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NEWS UPDATE

PREVENTION OF MONEY-LAUNDERING ACT, 2002 IN FORCE FROM JULY 1, 2005

SOURCE: PRESS INFORMATION BUREAU, GOVERNMENT OF INDIA

India is committed to fight all forms of economic crime which also includes money laundering. To deal with such economic crimes, a number of special laws regulating customs, excise, taxes, foreign exchange, narcotic drugs, banking, insurance, trade and commerce relating to export and import have been enacted. These laws are enforced by the respective agencies in India.

The Government, in order to combat money laundering as also to meet international commitments, such as recommendations of the Financial Action Task Force - an inter-governmental body which sets standards and develops and promotes policies to combat money laundering and terrorist financing - and the Political Declaration adopted by the United Nations General Assembly held in June, 1998, enacted the Prevention of Money-laundering Act, 2002 ("PMLA") as an Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering or for matters connected therewith. Although the Act received the assent of the President of India in January, 2003, it could not be brought into force due to certain lacunae in the Act. The Act was recently amended to remove these shortcomings.

The PMLA aimed at combating money laundering in India with three main objectives - to prevent and control money laundering, to confiscate and seize the property obtained from laundered money, and to deal with any other issue connected with money laundering in India, comes into force from July 1, 2005. The Act provides that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property, shall be guilty of offences of money-laundering. For the purpose of money-laundering, the PMLA identifies certain offences under the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, the Arms Act, the Wild Life (Protection) Act, the Immoral Traffic (Prevention) Act and the Prevention of Corruption Act, the proceeds of which would be covered under this Act.

To combat the menace of aforesaid offences of money laundering, the Government is entrusting the work relating to investigation, attachment of property/proceeds of crime relating to the scheduled offences under the Act and filing of complaints etc. to the Directorate of Enforcement, which currently deals with offences under the Foreign Exchange Management Act.

As per the provisions of the PMLA, every banking company, financial institution (which, inter alia, includes a chit fund company, a co-operative bank, a housing finance institution and a non-banking financial company) and intermediary (which includes a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and

registered under section 12 of the Securities and Exchange Board of India Act, 1992), shall have to maintain a record of all transactions, the nature and value of which is being prescribed in the Rules under the PMLA, which are concurrently being notified. Such transactions include all cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency, all series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within one calendar month and all suspicious transactions whether or not made in cash. Information of the afore-said transactions shall have to be furnished to the Director, Financial Intelligence Unit, India (FIU-IND).

The FIU-IND has been set up as a multi-disciplinary unit for establishing links between suspicious or unusual financial transactions and underlying criminal activities. It will coordinate and support efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering and related crimes. The FIU-IND will be the central nodal agency responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions to these agencies who shall protect the information against misuse. Through its research and analysis functions, it will monitor and identify strategic key areas on money laundering trends, methods and developments.

The punishment for offences under the said Act is rigorous imprisonment for a term from three years to seven years and a fine which may extend to five lakh rupees. Where the money laundering offence relates to a drug offence under the NDPS Act, the penalty can extend to a maximum of 10 years.

The Act provides that every order of attachment of property involved in money-laundering, order of seizure of property/records etc. shall be forwarded along with a complaint or application to the Adjudicating Authority within a period of thirty days. Such order would require to be confirmed by the Adjudicating Authority within a certain time-limit. The Adjudicating Authority is being constituted separately. The appeal against the orders of the Director or the Adjudicating Authority can be filed before the Appellate Tribunal being set up under the PMLA.