



PMLA LAW AND BACKGROUND FOR NOTIFICATIONS

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HISTORY AND ORIGIN OF TERM OF MONEY LAUNDERING

- ▶ **Sterling Seagrave** in his book **Lords of the Rim** mentioned Money laundering was prevalent 4000 years before Christ and explained how merchants and others, find ways to hide their wealth **including ways of moving it around without being identified and confiscated.**
- ▶ In the ancient time in BHARAT also when Kings and Mughals were ruling, produce by farmers and other production or trading by merchants find ways to hide to save the LAGAN

EMERGENCE OF WORD LAUNDERING


The term “money laundering” is said to have originated from the Mafia ownership of Laundromats (a self-service laundry service mark Laundromat) in the United States. Drug lords and gangsters in the 1950s showed the illegally earned money from a legitimate source by purchasing outwardly legitimate businesses to mix their Illicit earnings with the legitimate earnings they received from these businesses and thus the word 'Laundering' emerged .



INTERNATIONAL PROBLEM

Capone's Case Study; Crime of White Collar Persons

- ▶ In those days, Money Laundering was quite a simple process. The Money Launderers simply picked up bag full of loose notes from retail dealers and deposited them in the nearest banks. The banks did not ask any questions. Banks were too happy to receive huge sums of money.
- ▶ Almost a century ago, in the U.S alcohol was prohibited.
- ▶ There was a popular belief that Capone spent his entire life fighting the Mafia and Capone was not a part of the Mafia but **Al Scarface' Capone was the most famous Chicago gangsters .**
- ▶ **President Herbert Hoover declared him Public Enemy No. 1 and ordered action against him.**
- ▶ Several Government Departments, including the Income Tax department, went behind him.
- ▶ **Capone did not have even a bank account or any investment in his own name.**

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- **Capone claimed that he was earning less than 5,000 \$ a year, therefore he is out of the Income Tax net and not paying the tax.**
 - **Details of Capone's expenses. were collected by the agencies. Ultimately, Capone was charged and tried for evasion of Income Tax in spite of persistent threats to the jurors and bribery offers. Resulting in last minute change of the entire jury, Capone was found guilty on all counts.**
 - **In October 1931, Capone was sentenced to 11 years imprisonment and a fine of 50,000 USDs, -the severest punishment till then imposed for a tax offence.**



BEGINNING OF EFFORTS FOR AML AT INTERNATIONAL LEVEL

- ▶ **Firstly IN 1970, The U.S. Government passed the Currency and Foreign Transactions Reporting Act, requiring all banks to report cash transactions in excess of \$ 10,000 a day (the original limit was \$ 1,000).**
- ▶ **But in practice, provisions were misused by simply splitting the transactions to below \$ 10,000, a process called smurfing.**
- ▶ **In 1986, the US Government made attempts to avoid the reporting requirements a distinct criminal offence**



CONVENTIONS AND RESOLUTIONS

- ▶ **First Vienna Convention 1988 was on Unlawful Traffic in Narcotic Drugs and issue of proceeds of crime**
- ▶ **Strasbourg Convention was on Laundering search, seizure and confiscation of Proceeds from Crime and adoption of recommendations of FATF**
- ▶ **The organization for economic cooperation and development (OECD) Convention on combating of Corruption in public offices**
- ▶ **G- 7 summit in Paris and Recommendations of Financial Action Task Force on Money Laundering (FATF) for combating terrorist financing**



The FATF (Financial Action Task Force On Money Laundering) 1989

- ▶ The FATF (Financial Action Task Force) on Money Laundering is an intergovernmental body, which sets standards and develops and advocates policies to fight money Laundering and terrorist financing and other related threats to the integrity of the international financial system.
- ▶ FATF has devised and promulgated **40 Recommendations**, which set out the basic, universally applicable **framework for legal and regulatory systems, law enforcement activities, and the work of supervisory and regulatory agencies.**
- ▶ The FATF Recommendations are the internationally endorsed global standards against money laundering and terrorist financing




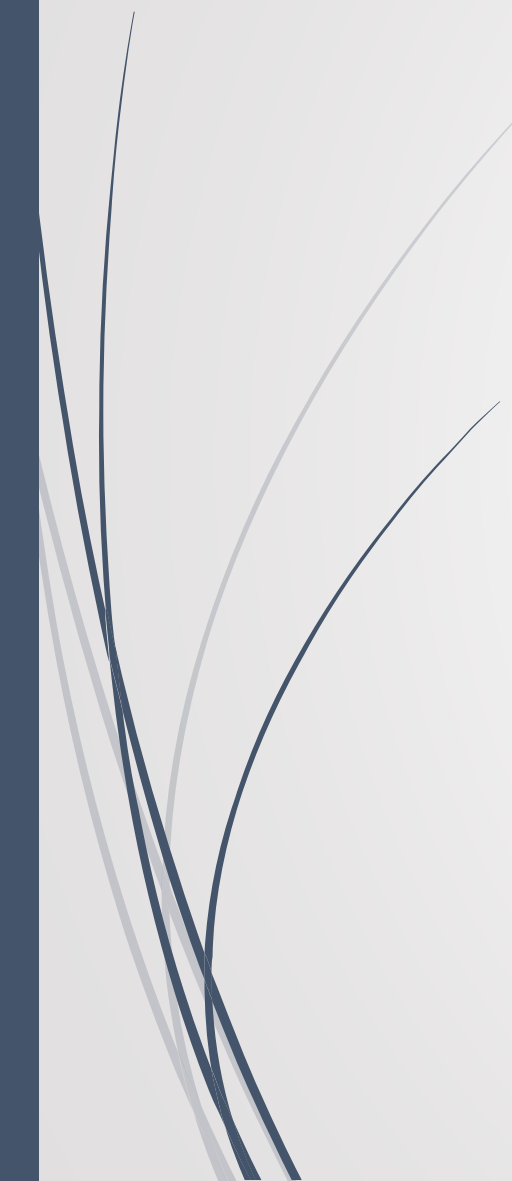
FATF Risk based Approach


- ▶ In June 2019, a research paper was published by FATF on guidance for a risk-based approach for effective implementation of FATF recommendations. It recognised that financial institutions and accountants in practice identify, assess and understand the money laundering and terrorist financing risk to which they are exposed and implement measures to mitigate the risk.
- ▶ The FATF recommendations apply to specified activities in R.22 (see paragraph 31 of guidance for a risk based approach for the accounting profession)
- ▶ Subject to the codes of professional conduct in the relevant jurisdiction, where services are not within their competence or risk appetite or comfort zone, accountants should refuse the engagement.



Recommendations Applicable to Accountants

- ▶ R 31 of RBA covers ethical obligations of professionals to avoid assisting criminals or facilitating criminal activity. The requirements regarding customer due diligence, record-keeping, politically exposed persons, new technologies and reliance on third parties set out apply to accountants in certain circumstances.

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- ▶ The requirements regarding customer due diligence, record-keeping, politically exposed persons, new technologies and reliance on third parties set out apply to accountants in certain circumstances. Specifically, the requirements applies to accountants when they prepare for or carry out transactions for their clients concerning the following activities:
 - ▶ Buying and selling of real estate;
 - ▶ Managing of client money, securities or other assets;
 - ▶ Management of bank, savings or securities accounts;
 - ▶ Organisation of contributions for the creation, operation or management of companies; and
 - ▶ Creating, operating or management of legal persons or arrangements, and buying and selling of business entities.



The Central Government hereby notifies that the **financial transactions carried out by a relevant person on behalf of his client**, in the course of his or her profession, in relation to the following activities-

- ▶ buying and selling of any immovable property;
- ▶ managing of client money, securities or other assets;
- ▶ management of bank, savings or securities accounts;
- ▶ organisation of contributions for the creation, operation or management of companies;
- ▶ creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities, shall be an activity for the purposes of said sub-section.



Status Of Practicing Professionals

As per latest data available the following is the status of Practicing Professionals

- ▶ As on date , there were about “3.80 lakh” chartered accountants (CAs) in India who were members of the Institute of Chartered Accountants of India (ICAI). However, only “1.25 lakh members” as on 1 st April 2022 are in full-time practice ¹.
- ▶ As of July 1, 2019, the Institute of Company Secretaries of India (ICSI) had “58,690 company secretaries” on its register out of which only “10,644 are in practice”.
- ▶ As of now, there are a total of “90,000 active members” of the Institute of Cost Accountants of India.



SOURCES OF MONEY

- ▶ Real estate transactions
- ▶ Drug trafficking
- ▶ People smuggling
- ▶ Arms, antique, gold smuggling
- ▶ Casinos & Gambling avenues (such as Horse Race & lotteries)
- ▶ Prostitution rings
- ▶ Financial frauds
- ▶ Corruption, or
- ▶ Illegal sale of wild life products and other specified predicate offences

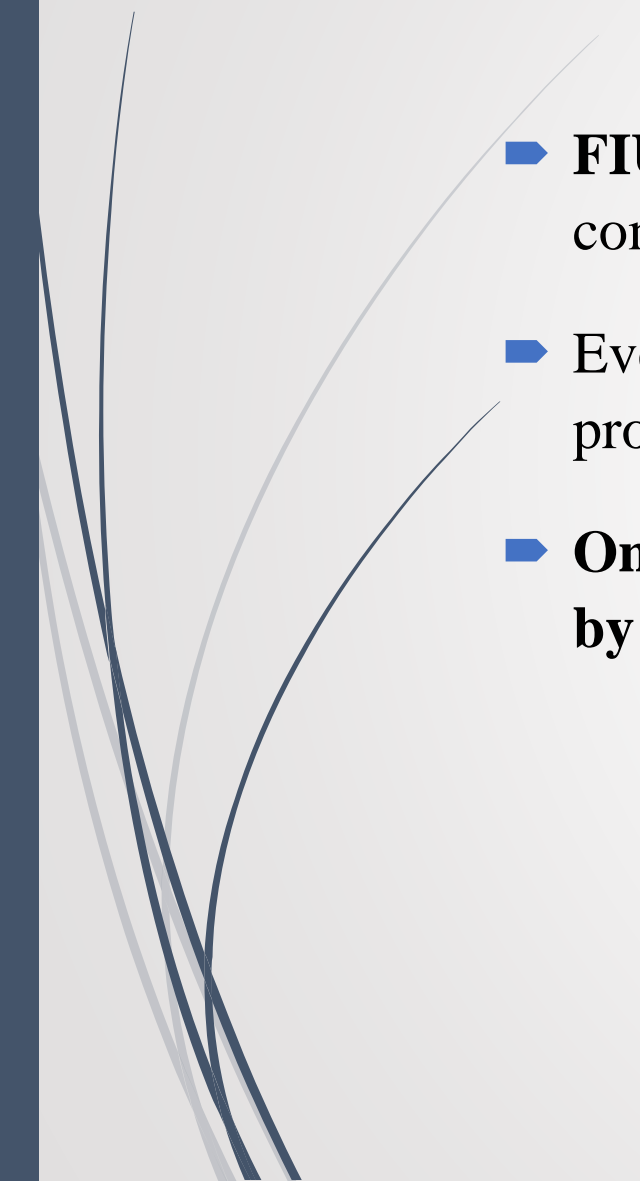


THE EGMONT GROUP; RECOGNITION OF CHANNEL OF BANKING SYSTEM CREATION OF FINANCIAL INTELLIGENCE UNITS (FIUS);

- ▶ Over the years, this was clear that banks and other financial institutions were an important source for information about money laundering and other financial crimes being investigated by law enforcement agencies.
- ▶ **A united body of 164 Financial Intelligence Units (FIUs) known as Egmont Group, provides a platform for the secure exchange of expertise and financial intelligence to combat money laundering and terrorist financing (ML/TF)**
- ▶ And these FIUs meet regularly to find ways of cooperation, especially in the areas of information exchange, training and sharing of expertise.





FUNCTION OF FIUs

- ▶ **FIUs, receive, analyze, and disclose information** by financial institutions to competent authorities of suspicious or unusual financial transactions.
 - ▶ Every FIU operates under **different guidelines**, most FIUs, under certain provisions, **can exchange information with their foreign counterparts**.
 - ▶ **One of the main goals of the Egmont Group is to create a global network by promoting international co-operation among FIUs.**
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THE BASEL STATEMENT OF PRINCIPLES: THURST ON BANKING

- ▶ **Since its inception, the Basel Committee has expanded its membership from the G10 to 45 institutions**
- ▶ **The Basel Committee has issued “Statement on prevention of criminal use of banking system for the purpose of money laundering”. The recommendations touch the following aspects.**
 - a) Proper customer identification
 - b) High ethical standards and compliance with laws
 - c) Co-operation with Law enforcement authorities;
 - d) Policies and procedure to adhere to the statement

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- ▶ “Banking Supervisors must determine that banks have adequate policies, practices and procedures in place, including strict **“know your customer” rules** that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally by criminal elements.
 - ▶ The Basel Committee has further issued an extensive paper on KYC (Know Your Customer) entitled **“Customer due diligence for banks”**. The same are intended to benefit banks against its fight against money laundering. In addition, the Basel Committee in this document, strongly supports the “adoption and implementation of the Financial Action Task Force recommendations, particularly those relating to banks”, and intends that the standard of Customer Due Diligence” be consistent with the FAT recommendations”.
 - ▶ **The Basel Committee has also laid down requirements for common equity, leverage ratios and liquidation ratios.**



Starting Of Journey Of PMLA In India

- The PML Bill 1998 was introduced in Lok Sabha on 04-08-1998.
- Referred to Standing committee on Finance on 05-08-1998.
- PMLA, 2002 received the assent of the President on 17th January 2003 became as Act No. 15 of 2003 and came into force with effect from 1st July, 2005.



Major Amendments

- Further The PMLA was amended by the Act No. 20 of 2005,
- Act No. 21 of 2009
- Act No. 2 of 2013,
- Act No.20 of 2015,
- Act No. 18 & 28 of 2016,
- Act No.13 & 16 of 2018,
- Act No.7, 14 & 23 of 2019,
- **The major efforts for amendments to link the provisions of Indian law with the laws of foreign countries.**

Proceeds Of Crime; Section 2(u)

- **“Proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held with in the country] [or a broad]**
- **[Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]**
- **(2Y) “Scheduled offence” means—**
 - (i) the offences specified under Part A of the Schedule; or**
 - (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or**
 - (iii) the offences specified under Part C of the Schedule.**

Offence Of Money-laundering.—Section 3.

- Who so ever 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 including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.
- [Explanation.—For the removal of doubts, it is here by clarified that,—
 - (i) A person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—(a) concealment; or (b) possession; or (c) acquisition; or (d) use; or (e) projecting as untainted property; or (f) claiming as untainted property, in any manner whatsoever;
 - (ii) the process or activity connected with proceeds of crime is a continuing activity and continue still such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.



2. PROCESS OF MONEY LAUNDERING:-

- ▶ Money laundering process generally comprises of three stages: -
 1. Placement
 2. Layering
 3. Integration

FINALY ASSUMPTION OR MYTH



PUNISHMENT;

Offence	Imprisonment	Fine
Commits the offence of money laundering	3 to 7 years	Seizure of Proceeds of Crime and value of property
If offence falls under paragraph 2 i.e. the Narcotics drugs and Psychotropic substances Act 1985.	Punishment up to 10 Years	Seizure of Proceeds of Crime and value of property Narcotics drugs



“REPORTING ENTITY”

- ▶ 2 (wa) “reporting entity” means a banking company, financial institution, intermediary or a person carrying on a designated business or profession;
- ▶ Main thrust and obligations have been on banking companies, financial institutions and intermediaries



VARIOUS REPORTING ENTITIES :

A. Banking Companies :

1. Nationalized banks, private Indian banks and private foreign banks,
2. All co-operative banks viz. primary co-operative banks, state co-operative banks and central cooperative banks,
3. State Bank of India and its associates and subsidiaries,
4. Regional Rural Banks.




B. Financial Institutions:

1. Financial Institutions as defined in Section 45-I of the RBI Act.
2. RBI regulates and supervises All-India Financial Institutions namely EXIM Bank, NABARD, NHB, SIDBI, IFCI Ltd., IDFC Ltd., IIBI Ltd. and TFCI Ltd.
3. Insurance Companies.
4. Hire Purchase Companies.
5. Chit fund companies as defined in the Chit Funds Act.
6. Housing Finance institutions as defined in the National Housing Bank Act such as HDFC.
7. Non-Bank Financial Companies as defined in section 45-I of the RBI Act such as private finance companies-motor and general, hire purchase companies, leasing companies and investment companies.



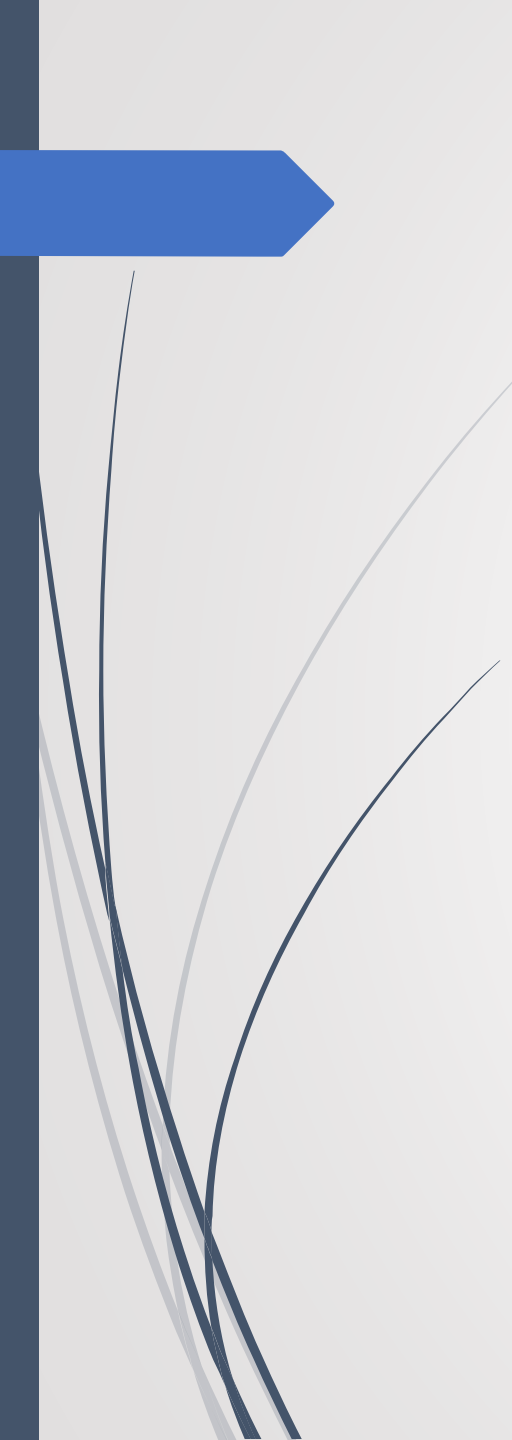
C. Intermediaries:


1. Stock Broker
2. Sub-broker
3. Share Transfer Agents
4. Bankers to an issue
5. Trustees to the Trust deed
6. Registrars to the Issue
7. Merchant Bankers
8. Underwriters
9. Portfolio Managers
10. Investment Advisors

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11. Depositories and Depository Participants.
 12. Custodian of Securities
 13. Foreign institutional investors
 14. Credit rating Agencies
 15. Venture Capital Funds
 16. Collective investment schemes including Mutual Funds
 17. An Association recognized or registered under the Forward Contracts (Regulation) Act 1952 or any member of such association
 18. An intermediary registered by Pension Fund Regulatory Development Authority
 19. A Recognised Stock Exchange

OFFICERS TO ASSIST IN INQUIRY, ETC.—

- ▶ The following officers and others are hereby empowered and required to assist the authorities in the enforcement of this act, namely:—officers OF THE
 1. Customs and central excise departments;
 2. The narcotic drugs and psychotropic substances act, 1985 (61 of 1985);
 3. Income-Tax Authorities under sub-section (1) of Section 117 of the Income-Tax the Schedule Act, 1961 (43 of 1961);
 4. Members of the recognised stock exchange referred to in clause (f) of section 2 and the officers of the stock exchanges recognised under section 4 of the securities contracts (regulation) act, 1956 (42 of 1956);



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5. Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
 6. Officers of Police;
 7. Foreign Exchange Management Act, 1999 (40 of 1999);
 8. Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992
 9. (ha) the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);
 10. (hb) **Forward Markets Commission** established under section 3 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952); (hc) **the recognised association recognised under section 6 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);**
 11. (hd) Pension Fund Regulatory and Development Authority;

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12. (he) Department of Posts in the Government of India;
 13. (hf) Registrars or Sub-Registrars appointed by the State Governments under section 6 of the Registration Act, 1908 (16 of 1908);
 14. (hg) registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 1988);
 15. (hh) Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949 (38 of 1949);
 16. (hi) Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959 (23 of 1959);
 17. (hj) the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980);]
 18. (i) other body corporate constituted or established under a Central Act or a State Act;



FINANCIAL ACTION TASK FORCE

- ▶ In 1989, G-7 summit was held in Paris and Financial Action Task Force (FATF) was established on Money Laundering to combat terrorist financing and to monitor International financial crimes
- ▶ The FATF is an intergovernmental body, which sets standards and develops and advocates policies to fight money Laundering and terrorist financing and other related threats to the integrity of the international financial system. There were initially 39 members of the FATF; 37 jurisdictions and 2 regional organizations

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- ▶ In June 2019, a research paper was published by FATF **on guidance for a risk-based approach** for the effective implementation of FATF recommendations. **It recognised that financial institutions and accountants in practice identify, assess and understand the money laundering and terrorist financing risk to which they are exposed** and implement measures to mitigate the risk.
 - ▶ **Subject to the codes of professional conduct in the relevant jurisdiction, where services are not within their competence or risk appetite or comfort zone, accountants should refuse the engagement.**



Vulnerabilities of accounting services

- ▶ **Financial and tax advice**
- ▶ **Company and trust formation**
- ▶ **Buying or selling of property**
- ▶ **Performing financial transactions**
- ▶ **Gaining introductions to financial institutions; criminals may use accountants as introducers or intermediaries**



Incomplete Records

- ▶ **Further, Para 23 OF RBA** covers **maintenance of incomplete records** by clients as revealed during the accounting/bookkeeping services provided by accountants **can be an area of higher risk.**
- ▶ **Paragraph (d) of Recommendation 22 of FATF** specifies **Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions** when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in.
- ▶ **Para 24 covers** Services relating to the formation and management of companies and trusts are seen as being a particular area of vulnerability.



Transparency and beneficial ownership of legal persons

- ▶ Maintenance of a register of beneficial ownership
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SECTION 14. NO CIVIL OR CRIMINAL PROCEEDINGS AGAINST REPORTING ENTITY, ITS DIRECTORS AND EMPLOYEES IN CERTAIN CASES.—



- ▶ Save as otherwise provided in section 13, the reporting entity, its directors and employees shall not be liable to any civil or criminal proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12.

SUSPICIOUS TRANSACTION REPORTS (STRS) –

- ▶ **Suspicious transaction as defined in PMLA also includes an attempted transaction**, whether or not made in cash, which to a person acting in good faith –
- ▶ Gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act, regardless of the value involved; or
- ▶ Appears to be made in circumstances of unusual or unjustified complexity; or
- ▶ Appears to have no economic rationale or bona fide purpose; or
- ▶ Gives rise to a reasonable ground of **suspicion that it may involve financing of the activities relating to terrorism;**
- ▶ This report has to be filed **within Seven (7) working days** of identification as suspicious at the level of **Principal Officer of the Bank.**



ILLUSTRATIVE LIST OF SUSPICIOUS TRANSACTIONS:

1. Customer insisting on anonymity, reluctance to provide identifying information, or Providing minimal, seemingly fictitious information
2. Cash based suspicious transactions for payment of premium and top ups over and above Rs. 5 lakh per person per month.
3. Frequent free look cancellations by customers;
4. Assignments to unrelated parties without valid consideration;
5. Request for purchase of a policy in amount considered beyond apparent need;
6. Policy from a place where customer does not reside or is not employed;

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7. Unusual terminating of policies and refunds;
 8. Frequent request for change in address
 9. Borrowing the maximum amount against a policy soon after buying it
 10. inflated or totally fraudulent claims e.9., by arson or other means causing a fraudulent claim to be made to recover part of the invested illegitimate funds
 11. Overpayment of premiums with a request for a refund of the amount overpaid.
 12. Multiple DD each of denomination for less than Rs. 50,0001 for payment of premium and top ups over and above Rs. 2 lakh per person per month.
 13. Media reports about a customer
 14. Information sought by Enforcement agencies

EXAMPLES OF SUSPICIOUS TRANSACTIONS ARE INDICATED AS UNDER:


- Identity of the client:-
 - False identification documents
 - Identification documents which could not be verified within reasonable time
 - Non-face to face client
 - Doubt over the real beneficiary of the account
 - Accounts opened with names very close to other established business entities
- Background of the client
- Multiple accounts

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- ▶ Large number of accounts having a common account holder, introducer or authorized Signatory with no rationale:-
 - ▶ Unexplained transfers between multiple accounts with no rationale Activity in Accounts
 - ▶ Unusual activity compared to past transactions
 - ▶ Use of different accounts by client alternatively
 - ▶ Sudden activity in dormant accounts
 - ▶ Activity inconsistent with what would be expected from declared business
 - ▶ Account used for circular trading



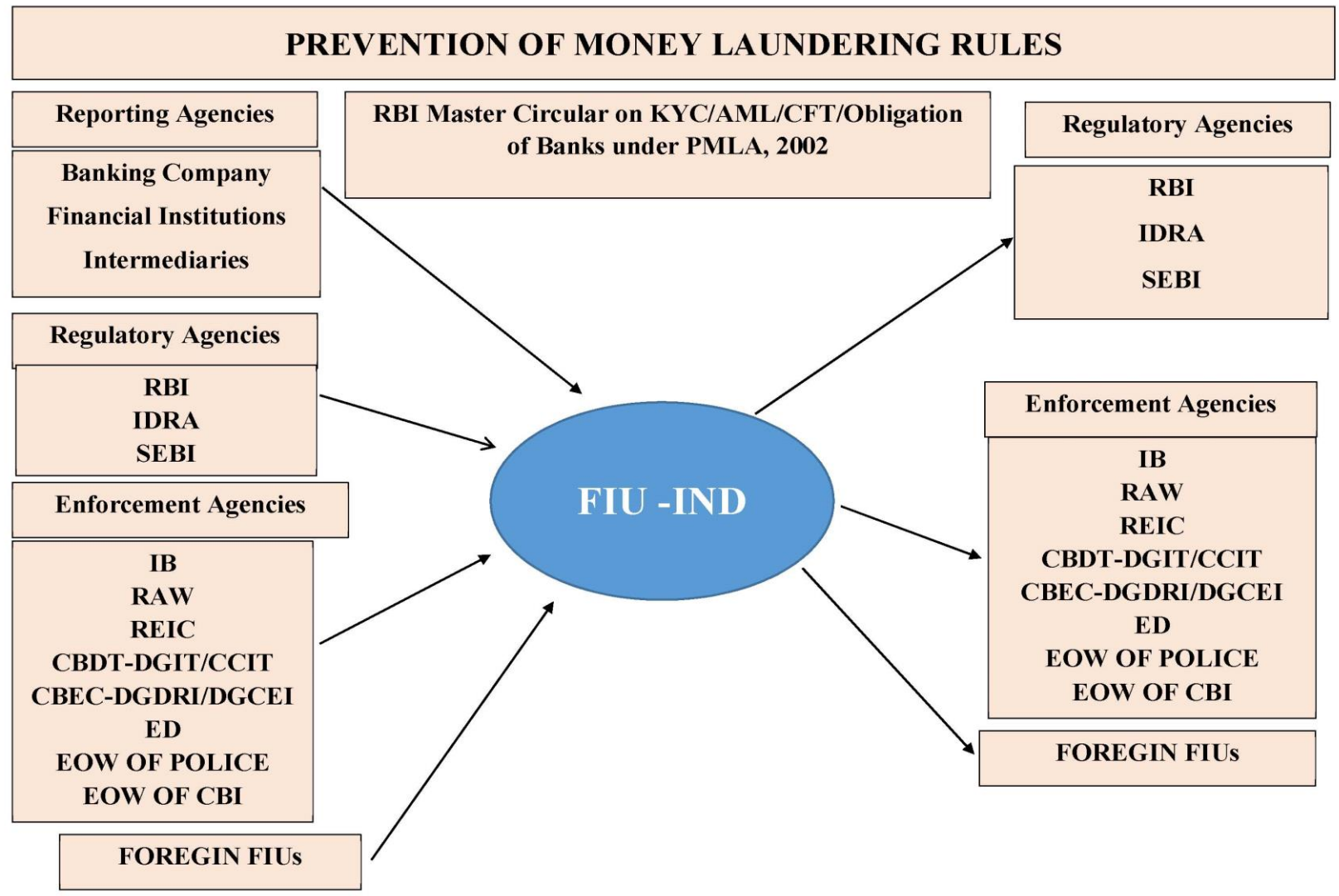
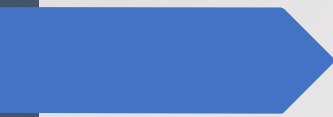
➤ **Nature of transactions:-**

- Unusual or unjustified complexity
- No economic rationale or bonafide purpose
- Source of funds are doubtful
- Appears to be case of insider trading
- Investment proceeds transferred to a third party
- Transactions reflect likely market manipulations
- Suspicious off market transactions

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- ▶ Value of transactions
 - ▶ Value just under the reporting threshold limit in an apparent attempt to avoid reporting
 - ▶ Large sums being transferred from overseas for making payments
 - ▶ Inconsistent with the clients apparent financial standing
 - ▶ Inconsistency in the payment pattern by client
 - ▶ Block deal which is not at market price or prices appear to be artificially
 - ▶ Inflated/deflated

ROLE OF FINANCIAL INTELLIGENCE UNIT-INDIA

- ▶ **FIU-IND was set up by the Government of India in 2004 as the central nodal agency responsible for receiving, processing, analysing and disseminating information relating to suspicious financial transactions and is responsible for domestic and global efforts against money laundering and related crimes.**
- ▶ The main function of FIU-IND is to receive various reports prescribed under the PMLA and the rules made thereunder, analyse them and, as appropriate, disseminate valuable financial information to intelligence/enforcement agencies and regulatory authorities.
- ▶ Therefore, any reports regarding financial transactions such as Suspicious Transaction Reports (STRs), Cash Transaction Reports (CTRs) etc. must be filed with the agency.
- ▶ FIU-IND has the authority to request additional information on individuals or entities from banks and other financial institutions. FIU-IND is an administrative FIU and does not investigate the cases.
- ▶ FIU-IND is responsible for coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing global efforts against money Laundering and related crimes.
- ▶ FIU-IND is an independent body that reports directly to the Economic Intelligence Council (EIC), headed by the Finance Minister of the country which is responsible for intelligence and control of smuggling, money laundering, tax evasion and fraud.





CUSTOMER IDENTIFICATION AND DUE DILIGENCE

MEANING OF CLIENT

“Client” means a person who engages in a financial transaction or activity with a reporting entity. The term also includes a person on whose behalf the person who engages in the transaction or activity is acting.

TRANSACTION MEANING

The word “transaction” has been defined under Clause (h) of Rule 2 of the above Rules and has undergone a substantial change by amendment made in 2013. Post amendment, the expression reads as under:

‘(h) “Transaction” means a purchase, sale, loan, pledge, gift, transfer, delivery or the arrangement thereof and includes –

- (i) opening of an account;**
- (ii) deposits, withdrawal, exchange or transfer of funds in whatever currency, whether in cash or by cheque, payment order or other instruments or by electronic or other non-physical means;**
- (iii) the use of a safety deposit box or any other form of safe deposit;**
- (iv) entering into any fiduciary relationship;**
- (v) any payment made or received in whole or in part of any contractual or other legal OBLIGATIONS**
- (vi) any payment made in respect of playing games of chance for cash or kind including such activities associated with casino; and**
- (vii) establishing or creating a legal person or legal arrangement.**



DOCUMENTS (ONLY CERTIFIED COPIES) REQUIRED FOR VERIFICATION [RULE 9(4) & RULE 9(5)]

- **Different documents for different type of persons like**
- **Individual**
- **Partnership**
- **Company**
- **Trust**
- **Beneficial owner**



DIFFERENT DOCUMENTS AS APPLICABLE IN CASE OF PERSON

- Aadhaar
- PAN
- Partnership Deed, Registration Certificate
- Certificate of Incorporation, MOA, Board Resolution
- Trust Deed
- Deed in case of existence of AOP or Body Individuals
- Resolutions to Authorise person to operate account where applicable

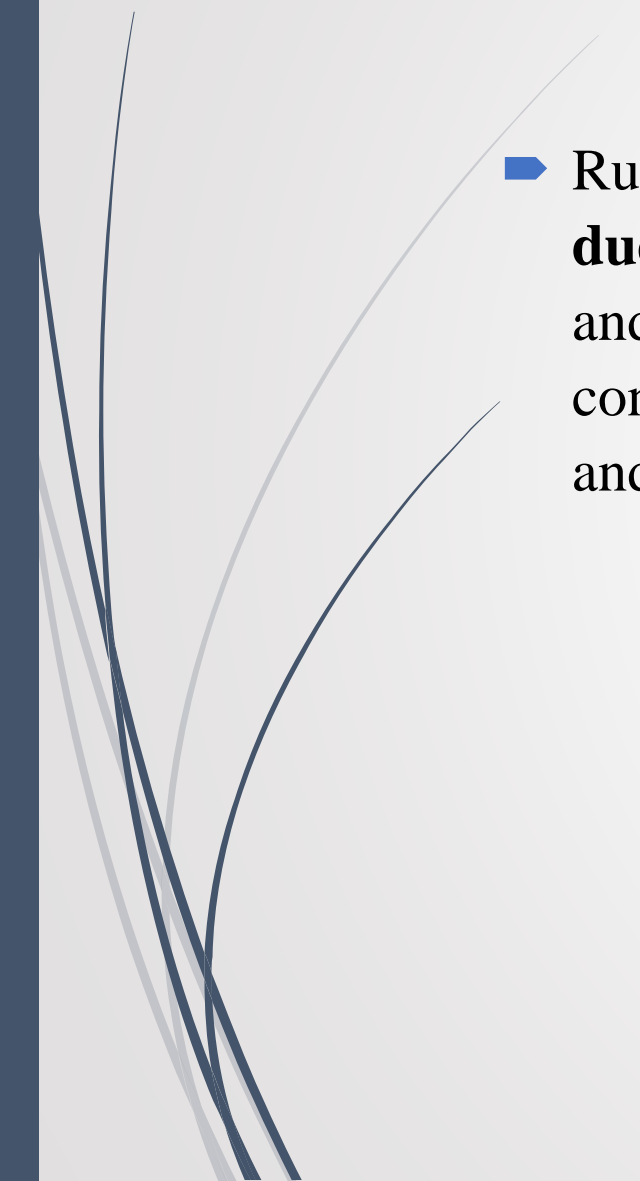


CLIENT DUE DILIGENCE – FALLOUTS AND ONGOING EXERCISE

- ▶ While Rule 9(11) provides that no reporting entity shall *allow the opening of or keep* any anonymous account or account in fictitious names or account on behalf of other persons whose identity has not been disclosed or cannot be verified,



ON GOING DUE DILIGENCE

- ▶ Rule 9(12) provides **that every reporting entity shall exercise ongoing due diligence** with respect to the business relationship with every client and closely examine the transactions in order to ensure that they are consistent with their knowledge of the client, his business and risk profile and where necessary, the source of funds.
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RISK ASSESSMENT

- ▶ Lastly Rule 9(13) states that every reporting entity shall carry out risk assessment to identify, assess and take effective measures to mitigate its money laundering and terrorist financing risk for clients, countries or geographic areas, and products, services, transactions or delivery channels that is consistent with any national risk assessment conducted by a body or authority duly notified by the Central Government.

MAINTENANCE OF RECORDS OF IDENTITY OF CLIENTS (RULE 10)

- ▶ **Every reporting entity, shall maintain records of the identity of its clients.**
 - (1) **Every reporting entity shall maintain the physical copy of records of the identity of its clients obtained in accordance with rule 9, after filing the electronic copy of such records with the **Central KYC Records Registry.**"**
 - (2) The records of the identity of clients shall be maintained in a manner as may be specified by its regulators from time to time.
 - (3) Where the reporting entity does not have records of the identity of its existing clients, it shall obtain the records within the period specified by the regulator, **failing which the reporting entity shall close the account of the clients after giving due notice to the client.**

Explanation - For the purpose of this rule, the expression "records of the identity of clients" shall include updated records of the identification data, account files and business correspondence.



KNOW YOUR CUSTOMER GUIDELINES

- ▶ **The objectives of KYC guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering or terrorist financing activities**
- ▶ The Reserve Bank of India directed all banks to implement KYC guidelines for all new accounts in the second half of 2002 and
- ▶ For existing accounts, imposing KYC norms was little difficult, so the RBI issued guidelines for it at the end of 2004.




THE KYC POLICY SHALL INCLUDE FOLLOWING FOUR KEY ELEMENTS:

- ▶ Customer Acceptance Policy;
- ▶ Risk Management;
- ▶ Customer Identification Procedures (CIP); and
- ▶ Monitoring of Transactions



INTRODUCTION OF V- CIP

- ▶ **RBI HAS MADE Amendments to the Master Direction (MD) on KYC IN FEB 2016**
 - ▶ **I. V-CIP:** Video based Customer Identification Process
- 



FREEZING AND CLOSURE OF ACCOUNTS

- ▶ In case of non-compliance of KYC requirements by the customers despite repeated reminders by banks/FIs, banks/FIs may impose ‘partial freezing’ on such KYC non-compliant accounts in a phased manner.
- ▶ While imposing ‘partial freezing’, banks/FIs have to ensure that the option of ‘partial freezing’ is exercised after giving due notice of three months initially to the customers to comply with KYC requirements to be followed by a reminder giving a further period of three months.
- ▶ Thereafter, banks/FIs may impose ‘partial freezing’ by allowing all credits and disallowing all debits with the freedom to close the accounts

INTRODUCTION OF NEW LAWS OR AMENDMENTS IN EXISTING LAWS IN VIEW OF AML

1. INCOME-TAX Act, 1961

Implication under Income-tax Act on benamidar and beneficial owner vis-à-vis the unexplained investments and credits

2. The Prohibition of Benami Property Transactions Act, 1988

3. Prevention of Money Laundering Act, 2002

4. New Company law 2013 and incorporation of section 447 in companies act and concept of beneficial owner creation of SFIO

5. Black Money (undisclosed foreign income and assets) and imposition of tax Act 2015

6. Fugitive Economic Offenders Act, 2018


7. Banning of Unregulated Deposits Schemes Act, 2019

8. Issue of detailed master circulars by RBI ,SEBI, IRDA for combating money laundering



FATF Recommendations applicable to accountants

- ▶ **R 31 of RBA covers ethical obligations of professionals to avoid assisting criminals or facilitating criminal activity.** The requirements regarding customer due diligence, record-keeping, politically exposed persons, new technologies and reliance on third parties set out apply to accountants in certain circumstances. Specifically, the requirements apply to accountants when they prepare for or carry out transactions for their clients concerning the following activities:
 - ▶ Buying and selling of real estate;
 - ▶ Managing of client money, securities or other assets;
 - ▶ Management of bank, savings or securities accounts;
 - ▶ Organisation of contributions for the creation, operation or management of companies; and
- ▶ Creating, operating or management of legal persons or arrangements, and buying and selling of business entities.



- 
- ▶ Para (e) of 22 of FATF also specify the activities mentioned in notification of 9 the May 2023.
 - ▶ Trust and company service providers – when they prepare for or carry out transactions for a client concerning the following activities:
 - ▶ Acting as a formation agent of legal persons;
 - ▶ Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - ▶ Providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - ▶ Acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;
 - ▶ Acting as (or arranging for another person to act as) a nominee shareholder for another person.


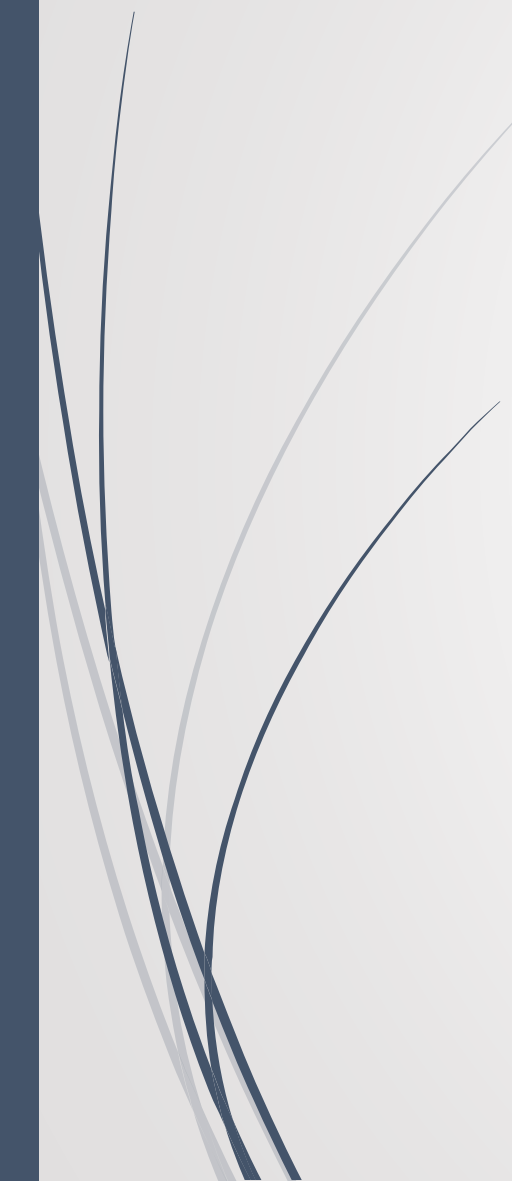



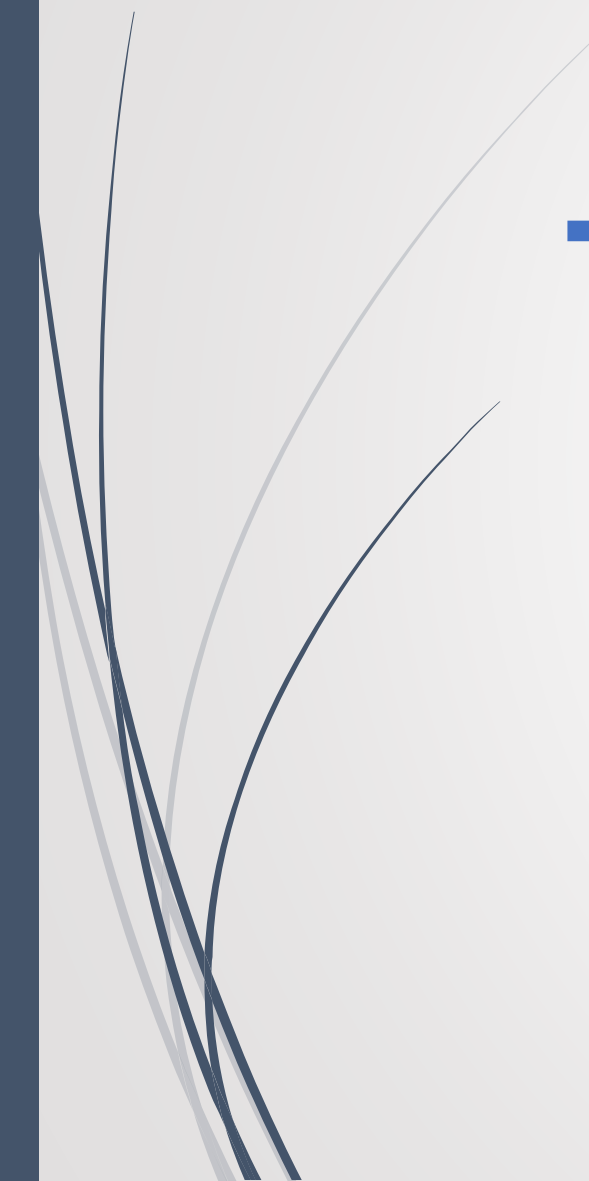
Two Notifications S.O. 2036(E) And 2135(E)

Dated 3rd May 2023 AND 9th MAY

- ▶ In view of the above recommendations and according to the FATF, the possible onsite assessment which is due in November 2023, whereas the findings may be discussed at its June 2024 plenary.
- ▶ In view of the above two notifications S.O. 2036(E) and 2135(E) have been issued by the Ministry of Finance, Department of Revenue on 3rd May 2023 AND 9th MAY respectively under [Prevention of Money-laundering Act, 2002 \(PMLA\)](#).

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- ▶ In exercise of the powers conferred by sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003), the Central Government hereby notifies that the financial transactions carried out by a relevant person on behalf of his client, in the course of his or her profession, in relation to the following activities-
 - ▶ Buying and selling of any immovable property;
 - ▶ Managing of client money, securities or other assets;
 - ▶ Management of bank, savings or securities accounts;
 - ▶ Organisation of contributions for the creation, operation or management of companies;
 - ▶ Creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities, shall be an activity for the purposes of said sub-section.

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- ▶ Explanation 1.- For the purposes of this notification ‘relevant person’ includes –
 - ▶ an individual who obtained a certificate of practice under section 6 of the Chartered Accountants Act, 1949 (38 of 1949) and practicing individually or through a firm, in whatever manner it has been constituted;
 - ▶ an individual who obtained a certificate of practice under section 6 of the Company Secretaries Act, 1980 (56 of 1980) and practicing individually or through a firm, in whatever manner it has been constituted;
 - ▶ an individual who has obtained a certificate of practice under section 6 of the Cost and Works Accountants Act, 1959 (23 of 1959) and practicing individually or through a firm, in whatever manner it has been constituted.


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- ▶ Explanation 2.- For the purposes of this notification ‘firm’ shall have the same meaning assigned to it in sub-clause (i) of clause (23) of section 2 of the Income-tax Act, 1961 (43 of 1961). [F. No. P-12011/12/2022-ES Cell-DOR]




Notification S.O. 2135(E).

Dated 9th May 2023

- ▶ S.O. 2135(E). —In exercise of the powers conferred by sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003) (hereinafter referred to the as the Act), the Central Government hereby notifies that the following activities when carried out in the course of business on behalf of or for another person, as the case may be, as an activity for the purposes of said sub-clause, namely: -
- ▶ acting as a formation agent of companies and limited liability partnerships;
- ▶ acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and limited liability partnerships;
- ▶ providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust;
- ▶ acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust; and
- ▶ acting as (or arranging for another person to act as) a nominee
- ▶ shareholder for another person.

- 
- **Explanation.** –For removal of doubts, it is clarified that the following activities shall not be regarded as activity for the purposes of sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Act, namely:-
 - any activity that is carried out as part of any agreement of lease, sub-lease, tenancy or any other agreement or arrangement for the use of land or building or any space and the consideration is subjected to deduction of income-tax as defined under section 194-I of Income-tax Act, 1961 (43 of 1961); or
 - any activity that is carried out by an employee on behalf of his employer in the course of or in relation to his employment; or
 - any activity that is carried out by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of a company to the extent of filing a declaration as required under clause (b) of sub-section (1) of section 7 of Companies Act, 2013 (18 of 2013); or
 - any activity of a person which falls within the meaning of an intermediary as defined in clause (n) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003).

- 
- ▶ Further it has been clarified in the notification that if activities when carried out
 - ▶ as part of any agreement of lease, sub-lease, tenancy or any other agreement or arrangement for the use of land or building or any space and the consideration is subjected to deduction of income-tax as defined under section 194-I of Income-tax Act, 1961 (43 of 1961); or
 - ▶ by an employee on behalf of his employer in the course of or in relation to his employment; or
 - ▶ by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of a company to the extent of filing a declaration as required under clause (b) of sub-section (1) of section 7 of Companies Act, 2013 (18 of 2013); or
 - ▶ **any activity of a person which falls within the meaning of an intermediary as defined in clause (n) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003) will not be under preview of PMLA**

Reporting Challenges

- ▶ Whether Reporting Entity will be liable to report for only five transactions mentioned in notification?
- ▶ Applicability of the notification?
- ▶ When there is engagement of professionals in five activities, only to report?
- ▶ Or without involvement in activities reporting has to be made to FIU?
- ▶ In normal course of audit if any suspicious transactions come into notice whether the same will be reported which are not related to activities mentioned in the notification ?
- ▶ Professionals sitting in small towns may face connectivity problems.
- ▶ If any Falsifications of Books is noticed while auditing in a normal course whether there is responsibility to report ?
- ▶ Whether registration is required with FIU?
- ▶ In how much time the report should be made to FIU?
- ▶ Professionals sitting in small towns may face connectivity problems.
- ▶ Higher compliance cost.
- ▶ Whether a person can not act as a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and limited liability partnerships



GST evasion of Rs 55,575 crore detected in last 2 years

- ▶ In the two years of the special drive, GST/ITC fraud worth Rs 55,575 crore has been detected. 719 persons have been arrested, which include 20 CA/CS professionals," the official said.**
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Fake Companies For Claiming Input Credit under GST.

2660 जाली कंपनियां बनाकर 15 हजार करोड़ का फर्जीवाड़ा

नोएडा में दो सीए समेत 8 अरेस्ट, इनपुट टैक्स क्रेडिट लेकर सरकार को लगाया चूना

■ एनबीटी न्यूज, नोएडा

फर्जी दस्तावेजों से जीएसटी नंबर सहित फर्म बनाकर सरकार को 15 हजार करोड़ रुपये से ज्यादा के राजस्व नुकसान पहुंचाने वाले गैंग का पुलिस ने खुलासा किया है। थाना सेक्टर-20 पुलिस ने इस मामले में 2 सीए समेत 8 लोगों को पुलिस ने गिरफ्तार किया है। पकड़े गए आरोपी फर्म का फर्जी बिल बनाते थे और जीएसटी रिफंड (इनपुट टैक्स क्रेडिट) प्राप्त कर सरकार को चूना लगाते थे।

आरोपियों को गिरफ्तारी के बाद 2660 फर्जी कंपनियां मिली हैं। इनमें 15 हजार करोड़ रुपये से ज्यादा का बीते 4.5 साल में आरोपियों ने जीएसटी रिफंड लिया है। नोएडा पुलिस आरोपियों पर गैरस्ट्र एक्ट के तहत केस दर्ज कर संपत्ति कुर्क की कार्रवाई करेगी। पुलिस कमिश्नर लक्ष्मी सिंह ने फर्जी कंपनियां बनाकर जीएसटी रिफंड के नाम पर चूना लग रहे गिरोह को पकड़ने वाली टीम को 25 हजार रुपये का इनाम देने की घोषणा की है।

मई में सेक्टर-20 थाने में पैन कार्ड से फर्जी कंपनी खोलने के प्रयास का केस दर्ज कराया था। पुलिस ने मामले की जांच की तो हजारों करोड़ की टगी करने वाले गिरोह का पर्दाफाश हुआ। निफ्त में आए आरोपियों की पहचान यासीन शेख, आकाश सेना, राजीव, अतुल सेगर, दीपक मुरजानी, अश्विन, विनीता के रूप में हुई है। पुलिस ने सभी को मधु विहार (दिल्ली) स्थित निवाली कार्यालय से गिरफ्तार किया। दीपक मुरजानी मास्टरमाइंड है। सभी आरोपी सरकार को जीएसटी रिफंड लेने के लिए दो टीमों में काम करते थे। दोनों टीम से दूसरे से मिलती नहीं थी। बात करने के लिए वॉट्सऐप कॉल करते थे।



नोएडा थाना सेक्टर 20 पुलिस ने फर्जी फर्म जीएसटी नंबर सहित तैयार करके सरकार को हजारों करोड़ का चूना लगाने वाले 8 आरोपियों को किया गिरफ्तार

“ फर्जी कंपनी बनाकर GST इनवॉइस भरे जाने की FIR दर्ज हुई थी। इनके पास 2660 जीएसटी नंबर सहित फर्जी कंपनियां मिली हैं। लाखों की संख्या में पैन कार्ड का डेटा मिला है। -लक्ष्मी सिंह, पुलिस कमिश्नर, गौतमबुद्ध नगर

ऐसे बनाते थे फर्जी कंपनी

जालसाजों की पहली टीम सर्विस प्रोवाइडर कंपनी से अद्वैत रूप से डेटा (पैन नंबर) खरीदती थी। इसके बाद अशिक्षित लोगों को 1000-1500 रूपयों का लालच देकर उनके आधार कार्ड में नया मोबाइल नंबर रजिस्टर्ड करते थे। इसके बाद प्राप्त डेटा से ऑनलाइन रेट एंजिन और बिजली बिल को अजूनलौड कर एडिट कर फर्म का एड्रेस डालते थे। अशिक्षित लोगों के आधार कार्ड के नाम को सर्विस प्रोवाइडर

कंपनी से खरीदे गए पैन कार्ड डेटा में सर्व किया जाता था। कुछ नाम कॉमन मिलने पर उनके नाम के आधार कार्ड और अन्य फर्जी दस्तावेजों को फर्जी फर्म और उसका जीएसटी नंबर रजिस्टर कराने के लिए जीएसटी की वेबसाइट पर लॉगिन करते थे। फर्म रजिस्टर कराने के लिए जीएसटी विभाग से एक वेरिफिकेशन कोड रजिस्टर्ड करार मोबाइल नंबर पर पहुंचता था। ओटीपी को पॉर्टल में दर्ज कर आरोपी फर्जी फर्म तैयार कर लेते थे।

हर महीने 4 से 5 करोड़ का फर्जी बिल

इसी तरह से आरोपी एक कंपनी से हर महीने 4 से 5 करोड़ का फर्जी बिल तैयार कर जीएसटी रिफंड लेते थे। पहली टीम 5 फर्जी फर्म उपयोग कर रही थी। इनके फर्जी खाते इमेली चौपाल, पिबोलो, राजनीश झा, दिवेंद्र झा के नाम से अलग-अलग बैंकों में खोल गए। पकड़े गए आरोपियों की दूसरी टीम में अक्षित गोयल, पद्मिनी गोयल, अर्चित, मयूर, चारु नागपाल, रोहित नागपाल, दीपक सिंघल अमी फरार है पुलिस उनको पकड़ने में जुटी हुई है।

6.35

लाख लोगों का डेटा पकड़े गए आरोपियों के पास मिला

4-5

करोड़ का फर्जी बिल तैयार आरोपी एक कंपनी से हर महीने

1000

और 1500 रूपयों का लालच देकर लोगों के आधार कार्ड में दर्ज कराते थे अपना मोबाइल नंबर

दिल्ली सरकार लिखी हुई कार बरामद

आरोपियों के कब्जे से तीन कार बरामद हुई हैं। इसमें से एक कार पर दिल्ली सरकार लिखा हुआ है। पुलिस ने 12.66 लाख रुपये, 32 मोबाइल फोन, कम्प्यूटर सिस्टम, हार्ड डिस्क और फर्जी पैन और आधार कार्ड बरामद किए हैं। फर्जी कंपनियों को जीएसटी नंबर कैसे मिला? इसमें किसी बड़े जीएसटी अधिकारी की भागीदारी तो नहीं है? इसी की जांच के लिए नोएडा पुलिस से जीएसटी केंद्र और प्रदेश मुख्यालय को लेंटर भेजकर जांच करने के लिए कहा है। फर्जी कंपनियों को न है इसकी जांच के लिए स्पेशलिस्ट को लगाया गया है।

MEHUL CHOKSHI :FRAUD CASE, SALE OF LAB-GROWN DIAMONDS- JAIL IN DOMINICA, ANTIGUA



**INX MEDIA CASE AND AIRCEL-MAXIS CASE
P. CHIDAMBARAM WAS ARRESTED BY CBI**



**PNB SCAM – NIRAV MODI IN JAIL IN
LONDON. U. K. COURT APPROVES MODI'S
EXTRADITION TO INDIA**





STATUS REPORT IN LOK SABHA

- ▶ According to the latest information given by Minister of State for Finance in a written reply to a question in the Lok Sabha, 283 prosecution complaints have been filed and properties worth Rs18,866 crore have been attached.

STATUS OF CASES AGAINST POLITICAL LEADERS

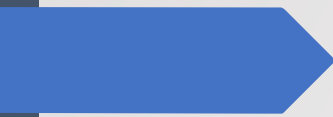
नेताओं के अपराध पर ED की सुस्ती का आलम  22:05

51 सांसद आरोपी  **सिर्फ 4** केस में
ट्रायल तक

28 सांसद पर
जांच जारी  **एक केस में 2012 के बाद
अब तक कुछ नहीं हुआ**

TOP NEWS सुप्रीम कोर्ट में अगले हफ्ते मामले की सुनवाई **LUXCOZI**
10 तक

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*Thank
you!*