

**PMLA , FATF, FIU, ED,  
Fraud Risk Assessment & Cases  
(Unit 15 – Module 1)**

**DFA**

March 25, 2022

**Arijit Chakraborty**

# Money Laundering & PMLA

## **Whosoever directly or indirectly -**

- Attempts to indulge / deliberately assists or knowingly becomes a party
- Actually involved even unknowingly in any process / activity connected with proceeds of crime
- 'Money Laundering' = illegal funds and assets are converted into legitimate funds
- Placement – Layering – Integration
- Finance Act 2018 : Present amendment shall allow to proceed against property equivalent to proceeds to crime held outside the country also:
- Use of Exception Reporting, unusual transaction review, system Alerts, AI & Data analytics

PMLA came into force with effect July 01, 2005

PMLA defines money laundering offence and provides for the freezing, seizure and confiscation of the proceeds of crime

# Offence of Money Laundering

- **The offence of money laundering:** *“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 including its concealment, possession, acquisition or use and projecting it or claiming it as untainted property shall be guilty of offence of money-laundering.”*
- **Hawala**
- Money laundering is popularly known as Hawala transactions.
- Famous during early 90's when many of the politicians were caught in its net
- "Hawala" = Arabic word = “transfer of money or information between two persons using a third person”
- **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.
- Schedule to PMLA has 156 Offences under 28 criminal acts
  - Indian Penal Code (IPC)
  - Narcotic Drugs And Psychotropic Substances Act (NDPS)
  - Unlawful Activities (Prevention) Act (UAPA)
  - Explosive Substances Act

## Stages of Money Laundering

- **Placement** : Initial stage in which cash proceeds from criminal activities is placed in financial institutions.

## Stages of Money Laundering

- **Layering** : Process of conducting complex series of financial transactions, with the purpose of hiding the origin of money from criminal activities

## Stages of Money Laundering

- **Integration** : Final stage in re-injection of the laundered proceeds back into the economy in such a way that they re-enter the financial system as normal business funds

# Powers of Investigating Officers

1. Power of Survey [S. 16]
  2. Power to Search, Seize and Freeze [S. 17]
  3. Power to Search Persons [S. 18], Power to Arrest [S. 19]
  4. Power to summon, production of documents and give evidence [S. 50]
  5. Power of retention of property and records [Ss. 20 & 21]
  6. Power to Attach property [Section 5]
- The authority shall forward “*reasons so recorded*” or “*order*”, “*alongwith material in his possession*”, to Adjudicating Authority.
  - The authority seizing any record or property shall file an application for retention thereof before the Adjudicating Authority within 30 days.

## Enforcement Directorate ( *FEMA & PMLA*)= Functions

- **1. Investigate contraventions of FEMA , 1999(FEMA)** which came into force with effect from 1.6.2000. Contraventions of FEMA are dealt with by way of adjudication by designated authorities of ED and penalties upto three times the sum involved can be imposed.
- **2. Investigate offences of money laundering under PMLA , 2002** which came into force with effect from 1.7.2005 and to take actions of attachment and confiscation of property if the same is determined to be proceeds of crime derived from a Scheduled Offence under PMLA, and to prosecute the persons involved in the offence of money laundering.
- There are **156 offences under 28 statutes** which are Scheduled Offences under PMLA.
- **3. Processing cases of fugitive/s from India under Fugitive Economic Offenders Act, 2018.**
- **Objective of this Act =** to provided for measures to deter fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian Courts and to preserve the sanctity of the rule of law
- **4.Sponsor cases of preventive detention** under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974(COFEPOSA) in regard to contraventions of FEMA.
- **5.Render cooperation to foreign countries** in matters relating to money laundering and restitution of assets under the provisions of PMLA and to seek cooperation in such matters.



# Rajeshwar Exports case – PMLA ( Demonetisation, 2016-17)

- ED in Mumbai in February, 2017 arrested owner of Rajeshwar Exports, Kritika Dahal, for money laundering using her company in Hong Kong.
- • ED team had come across illegal deposits of money (after November 8, 2016) worth Rs 700 crore with various bank accounts, which later, got diverted to Hong Kong
- ED revealed = bank accounts were used for illegal transactions of huge amounts.
- • More than 100 accounts of different shell companies were sourced for depositing huge cash of more than Rs 92 crore in old demonetised currency.
- ED Observation = layering of these funds has been done through more than 500 accounts
- Ultimately, funds from all companies & firms credited through RTGS to Rajeshwar Exports, which was utilised for outward remittance to Hong Kong in guise of payment of import of overvalued consignments of total 355 Bills of Entries
- SFIO registered cases against 49 shell companies, Rs 3900 crore laundered by 559 persons with help of 54 professionals., Rs 1,238 crore cash deposited in shell or dormant companies, post demonetisation.



## Deepak Talwar case

Talwar = corporate lobbyist, detained in UAE & arrested by ED in Jan 2019, involved case of misusing over Rs 90 crore taken through foreign funding route as part of CSR

- Charged with criminal conspiracy, forgery and under various other sections of FCRA for allegedly diverting Rs 90.72 crore worth of foreign funds meant for ambulances received by his NGO from Europe's leading missile manufacturing company

*"From the allegations made in the complaint, the offences under Section 3 read, with Section 70, punishable under Section 4 (related to money laundering) of Prevention of Money Laundering Act, are made out," Hon'ble Court*

ED lodged case in December 2017 for investigating matter under PMLA to trace trail of the proceeds of crime.

# The FATF – Structure & Objectives

- Established by the G-7 Summit in Paris in July 1989 to examine measures to combat money laundering.
- An inter-governmental body whose purpose is to establish international standards and promote national and international policies to combat ML and terrorist financing (TF).
- **Membership**
  - The 36 members (34 countries and 2 regional bodies) of FATF & members of 8 FATF-style regional bodies (FSRBs) have all committed to implement FATF standards.
  - The Gulf Cooperation Council & European Union are members of FATF.
    - **Objectives of FATF** = to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.
    - FATF monitors countries' progress in implementing FATF Recommendations; reviews money laundering and terrorist financing techniques and counter-measures; promotes the adoption and implementation of FATF Recommendations globally.

# FATF – Organisation, operations & Recommendations

- Financial Action Task Force (FATF) = global money laundering and terrorist financing watchdog.
- The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society.
- **Policy-making body** = FATF works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.
- FATF Recommendations, international AML and CFT and proliferation (AML/CFT) standards, and the FATF Methodology to assess the effectiveness of AML/CFT systems.
- More than 200 countries and jurisdictions committed to FATF
- **FATF Recommendations 2012** - *amended March 2022*
- Methodology 2013- *amended November 2020*
- Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations- *amended January 2021*

# Financial Intelligence Unit-India (FIU-IND )

- FIU = central national agency responsible for receiving, processing, analyzing and disseminating information relating to suspected financial transactions.
- FIU-IND = independent body reporting directly to Economic Intelligence Council (EIC) headed by Finance Minister.
- **Powers and functions include:**
  - receiving information and reports from Reporting Entities
  - processing, analysing and disseminating information to any authority in law in relation to suspected financial transactions.
- Financial Intelligence Unit–India(FIU-IND) established in 2004
- Financial Action Task Force (FATF) membership granted to India in 2010

# FIU –IND : Role, Functions

- Main function of FIU-IND is to receive cash/suspicious transaction reports, analyse them and, as appropriate, disseminate valuable financial information to intelligence/enforcement agencies and regulatory authorities .
- **1. Collection of Information:** Act as central reception point for receiving :
  - ✓ *Cash Transaction reports (CTRs),*
  - ✓ *Non-Profit Organisation Transaction Report(NTRs),*
  - ✓ *Cross Border Wire Transfer Reports (CBWTRs),*
  - ✓ *Reports on Purchase or Sale of Immovable Property (IPRs) and*
  - ✓ *Suspicious Transaction Reports (STRs) from various reporting entities.*
- **2. Analysis of Information:** Analyze received information in order to uncover patterns of transactions suggesting suspicion of money laundering and related crimes.

# Types of Report to FIU - MoF

- Suspicious Transaction Reports (STRs)
- Cash Transaction Reports (CTRs)- Rs 10 Lakhs threshold
- Counterfeit Currency Reports (CCRs)
- Cross Border Wire Transfer Reports (CBWTR)– Rs 5 lakhs above
- NPO Transaction Reports (NTRs) – Rs 10 lakhs
- Report -sale/purchase of immovable property ( IPR Rs 50 lakhs )