

**PMLA & Recent Notifications involving CA, CS & ICWA etc.
Under
The Prevention of Money Laundering Act, 2022**

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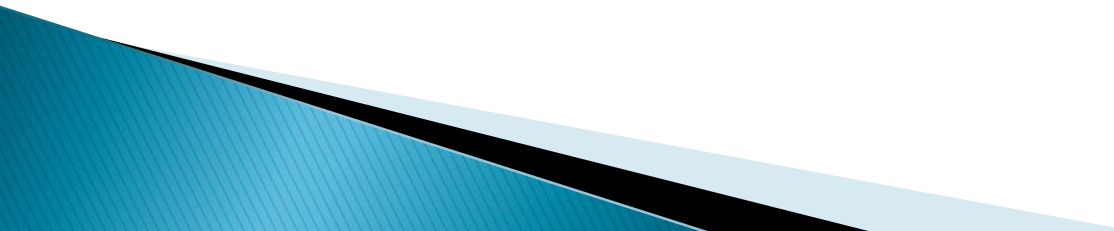
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Section 3 of PMLA: Offence of MONEY LAUNDERING

- ▶ *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*

Section 3 of PMLA: Offence of MONEY LAUNDERING

- a. its concealment,*
 - b. possession,*
 - c. acquisition or*
 - d. use and*
 - a. projecting or*
 - b. claiming it as untainted property*
- ▶ *shall be guilty of offence of money laundering .*
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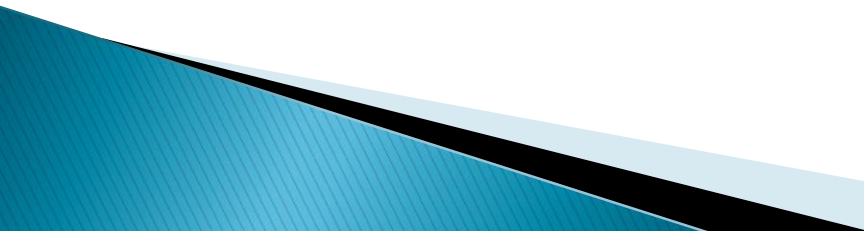
Explanation to offence of Money Laundering

- ▶ *For the removal of doubts, it is hereby 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;

Explanation to offence of Money Laundering

- ▶ *(ii) the process or activity connected with proceeds of crime is a*
 - *continuing activity and*
 - *continues till 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.*

Explanation to offence of Money Laundering

- ▶ The expression “money laundering”, ordinarily, means
 - ▶ the process or activity of
 - placement,
 - layering and
 - finally integrating
 - the tainted property in the formal economy of the country.
 - ▶ Money Laundering is not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money laundering.
- 

Proceeds Of Crime–Sec. 2(1)(u)

- ▶ 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 within the country or abroad;
- ▶ 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 relating to the scheduled offence.

Can an offence under PMLA be Committed without a Scheduled Offence?

- ▶ In the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence.
- ▶ The authorities under the 2002 Act cannot resort to action against any person for money laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression “derived or obtained” is indicative of criminal activity relating to a scheduled offence already accomplished.

Property–Sec. 2(1)(v)

- ▶ “property” means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;
- ▶ Explanation.—For the removal of doubts, it is hereby clarified that the term “property” includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

Person–Section 2(1)(s)

- ▶ “person” includes;—
- ▶ (i)an individual,
- ▶ (ii)a Hindu undivided family,
- ▶ (iii)a company,
- ▶ (iv)a firm,
- ▶ (v)an association of persons or a body of individuals, whether incorporated or not,
- ▶ (vi)every artificial juridical person, not falling within any of the preceding sub–clauses, and
- ▶ (vii)any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub–clauses;

Continuing Offence

- ▶ It would be an offence of money laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money laundering under the 2002 Act for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted.
- ▶ The offence of money laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed.
- ▶ The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime.

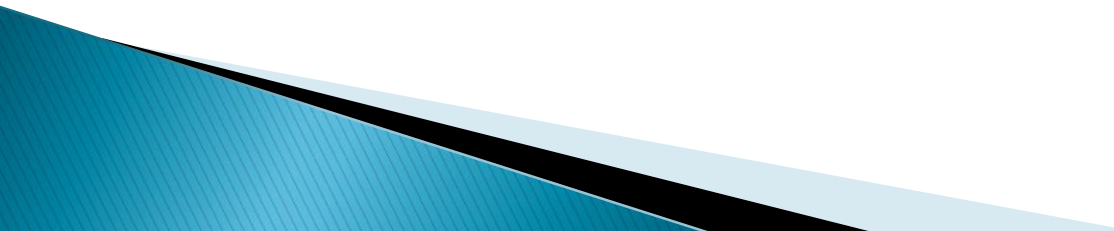
Punishment for Money laundering – Section 4

- ▶ As provided in Section 4 of PMLA,
- ▶ *Whoever*
 - *commits the offence of money laundering*
 - *shall be punishable*
 - *with rigorous imprisonment (RI)*
 - *for a term*
 - *which shall not be less than three years, but*
 - *but which may extend to seven years and*
 - *shall also be liable to fine.*
- ▶ *Provided that*
 - *where the proceeds of crime involved in money laundering relates to any offence specified under paragraph 2 of Part A of the Schedule the provisions of this section shall have effect as if for the words "which may extend to seven years" the words "which may extend to ten years" had been substituted.*

No Prosecution under PMLA, if No Predicate Offence

- ▶ The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence.
- ▶ The Authorities under the 2002 Act cannot prosecute any person on the notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum.
- ▶ If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money laundering against him or anyone claiming such property being the property linked to stated scheduled offence through him.

Scheduled Offence Section 2(1)(y)

- ▶ 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;
- 

Reporting Entity – Section 2(1) (wa)

- ▶ “reporting entity” means a banking company, financial institution, intermediary or a person carrying on a designated business or profession; .

PMLA NOTIFICATION ON 3RD MAY 2023

- ▶ The Ministry of Finance vide notification dated May 03, 2023 has widened the ambit of the term “Reporting Entity” as defined in Section 2(1)(wa), read with sec. 2 (1)(sa) of the PMLA.
- ▶ The notification acquaints 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–
 - ▶ (i) buying and selling of any immovable property;
 - ▶ (ii) managing of client money, securities or other assets;
 - ▶ (iii) management of bank, savings or securities accounts;
 - ▶ (iv) organization of contributions for the creation, operation or management of companies;
 - ▶ (v) 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.

- ▶ **Explanation 1.**– For the purposes of this notification **‘relevant person’** includes –
 - ▶ (i) an individual who obtained a certificate of practice under S.6 of the Chartered Accountants Act, 1949 (38 of 1949) and practicing individually or through a firm, in whatever manner it has been constituted;
 - ▶ (ii) an individual who obtained a certificate of practice under S.6 of the Company Secretaries Act, 1980 (56 of 1980) and practicing individually or through a firm, in whatever manner it has been constituted;
 - ▶ (iii) an individual who has obtained a certificate of practice under S.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.
- ▶ **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).**
- ▶ **[(23) (i) "firm" shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932), and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008 (6 of 2009)]**

3RD MAY NOTIFICATION READ IN CONJUNCTION WITH 9TH MAY NOTIFICATION

- ▶ 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:–
 - ▶ (i) acting as a formation agent of companies and limited liability partnerships;
 - ▶ (ii) 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;
 - ▶ (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust;
 - ▶ (iv) 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
 - ▶ (v) acting as (or arranging for another person to act as) a nominee shareholder for another person.

EXPLANATION OF 9TH MAY NOTIFICATION

- ▶ **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:–
 - ▶ (a) 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
 - ▶ (b) 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
 - ▶ (c) **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
 - ▶ (d) 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).

ELUCIDATION ON THE NOTIFICATIONS

- ▶ When the notifications are read in conjunction with each other, since they are both clarifying and explaining what an ‘Activity’ includes and excludes from the purview of the act in the context of sec. 2 (1)(sa) PMLA, we can conclude that Advocates will fall under the purview of the recent PMLA notification as the explanation of the 9th May notification states that ”any activity that is carried out by an advocate... who is engaged in the formation of a company TO THE EXTENT OF FILING A DECLARATION as required under section 7(1)(b) of Companies Act, 2013 (18 of 2013” shall NOT BE regarded as activity for the purposes of S.2(1)(sa)(vi) of the PMLA. This is by way of clarification to a limited extent.

ELUCIDATION ON THE NOTIFICATIONS

- ▶ Changes have been made applicable only for transactions where they undertake 'financial transactions' on behalf of their clients.
- ▶ Regular functions like certification of accounts, and financial advice among others for a fee are not covered under this change in PMLA.
- ▶ Individuals acting as a trustee of an express trust or nominee shareholders on behalf of other persons would also be covered under anti-money laundering law.
- ▶ The notification exempts from its purview advocates, chartered, cost accountants and company secretaries, who are engaged in the formation of a company to the extent of only filing a declaration form.

Financial Transactions

- ▶ “Financial transactions” imply transactions involving financing or investment activity;
- ▶ These financial transactions are transactions being carried by the corporate professional “on behalf of his client”. This implies that the real beneficiary or the stakeholder in the transaction is a client, but the transaction is being carried out by the corporate professional;
- ▶ Mere professional services, for example, incorporation of companies, or rendering professional services relating to management of companies, cannot be said to be “financial transactions”. The word “financial transactions” refers to the use of money – for instance, capital contribution, deployment of funds into properties, capital market, sourcing of funds, etc.

Points to Ponder

- ▶ In 3rd May 2023 notification, the word Profession has been used.
- ▶ In 9th May 2023 notification, the term Business has been used.
- ▶ In 3rd May 2023 notification, the term ‘Relevant Person’ is inclusive and not exhaustive.
- ▶ In 9th May 2023 notification Explanation (c) an exception has been created only for a limited purpose only to the extent of filing of a Declaration under Section 7(1)(b) of the Companies Act, 2013.

CONCLUSION

- ▶ Even though the Central government hasn't clarified whether Advocates will fall under the purview of the recent PMLA notification, the interpretation and the terms used in the 9th May Notification imply that Advocates who are engaging in the financial transactions of their clients can be included in the purview of the act.
- ▶ The terms used in the notification that **activities, when carried out in the “course of business” on behalf of or for another person, shall be classified as an activity for the purposes of said sub-clause**, clearly imply that when an advocate is carrying out a financial transaction on behalf of his clients as a “course of Business”, then the said activity of engaging in the financial transaction by an Advocate will fall under the purview of the notification.
- ▶ The term ‘Ordinary Course of Business’ has been used many times, however, it does not define the said term.
- ▶ According to the Black's law Dictionary it means the normal routine in managing a trade or business.
- ▶ However, this is merely interpretational since there are conflicting views on the said notifications.

3rd May 2023 Notification

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 3rd May, 2023

S.O. 2036(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), 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—

- (i) buying and selling of any immovable property;
- (ii) managing of client money, securities or other assets;
- (iii) management of bank, savings or securities accounts;
- (iv) organisation of contributions for the creation, operation or management of companies;
- (v) 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.

Explanation 1.— For the purposes of this notification ‘relevant person’ includes

- (i) 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;
- (ii) 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;
- (iii) 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.

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]

SHASHANK MISRA, Director (Headquarter)

9th May 2023 Notification

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 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 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:-

- (i) acting as a formation agent of companies and limited liability partnerships;
- (ii) 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;
- (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust;
- (iv) 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
- (v) 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:-

- (a) 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
- (b) 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
- (c) 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
- (d) 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).

[F. No. P-12011/10/2023-ES Cell-DOR]

SHASHANK MISRA, Director (Headquarter)

Reporting Entity– Registration and Reporting

- ▶ <https://uatfingate.fiuindia.gov.in/login>
- ▶ <https://fiuindia.gov.in/pdfs/downloads/FINnet%20Gateway%20User%20Guide%20Version%201.2.pdf>
- ▶ <https://fiuindia.gov.in/files/Downloads/Downloads.html>

THANK YOU

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