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# ASHOK PRANSHU & CO.

## CHARTERED ACCOUNTANTS

White Collar Crime | Money Laundering Insights

# MONEY LAUNDERING: A GLOBAL MENACE

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*In this present period of technological advancement, where the world economies are interdependent and resources can be exchanged between the sovereign borders seamlessly, combating the global phenomenon of money laundering is most urgent than ever.*

With the assistance of the sophisticated communication technology and swift flow of capital and resources outside the national boundaries, money launderers across the globe are able to route the proceeds of crime through different jurisdictions, thereby distancing the proceeds from its origin. The secretive way of transferring the proceeds of crime to different jurisdiction in guise of proceeds from a legal activity primarily through or from countries having strict banking secrecy and relaxed exchanged control laws is the biggest hindrance for enforcement agencies around the world to combat this menace of money laundering.

Looking at these devastating numbers, combatting money laundering is a key concern for the nations across the globe, because of its micro and macro effect. Though, the act of money laundering may not be characterized as a crime against any particular individual, howbeit, the same is against the society as a whole because of its significant implications on the economic stability and security of a country. Money Laundering is posing more threat than ever because of its unprecedented character, its unpredictable effect on the nation's financial system and the possibility of the laundered funds being used for terrorist financing, drugs, arms and human trafficking, etc.

# 2-5%

OF THE GLOBAL GDP, OR US \$ 800 BILLION - US\$ 2 TRILLION IS THE ESTIMATED AMOUNT OF MONEY LAUNDERED GLOBALLY IN ONE YEAR.

# 01 WHAT IS MONEY LAUNDERING

The word money laundering is the concealment of the origin of illegally obtained money, typically by means of transfer involving foreign banks, financial institutions or legitimate businesses. It is, primarily, hiding money or assets from the state either from blatant confiscation or from taxation.

It is the process of creating the appearance that large sum of money obtained from serious crimes, such as drug, arms or human trafficking, terrorist activities, corruption, etc., originated from a legitimate source. In other words, money laundering is a process in which money obtained from illegal activities like illegal sale of drugs, arms and humans, terrorism, corruption,

smuggling, financial frauds, extortion, insider trading etc. is provided with an appearance, as if such ill gotten money is earned through genuine legal activities, thereby disguising illicit money as an untainted property and also concealing the criminal activity associated with it.

The whole process of successfully wrapping the proceeds of crime with a legitimate source of income, allows the money launderer, or the person engaged in the criminal activity not only to keep a control and enjoy such resources, it also acts as an incentive for them to engage in such other illegal activities, as they shall be able to launder the funds to a safe location without detection by enforcement authorities.

# 02 HOW IS MONEY LAUNDERED

The whole process of money laundering is initiated by placing the ill-gotten and illegally earned money into the organized financial system. This process is structured through different ways which inter alia includes dividing the proceeds of crime into numerous smaller units and directly depositing such smaller units into different bank accounts.

The next phase is to layer the said transaction, in order to distance the same from its origin. Layering includes series of conversions of the money placed into the system to make it difficult

difficult for the agencies to establish the source and generation of the transaction. In this stage, the funds placed into the organized financial system is then routed across the globe through different jurisdiction either in form of investment in overseas stocks or parking of funds in other assets in different foreign jurisdictions.

THE PROCESS OF DISTANCING THE ILL GOTTEN MONEY FROM ITS ORIGIN IS PRIMARILY DIVIDED INTO THREE STAGES NAMELY PLACEMENT, LAYERING AND INTEGRATION.

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For the aforesaid activities, the money launderer, generally uses financial institutions of those sovereigns which do not follow strict anti-money laundering laws and which do provide strict banking secrecy laws and relaxed taxation and exchange control regulations. We all are aware of the recent Panama paper leaks and the former Switzerland Bank leaks which do highlight the presence of certain centers in the world which may be used by money launderers as their favoured destination because of their

secrecy laws.

On the application of the aforesaid two phases, it is almost difficult for the anti-money laundering agencies to detect the correct source and generation of funds. Post the successful implementation of the aforesaid two stages, the launderer further invests the funds into real estate, luxury assets, or business ventures, thereby mixing or integrating the illicit funds with the untainted money.

## 03 PREVENTION OF MONEY LAUNDERING: GLOBAL INITIATIVE

Money Laundering is a global menace that cannot be contained by any nation alone. A coordinated approach is must in order to combat this menace of money laundering effecting the world economy and national security at large.

A number of initiatives were taken at the international level to tackle money laundering which inter alia includes the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988; European Union Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; United Nations Convention against Corruption.

Albeit, number of initiatives were taken by some major international organisations to prevent money laundering, the creation of

Financial Action Task Force on Money Laundering ('FATF') in 1989, brought about the much needed dedicated organisation guiding the member countries in curbing this menace of money laundering.

The Task Force was given the responsibility of examining money laundering techniques and trends, reviewing the action which had already been taken at a national or international level, and setting out the measures that still needed to be taken to combat money laundering. In April 1990, less than one year after its creation, the FATF issued a report containing a set of Forty Recommendations, which were intended to provide a comprehensive plan of action needed to fight against money laundering.

Since then FATF has been instrumental in understanding the changing money laundering systems, processes and structures and has been introducing revised guidelines for the member countries to establish an effective and robust anti money laundering system.

## 04 INDIA'S CRUSADE AGAINST MONEY LAUNDERING

Before the enactment of the comprehensive law in India to tackle and prevent money laundering, other legislations were and are in place to combat and prevent the criminal activities and the flow of illicit funds generated from such activities. Some of the legislations which are in place are Benami Transactions (Prohibition) Act, 1988; The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974; The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, The Foreign Exchange Management Act, 1999; The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 etc.

In quest for a definitive anti money laundering law in India, Prevention of Money Laundering Bill 1998 was introduced in the Parliament on August 4, 1998. The same was revised in the year 1999 after incorporating the recommendations of the Standing Committee on Finance. The Bill received the assent of the Hon'ble President of India and became the Prevention of Money Laundering Act, 2002 ('Act') on January 17, 2003. The Act came into force with effect from July 1, 2005

The Act is a special Law and a self-contained code intended to address the increasing scourge of money laundering and provides for confiscation of property derived from or involved in money laundering and prosecution of those involved directly or indirectly in the process or activities of money laundering.

The Act consist of Ten Chapters containing 75 Sections and one Schedule. It is a comprehensive law encapsulating inter alia scheme for investigations, survey, search and seizure, attachment of properties involved in money laundering, confiscation of property, arrest of persons involved in money laundering, prosecution, etc.

In terms of the provisions of the Act, a person shall not be guilty of the offence of money laundering until and unless the proceeds of crime, being laundered relates to a scheduled offence . Thus, until and unless no crime under a scheduled offence has been committed, the provisions of Prevention of Money Laundering cannot be invoked. It is also worthwhile to note that the provisions of the Act shall be applicable on any person involved in the process of money laundering irrespective of whether that person was involved in the scheduled offence or not. Thus, in other words for application of this Act it is necessary that a scheduled offence has been committed, the proceeds of which were laundered but a person alleged under the Act may or may not be involved in that scheduled offence.

It is also of prime importance that for a person to be guilty of offence of money laundering in terms of Section 3 of the Act two conditions needs to be fulfilled, foremost that he is knowingly involved or attempts to indulge in any process or activity related to proceeds of crime and secondly of projecting such proceeds

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as untainted property. Section 4 provides for an imprisonment for a term which shall not be less than three years but which may be extended to ten years if a person is held guilty of offence of money laundering.

The Schedule to the Act provides for twenty-nine legislations to be termed as Scheduled Offence. The provisions of the Act shall only be applicable in the scenario, wherein, the proceeds of crime relate to criminal activity pertaining to such legislations only. Income Tax Act, 1961, Foreign Exchange Management Act, 1999 does not form part of the list and hence any act of tax evasion shall not qualify for offence under the Prevention of Money Laundering Act, 2002.

The Act shall be applicable on residents as well as non-residents even if the scheduled offence is committed outside India but the process of money laundering is executed in India and vice versa.

## 05 CONCLUSION

During the second 'Enforcement Day' function organized by Enforcement Directorate on May 1, 2014, Hon'ble President of India, Sh. Pranab Mukherjee has said "Money Laundering is a global menace, and law enforcement agencies of all countries have to co-operate to fight it". A coordinated effort amongst the anti-money laundering agencies around the world shall be instrumental in curbing this threat of money laundering. Though, the usage of advanced banking and financial systems, communication channels have made it difficult for the regulators to identify the illicit funds, a harmonized approach in terms of automatic exchange of information, strict exchange regulations, austere implementation of Know Your Customer ('KYC') regulations, and unbending compliance and reporting requirements by financial institutions among others may help the world to build a better tomorrow.

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Ashok Pranshu & Co. is a chartered accountancy firm, offering specialised professional services to the clients across the globe. Our areas of service includes auditing, taxation (domestic and international), money laundering laws, benami laws, corporate and exchange control laws.

Being a part of the global business community, we recognize that optimal results are driven by a spirit of collaboration and an optimistic approach to service. With this understanding, we collaborate with clients to assist them in setting up their business in India and outside India; handling their complex strategic transactions; rendering expert advisory on tax, money laundering, benami, corporate and exchange control matters; ensuring legal compliances, and providing representation services, where required.

Our team of experienced professionals is passionate and honest in their approach in providing solutions to the clients' problems and queries. We believe and strive to provide timely, efficient and practical legal solutions and outcomes to our clients to help them in taking an informed decision.

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