

Prevention on Money Laundering Act, 2002

Q1. What is PMLA?

PMLA refers to the Prevention of Money Laundering Act, 2002

Q2. When did the Prevention of Money Laundering Act come into force?

The Prevention of Money Laundering Act, 2002 has come into force with effect from 1 July, 2005. The Act was amended by Prevention of Money Laundering (Amendment) Act 2009 w.e.f 01.06.2009.

Q3. Does the Act extend to the whole of India?

Yes, it extends to the whole of India including the state of Jammu & Kashmir.

Q4. What is the object of the enactment of Prevention of Money Laundering Act, 2002?

As stated in the Preamble to the Act, it is an Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering.

Q5. Which agency administers the Prevention of Money Laundering Act?

The Directorate of Enforcement of the Department of Revenue, Ministry of Finance is responsible for administering the Prevention of Money Laundering Act.

Q6. What is Money Laundering?

The goal of a large number of criminal activities is to generate profit for an individual or a group. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. Illegal arms sales, smuggling, and other organized crime, including drug trafficking and prostitution rings, can generate huge amount of money. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to “legitimise” the ill-gotten gains through money laundering. The money so generated is tainted and is in the nature of ‘dirty money’. Money Laundering is the process of conversion of such proceeds of crime, the ‘dirty money’, to make it appear Legitimate Money.

Q7. How does Money Laundering take place?

Usually, the process of Money Laundering goes through the following three stages :

(a) Placement:- The Money Launderer, who is holding the money generated from criminal activities, introduces the illegal funds into the financial system. This might be done by breaking up large amount of cash into less conspicuous smaller sums which are deposited directly into a Bank Account or by purchasing a series of instruments such as Cheques, Bank Drafts etc., which are then collected and deposited into one or more accounts at another location.

(b) Layering:- The second stage of Money Laundering is layering. In this stage, the Money Launderer typically engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source. The Money Launderer may use various channels for movement of funds, like a series of Bank Accounts, sometimes spread across the globe, especially in those jurisdictions which do not co-operate in anti Money Laundering investigations.

(c) Integration:- Having successfully processed his criminal profits through the first two stages of Money Laundering, the Launderer then moves to this third stage in which the funds reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income. The Money Launderer might then choose to invest the funds into real estate, business ventures & luxury assets, etc. so that he can enjoy the laundered money, without any fear of law enforcement agencies.

The above three steps may not always follow each other. At times, illegal money may be mixed with legitimate money, even prior to placement in the financial system. In certain cash rich businesses, like Casinos (Gambling) and Real Estate, the proceeds of crime may be invested without entering the mainstream financial system at all.

Q8. What has been the international response to tackle Money Laundering?

In response to mounting concern over money laundering, the Financial Action Task Force on money laundering (FATF) was established by the G-7 Summit in Paris in 1989 to develop a co-ordinated international response. One of the first tasks of the FATF was to develop Recommendations which set out the measures national governments should take to implement effective anti-money laundering programmes.

Q9. What steps have been taken by the Government of India to tackle the menace of Money Laundering?

Government of India is committed to tackle the menace of Money Laundering and has always been part of the global efforts in this direction. India is signatory to the following UN Conventions, which deal with Anti Money Laundering / Countering the Financing of Terrorism :

1. International Convention for the Suppression of the Financing of Terrorism (1999)
2. UN Convention against Transnational Organized Crime (2000)
3. UN Convention against Corruption (2003)

In pursuance to the political Declaration adopted by the special session of the United Nations General Assembly (UNGASS) held on 8 to 10 June 1998 (of which India is one of the

signatories) calling upon member states to adopt Anti Money Laundering Legislation & Programme, the Parliament has enacted a special law called the 'Prevention of Money Laundering Act, 2002' (PMLA 2002). This Act has been substantially amended, by way of enlarging its scope, in 2009 (w.e.f. 1.6.2009), by enactment of Prevention of Money Laundering (Amendment) Act, 2009.

Q10. What is 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 and projecting it as untainted property shall be guilty of offence of money-laundering.(Section 3 of PMLA)

Q11. What are proceeds of crime?

“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;(Section 2(1)(u) of PMLA)

Q12. What is a 'scheduled offence' ?

The offences listed in the Schedule to the Prevention of Money Laundering Act, 2002 are scheduled offences in terms of Section 2(1)(y) of the Act. With the amendment of the Act in 2009, a large number of offences have been included in the Schedule of the Act. The scheduled offences are divided into three parts – Part A, Part B, & Part C. In Part A, certain serious offences such as those connected with waging war against the Nation, circulation of Fake Indian Currency Notes, offences relating to Narcotic Drugs, etc. have been included, wherein no monetary limit for initiating action under PMLA has been prescribed. In relation to offences under Part 'B' of the schedule, the value involved should be Rs 30 Lakhs or More. Part 'C' of the Schedule deals with trans-border crimes, and is a vital step in tackling Money Laundering across international boundaries.

Q13. What is a Predicate Offence?

Every Scheduled Offence is a Predicate Offence. The Scheduled Offence is called Predicate Offence as the offence is a prerequisite and integral part of Money Laundering Offence.

Q14. What are the major Acts covered in the Schedule?

- (a) Indian Penal Code (IPC)
- (b) NDPS Act
- (c) Unlawful Activities (Prevention) Act
- (d) Prevention of Corruption Act

- (e) Customs Act
- (f) SEBI Act
- (g) Copyright Act
- (h) Trademark Act
- (i) Information Technology Act
- (j) Explosive Act
- (k) Wild Life (Protection) Act

The various Acts covered in the Schedule to PMLA are given in Annexure-A.

Q15. Who investigates Scheduled Offences?

Scheduled Offences are investigated by agencies such as Police, Customs, SEBI, NCB, CBI under their respective Acts.

Q16. Who can investigate a case of Money Laundering ?

As per Sections 48 & 49 of the PMLA, the officers of the Directorate of Enforcement have been given powers to investigate cases of Money Laundering. The officers have also been authorised to initiate proceedings for attachment of property and to launch prosecution in the designated Special Court.

Q17. What are the possible actions which can be taken against persons/properties involved in Money Laundering?

Following actions can be taken against the persons involved in Money Laundering:-

- (a) Attachment of property derived or obtained as a result of a scheduled offence. The attached properties may be confiscated and disposed off. (Sections 5 & 8 of the Act).
- (b) Persons found guilty of an offence of Money Laundering are punishable with imprisonment for a term which shall not be less than three years but may extend up to seven years and shall also be liable to a fine up to Rupees 5 Lakhs (Section 4 of the Act). When the scheduled offence is committed under the Narcotic and Psychotropic Substances Act, 1985, the punishment shall be imprisonment for a term which shall not be less than three years but may extend upto ten years and liable to a fine of upto Rs.5 lakhs.

Q18. What are the powers available to the Investigating Officers under the Act ?

The Investigating Officers have the powers :-

- (a) To conduct survey of a place (Section 16)
- (b) To conduct search of building, place, vessel, vehicle or aircraft & seize records & property (Section 17)
- (c) To conduct personal search (Section 18)
- (d) To summon and record the statements of persons concerned (Sec. 50);

- (e) To arrest persons accused of committing the offence of Money Laundering (Section 19).
- (f) To provisionally attach any property suspected to be derived from the proceeds of crime (Section 5)

Q19. What are the powers of authority during survey?

An authority during the survey may—

- (i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies there from
- (ii) make an inventory of any property checked or verified by him, and
- (iii) record the statement of any person present in the place which may be useful for, or relevant to, any proceeding under this Act.(Section 16)

Q20. What are the powers of officers / authority during search & seizure?

Authorised officer may

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;
- (b) break open the lock of any door, box, locker, safe, almirah or other receptacle where the keys thereof are not available;
- (c) seize any record or property found as a result of such search;
- (d) place marks of identification on such record or make or cause to be made extracts or copies there from;
- (e) make a note or an inventory of such record or property;
- (f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act. (Section 17)

Q21. What is the time limit for retention of records and property seized during search & seizure?

Three months from the end of the month in which such records & property were seized. On the expiry of the said three months period, the records & property shall be returned to the person from whom such records & property was seized unless the Adjudicating Authority permits retention of such property beyond the said period. (Sections 20 & 21)

Q22. What are the rights of persons being searched during search?

- (i) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate.
- (ii) If the requisition is made, the authority shall not detain the person for more than twenty-

four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section.

(iii) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.

(iv) Search shall be made in the presence of two or more persons.

(v) No female shall be searched by any one except a female. (Section 18)

Q23. What are the rights of persons during arrest?

(i) Person making arrest shall, as soon as may be, inform him of the grounds for such arrest to the arrestee.

(ii) Every person arrested shall, within twenty-four hours, be taken to a Judicial Magistrate or a Metro-politan Magistrate, as the case may be, having jurisdiction (Section 19)

Q24. What are the powers of authorities regarding issuing summons, enforcing production of documents and to give evidence etc.?

(i) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director of the Directorate of Enforcement have the power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(ii) All the persons so summoned are bound to attend in person or through authorised agents, as such officer may direct, and are bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(iii) Such proceedings are deemed to be judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code. (Section 50)

Q25. What is the time limit for retention of record impounded during the proceedings conducted under the PMLA?

Authority empowered to issue summons may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act :

Provided that an Assistant Director or a Deputy Director cannot

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director. (Section 50)

Q26. What are the presumptions in interconnected transactions?

Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of

adjudication or confiscation under section 8, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority, be presumed that the remaining transactions form part of such inter-connected transactions. (Section 23)

Q27. Whether the statement recorded before the Investigating Officer under PMLA is admissible evidence under the Law? Yes, the statement recorded before the Investigating Officer under PMLA is admissible evidence in the Court as such proceeding under Section 50(2) and 50(3) of the Act is a judicial proceeding within the meaning of Section 193 and 228 of IPC.

Q28. Who has burden to prove the commission of offence under PMLA?

When a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused. (Section 24)

Q29. What is meant by the term “Property” appearing in the Prevention of Money Laundering Act, 2002?

“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 [Section 2(v)]

Q30. What is “attachment”?

“Attachment” means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III of the Act. [Section 2(d)]

Q31. What are the circumstances under which properties involved in money laundering can be attached?

(i) Where the Director, or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, has reasons to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that

(a) any person is in possession of any proceeds of crime;

(b) such person has been charged of having committed a scheduled offence; and

(c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by an order in writing, provisionally attach such property for a period not exceeding 150 days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 (43 of 1961).

(ii) No such order of attachment shall be made unless in relation to the scheduled offence, a

report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorized to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be. (Section 5)

Q32. How long will this order of provisional attachment of property remain valid?

Every order of provisional attachment shall cease to have effect after 150 days from the date of the order, if no order is passed by the Adjudicating Authority in this regard. However, within the said 150 days, if the Adjudicating Authority, by an order, records a finding that all or any of the properties are not involved in money laundering, then order of provisional attachment shall cease to have effect from the date of such order of the Adjudicating Authority. [Section 3(5)]

Q33. Whether the persons claiming or entitled to claim any interest in the enjoyment of immovable property can enjoy the property during the period of provisional attachment?

Yes. [Section 5 (4)]

Q34. What is the remedy available to aggrieved person, where property is provisionally attached?

It has been provided in the Act that before recording the finding that all or any of the properties are involved in money laundering, the Adjudicating Authority has to issue a show cause notice of not less than thirty days to the aggrieved person. The aggrieved person at this stage can submit his reply and attend the hearing, either by himself or through his authorized representative, before the Adjudicating Authority to present his standpoint. [Section 8(1)]

Q35. What will happen if the Adjudicating Authority records the finding that all or any of the properties are involved in money laundering?

- (i) Where the Adjudicating Authority decides that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property. Such attachment shall
 - (a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and
 - (b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final
- (iii) After the confirmation of provisional order of attachment, the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the attached property.

Q36. What will happen if the Adjudicating Authority records the finding that all or any of the properties are not involved in money laundering?

In such cases, the Adjudicating Authority shall direct the release of all properties other than the properties involved in money-laundering to the person from whom such properties were seized. [Section 20 (5)]

However, the Director or any other officer authorised by him in this behalf, may withhold the release of any property until filing of appeal under section 26 or forty-five days from the date of order under sub-section (5), whichever is earlier, if he is of the opinion that such property is relevant for the proceedings before the Appellate Tribunal. [Section 20 (6)]

Q37. What will happen to the seized records after passing of the order by the adjudicating authority?

The Adjudicating Authority shall direct the release of the records to the person from whom such records were seized. However, the Director or any officer authorized by him in this behalf may withhold the release of any records until filing of appeal under section 26 or after forty-five days from the date of order under sub-section (5), whichever is earlier, if he is of the opinion that such records are relevant for the proceedings before the Appellate Tribunal.[Section 21)]

Q38. What will happen to the attached properties after conclusion of trial for the scheduled offence?

(i) Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of the property and net income, if any, shall cease to have effect. [Section 8(5)]

(ii) Where on conclusion of a trial for any scheduled offence, the guilt of the person is proved in the trial court and order of such trial court becomes final, the order of attachment of property will become final. [Section 8 (3)]

(iii) Where the attachment of any property becomes final, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property. [Section 8(6)]

(iv) After an order of confiscation, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances. (Section 9)

Q39. Which is the Appellate Authority against the order passed by Adjudicating Authority and what is the time limit to file appeal?

The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal. Appeal has to be filed within a period of forty-five days from the date of receipt of a copy of the order made by the Adjudicating Authority. Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period. (Section 26)

Q40. Which is the Appellate Authority against the order passed by Appellate Tribunal and what is the time limit to file appeal?

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order. Thus appeal can be filed before High Court on any question of law or fact.

High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. (Section 42)

Q41. How do you describe the expression, “person” appearing in the Prevention of Money Laundering Act, 2002?

“Person” includes

1. an individual,
2. a Hindu undivided family,
3. a company,
4. a firm,
- 5 an association of persons or a body of individuals, whether incorporated or not,
6. every artificial juridical person not falling within any of the preceding sub-clauses, and
7. any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses.

Thus, besides the natural person, even legal entities are also covered under the expression “person” as per the Act.

Q42. What are the offences specified under Part “A” of the schedule?

Para 1: The Indian Penal Code (Section 121,121A,489A,489B)

Para 2: The Narcotics Drugs & Psychotropic Substances Act, 1985 (Section 15,16,17,18,19,20,21,22,23, 24, 25A,27A,29)

Para 3: The Explosives Substances Act, 1908 (Section 3,4,5)

Para 4: Unlawful Activities (Prevention) Act, 1967 (Section 10 read with 3, 11 read with 3&7, 13 read with 3,16 with 15, 16A, 17,18,18A, 18B,19,20,21,38,39 & 40)

Q43. What are the offences specified under Part “B” of the schedule?

Para 1: The Indian Penal Code (Section 120B,255, 257, 258, 259, 260, 302,304, 307, 308, 327, 329, 364A, 384 to 389, 392 to 402, 411, 412, 413, 414, 417, 418, 419, 420, 421, 422, 423, 424, 467, 471, 472&473, 475 & 476, 481, 482, 483,484,485,486,487,488).

Para 2: The Arms Act, 1959 (Section 25,26,27,28,29 &30)

Para 3 The Wildlife (Protection) Act, 1972 (Section 51 read with 9, 51 read with 17A, 51 read

with 39, 51 read with 44, 51 read with 48, 51 read with 49B).

Para 4 : Immoral Traffic (Prevention) Act, 1956 (Section 5,6,8,9)

Para 5 : The Prevention of Corruption Act, 1988 (Section 7,8,9,10 & 13)

Para 6 : The Explosives Act, 1884. (Section 9B, 9C)

Para 7 : The Antiquities and Arts Treasures Act, 1972 (Section 25 read with 3, 28)

Para 8 : The Securities and Exchange Board of India Act, 1992 (Section 12A read with 24))

Para 9 : The Customs Act, 1962. (Section 135)

Para 10: The Bonded Labour System (Abolition) Act, 1976 (Section 16,18,20)

Para 11: The Child Labour (Prohibition and Regulation) Act, 1986 (Section 14)

Para 12: The Transplantation of Human Organs Act, 1994 (Section 18,19,20)

Para 13: The Juvenile Justice (Care and Protection of children) Act, 2000. (Section 23,24,25,26)

Para 14: The Emigration Act, 1983 (Section 24)

Para 15: The Passports Act. 1967 (Section 12)

Para 16: The Foreigners Act, 1946 (Section 14,14B,14C)

Para 17: The Copy Right Act, 1957 (Section 63,63A,63B,68A)

Para 18: The Trade Marks Act, 1999. (Section 103,104,105,107,120)

Para 19: The Information Technology Act, 2000. (Section 72,75)

Para 20: The Biological Diversity act, 2002. (Section 55 read with 6)

Para 21: The Protection of Plant varieties and farmers' Rights Act, 2001. (Section 70,71,72,73 all read with 68)

Para 22: The Environment Protection Act, 1986. (Section 15 read with 7 & 8)

Para 23: The Water (Prevention and Control of Pollution) Act, 1974 [Section 41(2), 43]

Para 24: The Air (Prevention and Control of Pollution) Act, 1981. (Section 37)

Para 25: The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002. (Section 3)

Q44. What are the offences specified under Part “C” of the schedule?

An offence which is the offence of cross border implications and is specified in, -

1. Part A; or
2. Part B without any monetary threshold; or
3. The offences against property under Chapter XVII of the Indian Penal Code.

Q45. What is “offence of cross border implication”?

Any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B, or Part C of the Schedule, had it been committed in India and if such person remits the proceeds of such conduct or part thereof to India; or

Any offence specified in Part A, Part B, or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India. [Section 2 (ra)]

OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

Q46. What are the obligations of Banking Companies, Financial Institutions and Intermediaries of securities market in terms of the provisions of PMLA,2002?

Every banking company, financial institution and intermediary has to maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise a single transaction or a series of transactions integrally connected to each other and furnish such information to the Director within such time as prescribed. They are also to verify and maintain the records of the identity of all its clients, in prescribed manner. These records are to be maintained for a period of ten years. (Section 12)

Q47. What are the penalties that can be imposed on banking company, financial institution and intermediary for non maintenance of records or non submission of aforesaid information?

Fine can be levied on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure. (Section 13)

Q48. Who is the appellate authority against the order passed by Director? Any banking company, financial institution or intermediary aggrieved by any order of the Director made under section 13, may prefer an appeal to the Appellate Tribunal. (Section 26) SPECIAL COURTS

Q49. What are special Courts under PMLA?

For the trial of an offence punishable under section 4 of PMLA, the Central Government, in consultation with the Chief Justice of the High Court, by notification, has designated one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as specified in the notifications.

While trying an offence under PMLA, a Special Court has also to try an offence, other than an offence of money laundering, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. (Section 43)

Q50. What are offences triable by special Courts under PMLA?

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the scheduled offence and the offence punishable under section 4 of PMLA, shall be triable only by the Special Court constituted for the area in which the offence has been committed. (Section 44)

Q51. Which is the Appellate Authority against the order passed by Special Court?

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court. (Section 47)

RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND CONFISCATION OF PROPERTY

Q52. What is meant by term “Contracting State”?

“Contracting State” means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise. (Section 55)

Q53. What is the mechanism to obtain evidence required in connection with investigation into an offence or proceedings under the Act if such evidence may be available in any place in a contracting State?

An application is to be made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer and the Special Court, on being satisfied, may issue a Letter of Request to a court or an authority in the contracting State competent to deal with such request to

- (i) examine facts and circumstances of the case,
- (ii) take such steps as the Special Court may specify in such letter of request, and
- (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

Every statement recorded or document or thing received from contracting state shall be deemed to be the evidence collected during the course of investigation.(Section 57).

Q54. What is the mechanism to provide assistance to a contracting State?

Where a Letter of Request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under PMLA and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such Letter of Request to the Special Court or to any authority under the Act for execution of such request. (Section 58)

Q55. What are the Reciprocal arrangements for processes and assistance for transfer of accused persons?

(1) A Special Court, in relation to an offence punishable under section 4 for the service or execution of a summons, a warrant or a search warrant in a contracting state shall send such summons or warrant in duplicate in prescribed form to the Court, Judge or Magistrate through specified authorities.

(2) Similarly summons, a warrant or a search warrant in relation to an offence punishable under section 4 received for service or execution from a contracting state shall be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution.

After execution of summon or search warrant received from a contracting State, the documents or other things produced or things found in the search shall be forwarded to the Court issuing the summons or search-warrant through the specified authority. (Section 59)

Q56. Whether the property involved in money laundering and located in the contracting State can also be attached?

Yes. In such cases, after issue of an order for attachment of any property made under section 5 or an order confirming such attachment made by an Adjudicating Authority, the Special Court, on an application by the Director or the Administrator may issue a Letter of Request to a court or an authority in the contracting State for execution of such order.(Section 60)

Q57. Whether the request received from contracting state requesting attachment or confiscation of the property in India (derived or obtained, directly or indirectly, by any person from the commission of an offence under section 3 committed in that contracting State) can be executed?

Yes.

MISCELLANEOUS

Q58. What is the punishment for vexatious search?

Imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.(Section 62)

Q59. What is the punishment for false information or failure to give information, etc.?

Any person willfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both. (Section 63)

Q60. What is the punishment if a person being legally bound to state the truth of any matter refuses to answer any question put to him, refuses to sign any statement made by him, or omits to attend or produce books of account or documents at the place or time in compliance of summon issued under section 50?

Penalty of a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure can be imposed. (Section 63)

Q61. Whether a suit can be brought in civil court to set aside or modify any proceedings taken or made under PMLA?

No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under PMLA and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under PMLA. (Section 67)

Q62. What is the mechanism to recover the fine imposed on any person under Section 13 or Section 63?

Where any fine imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.(Section 69)

Q63. What are the provisions when the offence of money laundering is committed by companies?

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made there under is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made there under has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. (Section 70)

Q64. What will happen if there is conflict between the provisions of PMLA, and other Acts / laws?

The provisions of PMLA have over-riding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. (Section 71)

Q65. What will happen to the proceedings initiated under PMLA in the event of death or insolvency of the person?

In cases where any property of a person has been attached under section 8 and no appeal against the order attaching such property has been preferred, then, the legal representatives or the official assignee or the official receiver may prefer an appeal to the Appellate Tribunal / High Court or to continue the appeal before the Appellate Tribunal / High Court, in place of such person. (Section 72)