

CHAPTER 6

ANTI-MONEY LAUNDERING MEASURES- AN OVERVIEW

*Bhure Lal**

Money laundering has an adverse impact on socio-economic and political stability of a country and must be nipped in the bud. Governments must adopt measures to dismantle syndicates engaged in money laundering by resorting to aggressive enforcement of law the enforcing agencies must be adequately armed and trained. International cooperation should be ensured for all measures to achieve success.

The criminals outsmart the enforcing agencies and deploy a team of experts like chartered accountants, attorneys, bankers, mafia, to disguise their illicit money and masquerade it as legitimate income. These experts charge fee between 10 to 15% of the sum involved. The nexus between white-collared criminals, politicians, enforcing agencies and mafias cannot be ruled out. Bankers play the most prominent role and without their connivance the operation cannot be carried out. Development of new high-tech coupled with wire transfer of funds has further aggravated the difficulties to detect the movement of slush funds.

Money laundering is inseparable from large-scale criminal enterprises. It camouflages the dirty, tainted money generated by anti-social, anti-economic activities like drug trafficking, firearms smuggling, international bank and securities frauds, bribery, intellectual property theft, and other specified unlawful activity. Once criminals successfully disguise their illicit proceeds, they then can reinvest them in their criminal organizations, expand their operations, and profit from their crimes.

Money laundering is also a problem of global concern. It is usually carried out in an international context so that criminal origin of funds can be disguised. Criminals target foreign jurisdiction with liberal bank secrecy laws and weak anti-money laundering regulatory regimes as they transfer illicit

*Formerly member, Union Public Service Commission, New Delhi.

funds through domestic and international financial institutions often with the speed and ease of faceless internet transactions. The international nature of money laundering calls for international law enforcement cooperation to successfully investigate and prosecute those who instigate these complex criminal schemes. The recommendations of the Council of Europe (1980) and the Basle Declaration (1988) are major steps towards preventing the use of the financial system for money laundering.

Money laundering occurs not only in relation to the proceeds of drug-related offences but also in relation to the proceeds of other criminal activities (such as organized crimes and terrorism).

Money laundering must be combated mainly by penal measures and within the framework of international cooperation among judicial and law enforcement authorities. A penal approach should, however, not be the only way to combat money laundering.

Measures exclusively adopted at a national level, without taking account of international coordination and cooperation, would have very limited impact. Any community action should take particular account of the recommendations adopted by the Financial Action Task Force on money laundering, set up in July 1989 by the Paris summit of the seven most developed countries.

Credit and financial institutions require identification of their customers when entering into business relations or conducting transactions. Banks must not permit any abnormally suspicious movement of slush funds. The criminals want to take advantage of anonymity to carry out their criminal activities. Banks must not provide this anonymity. Credit and financial institutions must keep for at least five years copies or references of the identification documents required as well as supporting evidence and records consisting of documents relating to transactions. They should pay special attention to transactions with third countries, which do not apply comparable standards against money laundering.

Preventing the financial system from being used for money laundering is a task which cannot be carried out by the authorities responsible for combating this phenomenon without the cooperation of credit and financial institutions. Banking secrecy must be lifted in such cases.

Effective supervision of banks and financial institutions both onshore and offshore, proper licensing mechanism for creation of banks and financial institutions, registration of institutions, proper safeguards preventing criminals or their confederates to acquire banks, proper customer identification, ensuring no anonymous or fictitious account, existence of law

emphasizing the need to identify the account holder and the real beneficiary, making it obligatory to report suspicious, abnormal movement of funds and maintaining records for five years, sharing of information, arranging training on combating money laundering and doing away with rigid banking secrecy, will help in combating money laundering to an appreciable extent.

Identification of beneficiaries, directors, international exchange of information, reporting suspicious movement of capital, and international judicial cooperation will help in preventing money laundering.

Money Laundering not only economically destabilises a country but also, exposes it to terrorist's attacks threatening its integrity and sovereignty. It conceals the huge, illegal profits generated by unscrupulous, organised criminal groups in the fields of drug trafficking, arms running and other filthy activities. The culture of these groups is "criminogenic" and they are "regulatory resistant". They regard an earnest enforcing officer an impediment in circumventing the regulatory regime. The criminals are transferring funds quickly at the speed of light across international borders. The Cyber-Laundering has provided them with a shield of anonymity. Many banks, tax havens, offshore companies and trusts act on their behalf. Detecting, preventing, seizing and confiscating proceeds of crime, must occupy priority. International cooperation in Investigation, extradition and confiscation is a pre requisite to succeed otherwise the enforcing agencies will be acting without jurisdiction. Crime-Syndicates indulge in various nefarious activities providing cover to slush funds through Money Laundering and passing them as genuine money which has become a threat to many legitimately elected governments. If this menace is not put to end then activities like September 11, 2001 attack on World Trade Center and December 13, 2001 attack on Indian Parliament will be inevitable.

THE INDIAN SCENE

Foreign Exchange Regulation Act (FERA) was regarded a draconian law and incompatible with an economy embarking upon globalization and liberalization by trade, industry, commerce and various chambers. It was replaced by Foreign Exchange Management Act (FEMA) and Prevention of Money Laundering Act (PMLA). After FERA was scrapped, several cases of organized crime syndicates and terrorists funded by Hawala transactions have been detected. The offenders were fined and allowed to go. There is no effective mechanism to deal with the militants and crime syndicates funded through Hawala since it is a violation of law of civil nature.

In the case of money laundering, the offence has been subjected to the substantive offences mentioned in the Scheduled Acts (i.e. Indian Penal Code, Prevention of Corruption Act, 1988, Immoral Traffic (Prevention) Act, 1956, Narcotic Drugs and Psychotropic Substances Act, 1985, Wild Life (Protection) Act, 1972, Arms Act, 1959. Only when an offence under Scheduled Acts has been proved, proceedings under PMLA can be taken up. Money laundering, *per se*, is not an offence and therefore it cannot deal with the offence independently as it has been made dependent on the outcome of the trial in the offence under the Scheduled Act/Acts.

Economic offence is outside the purview of money laundering and a large number of cases involving money laundering will go unchecked. Similarly, offences under Customs Act, invoice manipulations and non-repatriation of export sale-proceeds should be brought within the ambit of PMLA.

Some amendments to FEMA and PMLA must be carried out immediately. FEMA should be provided teeth and offences under it like Hawala should be made Criminal. Offences under PMLA should be treated as substantive ones and not predicate offences. Some stiffness as was the case with FERA needs to be introduced immediately.

FERA was replaced in 2000 incorporating its provisions in two Acts – FEMA and PMLA. FEMA generally deals with foreign exchange related cases having civil liability. If the offence is proved, the accused is liable only to pay the amount involved and the penalty. On the other hand, under PMLA, ill-gotten properties can be attached and confiscated and the offenders are liable to be arrested. The Enforcement Directorate has been empowered to impose a penalty on the defaulting bankers and the financial institutions if they fail to maintain or retain records in accordance with the provisions of the PMLA. Banks are under obligation to report suspicious movement of capital to the Finance Intelligence Unit (FIU), which will in turn alert the concerned investigative agency. Suspicious movement of capital must be reported within seven days of arriving at the conclusion.

It was felt that the law should be strict on terrorists and drug-traffickers so that they stop funding their activities, otherwise events like 9/11 will be difficult to control. Terrorists and criminal syndicates must be starved of funds. In such cases, the burden of proof must lie with the accused as was the case under the erstwhile FERA and the penalty should also be stiff. The enforcing agency should have the power to attach, seize and confiscate the property of such dreaded criminals not only in India but also in other countries with whom we have bilateral arrangements.

Imports and exports of goods putting the security and integrity of the country in peril must be prohibited. Relevant provisions must be incorporated in PMLA which will become fully operational after a few months when rules and procedures are framed and special Courts and appellate authorities are set up. The scope of PMLA should also be widened to include economic offences within its purview like invoice manipulations or evasion of duty.

It is desirable that some amendments are made to the schedule appended to the provisions of PMLA such as inclusion of a section providing for punishment of terrorists act and punishment for raising funds for terrorists acts. The law should also make conspiracy punishable for those who hold proceeds of terrorists. Terrorism should also be brought within the purview of law. They should be brought within the category of scheduled offences under part A. Likewise provision should be made in the Act prohibiting importation and exportation of goods, confiscation of wrongly imported goods, evasion of duty and offences under the Customs Act, 1962 as scheduled offences under Part B.

If peace and security is to be ensured, amendments to the PMLA should be made. The bogey of making the PMLA a dracula like the FERA must not be heeded to as the integrity of the country is most desirable aspect of the Act.