

**CTC's Full Day Seminar jointly with Tax
Practitioners Association, Indore
On
Demonetisation, Capital Gains, Benami Property
Act, Prevention of Money Laundering Act (PMLA)
& Penalties**

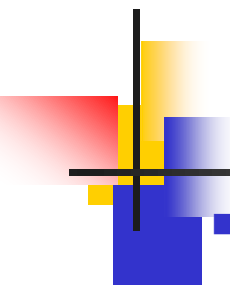
OVERVIEW OF PMLA, 2002

by: Mr. Paresh P. Shah

P.P. Shah & Associates

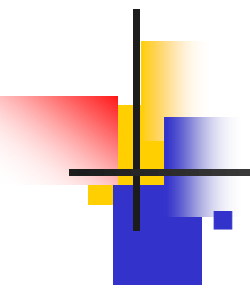
Chartered Accountants

Email: ppshahandassociates@gmail.com



Overview

- Objectives
- Money Laundering- Meaning & Process
- Money Laundering & FEMA
- Methods of money laundering
- Structure of PMLA
- Enforcement Process
- Financial Intelligence Unit (FIU)
- Directorate of Enforcement (ED)
- Adjudicating Authority
- Appellate Tribunal
- Special Court
- Civil Court & PMLA
- Instances of prosecution by ED

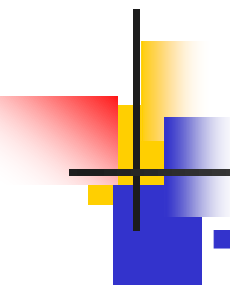


PMLA OBJECTIVES

- Preamble of PMLA

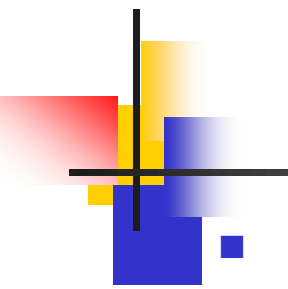
'An Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto'

- The PML Act seeks to combat money laundering in India and has three main objectives:
 - To prevent and control money laundering
 - To confiscate and seize the property obtained from the laundered money; and
 - To deal with any other issue connected with money laundering in India.
- The Act also proposes punishment under sec.4



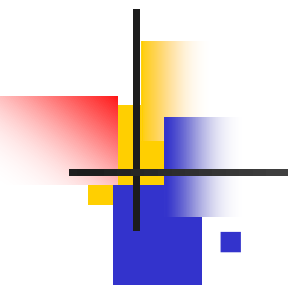
WHY MONEY LAUNDERING

- Illegal arms sales, smuggling, and other organized crime, including drug trafficking and prostitution rings, can generate huge amounts of money.
- Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to “legitimize” 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 as ‘legitimate’ money.



WHAT IS MONEY LAUNDERING

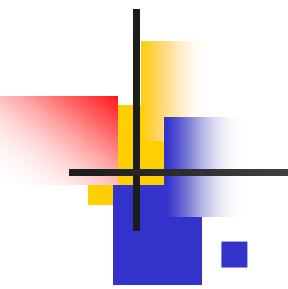
- Sec. 3 of PMLA defines offence of money laundering as: “whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering.”
- Definition: Proceeds of crime (Sec. 2(u)):
"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



WHAT IS MONEY LAUNDERING (con't)

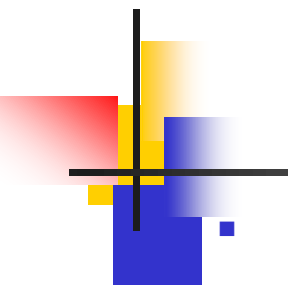
- **Scheduled Offence:**

- The offences listed in the schedule to PMLA, 2002 are scheduled offence. There are 2 parts – Part A & Part C
- Part A comprise of offences under: IPC, NDPC, Explosive Substances Act, Unlawful Activities (Prevention) Act, Arms Act, Wild Life (protection) Act, Immoral Traffic (Prevention) Act, Prevention of Corruption Act, Antiquities and Arts treasures Act etc
- Part C deals with trans border crimes



MONEY LAUNDERING & FEMA

- Violations of FEMA provisions
 - Compounding Procedure
 - Compounding with RBI & ED
 - Seizures & Penalties under FEMA



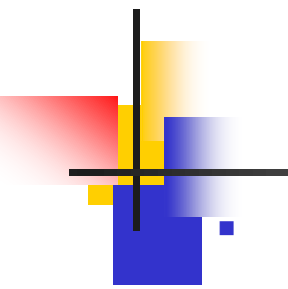
Penalties under S.13 of FEMA

- Penalties.

13. (1) If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

(1A) If any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A, he shall be liable to a penalty up to three times the sum involved in such contravention and confiscation of the value equivalent, situated in India, of the foreign exchange, foreign security or immovable property.

(1B) If the Adjudicating Authority, in a proceeding under sub-section (1A) deems fit, he may, after recording the reasons in writing, recommend for the initiation of prosecution and if the Director of Enforcement is satisfied, he may, after recording the reasons in writing, may direct prosecution by filing a Criminal Complaint against the guilty person by an officer not below the rank of Assistant Director.



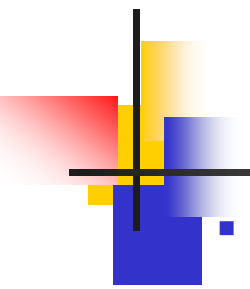
Penalties under S.13 of FEMA (con't)

- Penalties (con't)

13.(1C) If any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A, he shall be, in addition to the penalty imposed under sub-section (1A), punishable with imprisonment for a term which may extend to five years and with fine.

(1D) No court shall take cognizance of an offence under sub-section (1C) of section 13 except as on complaint in writing by an officer not below the rank of Assistant Director referred to in sub-section (1B).

(2) Any Adjudicating Authority adjudging any contravention under sub-section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.



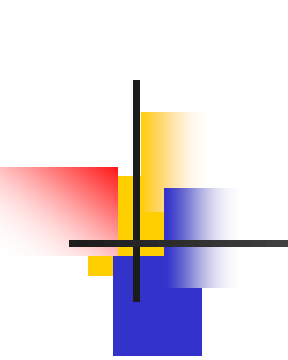
Penalties under S.13 of FEMA (con't)

- Penalties (con't)

Explanation.—For the purposes of this sub-section, "property" in respect of which contravention has taken place, shall include—

- (a) deposits in a bank, where the said property is converted into such deposits;
- (b) Indian currency, where the said property is converted into that currency; and
- (c) any other property which has resulted out of the conversion of that property.

Sections 1A – 1D of Section 13 inserted by the Finance Act, 2015, w.e.f. 9-9-2015



Power to Compound contravention under S. 15 of FEMA

- **Power to compound contravention**

15. (1) Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and Officers of the Reserve Bank as may be authorised in this behalf by the Central Government in such manner as may be prescribed²⁴.

(2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded.

Power of search, seizure, etc. under S. 37 of FEMA

- Power of search, seizure, etc.

37. (1) The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13.

(3) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on income-tax authorities under the Income-tax Act, 1961 (43 of 1961) and shall exercise such powers, subject to such limitations laid down under that Act.

Special provisions relating to assets held outside India under S. 37A of FEMA

- **Special provisions relating to assets held outside India in contravention of section 4**

37A. (1) Upon receipt of any information or otherwise, if the Authorised Officer prescribed by the Central Government has reason to believe that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4, he may after recording the reasons in writing, by an order, seize value equivalent, situated within India, of such foreign exchange, foreign security or immovable property:

Provided that no such seizure shall be made in case where the aggregate value of such foreign exchange, foreign security or any immovable property, situated outside India, is less than the value as may be prescribed.

(2) The order of seizure along with relevant material shall be placed before the Competent Authority, appointed by the Central Government, who shall be an officer not below the rank of Joint Secretary to the Government of India by the Authorised Officer within a period of thirty days from the date of such seizure.

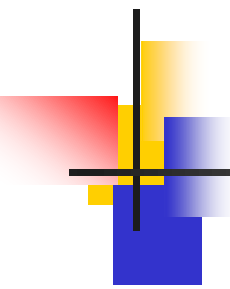
Special provisions relating to assets held outside India under S. 37A of FEMA (con't)

37A. (3) The Competent Authority shall dispose of the petition within a period of one hundred eighty days from the date of seizure by either confirming or by setting aside such order, after giving an opportunity of being heard to the representatives of the Directorate of Enforcement and the aggrieved person.

Explanation.—While computing the period of one hundred eighty days, the period of stay granted by court shall be excluded and a further period of at least thirty days shall be granted from the date of communication of vacation of such stay order.

(4) The order of the Competent Authority confirming seizure of equivalent asset shall continue till the disposal of adjudication proceedings and thereafter, the Adjudicating Authority shall pass appropriate directions in the adjudication order with regard to further action as regards the seizure made under sub-section (1):

Provided that if, at any stage of the proceedings under this Act, the aggrieved person discloses the fact of such foreign exchange, foreign security or immovable property and brings back the same into India, then the Competent Authority or the Adjudicating Authority, as the case may be, on receipt of an application in this regard from the aggrieved person, and after affording an opportunity of being heard to the aggrieved person and representatives of the Directorate of Enforcement, shall pass an appropriate order as it deems fit, including setting aside of the seizure made under sub-section (1).



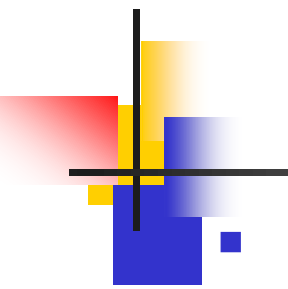
Special provisions relating to assets held outside India under S. 37A of FEMA (con't)

37A.

(5) Any person aggrieved by any order passed by the Competent Authority may prefer an appeal to the Appellate Tribunal.

(6) Nothing contained in section 15 shall apply to this section.

Section 37A inserted by the Finance Act, 2015, w.e.f. 9-9-2015



PROCESS OF MONEY LAUNDERING

- **Placement**

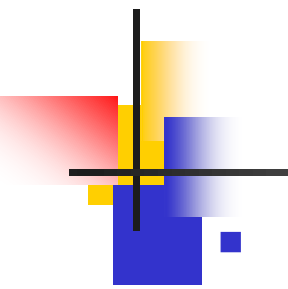
- Dirty money being inserted in financial system

- **Layering**

- Separates the proceeds from their criminal origin by moving them through a series of financial transactions

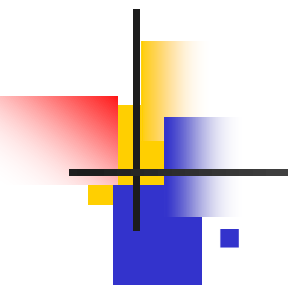
- **Integration**

- Creating a legitimate explanation for their sources of funds, allowing them to be retained, invested or used, to acquire goods or assets



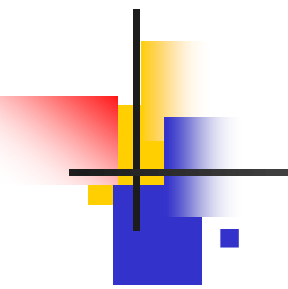
PLACEMENT

- Refers to the process of transferring the proceeds from illegal activities into financial system in a manner not detectable by governmental authorities.
- Involves:
 - Placing of money in the financial system which is done by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account, or by purchasing a series of monetary instruments (cheques, money orders, etc.)
 - Placing of money in the retail economy by buying high value goods such as precious metals, artwork, etc that can be resold later for payment by cheque
 - Smuggling out of the country



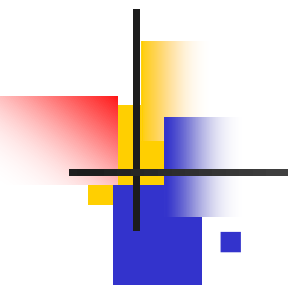
LAYERING

- Refers to a process of disassociating the illegal money from the source of the crime by creating a complex web of financial transactions for concealing its source, trail and ownership.
- Involves creation of complex layers of financial transactions for concealing or disguising the source of the ownership of the funds.
- Involves:
 - channeling through the purchase and sale of investment instruments such as bonds, stocks, and traveler's cheques or the launderer might simply wire the funds through a series of accounts at various banks across the globe, particularly to those jurisdictions that do not cooperate in anti-money laundering
 - disguising the transfer as payments for goods or services, thus giving them a legitimate appearance.



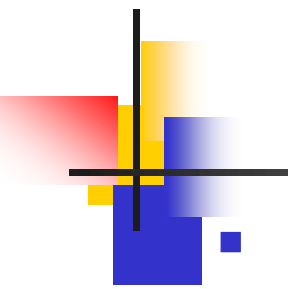
LAYERING (con't)

- A number of rotations to slush funds are given through banks and this complex layer of financial transactions are carried out to divorce the illicit proceeds from their source and mislead the investigating agencies.
- The high-value goods and monetary instruments are resold and the proceeds are invested in real estate and legitimate businesses, particularly in the leisure and tourism industries.
- Shell companies i.e. paper companies / bogus companies) serve as front and are registered in offshore havens.



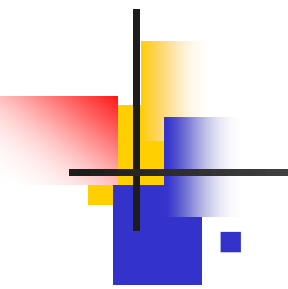
INTEGRATION

- Refers to the process of integrating the now 'clean' money into the regular economy.
- Involves assimilation of layered money into the legitimate economic and financial system for later extraction
- It involves making the wealth derived from crime appear legitimate
- By this stage, it is exceedingly difficult to distinguish legal and illegal wealth



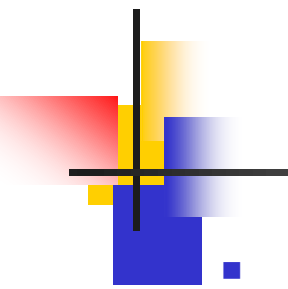
METHODS OF MONEY LAUNDERING

- Smurfing: It involves many individuals who deposit cash into bank accounts or buy bank drafts in amounts in small amounts to avoid the reporting threshold.
- Bank Complicity: Bank complicity occurs when a bank employee is involved in facilitating part of the money laundering process
- Money Services and Currency Exchanges: they provide a service that enables individuals to exchange foreign currency that can then be transported out of the country
- Asset Purchases with Bulk Cash
- Electronic Funds Transfer
- Postal Money Orders
- Credit cards
- Casino winnings



METHODS OF MONEY LAUNDERING

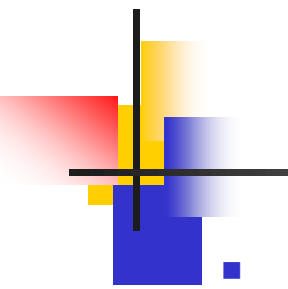
- Refining: This involves the exchange of small denomination bills for larger ones at a number of different banks in order not to raise suspicion. This serves to decrease the bulk of large quantities of cash
- Co-mingling of Funds with legitimate business
- Value Tampering: sale of property at a price below its actual value and then accepting the difference of the purchase price "under the table"
- Loan back: where paperwork for loan or mortgage is created in exchange for a sum of illegitimate money. This is followed by regular loan payments creating further legitimacy



STRUCTURE OF PMLA

■ Structure

Section No.	Description
3	Offence of Money-laundering
4	Punishment for Money-laundering
5	Attachment of Property involved in Money-laundering
6	Adjudicating authorities, composition, powers, etc.
7	Staff of Adjudicating authorities
8	Adjudication
9	Vesting of Property in Central Government
10	Management of Properties confiscated
11	Power regarding summons, evidence, etc.
12	Obligation of Banking companies, FIs & intermediaries
12A	Access to information from reporting entity

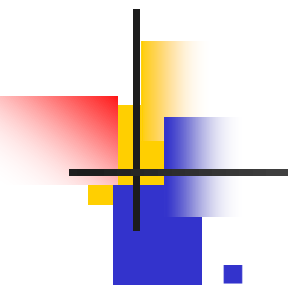


STRUCTURE OF PMLA (con't)

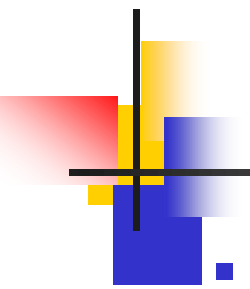
- Structure of PMLA

Section No.	Description
17	Search & Seizure
18	Search of persons
19	Power to arrest
26	Appeal to Appellate Tribunal
50	Powers of authorities regarding summons, production of documentation and to give evidence, etc.
58	Assistance to a Contracting State in certain cases
58A	Special Court to release Property
58B	Letter of request of a Contracting State or authority for confiscation or release of Property

PMLA - OVERVIEW OF ENFORCEMENT PROCESS

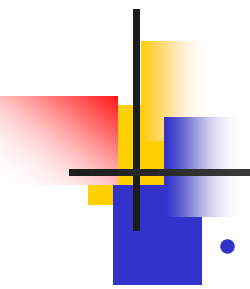


- PMLA empowers Enforcement Directorate to carry out investigations in cases involving offence of money laundering and also to attach the property involved in money laundering.
- PMLA envisages setting up of an Adjudicating Authority to exercise jurisdiction, power and authority conferred by it essentially to confirm attachment or order confiscation of attached properties.
- It also envisages setting up of an Appellate Tribunal to hear appeals against the order of the Adjudicating Authority and the authorities like Director FIU-IND



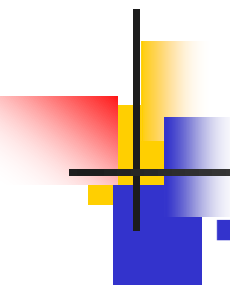
Financial Intelligence Unit-India (FIU)

- FIU is the central national agency responsible for receiving, processing, analyzing and disseminating information relating to suspected financial transactions.
- 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.



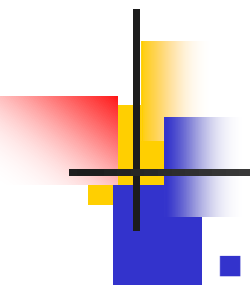
Directorate of Enforcement

- Responsible for investigating cases of money laundering, initiate proceedings for attachment of property and to launch prosecution in the Special Court.
- Powers and functions include:
 - survey, search, seizure, arrest, attachment, prosecution against offender;
 - providing and seeking mutual legal assistance to/from contracting states in respect of attachment/confiscation of proceeds of crime and transfer of accused persons;
 - rendering cooperation to foreign countries in matters related to money laundering and restitution of assets.



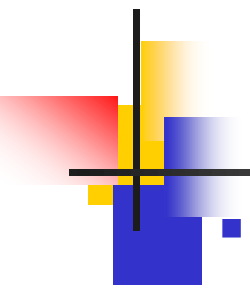
Adjudicating Authority

- The adjudicating authority consists of a chairperson and 2 members. It functions within Department of Revenue, Ministry of Finance.
- The Adjudicating Authority is not bound by the procedure laid down in the CPC but “*shall be guided by the principles of natural justice*” and shall be entitled to regulate its own procedure.
- The role of Adjudicating Authority is to consider attachments made by authorities and grant or refuse permission for retention and confiscation of seized property.
- The Director or any person aggrieved by an order made by the Adjudicating Authority may prefer an appeal to the Appellate Tribunal. Appeal has to be filed within a period of forty-five days.



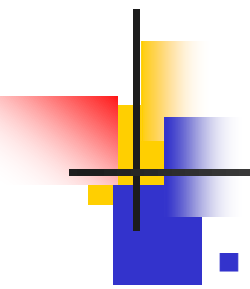
Appellate Tribunal

- Appellate Tribunal: is empowered to hear appeals against the decision of Adjudicating Authority and other authorities under this Act. It consists of a Chairperson and two other members.
- Further appeal can be made against the order of the Tribunal to High Court within 60 days.
- Appellate Tribunal is vested with powers of a civil court. It can also review its decisions and decide cases ex parte.



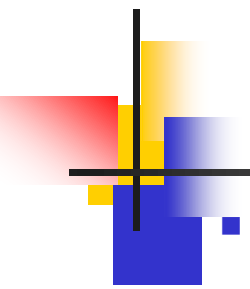
Special Court

- For trial of offence punishable under section 4 of PMLA, 2002, the Central Government, in consultation with the Chief Justice of the respective High Courts, 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 of money laundering under PMLA, 2002, a Special Court has also to try the offences, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial [Section 43] i.e. offence under PMLA plus the offence at the trial court
- The Special court can take cognizance of any offence of money laundering upon a complaint being made by an authority, without the accused being committed to it for trial.
- The provisions of the CrPC shall apply to the proceedings before a Special Court.



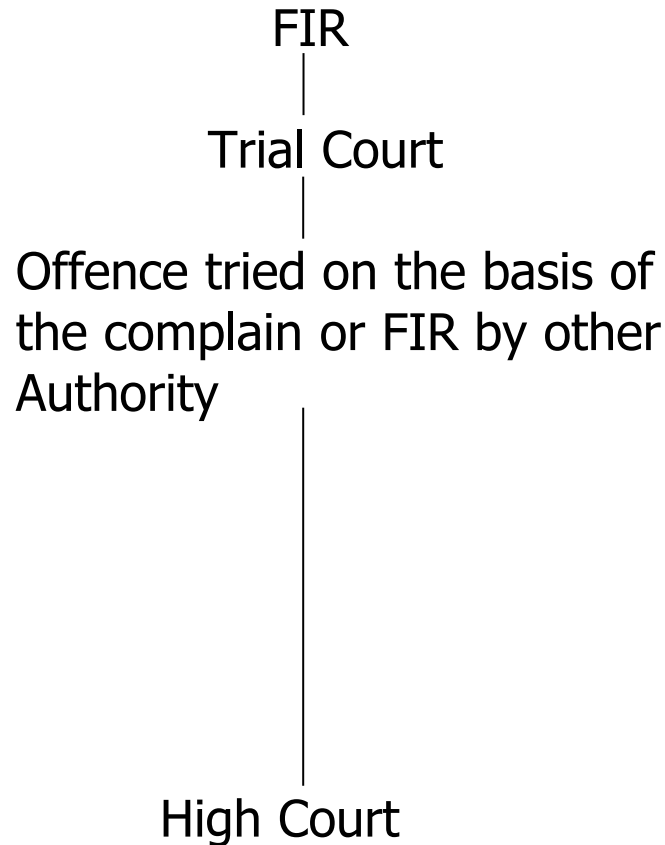
Special Court (con't)

- In case a trial court has taken cognizance of a scheduled offence, then in such cases, on an Application by the authority authorized to file a complaint under PMLA, the trial court (which has taken cognizance of the scheduled offence) shall commit the case relating to the scheduled offence to the Special Courts under PMLA.
- The Special Court, PMLA, on receipt of such case committed to it, shall proceed to deal with it from the stage at which it is committed [Section 44(1)(c)].
- 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 (2 of 1974), 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].

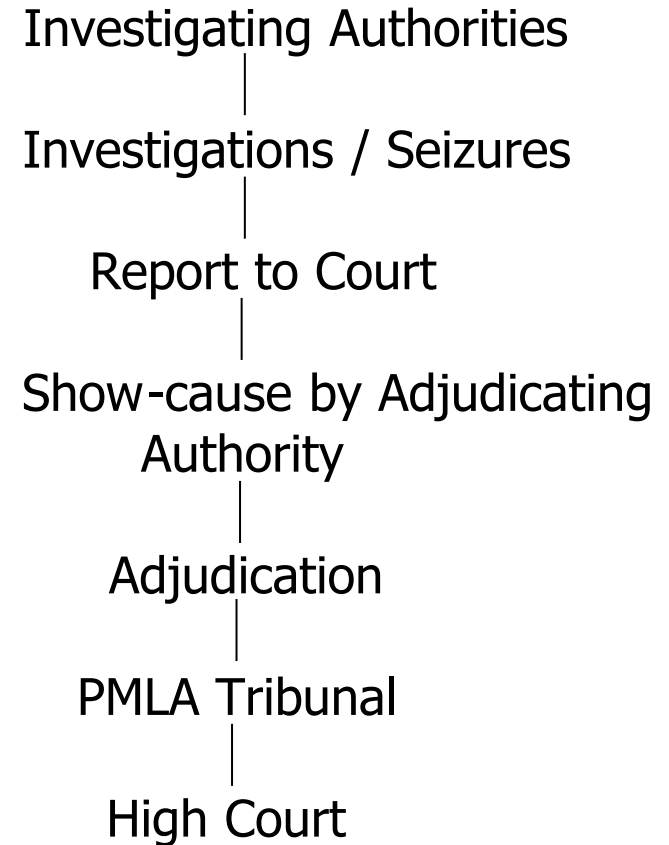


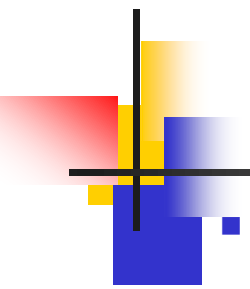
Parallel Streams of Proceedings

PMLA COURT



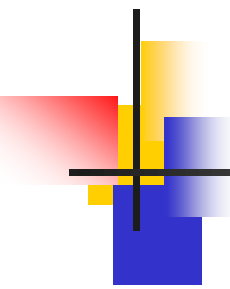
ED





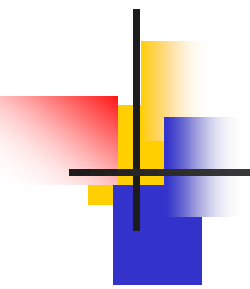
Parallel Streams of Proceedings (con't)

- Once the Complaint Report is filed with the Special Court by the office of the ED, the investigation / attachment proceedings before the Director and/or the Adjudicating Authority will continue and in parallel, trial proceedings before the Special Court will also be continuing by the prosecution for determining proof of guilt of the accused 'beyond reasonable doubt' and the establishment of 'mens rea' in order to demonstrate that there is "substantial probable cause" to form opinion that the property under attachment is proceeds of crime.
- Thus, there is the possibility of a matter under PMLA going from Special Court to High Court and in parallel, going from adjudicating officer to Appellate Tribunal to High Court. The matter may continue under both the streams of proceedings unless the Special Court decides in favour of the accused. In such a case, probably the adjudicating officer during adjudication process or at the stage of Appellate Tribunal, as the case may be, will have to consider the findings of the Special Court to decide the matter.



Civil Courts and PMLA

- No suit can be brought in any civil court to set aside or modify any proceeding taken or order made under PMLA, 2002 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 the PMLA, 2002 [Section 67].
- Thus, jurisdiction of civil courts is barred. The offence of money laundering is triable only by a special court constituted for the area in which the offence has been committed.



PMLA and Other Acts / Laws

- **Conflict between PMLA and Other Acts / Laws**

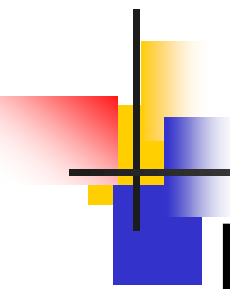
The provisions of PMLA, 2002 have over-riding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force [Section 71].

Instances of prosecution by Enforcement Directorate

	Brief details
Black money & tainted assets post-demonetisation	As per official report issued in Nov. 2017, the ED is investigating over 3,700 cases of money laundering and hawala transactions, involving tainted assets worth Rs. 9,935 crore, as part of its action against black money generated post demonetisation. The central probe agency also carried out a "risk assessment" of these cases, registered post the notes ban on November 8 last year, and found that a majority of (43%) the financial crimes were carried out by perpetrating bank frauds and cheating financial institutions through a maze of shell firms. The other category of post-notes ban financial crimes being probed by the ED include cases of corruption (31 per cent), drugs and narcotics trade (6.5 per cent), arms and explosives (4.5 per cent) and others (8.5 per cent).

Instances of prosecution by Enforcement Directorate (con't)

	Brief details
Sterling Biotech	The Enforcement Directorate conducted raids in Nov. 2017 while investigating a Rs 5,000-crore money laundering probe against directors and associates of Gujarat-based pharma firm Sterling Biotech in connection with an alleged bank fraud case. The CBI alleged that the company took loans of over Rs 5,000 crore from a consortium led by Andhra Bank which have turned into non-performing assets.
Karthi Chidambaram	The ED has found in a search in March 2016 that Karthi has made investments in real estate assets and other businesses in many countries, including England, United Arab Emirates, Thailand, Singapore, Malaysia, South Africa, USA, Switzerland, Philippines, Sri Lanka, British Virgin Island, France, Greece and Spain
Rs. 1000 crore Basmati Rice scandal	According to the probe done by the DRI in March 2016, over two lakh metric tonnes of Basmati rice was illegally offloaded in Dubai over the previous year instead of in Bandar Abbas in Iran. The case is now being investigated by ED.



Instances of prosecution by Enforcement Directorate

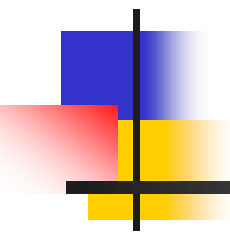
	Brief details
Vijay Mallya	The ED has registered a money-laundering case on March 7, 2016 under PMLA against Vijay Mallya and the CFO of Kingfisher Airlines A. Raghunathan to trace the transactions pertaining to a suspected diversion of funds in connection with the CBI's probe into the alleged default of a Rs. 900- crore loan in collusion with IDBI officials.
Lalit Modi	The ED has invoked PMLA along with sections 420 (cheating) and 120-B (criminal conspiracy) of IPC to probe if BCCI IPL and the exchequer had been cheated in the award of telecast rights for the T-20 tournament in 2009. A special court in Mumbai on March 1, 2016 issued an order allowing the ED to begin extradition proceedings against former IPL chairman Lalit Modi in connection with its money laundering probe against him and others.

Instances of prosecution by Enforcement Directorate (con't)

	Brief details
Odisha chit fund & mining scams	The ED attached assets worth Rs. 485 crores of three mining companies and a chit fund in connection with its money laundering probe resulting from detection of large-scale alleged irregularities by the State mines dept.
Dawood Ibrahim	The ED is investigating all properties linked to D-gang and other associates such as attorneys and politicians who may have helped in laundering the crime proceeds. The ED has also approached enforcement agencies in UK, Cyprus, Turkey, Spain & Morocco with information of bank accounts and properties
Rose Valley	In April 2015, ED filed charge sheet in the Rose Valley ponzi scam case against six persons on the basis of SEBI complaint to ED that Rose Valley had garnered more than Rs.15,000 crore from the public through issue of various financial instruments, which did not have sanction of the capital market regulator. ED has also frozen numerous bank accounts and fixed deposits of the Rose Valley group.

Instances of prosecution by Enforcement Directorate (con't)

	Brief details
Sahara India	In 2014, ED has registered a money laundering case against Sahara Group under PMLA Act, in connection with non-payment of crores of rupees to depositors as probed by capital markets regulator SEBI. Around 1/8th (Rs 3600 crore) money of the total suspected amount (Rs 17000 crore) has been laundered to US and UK to acquire a hotel in UK.
Money laundering at branch of BOB	Six persons were arrested in the case involving alleged laundering of black money to the tune of Rs. 6000 crore at a branch of Bank of Baroda in Oct, 2015. Money was being transferred through 59 accounts at the bank's Ashok Vihar branch to companies in Hong Kong and Dubai. The money was disguised as payments for imports. A search revealed that addresses given by at least 50 companies for bank records were fake. Interrogation of the bank officials revealed that some of the employees acted as middle-men for these companies.



Thank You
