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Prevention of Money Laundering Act, 2002
by
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Michael Jackson sang that it does not matter if you are black or white, but from a financial point of view there is a big difference between black and white and we in India are very aware of this and this forms part of our daily use of language.

One theory is that the term "money laundering" originates from the 1920s and 1930s, when the gangster A L Canone used to hide the money that he collected from his activities, in washing machines.

There is, however, another theory which says that the first theory is wrong and that when illegal campaign contributions were collected for President Nixon in the 1970s, these were then sent to Mexico from where they came back to a company in Maine and were used in America. The term money laundering was used for the first time by the English newspaper "The Guardian" with reference to President Nixon's collections.

In the 1990s, the United Nations became very conscious of money laundering and in 1999 passed a resolution that Member States should enact such laws. India did enact the law in 2002 but did not bring it into effect immediately, but only on 1.7.2005.

India has many laws relating to conversion of black into white and white into black. These are the Income-tax Act, FEMA, FERA, SAFEMA and also specific provisions of different statutes which allow for confiscation of illegally acquired monies.

Under the Income-tax Act it is an offence to evade tax. This evasion of tax may be done by, for instance, claiming expenses, i.e. converting white into black, or even by converting black into white by, for instance, introducing black money as official money by receiving a gift from someone or by claiming that an amount falls within the scope of an exemption when in fact it does not.

Under the SAFEMA, which was introduced in 1976, if a person was guilty of any offence under the Customs Act or under FERA, then the property of such a person or his relative or even associate could be confiscated if this was found to have been from a tainted source.

The PML Act is somewhat different. This is not an Act which imposes consequences on account of a substantive violation of any other law but only for the offence, in certain circumstances, of converting or attempting to convert tainted money into such a form that it would appear to be untainted or clean or laundered.

Section 3 of the PML Act indicates that the offence of money laundering consists of three ingredients – (1) that there is a crime of a certain nature, (2) that the crime has resulted in money being received by person who has committed the crime and (3) that this money is sought to be converted from a form which reflects its tainted character to an untainted or clean form.

The types of crimes which are the basis of this Act are those which are listed in the Schedule. The Schedule consists of two parts, Part A and Part B. Part A has two paragraphs and Part B has five paragraphs. Paragraph 1 of Part A relates to waging war or offences against the State and paragraph 2 relates to offences under The Narcotic Drugs and Psychotropic Substances Act. Even if these crimes committed under this Act are small in terms of financial value, the PML Act can still be invoked.

In the case of other laws which are referred to in Part B and which are 5 in number, viz. The Arms and Wildlife Act, Immoral Traffic Act, Indian Penal Code and Prevention of Crime Act, the amount involved has to be at least Rs.30 lakhs for this to be an offence which is to be taken note of insofar as the PML Act is concerned.

Therefore, if a person, for instance, evades tax in his business and then tries to convert the black money so generated into white, he does not fall within the scope of the PML Act because the source of the tainted money is not one of the specified crimes.

There can be not only double jeopardy as pointed out by Mrs.Saxena but there could even be triple jeopardy and quadruple jeopardy in such cases. Take for example the case of a person who exports drugs illegally and receives money outside India and then brings the money back into India and then tries to convert it into a clean form. Such a person has committed a violation under the Narcotics Law and then under FEMA for having received money outside India, then under the FEMA Act for having brought the money back illegally into India, then under the Income-tax Law for having evaded income-tax and then finally under the PML Act for trying to legitimize this money. So, there can be enormous consequences for such a person.

The law in the U.K. and in the U.S. should also be considered. In the U.K., it appears that the law is such that even a theft of an item without any lower limit and the possession of that item and the use of that item can be a violation of the Money Laundering Law. Therefore, if a person steals a shirt and then keeps it at home or wears it, (even if he doesn't wash it!) he has violated the Laundering Law.

In the U.S., this is not so and there is a decision of the U.S. Supreme Court in the case of a man who was found having hidden Dollars 81,000 in his car and was driving towards Mexico. It was found that the source of his money was a drug transaction. The Supreme Court however held that while he may have been guilty under the Narcotics Law, it had not been proved that he was carrying the money to Mexico in order to bring it back in a clean form. Therefore, he was liable under the Narcotics Law but not liable under the Money Laundering Law.

The Indian law appears to be similar to the American law.

But even here, since the law is new and there are not many decisions on this, certain situations may arise if, for instance, a person has committed a robbery and has got Rs.50 lakhs with himself and if he keeps it at home, it is not a violation under the PML Act.

If, for instance, he uses the money for normal expenditure such as food, clothing, travel etc., then has he attempted to convert it from a tainted form into an untainted form? One view would be that using the money to buy goods or services, he has introduced the money into the legitimate economy and therefore has attempted to convert it into a clean form.

Another view would be that since he has not created an asset, but has used the money, this is not in violation of PML Act.

Let us consider another situation. A person has got tainted money of Rs.50,00,000/-. He then buys a flat for Rs.1,50,00,000/- of which Rs.1,00,00,000/- is paid by cheque and Rs.50,00,000/- is tainted money. He is now showing that tainted money as official money and therefore he has converted it. One view in this case would be that he has got it without the cash amount. Since the holding of the asset is legitimate, then does he converted the entire Rs.50,00,000/- into clean form? Another view is that if he were to sell the property for Rs.1,50,00,000/-, he would have to pay tax on the amount of Rs.50,00,000/- capital gain on the sale and therefore it is not the original amount which has been converted but it is the latter amount which has come to him as taxable property.

But if he buys a flat for Rs.1,50,00,000/- and then sells it for Rs.1,00,00,000/- cheque and Rs.50,00,000/- cash, the colour of the original cash has not changed at all and therefore one could perhaps say that the tainted money remained tainted and does not fall under the PML Act. There would be many such situations.

Company Secretaries have to have knowledge of all such laws and have to be vigilant to see that their clients are not affected by such tainted money which comes in by way of deposits or as share capital and if they come to know about such amounts then they must inform the Company and the Government authorities as well.

So be vigilant and be vocal!