

THE PREVENTION OF MONEY-LAUNDERING (AMENDMENT)ACT, 2009

NO. 21 OF 2009

[6th March, 2009.]

An Act further to amend the Prevention of Money-laundering Act, 2002. BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:-

@ 1. ! Short title and commencement. ! 1. Short title and commencement. –

(1) This Act may be called the Prevention of Money-laundering (Amendment) Act, 2009.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

@ 2. % Amendment of section 2. ! 2. Amendment of section 2. - In section 2 of the Prevention of Money-laundering Act, 2002 (hereinafter referred to as the principal Act), in sub-section (1),-

(i) after clause (d), the following clause shall be inserted, namely:- '(da) "authorised person" means an authorised person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999;'

(ii) after clause (j), the following clause shall be inserted, namely:- '(ja) "designated business or profession" means carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino or such other activities as the Central Government may, by notification, so designate, from time to time;'

(iii) in clause (l), for the words "a non-banking financial company", the words "an authorised person, a payment system operator and a non-banking financial company" shall be substituted;

(iv) in clause (q), after the words and figures "Reserve Bank of India Act, 1934", the words "and includes a person carrying on designated business or profession" shall be inserted;

(v) after clause (r), the following clauses shall be inserted, namely:- '(ra) "offence of cross border implications", means- (i) 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 (ii) 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. Explanation.-Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money-laundering (Amendment) Act, 2009;

(rb) "payment system" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement

service or all of them. Explanation.-For the purposes of this clause, "payment system" includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations; (rc) "payment system operator" means a person who operates a payment system and such person includes his overseas principal. Explanation.-For the purposes of this clause, "overseas principal" means,- (A) in the case of a person, being an individual, such individual residing outside India, who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India; (B) in the case of a Hindu undivided family, Karta of such Hindu undivided family residing outside India who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India; (C) in the case of a company, a firm, an association of persons, a body of individuals, an artificial juridical person, whether incorporated or not, such company, firm, association of persons, body of individuals, artificial juridical person incorporated or registered outside India or existing as such and which owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;';

(vi) in clause (y), for sub-clause (ii), the following sub-clauses shall be substituted, namely:- "(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or (iii) the offences specified under Part C of the Schedule."

@ 3. % Amendment of section 5. ! 3. Amendment of section 5. - In section 5 of the principal Act, in sub-section (1),-

(a) for the words "ninety days", the words "one hundred and fifty days" shall be substituted;

(b) for the proviso, the following provisos shall be substituted, namely:-
"Provided that 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 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised 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: Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act."

@ 4. % Amendment of section 6. ! 4. Amendment of section 6. - In section 6 of the principal Act,- (i) in sub-section (1), for the words "one or more Adjudicating Authorities", the words "an Adjudicating Authority" shall be substituted; (ii) in the proviso to sub-section (8), for the word "sixty-two", the word "sixty-five" shall be substituted.

@ 5. % Amendment of section 8. ! 5. Amendment of section 8. - In section 8 of the principal Act, in sub-section (1), for the words and figure "offence under section 3", the words and figure "offence under section 3 or is in possession of proceeds of crime" shall be substituted.

@ 6. % Amendment of section 12. ! 6. Amendment of section 12. - In section 12 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:- "(2)(a) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of ten years from the date of transactions between the clients and the banking company or financial institution or intermediary, as the case may be. (b) The records referred to in clause (c) of sub-section (1) shall be maintained for a period of ten years from the date of cessation of transactions between the clients and the banking company or financial institution or intermediary, as the case may be."

@ 7. % Amendment of section 17. ! 7. Amendment of section 17. - In section 17 of the principal Act, in sub-section (1),-

- (i) in the opening portion, for the words "the Director", the words "the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section," shall be substituted;
- (ii) for the proviso, the following proviso shall be substituted, namely:- "Provided that no search shall be conducted 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, or a complaint has been filed by a person, authorised 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."

@ 8. % Amendment of section 18. ! 8. Amendment of section 18. - In section 18 of the principal Act,-

- (i) in sub-section (1), the following proviso shall be inserted, namely:- "Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised 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.";
- (ii) in sub-section (9), the proviso shall be omitted.

@ 9. % Amendment of section 28. ! 9. Amendment of section 28. - In section 28 of the principal Act, in sub-section (2), clause (a) shall be omitted.

@ 10. % Amendment of section 32. ! 10. Amendment of section 32. - In section 32 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely:- "Provided that the Chief Justice of India shall be consulted before removal of the Chairperson or a Member who was appointed on the recommendation of the Chief Justice of India."

@ 11. % Amendment of section 38. ! 11. Amendment of section 38. - In section 38 of the principal Act, for the words "one or more of the other Members", the words "third Member" shall be substituted.

@ 12. % Amendment of section 60. ! 12. Amendment of section 60. - In section 60 of the principal Act, after sub-section (6), the following sub-section shall be inserted, namely:-
"(7) When any property in India is confiscated as a result of execution of a request from a contracting State in accordance with the provisions of this Act, the Central Government may either return such property to the requesting State or compensate that State by disposal of such property on mutually agreed terms that would take into account deduction for reasonable expenses incurred in investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property."

@ 13. % Amendment of Schedule. ! 13. Amendment of Schedule. - In the principal Act, in the Schedule,- (i) in Part A,- (a) in Paragraph 1, after section 121A and the entry relating thereto, the following sections and the entries shall be inserted, namely:- Section Description of offence "489A Counterfeiting currency notes or bank notes. 489B Using as genuine, forged or counterfeit currency notes or bank notes."; (b) in Paragraph 2, for sections 15, 18 and 20 and the entries relating thereto, the following sections and the entries shall be substituted, namely:- Section Description of offence "

15 Contravention in relation to poppy straw.

16 Contravention in relation to coca plant and coca leaves.

17 Contravention in relation to prepared opium.

18 Contravention in relation to opium poppy and opium.

19 Embezzlement of opium by cultivator.

20 Contravention in relation to cannabis plant and cannabis.

21 Contravention in relation to manufactured drugs and preparations."; (c) after Paragraph 2, the following Paragraphs shall be inserted, namely:-

"PARAGRAPH 3 OFFENCES UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908 Section Description of offence

3 Causing explosion likely to endanger life or property.

4 Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property.

5 Making or possessing explosives under suspicious circumstances.

PARAGRAPH 4 OFFENCES UNDER THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 Section Description of offence

10 read with section 3 Penalty for being member of an unlawful association, etc.

11 read with sections 3 Penalty for dealing with funds of an unlawful and 7 association.

13 read with section 3 Punishment for unlawful activities.

16 read with section 15 Punishment for terrorist act.

16A Punishment for making demands of radioactive substances, nuclear devices, etc.

17 Punishment for raising fund for terrorist act.

18 Punishment for conspiracy, etc.

18A Punishment for organising of terrorist camps.

18B Punishment for recruiting of any person or persons for terrorist act.

19 Punishment for harbouring, etc.

20 Punishment for being member of terrorist gang or organisation.

21 Punishment for holding proceeds of terrorism.

38 Offence relating to membership of a terrorist organisation.

THE SCHEDULE [See section 2 (y)] PART A * * * * *

PARAGRAPH 2 OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 Section Description of offence

15 Contravention in relation to poppy straw.

18 Contravention in relation to opium poppy and opium.

20 Contravention in relation to cannabis plant and cannabis.

* * * * * PART B

PARAGRAPH 1 OFFENCES UNDER THE INDIAN PENAL CODE Section Description of offence

302 Murder.

304 Culpable homicide not amounting to murder, if act by which the death is caused is done with the intention of causing death.

307 Attempt to murder.

308 Attempt to commit culpable homicide.

327 Voluntarily causing hurt to extort property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence.

329 Voluntarily causing grievous hurt to extort property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence.

364A Kidnapping for ransom, etc.

384 to 389 Offences relating to extortion.

39 Offence relating to support given to a terrorist organisation.

40 Offence of raising fund for a terrorist organisation."; (ii) in Part B,- (a) for Paragraph 1, the following Paragraph shall be substituted, namely:-

"PARAGRAPH 1 OFFENCES UNDER THE INDIAN PENAL CODE Section Description of offence

120B Criminal conspiracy.

255 Counterfeiting Government stamp.

257 Making or selling instrument for counterfeiting Government stamp.

258 Sale of counterfeit Government stamp.

259 Having possession of counterfeit Government stamp.

260 Using as genuine a Government stamp known to be counterfeit.

302 Murder. 304 Punishment for culpable homicide not amounting to murder.

307 Attempt to murder.

308 Attempt to commit culpable homicide.

327 Voluntarily causing hurt to extort property, or to constrain to an illegal act.

329 Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.

364A Kidnapping for ransom, etc.

384 to 389 Offences relating to extortion.

392 to 402 Offences relating to robbery and dacoity.
411 Dishonestly receiving stolen property.
412 Dishonestly receiving property stolen in the commission of a dacoity.
413 Habitually dealing in stolen property.
414 Assisting in concealment of stolen property.
417 Punishment for cheating.
418 Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.
419 Punishment for cheating by personation.
420 Cheating and dishonestly inducing delivery of properties.
421 Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

THE SCHEDULE [See section 2 (y)] PART A * * * * *

PARAGRAPH 2 OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 Section Description of offence
15 Contravention in relation to poppy straw.
18 Contravention in relation to opium poppy and opium.
20 Contravention in relation to cannabis plant and cannabis.

* * * * * PART B PARAGRAPH 1 OFFENCES UNDER THE INDIAN PENAL CODE Section Description of offence
302 Murder.
304 Culpable homicide not amounting to murder, if act by which the death is caused is done with the intention of causing death.
307 Attempt to murder.
308 Attempt to commit culpable homicide.
327 Voluntarily causing hurt to extort property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence.
329 Voluntarily causing grievous hurt to extort property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence.
364A Kidnapping for ransom, etc.
384 to 389 Offences relating to extortion.

PARAGRAPH 7 OFFENCES UNDER THE ANTIQUITIES AND ARTS TREASURES ACT, 1972 Section Description of offence
25 read with Contravention of export trade in antiquities and art section 3 treasures.
28 Offences by companies.

PARAGRAPH 8 OFFENCES UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 Section Description of offence
12A read Prohibition of manipulative and deceptive devices, with insider trading and substantial acquisition of securities section 24 or control.

PARAGRAPH 9 OFFENCES UNDER THE CUSTOMS ACT, 1962 Section Description of offence
135 Evasion of duty or prohibitions.

PARAGRAPH 10 OFFENCES UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976 Section Description of offence

16 Punishment for enforcement of bonded labour.

18 Punishment for extracting bonded labour under the bonded labour system.

20 Abetment to be an offence.

PARAGRAPH 11 OFFENCES UNDER THE CHILD LABOUR

(PROHIBITION AND REGULATION) ACT, 1986 Section Description of offence 14 Punishment for employment of any child to work in contravention of the provisions of section 3.

PARAGRAPH 12 OFFENCES UNDER THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994 Section Description of offence

18 Punishment for removal of human organ without authority.

19 Punishment for commercial dealings in human organs.

20 Punishment for contravention of any other provision of this Act.

PARAGRAPH 24 OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 Section Description of offence

37 Failure to comply with the provisions for operating industrial plant.

PARAGRAPH 25 OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF MARITIME NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF ACT, 2002 Section Description of offence

3 Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc."; (iii) after Part B, the following Part shall be inserted, namely:- "PART C 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.".

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V. K. BHASIN, Additional Secretary to the Govt. of India. { }