

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
TRANSFERRED CASE (CRL) NO. 4 OF 2018**

IN THE MATTER OF:-**DIRECTORATE OF ENFORCEMENT**

.....

PETITIONER**VERSUS****RAJBHUSHAN DIXIT & ANR.**

.....

RESPONDENTS

**WRITTEN SUBMISSIONS
BEHALF OF TUSHAR MEHTA, SOLICITOR GENERAL OF INDIA**

BRIEF INTRODUCTION TO THE PREVENTION OF MONEY LAUNDERING ACT, 2002

1. It was in light of the said concrete international effort to tackle the menace of money laundering from proceeds of crime of serious offences, the Union of India sought to enact a legislation as per the need of the country. It needs to be stated that in the 'Statement of Objects and Reasons' of PMLA, it was specifically stated that;

"Money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. To obviate such threats international community has taken some initiatives. It has been felt that to prevent money-laundering and connected activities a comprehensive legislation is urgently needed. To achieve this objective the Prevention of Money-laundering Bill, 1998 was introduced in the Parliament. The Bill was referred to the Standing Committee on Finance, which presented its report on 4th March, 1999 to the Lok Sabha. The Central Government broadly accepted the recommendation of the Standing Committee and incorporated them in the said Bill along with some other desired changes.

STATEMENT OF OBJECTS AND REASONS

It is being realised, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined below:—

(a) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence.

(b) the Basle Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of moneylaundering.

(c) the Financial Action Task Force established at the summit of seven major industrial nations, held in Paris from 14th to 16th July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of moneylaundering. The recommendations were classified under various heads. Some of the important heads are—

(i) declaration of laundering of monies carried through serious crimes a criminal offence;

- (ii) to work out modalities of disclosure by financial institutions regarding reportable transactions;
- (iii) confiscation of the proceeds of crime;
- (iv) declaring money-laundering to be an extraditable offence; and
- (v) promoting international co-operation in investigation of moneylaundering.

(d) the Political Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No. S-17/2 of 23rd February, 1990, inter alia, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.

(e) the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998 has made another declaration regarding the need to combat moneylaundering. India is a signatory to this declaration.

2. In view of an urgent need for the enactment or a comprehensive legislation inter alia for preventing money-laundering and connected activities confiscation of proceeds of crime, setting up of agencies and mechanisms for coordinating measures for combating money-laundering, etc., the Prevention of Money-Laundering Bill, 1998 was introduced in the Lok Sabha on the 4th August, 1998. The Bill was referred to the Standing Committee on Finance, which presented its report on the 4th March, 1999 to the Lok Sabha. The recommendations of the Standing Committee accepted by the Central Government are that (a) the expressions “banking company” and “person” may be defined; (b) in Part I of the Schedule under Indian Penal Code the word offence under section 477A relating to falsification of accounts should be omitted; (c) ‘knowingly’ be inserted in clause 3(b) relating to the definition of moneylaundering; (d) the banking companies financial institutions and intermediaries should be required to furnish information of transactions to the Director instead of Commissioner of Income-tax (e) the banking companies should also be brought within the ambit of clause II relating to obligations of financial institutions and intermediaries; (f) a definite time-limit of 24 hours should be provided for producing a person about to be searched or arrested person before the Gazetted Officer or Magistrate; (g) the words “unless otherwise proved to the satisfaction of the authority concerned” may be inserted in clause 22 relating to presumption on inter-connected transactions; (h) vacancy in the office of the Chairperson of an Appellate Tribunal, by reason of his death, resignation or otherwise, the senior-most member shall act as the Chairperson till the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill the vacancy, enters upon his office; (i) the appellant before the Appellate Tribunal may be authorised to engage any authorised representative as defined under section 288 of the Income-tax Act, 1961, (j) the punishment for vexatious search and for false information may be enhanced from three months imprisonment to two years imprisonment, or fine of rupees ten thousand to fine of rupees fifty thousand or both; (k) the word ‘good faith’ may be incorporated in the clause relating to Bar of legal proceedings. The Central Government have broadly accepted the above recommendations and made provisions of the said recommendations in the Bill.

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3. In addition to above recommendations of the standing committee the Central Government proposes to (a) relax the conditions prescribed for grant of bail so that the Court may grant bail to a person who is below sixteen years of age, or woman, or sick or infirm, (b) levy of fine for default of non-compliance of the issue of summons, etc. (c) make provisions for having reciprocal 2 Introduction arrangement for assistance in certain matters and procedure for attachment and confiscation of property so as to facilitate the transfer of funds involved in money-laundering kept outside the country and extradition of the accused persons from abroad.

4. The Bill seeks to achieve the above objects.”

2. Thus, as can be seen from the Legislative Intent, the international framework and the seriousness of the object of the Act, the PMLA was enacted to make strict and stringent provisions to tackle the global problem of money-laundering.

Brief statutory framework

3. The Prevention of Money Laundering Act, 2002, as is clear from the international background provided hereinbefore, serves us dual purpose – one being preventive in nature and the other being penal in nature. In that sense, the PMLA is an **amorphous statute** or a **hybrid statute**, which has **regulatory**, **preventive** and **penal** aspects. It is submitted that the Petitioners seeking to merely classify PMLA as a *penal statute* is, apart from being contrary to express international factual developments around money laundering, but it is also against the express provisions enshrined under the Act. Prima facie, the regulatory and preventive provisions of the Act can be summarised as under:-

- (i) Process and procedure regarding attachment, adjudication and confiscation (**Section 5, Section 6, Section 7, Section 9, Section 10 and Section 11**);
- (ii) The Prevention of Money-laundering (Manner of Receiving the Records Authenticated Outside India) Rules 2005, The Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (**Section 12, Section 12A, Section 12AA, Section 13, Section 14, Section 15**);
- (iii) Provisions regarding Survey, Search and Seizure and Retention of Records – (**Section 16, Section 17, Section 18, Section 20, Section 21, Section 22**);
- (iv) Provisions regarding statutory obligation on part of other authorities to assist the Enforcement Directorate in its preventive/regulatory functions (**Section 48, Section 49, Section 52, Section 53, Section 54, Section 63, Section 69, Section 72A**); and
- (v) Provisions regarding International Cooperation and Exchange of Information in order to provide the database for monitoring cross border suspicious transactions– (**Section 55, Section 56, Section 57, Section 58, Section 58B, Section 59, Section 60, Section 61**).

4. The first issue before this Hon'ble Court would be to apply the PMLA in a purposive manner and as a **complete Code**. Specific reliance is placed on the following provisions :

- **Section 2 – Definitions**
(d) "attachment"

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(fa) "*beneficial owner*"

(na) "*investigation*"

(u) "*proceeds of crime*"

(y) "*scheduled offence*"

(ra) "*offence of cross border implications*"

- **Section 3 - Offence of money-laundering**
- **Section 5 - Attachment of property involved in money-laundering**

5. As per the basic scheme of the PMLA, the offence of money laundering as defined under Section 3 is directed against the proceeds of crime and is admittedly punishable with not less than 3 years which may extend to 7 years under Section 4. The "*proceeds of crime*" as per Section 2(u) pertain to any property derived, obtained directly or indirectly, as a result of *criminal activity* by any person relating to a scheduled offence or "the value of such property". "the value of such property" is when the property derived/ obtained is not available for attachment, then any other property of equivalent value.

6. The scheduled offences have been defined under Section 2(y) and admittedly, the sections under which the Respondent is charged/investigated by Police/ CBI etc, are part of the offences as specified under part A of the schedule. Section 16 falling under Chapter V pertains to summons, searches and seizures, gives the power of survey to an authority on the basis of the material in its possession on reasons to believe (reasons for such belief to be recorded in writing) that an offence under Section 3 has been committed. Section 17(1A) gives further power to seize the record when the authorized officer has 'reason to believe' on the basis of material. A copy of the said order is to be served on the person whose property/ record is seized. The order of freezing under Section 17(1) continues for a period of 180 days and in terms of Section 17(4), within a period of 30 days from such seizure or freezing, an application has to be filed in writing requesting for continuation of order of freezing beyond a period of 180 days before the adjudicating authority. The procedure is provided under Section 8 pertaining to the adjudication to be done by the said authorities who are to further pass an order to decide whether the freezing is to continue during the pendency of the proceedings under PMLA.

7. The following provisions provide further procedure under the PMLA:

- **Section 19 : Power to arrest**
- **Section 24 : Burden of proof**
- **Section 43 : Special Courts**
- **Section 44 : Offences triable by Special Courts**
- **Section 45 : Offences to be cognizable and non-bailable**
- **Section 46 : Application of Code of Criminal Procedure, 1973 to proceedings before Special Court**
- **Section 50 : Powers of authorities regarding summons, production of documents and to give evidence, etc**
- **Section 65 : Code of Criminal Procedure, 1973 to apply**
- **Section 71 : Act to have overriding effect**

8. It is submitted that the PMLA, in order to specifically tackle a particular malaise/crime, has established a separate procedure under the enactment. The PMLA, as a complete Code in itself to the extent in directly or in directly provides for a specific procedure.

9. From the aforesaid scheme of the Act, it would become clear that –

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- (i) There is a conscious legislative departure from conventional penal law in India;
- (ii) Considering the peculiar nature of money laundering – which requires prevention, regulation and prosecution, a completely different scheme is framed by the legislature;
- (iii) The new scheme introduced for dealing with the money laundering is as a part of India's global responsibility in international law;
- (iv) While complying with the mandate of FATF, the legislature has very consciously ensured that the Act becomes compliant to the constitution of India.

10. This legislative intent becomes further clear if various provisions of the Act are read with the rules framed thereunder. The Rules are enumerated as under :

- a.** The Prevention of Money-laundering(Forms, Search and Seizure or Freezing & the manner of forwarding the reasons & Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005
- b.** The Prevention of Money-laundering(The Manner of Forwarding a Copy of the Order of Retention of Seized Property along with the Material to the Adjudicating Authority and the Period of its Retention) Rules, 2005
- c.** The Prevention of Money-laundering (Maintenance of Records) Rules, 2005
- d.** The Prevention of Money-laundering(Receipt and Management of Confiscated Properties) Rules, 2005
- e.** The Prevention of Money-laundering (Appeal) Rules, 2005
- f.** The Prevention of Money-laundering (The Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person Along with the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005
- g.** The Prevention of Money-laundering (Manner of Receiving the Records Authenticated Outside India) Rules, 2005
- h.** PML(The Manner of Forwarding a copy of the Order of Provisional Attachment of Property along with the Material, and copy of the Reasons along with the Material in respect of Survey, to the Adjudicating Authority and its period of Retention) Rules, 2005
- i.** Prevention of Money-laundering (Appointment and Conditions of Service of Chairperson and Members of Adjudicating Authorities) Rules, 2007
- j.** Prevention of Money-laundering (Appointment and Conditions of Service of Chairperson and Members of Appellate Tribunal) Rules, 2007
- k.** The Prevention of Money-laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013
- l.** The Prevention of Money-laundering (Issuance of Provisional Attachment Order) Rules, 2013
- m.** The Prevention of Money-laundering (Restoration of confiscated property) Rules, 2016

11. The said Rules demonstrate that –

- (i) There is a conscious departure from conventional investigation commencing from registration of FIR.

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(ii) Considering the global nature of money laundering and in view of the fact that mostly the evidence in the form of electronic evidence elaborate procedure is prescribed to ensure complete confidentiality.

(iii) The scheme of the Act and rules framed thereunder ensures an inbuilt checks and balances for its potential abuse.

12. It is submitted that **Annexure A** to this note portrays how the major provisions of the PMLA have evolved over the years in order to adhere to the recommendations of the FATF and to bring the legislation in tune with the international best practices.

Detailed data on offences being investigated by Directorate of Enforcement

13. As stated previously, as on date 4,700 cases are being investigated by Directorate of Enforcement. The number of the cases taken up for investigation each year in last 5 years varies from 111 cases in 2015-16 to 981 in 2020-21, as per following details:

Financial Year	Number of cases taken up for the investigation under PMLA
2015-16	111
2016-17	200
2017-18	148
2018-19	195
2019-20	562
2020-21	981

14. It is evident from the data as captured above that very small number of cases are being taken up for investigation under the PMLA as compared to annual registration of the cases under the Money Laundering Act in UK (7,900), USA (1,532), China (4,691), Austria (1,036), Hongkong (1,823), Belgium (1,862), Russia (2,764).

15. It is pertinent to mention here that during last five year (2016-17 to 2020-21), 2086 cases were taken up for investigation under the PMLA out of registration of FIR of approx. 33 lakh for predicate offence by Law Enforcement Agencies.

16. The low registration of cases in India is due to the robust mechanism for risk-based selection of the cases for investigation. It is pertinent to mention here that FATF recommendation provides for no threshold for selection of cases for investigation under the PMLA, however, the Directorate of Enforcement is focusing its attention on cases involving high value of proceeds of crime and cases involving serious predicate offence involving terror financing, narcotics, corruption, offence involving national security, etc.

17. In last 17 years, 4,850 cases have been taken up for investigation under the PMLA. The investigation in these offences were carried out by using investigative tools as provided under the PMLA including 2,883 searches and arresting **313 persons**.

18. The proceeds of crime of Rs. 98,368 crore were identified and attached under Section 5 of the PMLA out of which, proceeds of crime of **Rs. 55,899 crore** has been confirmed by Adjudicating Authority and substantial part of attached proceeds of crime are still under adjudication by the Adjudicating Authority. In addition to this, proceeds of crime of Rs. 853.16

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crore has already been confiscated to the Central Government under the orders of the competent court.

19. It is submitted that timely attachment of proceeds of crime has led to attachment of assets worth of Rs. 19,111.20 crore out of total fraud of Rs. 22,585.83 crore by three fugitive offenders namely Shri Vijay Mallya, Shri Nirav Modi and Shri Mehul Choksi. Out of the attached proceeds of crime from these 3 individuals, assets of Rs. 15,113.91 crore has already been returned back to public sector banks by the ED u/s 8(7) PMLA through the order of the Court and assets worth of Rs. 335.06 crore has been confiscated to the Government of India i.e. 66.91% of total loss to the banks in these 3 cases has been returned back to them by the ED. It is pertinent to mention here that SBI has already recovered cash of Rs. 7,975.27 crore by selling a part of assets returned to it by the ED. The process of liquidation of other restituted assets by the banks is continuing.

20. Since, PMLA is a new law which came into force on 01.07.2005, the process of filing of Prosecution Complaint started mainly from Year 2012 & 2013 and till date, Prosecution Complaint has been filed in 930 cases which are under different stages of trial as on date 21 persons have been convicted under the PMLA. Only in one case involving 6 accused were discharged under the PMLA on merit whereas in remaining 24 cases, accused were discharged under the PMLA mainly on the ground that accused were discharged under the predicate offence and only in one case, the predicate offence was not proved. It is amply clear from these data that accused in 24 cases were not discharged on merit of money laundering case but as sequel to discharge in scheduled offence. All the cases of discharge except for one are subject matter of further appeal.

21. The investigation in 57 cases of terror & naxal financing has resulted in identification of POC of Rs. 1,249 crore and attachment of proceeds of crime of Rs. 982 crore (256 properties) and filing of 37 prosecution complaints and conviction of two terrorists under PMLA. The attachment of proceeds of crime include properties of Hafiz Mohammad Sayeed (UN designated terrorist), Syed Salahuddin (Head of Hizbul Mujahideen) and Iqbal Mirchi (involved in Mumbai blasts and international narcotics smuggler) also.

22. It is pertinent to mention here that quantum of proceeds of crime involve in the bunch cases of PMLA which are under consideration by Honourable Court is Rs. 67,104 crore.

DEFINING MONEY-LAUNDERING

The source of the change in definition was FATF

23. It is submitted that the interpretation canvassed by the Petitioners, apart from doing violence to the language of the Act, has been specifically debated at the international level and rejected. It is submitted that in fact, it was under the international guidance of the FATF that the amendments in 2012 were carried out. It is submitted that therefore, to limit the understanding of money-laundering to a “process or activity” which ought to specifically include *projection of proceeds of crime as untainted* would be erroneous. Further, to assert that mere possession or concealment of proceeds of crime would be outside the purview of the PMLA, would also be against the specific mandate of the FATF and the international best

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practices, due to which, the incremental changes in the definition under Section 3 have been carried out as explained hereunder.

24. It is submitted that as stated hereinbefore, the United Nations convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention) [SGI Compilation – Volume I – pg. 13 to 43] has adopted definition of money laundering in Article 3.1(b) (i) (ii) & (c) (i). The Vienna Convention further added that money laundering also involves *acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from an offence.*

25. It is submitted that the Vienna Convention limited the predicate offences to drug trafficking offences only. Accordingly, crimes unrelated to drug trafficking such as fraud, theft, kidnapping and other heinous crimes are not defined as money laundering offences under Vienna Convention.

However, over the years International Community has reached to a conclusion that predicate offences for money laundering should go beyond drug trafficking. Thus, other international instruments have expanded the definition of predicate offence to include other serious crimes. The **United Nations Convention Against Transnational Organized Crime (2000) (Palermo Convention)** [SGI Compilation – Volume I – pg. 70 to 161] requires all the participant countries to apply that money laundering offences should be as sequel to “*the widest range of predicate offences*”.

26. It is submitted that as pointed out hereinabove the FATF is an international organisation whose recommendations bind member countries. India is a Member country. The FATF has set international standards so far as, inter alia, definition of money laundering is concerned. the FATF has taken wide definition of money laundering used in Vienna and Palermo Convention and thereafter recommended member countries to expand the predicate offences to include serious crimes. This fact would show that –

- (i) International community took cognizance of the fact that money laundering can no longer continue to be in the domain of drug related offences;
- (ii) A very wide definition of money laundering needs to be evolved and accepted by the world community.

In this context it is relevant to examine the Recommendation No.1 of FATF [as on 2003] and revised Recommendation No.3 of FATF [as revised on 2012] [SGI Compilation – Volume I – pg. 278 to 417 (2012 Recommendation)].

27. Following above mandatory recommendations of FATF, member countries of FATF have incorporated the definition of money laundering in their respective anti-money laundering legislations in line with recommendation of FATF i.e. by adopting definition of Vienna Convention and the Palermo Convention by expanding the predicate offence to include all the serious crimes. Section 3 of PMLA as originally enacted in 2002 reads as under:

“Section 3. 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.”

FATF Evaluations of anti money-laundering [AML] regime in India

28. As pointed out above, the FATF makes evaluation of every country. This evaluation is done by peer review. In other words, representatives of other countries examines the anti-money laundering regime in India, consults Indian authorities, gather statistics, facts and details and examine the enactment dealing with the money laundering. Such evaluation results into every such country be declared either as “Non Compliant” [NC], “Partially Compliant” [PC] or “Largely Compliant” [LC] or “Fully Compliant” [FC] or [C] with respect to one parameter or other. This is known as rating by FATF with reference to its 40 recommendations.

29. Subsequent to the enactment to the PMLA, FATF has carried out mutual evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of India during 2009 to 2010 based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of FATF. The report of India titled as ***Mutual Evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of India*** [SGI Compilation – Volume VII – pg. 2934-3189] was adopted on 24.06.2010 along with thirteen Recommendations and India was placed in regular follow up process of mutual evaluation processes as Indian was found to be *not fully compliant* to FATF standards. The Recommendation 1 of the mutual evaluation report has pointed out that definition of money laundering u/s 3 of PMLA was not consistent with the Vienna and Palermo Conventions. The summary of the shortcoming forming the part of Recommendation 1 reads as under:

- (High) monetary threshold condition for most ML predicates at the stage the predicate offences in the Schedule of the PMLA had a monetary threshold.
- ML provision does not cover physical concealment of criminal proceeds.
- ML provision does not cover the sole knowing acquisition, possession and use of criminal proceeds.

30. The above shortcomings were discussed in FATF mutual evaluation report details of which are reproduced hereunder for ready reference:

“2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES***Laws and Regulations******2.1 Criminalisation of Money Laundering (R.1 & 2)******2.1.1 Description and Analysis******Recommendation 1***

135. India has criminalised money laundering (ML) under both the Prevention of Money Laundering Act, 2002 (PMLA) as amended in 2005 and 2009, and the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) as amended in 2001. While the ML provisions under the NDPS Act only relate to predicate drug offences, the PMLA applies to a much broader range of predicate offences, including narcotics.

136. The relevant provisions are as follows:

xxx xxx xxx
xxx xxx xxx

Consistency with the United Nations Conventions

137. The Vienna and Palermo Conventions require countries to establish a criminal offence for the following knowing/intentional acts: conversion or transfer of proceeds for specific purposes; concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to proceeds; and - subject to the fundamental/constitutional principles or basic concepts of the country's legal system - the sole acquisition, possession or use of proceeds (Art. 3(1)(b)&(c) of the Vienna Convention; and Art. 6(1) of the Palermo Convention against Transnational Organised Crime – the TOC Convention).

138. Section 8A of the NDPS Act offence is an almost faithful transposition of the Vienna Convention ML provisions. The PMLA takes a different approach by using a terminology that by its broad wording is intended to generally correspond with the criminal activity targeted by both the Vienna and Palermo Conventions.

139. As said, the PMLA (s.3) provides that money laundering is committed where someone —directly or indirectly attempts to indulge, 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. The section 3 mens rea threshold is lower than the Art. 6.1(a) of the TOC Convention in that no specific purpose or intention is required. The substantive element of —projecting it as untainted property carries the notion of knowing disguise, as required by the Conventions, but does not appear to cover all concealment activity, such as the physical hiding of the assets.

140. As for the —knowledge mental element of the offence of money laundering required by the Conventions, this is satisfied in both the NDPS Act and the PMLA.

Definition of proceeds

141. The ML offence in the PMLA extends to any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence (see infra under the heading predicate offences) or the value of any such property (PMLA s.2(1)(u) - definition of proceeds of crime). Property is defined as any property or assets of every description, whether corporeal or incorporeal, moveable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located (PMLA s.2(1)(v)).

142. Since the NDPS Act does not contain any general definition of property or proceeds of crime, the relevant definitions in the Code of Criminal Procedure (CrPC) apply. Similarly to the PMLA definitions, the term proceeds of crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity (including crime involving currency transfers) or the value of any such property (CrPC s.105A(c)); while the term property means property and assets of every description whether corporeal or incorporeal, moveable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets derived or used in the

commission of an offence and includes property obtained through proceeds of crime (CrPC s.105A(d)).

143. It is no formal and express legal condition that a conviction for the predicate offence is required as a precondition to prosecute money laundering, although some practitioners the assessment team met with felt that only a conviction would satisfactorily meet the evidentiary requirements. The definition of property in the PMLA (see supra) however requires property to be —related to a scheduled offence¹. Consequently, the section 3 ML offence not being an —all crimes offence, in the absence of case law, it is generally interpreted as requiring at the very minimum positive proof of the specific predicate offence before a conviction for money laundering can be obtained, be it for third party or self-laundering.

144. Similarly, under section 8A of the NDPS Act, although it is debatable that the person charged with money laundering needs to have been convicted of a predicate offence, the positive and formal proof of a nexus with a drug-related predicate offence is essential.

Predicate offences

145. As far as the PMLA is concerned, India follows the list approach for predicate offences according to the Schedule to the PMLA, as amended by the Prevention of Money Laundering (Amendment) Act since 1 June 2009. The Schedule comprises three Parts:

- a. Part A covering 33 offences without threshold value;
- b. Part B covering 46 offences with a threshold value of INR 3 million (—30 lakh rupees) or USD 60 000;
- c. Part C including all offences listed in Part A and Part B (without monetary threshold), supplemented by all offences covered by Chapter XVII of the Indian Penal Code, 1860 (IPC - offences against property), when these offences have cross-border implications.

All in all, the list of predicate offences includes 156 offences under 28 different statutes.

146. According to section 2(v)(ra) of the Prevention of Money Laundering (Amendment) Act, 2009 an offence with cross border implications that is included in Part C of the Schedule means:

- a. 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
- b. 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.

So only since the 2009 Amendment, predicate offences for money laundering also extend to conduct that occurred in another country which constitutes an

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offence in that country and which would have constituted a predicate offence had it occurred domestically.

147. Although the scheduled offences now include a range of offences in each of the designated categories of offences, all offences under Schedule B only count as a predicate to money laundering where the value involved is INR 3 million/USD 60 000 or more.

Table :

xxx	xxx	xxx
xxx	xxx	xxx

148. The predicate offences relating to money laundering in the NDPS Act only extend to the drug offences under the Act. The ML offence in this Act does specifically refer to drug offences that occurred in another country, provided that it would have constituted an offence had it occurred in India (NDPS Act s.8A(c)). Although not formally repealed, section 8A NDPS Act has become somewhat redundant with the introduction of the PMLA (Schedule A - drug related predicate offences) imposing much stiffer sanctions. On the other hand, unlike the PMLA, the ML definition under the NDPS Act fully corresponds with that of the Conventions.

Self-laundering

149. The PMLA money laundering offence applies to —whoever”, a term that includes the person who commits the predicate offence, if that person is knowingly involved in the laundering of the proceeds of his crime. The NDPS Act ML provision simply refers to “no person”, without exception. Furthermore, no legal principle in India prevents the application of the ML provisions to the predicate offender.

Ancillary offences

150. Section 3 of the PMLA is construed in such way to encompass, beside the actual dealing with criminal proceeds, any attempt, assistance, being a party and actual involvement in a ML process or activity, and as such it generally covers all relevant ancillary offences, including – although not expressly stated - conspiracy. Criminal conspiracy as provided in sections 120A and B of the IPC and abetment as in section 107 of the PC apply to the PMLA offences anyway. The NDPS Act specifically provides for abetment and conspiracy in its section 29. Preparatory acts and attempts are covered by section 30.

Additional elements

151. India assumes extraterritorial jurisdiction where the proceeds of crime are derived from conduct by an Indian citizen that occurred in another country (IPC s.4). This is so even if the conduct is not an offence in that country but constitutes a predicate offence had it occurred domestically, on the condition it is one of the offences listed in one of the three parts of the Schedule to the PMLA.

RECOMMENDATION 2

Scope of liability

xxx	xxx	xxx
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xxx

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Implementation and effectiveness

164. When the PMLA was enacted on 1 July 2005 implementing the Palermo TOC Convention, it was already clear that the scope of the law was too restrictive to withstand the test of the relevant international standards. With the extension of the list of predicate offences under Schedule A and B, and the addition of Schedule C offences since 1 June 2009, India has made a serious effort to bring the ML criminalisation of the PMLA in line with the FATF criteria in this respect. It did not do away with all shortcomings, however.

165. Firstly, it is not clear why the legislator abandoned the NDPS Act approach to define the ML activity by simply incorporating the relevant Convention language in the domestic law. With the section 3 of the PMLA money laundering provision, a newly defined ML offence was introduced differing from the comprehensive qualification of section 8A of the NDPS Act that was not repealed, resulting in the coexistence of two divergent drug related ML offences.

166. The new definition of the ML offence in section 3 of the PMLA tries to capture all requisite mental and physical elements of the Convention's ML provision in one overarching sentence. The mens rea element is the —knowledge standard as minimally required by the Conventions. **Section 3 of the PMLA does not require a specific intention or purpose, and as such its threshold is lower than that of Art. 6.1(a)(i) of the TOC Convention.**

The provision however falls short on the following actus reus aspects:

a. **The physical element in all cases includes the substantive condition of “projecting (the proceeds of crime) as untainted property”, so although the broad formulation of “any process or activity covers any conduct involving criminal proceeds, such conduct is only criminalised as money laundering when the property is concurrently projected as untainted. While this —projection circumstance may correspond with the notion of —disguise as in Art. 6.1(a)(ii) of the TOC Convention, it does not cover acts of physical concealment without any —projecting (such as deposit in a safe), even if - as was argued - this act is seen as an attempt to —project, quod non.**

b. **With the imposition of the —projecting condition the PMLA offence does not extend to the activity of sole —acquisition, possession or use of criminal proceeds as stated in Article 6(1)(b)(i) of the TOC Convention, although this would not be contrary to the basic concepts of the Indian legal system. Only the offences of —holding drug proceeds (NDPS Act s.68C) or —proceeds of terrorism (UAPA s.21) are unconditional and may be considered to cover —possession situations in these specific circumstances. Also, the sections 410 and 411 IPC —receiving offence may cover acts of —acquisition, but these provisions fall short in respect of the scope of predicate offences, as they only apply to stolen (or equivalent) property.**

167. A more serious, and in fact a major deficiency however are the restrictions that come with the predicate offences listed in Schedule Part B, as these offences

carry a threshold of 3 million INR (USD 60 000) before they qualify as predicates, except if they have —cross-border implications (Schedule Part C). So the 2009 Amendment to the PMLA did not satisfactorily address this deficiency that was already highlighted in the previous APG assessment. The authorities explained their perseverance to maintain the threshold condition by their concern not to overburden the law enforcement authority (the Directorate of Enforcement - ED), designated to pursue the financial and proceeds of crime aspects of the predicate offences, with the investigation of petty crimes, so they can concentrate on serious cases. Indeed, in practice targeted ML investigations by the ED are conducted concurrently with or consecutive to predicate offence enquiries by the State Police. Be that as it may, the threshold condition, even when mitigated by the cross-border exception, clearly goes against the FATF standard. Besides, the artificial differentiation between illegal and admissible activity solely based on the amounts involved does not find any justifiable objective grounds and negates the gravity of any money laundering activity as such. Moreover, it leaves a gap in the AML system that may negatively impact on effective prosecution and general deterrence.

168. The linkage and interaction of the ML offence with a specific predicate criminality is historically very tight in the Indian AML regime. The concept of stand-alone money laundering is quite strange to the practitioners, who cannot conceive pursuing money laundering as a sui generis autonomous offence. Some interlocutors were even of the (arguably erroneous) opinion that only a conviction for the predicate criminality would effectively satisfy the evidential requirements. As said, this attitude is largely due to the general practice in India to start a ML investigation only on the basis of a predicate offence case. Even if the ML investigation since recently can run concurrently with the predicate offence enquiry, there is no inter-agency MOU or arrangement to deal with evidentiary issues between the various agencies in investigating predicates and ML offences. Also, the way the interaction between the law enforcement agencies is presently structured carries the risk that ML prosecutions could be delayed while the other predicate offence investigation agencies try to secure convictions.

169. While the strict evidentiary standard in respect of the proof of the predicate offence - as interpreted by the law enforcement authorities in the absence of any jurisprudence on this issue - may be considered manageable when both the predicate and the laundering activity fall under the Indian jurisdiction, the proof of foreign predicates represents a far greater challenge. There may be an effectiveness issue as in that case the Indian law enforcement authorities are not in control and they are either dependent on the foreign jurisdiction supplying the formal and specific proof or they have to go out and conduct the investigations themselves.

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173. All in all, there clearly is an effectiveness issue. The whole system is historically keyed to domestic situations, where both the predicate and the money laundering are under Indian jurisdiction and covered by the national law enforcement capacity. Before the introduction of the cross-border clause of Schedule Part C on 1 June 2009, foreign predicate offences did not even qualify legally as criminal activity underpinning ML activity in India. Whenever the

predicate criminality is committed outside India, law enforcement is totally dependent on the formal and positive proof being supplied by the foreign jurisdiction or the Indian police must investigate the foreign predicate offence themselves to the satisfaction of the high evidentiary requirements, bearing in mind there is still no jurisprudential guidance on this important issue.

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Table 2: Recommended Action Plan to Improve the AML/CFT System

<u>AML/CFT system</u>	<u>Recommended Action</u>
<u>1. General</u>	<u>No text required</u>
<u>2. Legal System and Related Institutional</u>	
<u>2.1 Criminalisation of Money laundering Measures (R.1 & R.2)</u>	<p><u>Although recently an increased focus on the ML aspect and use of the ML provisions is to be acknowledged, there are still some important and often long-standing legal issues to be resolved. To that end following measures should be taken:</u></p> <ul style="list-style-type: none"> • <u>The monetary threshold limitation of INR 3 million for the Schedule Part B predicate offences should be abolished.</u> • <u>The section 3 PMLA definition of the ML offence should be brought in line with the Vienna and Palermo Conventions so as to also fully cover the physical concealment and the sole acquisition, possession and use of all relevant proceeds of crime.</u> • <u>The present strict and formalistic interpretation of the evidentiary requirements in respect of the proof of the predicate offence should be put to the test of the courts to develop case law and receive direction on this fundamental legal issue.</u> • <u>The level of the maximum fine imposable on legal persons should be raised or left at the discretion of the court to ensure a more dissuasive effect.</u> • <u>The practice of making a conviction of legal persons contingent on the concurrent prosecution/conviction of a (responsible) natural person should be abandoned.”</u>

31. As discussed above, during Mutual Evaluation of India, the FATF has pointed out that concealment, possession, disposition and use of proceeds of crime were not criminalized by India's PMLA, 2002 though Article 6 of Palermo Convention require that such activity should be criminalized. In pursuance to the recommendation of FATF, amendment was made to Section 3 of PMLA by PMLA (Amendment), 2012 to include these activities in the definition of the offence of *money laundering*. The amendment came into effect from 15.02.2012.

In other words, the amendment to Section 3 of PMLA has been made to address the legal deficiency as pointed out by FATF and to make it globally compliant.

32. It is submitted that as discussed above during mutual evaluation since FATF pointed out that concealment, possession, disposition and use of proceeds of crime were not criminalized by India's PMLA, 2002 though Article 6 of 1988 Vienna Convention required, the Parliament, therefore, amended definition of section 3 of PMLA [by PMLA Amendment Act, 2012] [SGI Compilation – Volume VII – pg. 3286-3307 (PMLA (Amendment) Act, 2012)] to include these activities in section 3 which defines offence of money laundering. The amended section read as under-

“3. 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 including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.”

33. It is submitted that the **Statement of Object and Reasons of Prevention of Money Laundering (Amendment) Bill, 2011** [SGI Compilation – Volume VII – pg. 3228-3229]; SGI Compilation – Volume VII – pg. 3248-3285 [PMLA (Amendment) Bill, 2012] were in line with the recommendations of the FATF and are quoted as under :

“The Prevention of Money-Laundering Act, 2002 was enacted to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matter connected therewith or incidental thereto. The aforesaid Act also addresses the international obligations under the Political Declaration and Global Programme of Action adopted by the General Assembly of the United Nations to prevent money-laundering. The Act was amended in the year 2005 and 2009 to remove the difficulties arisen in implementation of the Act.

2. The problem of money-laundering is no longer restricted to the geo political boundaries of any country. It is a global menace that cannot be contained by any nation alone. In view of this, India has become a member of the Financial Action Task Force and Asia Pacific Group on money-laundering, which are committed to the effective implementation and enforcement of internationally accepted standards against money-laundering and the financing of terrorism. Consequent to the submission of an action plan to the Financial Action Task Force to bring anti money-laundering legislation of India at par with the international standards and to obviate some of the deficiencies in the Act that have been experienced by the implementing agencies, the need to amend the Prevention of Money-Laundering Act, 2002 has become necessary.

3. The Prevention of Money-Laundering (Amendment) Bill, 2011, inter alia, seeks to—

(a) introduce the concept of ‘corresponding law’ to link the provisions of Indian law with the laws of foreign countries and provide for transfer of the proceeds of the foreign predicate offence in any manner in India;

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(b) introduce the concept of ‘reporting entity’ to include therein a banking company, financial institution, intermediary or a person carrying on a designated business or profession;

(c) enlarge the definition of offence of money-laundering to include therein the activities like concealment, acquisition, possession and use of proceeds of crime as criminal activities and remove existing limit of five lakh rupees of fine under the Act;

(d) make provision for attachment and confiscation of the proceeds of crime even if there is no conviction so long as it is proved that offence of money-laundering has taken place and property in question is involved in money-laundering;

(e) confer power upon the Director to call for records of transactions or any additional information that may be required for the purposes of the prevention of money-laundering and also to make inquiries for noncompliance of reporting obligations cast upon them;

(f) make the reporting entity, its designated directors on the Board and employees responsible for omissions or commissions in relation to the reporting obligations under Chapter IV of the Act;

(g) provide that in any proceedings relating to proceeds of crime under the aforesaid Act, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money-laundering;

(h) provide for appeal against the orders of the Appellate Tribunal directly to the Supreme Court;

(i) provide for the process of transfer of the cases of Scheduled offence pending in a court which had taken cognizance of the offence to the Special Court for trial of offence of money-laundering and also provide that the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(j) putting all the offences listed in Part A and Part B of the Schedule to the aforesaid Act into Part A of that Schedule instead of keeping them in two Parts so that the provision of monetary threshold does not apply to the offences.

34. It is submitted that in light of the above, the amendment was carried out in 2012 in order remove the doubts and to ensure that any and all activities [with *mens rea*] related to money laundering are criminalised. The speech of the Hon’ble Minister on the Floor of the House, makes the said intent clear when read in the context of the FATF recommendation itself. The relevant part is quoted as under [SGI Compilation – Volume VII – pg. 3230-3247 (PMLA (Amendment) Bill, 2011 and PMLA (Amendment) Bill, 2012 debate)] :

“LOK SABHA

SYNOPSIS OF DEBATES

November 29, 2012

THE PREVENTION OF MONEY-LAUNDERING (AMENDMENT) BILL, 2011

THE MINISTER OF FINANCE (SHRI P. CHIDAMBARAM) moving the motion for consideration of the Bill said: **The Prevention of Money Laundering Act, 2002 was enacted in 2003 and brought into force on 1st July 2005 to prevent money laundering and to provide for attachment, seizure and confiscation of property obtained or derived, directly or indirectly from**

or involved in money laundering and for matters connected therewith or incidental thereto. I may clarify that the money-laundering used in a colloquial sense is not the money-laundering that has been referred to in the Act. There must be proceeds of a crime and anyone who deals with the proceeds of a crime is guilty of the offence of money laundering. This Act was passed in 2003. The Act also addresses the international obligations under the Political Declaration and Global Programme of Action adopted by the General Assembly of the United Nations to prevent money laundering. The Act was amended in the year 2005 and 2009 to remove the difficulties arisen in implementation of the Act. The problem of money-laundering is no longer restricted to the geo political boundaries of any country. It is a global menace that cannot be contained by any nation alone. In view of this, India has become a member of the Financial Action Force, which is a global body, and the Asia Pacific group on moneylaundering, which are committed to the effective implementation and enforcement of internationally accepted standards against money-laundering and the financing of terrorism. Consequent to the submission of an action plan to the Financial Action Task Force to bring anti money-laundering legislation of India at par with the international standards and to obviate some of the deficiencies in the Act that have been experienced by the implementing agencies, the need to amend the Prevention of Money-Laundering Act, 2002 has become necessary. Hence, the Prevention of Money-Laundering (Amendment) Bill, 2011 was introduced in Lok Sabha on 27/12/2011. The Prevention of Money Laundering (Amendment) Bill, inter alia, seeks to introduce the concept of 'corresponding law' to link the provisions of Indian law with the laws of foreign countries. There are amendments to some other provisions with regard to reporting entities, attachment of property, trial in the special courts etc., which have also been included in the Bill to make the Anti Money-Laundering law more effective. The Bill was referred to the Standing Committee on Finance for examination and report thereon. The Standing Committee on Finance has presented its 56th Report on Prevention of Money Laundering (Amendment) Bill, 2011 to the Lok Sabha and laid in the Rajya Sabha on 09.05.2012. The Standing Committee on Finance has made 18 recommendations, and I am happy to say that all the recommendations have been accepted by the Government. I am very happy that there is complete unanimity on the Bill as well as amendments to the Bill. The consequential changes required thereby have been proposed through a list of official amendments, which is placed before the House for consideration.

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RAJYA SABHA

SYNOPSIS OF DEBATE

December 17, 2012

The Prevention of Money-Laundering (Amendment) Bill, 2012

THE MINISTER OF FINANCE (SHRI P. CHIDAMBARAM), moving the motion for consideration-of the Bill, said: The Prevention of Money-Laundering Act, 2002 was enacted in 2003 and brought into force 1st July, 2005. The Act was

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amended in the year 2005 and in the year 2009. The problem of money-laundering is no longer restricted to the geo-political boundaries of any country. The Bill seeks to introduce the concept of ‘corresponding law’ to link the provisions of Indian law with the laws of foreign countries. It seeks to make provision for attachment and confiscation of the proceeds of crime if it is proved that offence of money-laundering has taken place and property in question is involved in moneylaundering. The Standing Committee on Finance has made 18 recommendations and all of them have been accepted by the Government. Lok Sabha considered and passed the Bill on 29th November, 2012. I would request the hon. Members to support the Bill.

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The Hon’ble Minister, replying to the debate, said: Money-laundering is more than simply converting blackmoney into white or white money into black. And anyone who directly or indirectly indulges or assists or is involved in any process or activity connected with the proceeds of crime and projects it as untainted property is guilty of offence of money laundering. So, money-laundering is a very technically-defined offence. Initially the thinking was unless a person was convicted of the predicate offence, you cannot convict him of money-laundering. The Financial Action Task Force (FATF) has now come around to the view that if the predicate offence has thrown up certain proceeds and you dealt with those proceeds, you could be found guilty of offence of money-laundering. We are trying to make this law on lines of laws that are commended by FATF. This Bill was passed in 2002. We amended it in 2005 and 2009. We are amending it in 2012. All I am trying to say is that this is an evolutionary process.”

35. The above referred definition was again subjected to review by the FATF in 2013 in its **8th Follow-Up Report Mutual Evaluation of India June 2013 [SGI Compilation – Volume VII – pg. 3308-3353]** of the FATF. For sake of clarity the recommendation of FATF contained therein is reproduced as under:

“Core Recommendations

Recommendations	Rating	Summary of Factors underlying Rating	Actions taken to remedy deficiencies
1-ML offence	PC	<ul style="list-style-type: none"> (High) monetary threshold condition for most ML predicates. 	<p>Amendments to India’s Prevention of Money Laundering Act (PMLA) were enacted by Parliament on 17 December 2012 and came into force on 15 February 2013.</p> <p>All predicate offences previously contained in Part B of the Schedule (46 offences with a threshold value of INR 3 million (“30 lakh rupees” of USD 60 000) were added in Part A without a threshold value. Part C of the Schedule now includes all offences listed in Part A, supplemented by all offences covered by Chapter XVII of the Indian Penal Code, when these</p>

Recommendations	Rating	Summary of Factors underlying Rating	Actions taken to remedy deficiencies
			offences have cross-border implications. All in all, the list of predicate offences continues to include 156 offences under 28 different statutes but without any monetary threshold. As result, the major technical deficiency identified in relation to R.1 is fully addressed.
		<ul style="list-style-type: none"> ML provision does not cover physical concealment of criminal proceeds. 	Amendments to the PMLA were enacted by Parliament on 17 December 2012 and came into force on 15 February 2013.
		<ul style="list-style-type: none"> ML provision does not cover the sole knowing acquisition, possession and use of criminal proceeds. 	<p>The amended section 3 of the PMLA now reads. “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 <u>including its concealment, possession, acquisition or use and projecting or claiming it as untainted property</u> shall be guilty of the offence of money laundering.” While the current formulation specifically refers to concealment, possession, acquisition and use, it does not do away with the condition that the proceeds of crime need to be “<u>projected or claimed as untainted property</u>”.</p> <p><u>The working of the ML offence is thus not fully in line with the Vienna and Palermo Conventions but case law provided by India appears to mitigate the concerns regarding the possible limiting effect of the conditional element in the ML offence. On that basis, it can be concluded that the scope of these technical deficiencies is relatively minor. It is not expected that there will be any impact on the effectiveness of India’s AML regime. The</u></p>

Recommendations	Rating	Summary of Factors underlying Rating	Actions taken to remedy deficiencies
			<u>deficiency is mostly addressed.</u>

36. The amendment to Section 3 was examined during follow up process of the Recommendation by the FATF and the review of the measures taken by the India in this regard has been held as “*largely compliant*” [LC] but not “*fully compliant*” [FC].

37. The above facts would make it clear that –

- (i) Even in an act of mere concealment, mere possession or mere use of “proceeds of crime” or “activity” connected with the proceeds of crime, *per se*, is an offence.

In other words, if a person conceals the proceeds of crime, keeps it in his possession or uses it, he is guilty of money laundering irrespective of as to whether he is projecting it as untainted or not.

This is for the simple reason that if a person conceals something, the question of that person projecting that very thing either as tainted or untainted cannot arise.

- (ii) The anomaly resulting from an erroneous drafting was successfully explained during the 2013 review of FATF by categorically contending that all expressions following the term “including” are mere illustrative and independently constitute an offence of money laundering without being dependent upon each other. The FATF was shown judgments on –

- (a) What is the significance of the expression following “including”; and
(b) When “and” can be read as “or”

38. Thus, so long as a person knowingly :-

- becomes a party or
- is actually involved

in any process or activity connected with proceeds of crime, such person is guilty of money laundering.

39. In order to understand the scope of provision, it would be appropriate to examine and analyse the phrase and words used in the section 3 of PMLA. The provision stipulates –

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

INCLUDING

- *its concealment, possession, acquisition or*
 - *use and projecting or*
 - *claiming it as untainted property*
- shall be guilty of offence of money-laundering*

40. The argument of the petitioner is that the offence of money laundering is complete only when any “process” or “activity” results in a claim that the proceeds of crime arising from “process” or “activity” is untainted property. This defeats the very intent, object and purpose of prevention and prosecution of money laundering offence. In other words, it would

effectively result into a *license to commit an offence of money laundering* and thereafter either conceal the proceeds of crime, keep it in the possession or use it and thereby wriggle out of the legislative intent of preventing or prosecuting money laundering by merely raising the plea by the accused that he never claimed the property as *untainted* property. Such an interpretation would be so absurd that it destroys the very spirit of money laundering, prevention and prosecution efforts taking place globally.

41. This Hon'ble Court would not accept an interpretation which defeats the very preventive and penal nature of a global menace. It is a settled position that while interpreting any statutory provision, an interpretation which leads to mischief is always avoided by courts. It is submitted that while there is no need to multiply citation on the said point, the observations of Lord Denning may provide some guidance. It is submitted that Lord Denning, in *Seaford Court Estates Ltd. V. Asher*, [1949] 2 K.B. 481, has held as under :

“The question for decision in this case is whether we are at liberty to extend the ordinary meaning of “burden” so as to include a contingent burden of the kind I have described. Now this court has already held that this sub-section is to be liberally construed so as to give effect to the governing principles embodied in the legislation (Winchester Court Ltd. v. Miller); and I think we should do the same. Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give “force and life” to the intention of the legislature. That was clearly laid down by the resolution of the judges in Heydon's case, and it is the safest guide to-day. Good practical advice on the subject was given about the same time by Plowden in his second volume Eyston v. Studd. Put into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases.”

42. Therefore, an interpretation which furthers the intent rather than rendering an important international legislative step ineffective, must be adopted by the Hon'ble Court.

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Further, the illustration of a murder committed by an imaginary person would clarify the same. Suppose person “X” commits murder of one person “Y” for payment of money. Such money, therefore becomes, *proceeds of crime*. In the said case, the offence of murder was complete with the death of Y. Thereafter, a friend of X, one person “Z”, helps X in concealing that money he received to murder Y [the *property*] and/or helps in maintaining possession of that property without having any role in assisting X in *murdering* Y. In such a situation, the Petitioners allege that Z would have to be dealt with under the regime of the predicate offence and not under the PMLA as no *projection* has been done by Z.

It is submitted that the same would be erroneous and irrational. It is submitted that when the person Z, has played no role whatsoever in *act of murder* or any event surrounding it, it is not understandable how Z would be liable under the IPC provisions even with the use of Section 120B. Further, it is submitted that when Z has knowingly enabled X to enjoy/hold/hide the fruits of the crime committed by X, Z’s liability cannot be of IPC offences, rather specifically of “money laundering”. As discussed previously, the purpose of anti-money laundering laws was to deter people from enjoying the fruits of their crimes. It is submitted that the said example encapsulates the limitations of traditional approach to crime and in fact, highlights the importance of the evolved approach of anti-money laundering laws in the nature of the PMLA.

43. It is submitted that the above analysis shows that not only the definition is compliant with global standards, it also complies with the Constitution of India as it is neither irrational or arbitrarily nor it is contrary to the intent and purpose of the criminal offence which is being tackled by way of an Act. The definition thus passes the muster both under Article 14 and Article 21 of the Constitution of India.

Why all elements constitute the offence and projecting is not a necessity

44. It is submitted that all and any of the activities connected with *proceeds of crime* including the solitary – possession, concealment, use or acquisition, in itself, ought to constitute an offence not merely because the FATF or the Vienna and Palermo Convention state so rather, it is necessary in order to ensure that the objective of the PMLA – to curb money laundering holistically, would be defeated. It is submitted that the purpose of any anti money laundering legislation is not merely to criminalise the final *projecting part* of the activity. The modern approach, as discussed previously, aims at criminalise all and any of the activities associated with *proceeds of crime* and even suggests preventive measure.

45. It is submitted that primary reasons for fighting money laundering can be summarised as under

- a. Ensure that persons do not *enjoy the proceeds of crime* in any manner whatsoever;
- b. By stopping such *enjoyment of proceeds of crime*, ensure that the motivation for crimes itself is curbed;
- c. To confiscate the proceeds of predicate criminal activities;
- d. to undermine crime itself and especially organised crime by taking away the incentive for these criminal activities relating to offences
- e. To catch high- level criminals who are often away from criminal activities but leave a ‘paper trail’ of records of the movement of money which implicates them;

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- f. To curb the prejudicial influence the flows of ‘dirty money’ may have on the financial sector, and more generally, on the economy as a whole
 - g. Ensure the effective allocation of resources and capital at a global level.
46. It is submitted that if **projecting** is necessarily required, and the solitary – possession, concealment, use or acquisition of *proceeds of crime* is not criminalised, the entire objective of the anti money-laundering regime [as the FATF puts it], would be defeated. It is submitted that the said interpretation would effectively allow and give an impetus to all sorts of activities/processes associated with proceeds of crime by not punishing them thereby rendering the entire implementation of the PMLA in danger.
47. It is submitted that considering the definition prevailing in India, it is necessary that any and all of the activity or process occurring in the definition after the word *including* is considered to be merely illustrative and not restrictive.

Clarificatory amendment in 2019

48. It is submitted that even though the provisions of section 3 clearly define the scope of offence of money laundering difficulties have been experienced in interpretation of section 3 of PMLA 2002 and the provision were misconstrued resulting in defeating very object and legislative intent of offence of money laundering.

Accordingly, provisions of section 3 has been clarified by way of the amendment in 2019 by insertion of Explanation to section 3 of PMLA. In this context, it would be relevant to examine the background and justification to amendment to section 3 of PMLA (**Statement RE: Amendment/ Background/ Justification for amendments to PMLA – Pg 226-235 of the Debate on the Finance Bill, 2019**) [SGI Compilation – Volume VII – pg. 3378-3387] which was laid before the Parliament on 18.07.2019. The relevant part of the background and justification note is reproduced as under:

“4. It has been experienced that certain doubts are also raised as regards definition of ‘Offence of money laundering’ included in section 3 of the Act of 2002. It is observed that the legislative intent and object of the Act of 2002 is wrongly construed as if all the activities as mentioned therein are required to be present together to constitute the offence of Money Laundering. The intention of the legislature had always been that a person shall be held to be guilty of offence of money-laundering if he is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in any one or more of the process of activity included in section 3 of the Act of 2002. It is also observed that the original intention of the legislature is wrongly construed to interpret as if the offence of money laundering is a one time instantaneous offence and finishes with its concealment or possession or acquisition or use of projecting it as untainted property or claiming it as untainted property. The intention of the legislature had always been that a person will be held to be guilty of offence of money-laundering and will be punished as long as person is enjoying the “proceeds of crime” by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property or in any manner whatsoever. Accordingly, an Explanation is proposed to be inserted in section 3 of the Act of 2002 to clarify the above legislative intent.”

49. In this context, it would be appropriate to reproduce newly inserted the clarificatory Explanation to section 3:

“Explanation.-For the removal of doubts, it is hereby clarified that, -

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:-

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property;

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]”

50. A careful analysis of Clause (i) of the Explanation keeping in view the term ‘any’ and ‘including’ as used in section 3 of PMLA will clarify that the Explanation only explain the already existing wider definition of the offence of money laundering as captured in provisions of section 3 of PMLA. It is submitted that since any person involved in any of the process or activity connected with the proceeds of crime including concealment, possession, acquisition or use and projecting or claiming it as untainted property is guilty of offence of money laundering till the time he is involved in any of such process or activity, the offence shall continue till he is directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in **any** process or activity. It is quite likely that he may continue to be involved in one or more processes or activities connected with proceeds of crime, the nature of offence per se is continuing. Accordingly, the Clause (ii) of Explanation has not introduced any new legal concept but has only explained the existing provisions of section 3 of PMLA.

Steps pursuant to crime and proceeds thereof – Inbuilt limitation of Section 3

51. It is submitted that the next important step after the identification of proceeds of crime is ***investigation into offence of money laundering***. The offence of money laundering has been defined in section 3 of PMLA. The basic theme of offence of money laundering revolves around involvement of any person or entity in any process or activity connected with proceeds of crime. A careful analysis of provisions of section 3 proves that provisions of section 3 stipulate following five categories of accused:

Category 1: whosoever **directly attempts to indulge** in any process or activity connected with proceeds of crime.

Category 2: whosoever **indirectly attempts to indulge** in any process or activity connected with proceeds of crime.

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Category 3: whosoever **knowingly assists** in any process or activity connected with proceeds of crime. Page 8 of 15

Category 4: whosoever **knowingly is a party** in any process or activity connected with proceeds of crime.

Category 5: whosoever is **actually involved** in any process or activity connected with proceeds of crime.

52. Depending upon the facts of the case, it is quite likely that accused of money laundering may fall in more than one of the above categories. The phrase '**any process or activity**' connected with the proceeds of crime has wide meaning due to the use of word '**any**' before process and activities. The definition of offence of money laundering has also recorded certain illustrations after any process or activity, which reads as under:

"...any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering."

53. A careful reading of section 3 of PMLA specially the part of provision as extracted above clearly provide that **any process or activity** which itself has a wider meaning also includes the process or activity of concealment, possession, acquisition, use and/ or projecting, claiming it as untainted property. However, these illustrations in no way restrict the wider meaning of any process or activity connected with proceeds of crime. Keeping in view the intent of provisions of section 3, the focus of investigation should be on **identification of all the process or activity connected with proceeds of crime** including the specific processes and activities, which have been included as illustrations in Section 3. The identification of process or activity connected with proceeds of crime will necessarily involve movement of proceeds of crime amongst accused using bank/ financial institution or any other entities/ persons, investment in businesses (known/concealed), acquisition or disposal of movable and immovable property, etc. The result of investigation should be summarized by clearly recording following findings:

- Identification of nature and details of process or activity connected with the proceeds of crime
- Identification of accused entities/ persons, their categorization in one of the five categories as mentioned above and their specific role in the offence of money laundering.
- It is pertinent to mention here that accused of offence of money laundering may be the same or different from accused of predicate offence. Accordingly, a finding in this regard may be recorded clearly in the prosecution complaint in order to avoid any confusion.

54. It is submitted that on numerous occasions, one category of accused is found to be involved in more than one process or activity connected with proceeds of crime or one accused may be covered in more than one category. These findings will prove extent of involvement of each accused in offence of money laundering, which will assist special court in determining quantum of punishment.

55. It may be noted that a comparative analysis of jurisdictions of the USA, Germany, UK and Australia and their respective mutual evaluations reports [**Annexure B to the Note**

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II] clearly evidences that projecting ought not to be a necessary element as per FATF standards.

56. In this regard, in *Rohit Tandon v. Directorate of Enforcement*, 2018 (11) SCC 46 [SGI Compilation – Volume VII – pg. 3388-3414] this Hon'ble Court examined the interplay of the various aspects of Section 3 and held as under:

“26. Realising this position, the learned counsel appearing for the appellant would contend that even if the allegations against the appellant are taken at its face value, the incriminating material recovered from the appellant or referred to in the complaint, by no stretch of imagination, would take the colour of proceeds of crime. In fact, there is no allegation in the charge-sheet filed in the scheduled offence case or in the prosecution complaint that the unaccounted cash deposited by the appellant is as a result of criminal activity. Absent this basic ingredient, the property derived or obtained by the appellant would not become proceeds of crime. To examine this contention, it would be useful to advert to Sections 3 and 4 of the 2002 Act. The same read thus:

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27. As the fulcrum of Section 3 quoted above, is the expression “proceeds of crime”, the dictionary clause in the form of Section 2(1)(u) is of some relevance. The same reads thus:

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It will be useful to advert to the meaning of the expression “property” as predicated in Section 2(1)(v). The same reads thus:

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The expression “scheduled offence” has been defined in Section 2(1)(y) of the 2002 Act. The same reads thus:

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Indisputably, the predicate offence is included in Part A in Para 1 of the Schedule in the 2002 Act, in particular Sections 420, 467, 471 and 120-B IPC. Indeed, the expression “criminal activity” has not been defined. By its very nature the alleged activities of the accused referred to in the predicate offence are criminal activities. The possession of demonetised currency in one sense, ostensibly, may appear to be only a facet of unaccounted money in reference to the provisions of the Income Tax Act or other taxation laws. However, the stated activity allegedly indulged into by the accused named in the commission of predicate offence is replete with mens rea. In that, the concealment, possession, acquisition or use of the property by projecting or claiming it as untainted property and converting the same by bank drafts, would certainly come within the sweep of criminal activity relating to a scheduled offence. That would come within the meaning of Section 3 and punishable under Section 4 of the Act, being a case of money laundering.”

57. It is submitted that therefore, a correct interpretation of Section 3, in the defined contours as mentioned above, ensures fairness in action and at the same time, upholds the purpose for which the definition of the said activity had been expanded in light of the FATF recommendations.

Legislative burden of defining

58. It is submitted that the international efforts to curb money-laundering also include the monitoring of the progress of a nation in implementing the international standards viz. money laundering. The standards specifically include the question of defining money-laundering and provide an illustrative answer to the interpretation canvassed by the Petitioners. It is submitted that defining what would constitute a “crime” within a country is the sole obligation of the Legislature in the country. The definition of “crime” and what it denotes in a civilised society gain significance in the challenge to any criminal provision. In *Halsbury's*, 4th Edn., Vol. 11, “Principles of Criminal Liability” it has been described thus:

“1. Definition of crime.—There is no satisfactory definition of crime which will embrace the many acts and omissions which are criminal, and which will at the same time exclude all those acts and omissions which are not. Ordinarily a crime is a wrong which affects the security or well-being of the public generally so that the public has an interest in its suppression. A crime is frequently a moral wrong in that it amounts to conduct which is inimical to the general moral sense of the community. It is, however, possible to instance many crimes which exhibit neither of the foregoing characteristics. An act may be made criminal by Parliament simply because it is criminal process, rather than civil, which offers the more effective means of controlling the conduct in question.”

59. The constituents of crime in general have been enumerated in *Halsbury's Laws of England* as:

“4. The constituents of crime in general.—A person is not to be convicted of a crime unless he has, by voluntary conduct, brought about those elements which by common law or statute constitute that crime. In general a person does not incur criminal liability unless he intended to bring about, or recklessly brought about, those elements which constitute the crime. The foregoing concepts are traditionally expressed in the maxim actus non facit reum nisi mens sit rea.” [Halsbury's Laws of England, (4th Edn., Vol. 11) para 4.]

60. In *Kenny's Outlines of Criminal Law*, 19th Edn., 1966 by J.W. Cecil Turner, it has been stated that:

“There is indeed no fundamental or inherent difference between a crime and a tort. Any conduct which harms an individual to some extent harms society, since society is made up of individuals; and therefore although it is true to say of crime that is an offence against society, this does not distinguish crime from tort. The difference is one of degree only, and the early history of the common law shows how words which now suggest a real distinction began rather as symbols of emotion than as terms of scientific classification.

So long as crimes continue (as would seem inevitable) to be created by government policy the nature of crime will elude true definition. Nevertheless it is a broadly accurate description to say that nearly every instance of crime presents all of the three following characteristics: (1) that it is a harm, brought about by human conduct, which the sovereign power in the State desires to prevent; (2) that among the measures of prevention selected is the threat of punishment; (3) that legal proceedings of a special kind are employed to decide whether the person accused did in fact cause the harm, and is, according to law, to be held legally punishable for doing so.”

61. Stephen defines a “crime” thus:

“A crime is an unlawful act or default which is an offence against the public, rendering the person guilty of such act or default liable to legal punishment. The process by which such person is punished for the unlawful act or default is carried on in the name of the Crown; although any private person, in the absence of statutory provision to the contrary, may commence a criminal prosecution. Criminal proceedings were formerly called pleas of the Crown, because the King, in whom centres the majesty of the whole community, is supposed by the law to be the person injured by every infraction of the public rights belonging to that community. Wherefore he is, in all cases, the proper prosecutor for every public offence.” [Stephen, New Commentaries on the Laws of England (17th Edn., Vol. 4, Ch. I) 1-2.]

62. Blackstone, while discussing the general nature of crime, has defined crime thus:

“A crime, or misdemeanour, is an act committed or omitted, in violation of a public law, either forbidding or commanding it. This general definition comprehends both crimes and misdemeanours; which, properly speaking, are mere synonym terms: though, in common usage, the word “crimes” is made to denote such offences as are of a deeper and more atrocious dye; while smaller faults, and omissions of less consequence, are comprised under the gentler name of “misdemeanours” only.” [Blackstone, Commentaries on the Laws of England, Edited by Wayne Morrison, Vol. 4 p. 5.]

63. In *R. Sai Bharathi v. J. Jayalalitha*, (2004) 2 SCC 9 [SGI Compilation – Volume VI – pg. 2555-2602], while opining about crime, it has been observed as under:

“56. Crime is applied to those acts, which are against social order and are worthy of serious condemnation. Garafalo, an eminent criminologist, defined “crime” in terms of immoral and anti-social acts. He says that: ‘crime is an immoral and harmful act that is regarded as criminal by public opinion because it is an injury to so much of the moral sense as is possessed by a community — a measure which is indispensable for the adaptation of the individual to society’.

The authors of the Indian Penal Code stated that:

‘... We cannot admit that a Penal Code is by any means to be considered as a body of ethics, that the legislature ought to punish acts merely because those acts are immoral, or that, because an act is not punished at all, it follows that the legislature considers that act as innocent. Many things which are not punishable are morally worse than many things which are punishable. The man who treats a generous benefactor with gross ingratitude and insolence deserves more severe reprehension than the man who aims a blow in passion, or breaks a window in a frolic; yet we have punishment for assault and mischief, and none for ingratitude. The rich man who refuses a mouthful of rice to save a fellow creature from death may be a far worse man than the starving wretch who snatches and devours the rice; yet we punish the latter for theft, and we do not punish the former for hard-heartedness.’”

64. In *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569 [SGI Compilation – Volume VI – pg. 2603-2801], this Hon'ble Court observed that:

“446. What is a crime in a given society at a particular time has a wide connotation as the concept of crime keeps on changing with change in political, economic and social set-up of the country. Various legislations dealing with economic offences or offences dealing with violation of industrial activity or breach of taxing provision are ample proof of it. The Constitution-makers foresaw the eventuality, therefore they conferred such powers both on Central and State Legislatures to make laws in this regard. Such right includes power to define a crime and provide for its punishment. Use of the expression, “including all matters included in the Indian Penal Code at the commencement of the Constitution” is unequivocal indication of comprehensive nature of this entry. It further empowers the legislature to make laws not only in respect of matters covered by the Indian Penal Code but any other matter which could reasonably and justifiably be considered to be criminal in nature.”

65. In this regard, the observations of this Hon'ble Court in *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221 [SGI Compilation – Volume VI – pg. 2802-2933], are illustrative and shed considerable light on the issue. The said observations are quoted as under :

87. The concept of crime is essentially concerned with social order. It is well known that man's interests are best protected as a member of the community. Everyone owes certain duties to his fellowmen and at the same time has certain rights and privileges which he expects others to ensure for him. This sense of mutual respect and trust for the rights of others regulates the conduct of the members of society inter se. Although most people believe in the principle of “live and let live”, yet there are a few who, for some reason or the other, deviate from this normal behavioural pattern and associate themselves with anti-social elements. This obviously imposes an obligation on the State to maintain normalcy in the society. This arduous task of protecting the law-abiding citizens and punishing the law-breakers vests with the State which performs it through the instrumentality of law. It is for this reason that Salmond has defined law as a “rule of action” regulating the conduct of individuals in society. The conducts which are prohibited by the law in force at a given time and place are known as wrongful acts or crimes, whereas those which are permissible under the law are treated as lawful. The wrongdoer committing crime is punished for his guilt under the law of crime. [Criminology and Penology by Dr N.V. Pranjape (15th Edn., 2012) 1.]

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95. From the aforesaid discussion, it is plain as day that the contention that the criminal offence meant to subserve the right of inter se private individuals but not any public or collective interest in totality is sans substance. In this regard, we may take note of the submission put forth by Mr Narasimha, learned Additional Solicitor General, that Articles 17, 23 and 24 which deal with abolition of untouchability and prohibit trafficking in human beings and forced labour and child labour respectively are rights conferred on the citizens and they can be

regarded as recognition of horizontal rights under the Constitution. He has referred to certain legislations to highlight that they regulate rights of individuals inter se. Mr Narasimha has drawn immense inspiration from *Vishaka v. State of Rajasthan* [*Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] where the Court has framed guidelines to protect the rights of individuals at their workplace. It ultimately resulted in passing of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which empowered individuals to protect their fundamental right to dignity against other citizens. Similarly, legislations like the Child Labour (Prohibition and Regulation) Act, 1986; the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; the Protection of Civil Rights Act, 1955; the Press Council Act, 1978; the Noise Pollution (Regulation and Control) Rules, 2000 under the Environment (Protection) Act, 1986 regulate the fundamental rights of citizens vis-à-vis other citizens.

96. We have referred to this facet only to show that the submission so astutely canvassed by the learned counsel for the petitioners that treating defamation as a criminal offence can have no public interest and thereby it does not serve any social interest or collective value is sans substratum. We may hasten to clarify that creation of an offence may be for some different reason declared unconstitutional but it cannot be stated that the legislature cannot have a law to constitute an act or omission done by a person against the other as a crime. It depends on the legislative wisdom. Needless to say, such wisdom has to be in accord with constitutional wisdom and pass the test of constitutional challenge. If the law enacted is inconsistent with the constitutional provisions, it is the duty of the Court to test the law on the touchstone of the Constitution.

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"130. The principles as regards reasonable restriction as has been stated by this Court from time to time are that the restriction should not be excessive and in public interest. The legislation should not invade the rights and should not smack of arbitrariness. The test of reasonableness cannot be determined by laying down any abstract standard or general pattern. It would depend upon the nature of the right which has been infringed or sought to be infringed. The ultimate "impact", that is, effect on the right has to be determined. The "impact doctrine" or the principle of "inevitable effect" or "inevitable consequence" stands in contradistinction to abuse or misuse of a legislation or a statutory provision depending upon the circumstances of the case. The prevailing conditions of the time and the principles of proportionality of restraint are to be kept in mind by the court while adjudging the constitutionality of a provision regard being had to the nature of the right. The nature of social control which includes public interest has a role. The conception of social interest has to be borne in mind while considering reasonableness of the restriction imposed on a right. The social interest principle would include the felt needs of the society.

192. From the analysis we have made it is clear as day that the provision along with Explanations and Exceptions cannot be called unreasonable, for they are neither vague nor excessive nor arbitrary. There can be no doubt that Court can strike down a provision, if it is excessive, unreasonable or disproportionate, but the Court cannot strike down if it thinks that the provision is unnecessary or unwarranted. Be it noted that it has also been argued that the provision is defeated by doctrine of

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proportionality. It has been argued that existence of criminal defamation on the statute book and the manner in which the provision is engrafted suffers from disproportionality because it has room for such restriction which is disproportionate. In Om Kumar v. Union of India [Om Kumar v. Union of India, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039] , the Court has observed that while regulating the exercise of fundamental rights it is to be seen whether the legislature while exercising its choice has infringed the right excessively.”

Other aspects highlighted by the FATF

66. It is submitted that the salient features of the **Money Laundering (Amendment) Bill, 2011** [SGI Compilation – Volume VII – pg. 3190-3227] in light of FATF Recommendations are as under :

a. Amendments and insertions in the definition:

Certain new definitions have been proposed to be incorporated in section 2 of the Act, provisions relating to which have been made in the Bill. They are namely- ‘beneficial owner’, ‘client, dealer’, ‘precious metal’, ‘precious stone’, ‘real estate agent’.

b. Changing the definition of offence of money-laundering:

During Mutual Evaluation of India, it was pointed out by FATF that concealment, possession, acquisition and use of the proceeds of crime are not criminalized by PMLA. Article 6 of Palermo Convention requires that such activities should also to be criminalized. Hence Section 3 of PMLA has been proposed to include these activities under offence of money laundering.

c. Punishment for money-laundering:

FATF Recommendation requires that “legal persons” also (and not just “natural persons”) should be subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for money laundering. In PMLA the punishment prescribed in section 4 is rigorous imprisonment not less than 3 years but which may extend to 7 years and also fine which may extend to Rs. 5 lakh. This amount appears disproportionately low, given the gravity of the offence of money laundering. It has therefore been proposed to amend Section 4 so as to provide for imposition of fine proportionate to the gravity of the offence which will be determined by the court. The limit of Rs. 5 lakh is therefore proposed to be deleted altogether. Further an explanation has been inserted in Section 70 that the prosecution or conviction of any legal juridical person shall not be contingent on the prosecution or conviction of any individual.

d. Removing monetary threshold for investigating the offence of money laundering:

Under the current provisions the offences specified in Part A of the Schedule do not prescribe any monetary threshold. However ,the offences specified in Part B of the Schedule are considered Offence of Money-laundering only if the total value involved in such offences is thirty lakhs rupees or more. The FATF standards do not envisage monetary threshold for investigating the offence of money-laundering. To conform to the FATF standards, it has been proposed to move the offences listed in Part B of the Schedule to Part A.

e. Amendment in provisions implemented by FIU:

(i) Sec. 12 prescribes obligation of banks, Financial Institutions and intermediaries for verification of identity of clients, maintenance of records of transactions and identity and furnishing STRs, CTRs etc to the Financial Intelligence Unit India (FIU-IND). The

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proposed legislation includes the following new reporting entities: Department of Posts, Commodity Exchanges and brokers, Stock Exchanges, Entities registered with PFRDA, entities who can be included when notified by the Government -Real estate agents, sub-registrars (registering property), dealers in precious metals/stones, high value goods and safe deposit keepers.

(ii) Director, FIU-IND is proposed to be empowered by insertion of a new Section 12A in the PMLA so that he may call for records of transactions or any additional information that may be required for the purposes of the PMLA and also the power to make inquiries for non-compliance of reporting entities to the obligations cast upon them.

f. Strengthening of KYC and reporting obligation:

- Know Your Customer (KYC) obligations—In the proposed legislation the reporting entity has to identify “beneficial owner” during KYC.
- Reporting obligations— It is proposed in the legislation that reporting entity has to report even an attempted transaction.
- Reference to “integrally connected transactions” is deleted. The proposed changes will be reflected in the amended Section 12 (1).

g. Record keeping obligation:

KYC documents to be maintained for 10 years after “the business relationship has ended” [proposed sec. 12(4)] instead of “after cessation of transactions”, as at present. “Account files and business correspondence” also needs to be retained for 10 years [proposed sec. 12(3)], information about “attempted transactions” reported to FIU also needs to be retained.

(iv) An exemption clause has also been proposed to exempt any class of reporting entities from any of the obligations to identify clients, maintain records and send reports to FIU.

h. Measures for effective compliance:

- (a) In the proposed legislation Director, FIU-IND can refer special audit of a reporting entity with regard to their obligations [sec 13(1A)]. Expenses of such audit can be recovered from the reporting entity [sec. 13(1B)].
- (b) Graded penalty is proposed for failures. Such as written warning, directions to comply, directions to send reports and finally, fine [sec 13(2)].
- (c) Penalty can also be imposed on “designated director on the Board” and “employees” of reporting entities, in place of only “officers” at present.

67. It is submitted that there have been other instances wherein the Mutual Evaluation of the FATF has led to consequent changes in the PMLA. During mutual evaluation after having examined the provisions of section 5 and section 8 PMLA, FATF has made following observations:

“Prevention of Money Laundering Act (PMLA)

233. *Confiscation under Chapter III of the PMLA is only possible when it relates to “proceeds of crime” as defined in s. 2(1)(u), i.e. resulting from a scheduled offence, and when there is a conviction of such scheduled (predicate) offence. In addition in such cases, only proceeds of the predicate offence can be confiscated and not the proceeds of the ML offence itself.*

234. *The predicate offence conviction condition creates fundamental difficulties when trying to confiscate the proceeds of crime in the absence of a conviction of a predicate offence, particularly in a stand-alone ML case, where the laundered assets become the corpus delicti and should be forfeitable as such. In the international context, the predicate conviction requirement also seriously*

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affects the capacity to recover criminal assets where the predicate offence has occurred outside India and the proceeds are subsequently laundered in India (see also comments in Section 2.1 above).

235. The definition of proceeds of crime and property in the PMLA are broad enough to allow for confiscation of property derived directly or indirectly from proceeds of crime relating to a scheduled (predicate) offence, including income, profits and other benefits from the proceeds of crime. These definitions also allow for value confiscation, regardless of whether the property is held or owned by a criminal or a third party. As section 65 of the PMLA refers to the rules in CrPC, instrumentalities and intended instrumentalities can be confiscated in accordance with section 102 and 451 of the CrPC. However, there is no case law in this respect.

236. Also, the procedural provisions of Chapter III make confiscation of the proceeds of crime contingent on a prior seizure or attachment of the property by the Adjudicating Authority, and consequently substantially limit the possibilities for confiscation under the PMLA.”

“General comments

244. Since confiscation is linked to a conviction it is not possible to confiscate criminal proceeds when the defendant has died during the criminal proceedings. However, it is possible to attach and dispose of any property of a proclaimed offender when that person has absconded. The absence of a regulation when the defendant has died may have a negative impact on the effectiveness of the confiscation regime in place in India.”

13. Keeping in view the above observations, FATF has made following Recommendations for compliance:

“2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors relative to s.2.3 underlying overall rating
R.3	PC	<ul style="list-style-type: none"> • <u>Confiscation of property laundered is not covered in the relevant legislation and depends on a conviction for a scheduled predicate offence.</u> • The UAPA does not allow for confiscation of intended instrumentalities used in terrorist acts or funds collected to be used by terrorist individuals. • The UAPA and NDPS Act do not allow for property of corresponding value to be confiscated. • There are no clear provisions and procedures on how to deal with the assets in the case of criminal proceedings when the suspect died. <ul style="list-style-type: none"> ○ Concerns based on the limited number of confiscations in relation to ML/FT offences.

68. As discussed earlier, Section 5(1) of PMLA as originally enacted in year 2002 and amended in year 2009 stipulate that a person from whom the property is attached must “have been charged of having committed a scheduled offence”. In pursuance to recommendation of FATF following amendments have been proposed by PMLA Amendment Act, 2012 w.e.f. 05.02.2015.

- clause (b) of sub-section (1) of section 5 PMLA is proposed to be deleted as property may come to someone, who has nothing to do with scheduled offence or even the money laundering offence, he could only be possessor of the property.

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- Procedure for attachment of property u/s 5(1) has now been proposed under the PMLA instead of earlier provisions to follow the Second Schedule of Income Tax Act, 1961.
- Time for Adjudicating Authority to confirm attachment of property has been proposed to be increased from 150 days to 180 days.

69. In addition to above referred to amendment to section 5, it has also been proposed to make confiscation independent of conviction to address the problem faced in such cases where money-laundering has been done by a person who has not committed the scheduled offence or where property is possessed by someone who has not committed any offence. Accordingly, it is proposed to amend section 8(5) to provide for attachment and confiscation of the proceeds of crime, even if there is no conviction, so long as it is proved that predicate offence and money-laundering offence have taken place and the property in question (i.e., the proceeds of crime) is involved in money-laundering.

70. The existing provisions of the PMLA prior to amendment vide PMLA Amendment Act, 2012 provided for confiscation of attached property to be ordered by Adjudicating Authority, after conviction in the scheduled offence case. Appeals to such orders lie with Appellate Authority, then High Court and Supreme Court, which implies that there can be another set of appeals after confiscation. To streamline the process power to confiscate attached property is proposed to be given to the Special Court, who shall pass the order to confiscating or release the attached property, along with judgement in the predicate offence/ money-laundering case. A new sub-section 60(2A) has been added to address the issue when trial takes place outside India or the case initiated abroad is closed and the property is to be confiscated.

71. The Standing Committee of Finance in its 56th Report (May 2012) after examining the proposed amendment has concurred with the proposed amendment. The PMLA Amendment Act, 2012 substituted following sub-section (5), (6) & (7) of section 8 in place of existing sub-section (5) & (6) of section 8.

72. The FATF in its 8th Follow up Report on Mutual Evaluation of India (June 2013) after having examined the above referred to amendment to section 5 & section 8 of PMLA has held as under:

“The Amendments to sections 5 and 8 of the PMLA ensure that the confiscation of property laundered is also covered. The amendment to section 8 also ensures that confiscation of property is no longer dependent on a conviction for a scheduled predicate offence. The confiscation of property is now dependent on a predicate offence investigation registered at the judicial level, either in India or in any other country. The technical deficiencies are addressed.”

x x x x x x

“Amendments to section 8(7) of the PMLA and section 33(5) of the UAPA introduce procedures for dealing with instances where the trial cannot be concluded because of the death of the accused or the accused being declared as a proclaimed offender or for any other reason. The deficiency is addressed.”

73. It is amply clear from the above discussion that amendments to section 5 and 8 by PMLA Amendment Act, 2012 have been made to make existing provisions of PMLA in conformity to the global standard and to strengthen existing provisions of PMLA to achieve desired objective.

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74. It may further be noted that apart from PMLA, other amendments to the Unlawful Activities (Prevention) Act, NDPS and Companies Act as sequel to FATF recommendation during Mutual Evaluation of India

DETAILS OF FATF RECOMMENDATION	ACTION TAKEN	REMARKS
RECOMMENDATION 1 <ul style="list-style-type: none"> High monetary threshold for most of predicate offence. Definition of Section 3 not in consonance with FATF standards. 	<ul style="list-style-type: none"> High monetary threshold removed from 46 predicate offence. 156 predicate offence are without any monetary threshold. Section 3 was amended. However, the term projected or claimed as untainted property is still the part of illustration which is not as per global standard. 	Due to non-removal of term projected or claimed as untainted property, India rating is largely compliant
RECOMMENDATION 3 <ul style="list-style-type: none"> Confiscation of property depends on a conviction of a scheduled predicate offence. There is no clear provision and procedure to deal with asset in case of criminal proceedings when the defendant has died. UAPA and NDPS Act do not allow for property of corresponding value to be confiscated. UAPA does not allow confiscation of intended instrumentalities used in Terrorist Act or fund collected to be used by terrorist individuals. 	<ul style="list-style-type: none"> Section 5 and Section 8 of PMLA amended. Amendment to the UAPA vide Amendment Act, 2012. The amended section 2(g) and 24(3) of UAPA has addressed the deficiency. Provisions of NDPS Act was also amended. 	Not only PMLA, UAPA and NDPS Acts were also amended.
Recommendation 33 <ul style="list-style-type: none"> Information on additional beneficial ownership of legal person beyond the immediate beneficial owner is not required to be collected. 	<ul style="list-style-type: none"> Necessary legislation u/s 89 & 90 of the Companies Bill, 2012 was incorporated which became part of Companies Act, 2013 	Companies Act, 2013 excluded FATF recommendation.

75. It is therefore submitted that the recommendation of the FATF has a sanctity attached therewith which has been consistently taken in the right earnest by the Legislature.

Meaning of definitions when the word “including” is used

76. The analysis of the words and phrases used in the section clearly provide that whosoever is directly or indirectly attempts to indulge or knowingly assists or knowingly is

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party or is actually involved in **any** process or activity in connection with the proceeds of crime... shall be guilty of offence of money laundering. It is submitted that Hon'ble Supreme Court in case of **Shri Balaganesan Metals vs. M.N. Shanmugham Chetty & Ors. (1987) 2 SCC 707**, (para 18) [SGI Compilation – Volume VII – pg. 3354-3367] while examining the meaning of the word '**any**' has held that the word indicates 'all' or 'every' as well as 'some' or 'one' depending upon context and subject matter of the statute. For the sake of clarity, the relevant part of the judgement is extracted below:

"18. In construing Section 10(3)(c) it is pertinent to note that the words used are "any tenant" and not "a tenant" who can be called upon to vacate the portion in his occupation. The word "any" has the following meaning:

Some; one of many; an indefinite number. One discriminately of whatever kind or quantity.

Word "any" has a diversity of meaning and may be employed to indicate "all" of "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject matter of the statute.

It is ofent synonymous with "either", "every" or "all". Its generality may be restricted by the context; (Black's Law Dictionary, 5th edn.)"

77. Keeping in view the meaning of term "any" as approved by Hon'ble Apex Court, if the word '**any**' used before process or activity connected with the proceeds of crime is examined, it will give wide meaning of terms "*process or activity connected with the proceeds of crime...*". For the reason that all or every type/ species of process or activity connected with proceeds of crime shall be included while interpreting the nature of process or activities connected with the proceeds of crime.

78. The word 'any' before process or activity connected with the proceeds of crime has been followed by the term '**including**'. Use of word "include" would enlarge the scope of the definition. See **Municipal Corpn. of Greater Bombay v. Indian Oil Corpn. Ltd., 1991 Supp (2) SCC 18**; **ESI Corpn. v. High Land Coffee Works, (1991) 3 SCC 617**; **Forest Range Officer v. P. Mohammed Ali, 1993 Supp (3) SCC 627**; **Oswal Fats & Oils Ltd. v. Commr. (Admn.), (2010) 4 SCC 728**; **Doypack Systems (P) Ltd. v. Union of India, (1988) 2 SCC 299**; **N.D.P. Namboodripad v. Union of India, (2007) 4 SCC 502**; **CTO v. Rajasthan Taxchem Ltd., (2007) 3 SCC 124**; **Associated Indem Mechanical (P) Ltd. v. W.B. Small Industries Development Corpn. Ltd., (2007) 3 SCC 607**; **Mamta Surgical Cotton Industries v. Commr. (Anti-Evasion), (2014) 4 SCC 87**.

79. It is amply clear from the ration decidendi as laid down by Hon'ble Supreme Court that the word 'include' in a definition is very generally used to enlarge the meaning of words or phrases occurring in the body of statute and when it is so used, those words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declare that they shall include. Legal analysis of the phrase used before the word 'including' in the provisions of section 3 of PMLA any process or activity connected with the proceeds of crime and phrase used after the word 'including' its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering proves beyond doubt that not only the natural import of the phrase any process or activity connected with the proceed of crime but also the process and activity like concealment, possession, acquisition or use and


projecting or claiming it as untainted property shall also be included within the meaning of any process or activity connected with the proceeds of crime. In view of the legal analysis the argument that any process or activity connected with proceeds of crime will only include concealment, possession, acquisition or use and projecting or claiming it as untainted property is legally untenable and contrary to the construction of provisions of section 3 of PMLA. It shall be legally incorrect to plead that inclusion of words ‘...its concealment, possession, acquisition or use and projecting or claiming it as untainted property...’ will prohibit nature import of meaning of words/ phrases ‘...any process or activity connected with the proceeds of crime...’.

80. It is submitted that the use of the word ‘any’ before process or activity connected with the proceeds of crime and the word ‘including’ after process or connected with the proceeds of crime clearly stipulate that meaning of words process or activity used in section 3 of PMLA is extensive and wide and will not be restricted to those things which section 3 of PMLA declare that they shall include. In other words, in addition to meaning of those things which is included in section 3 of PMLA (concealment, possession, acquisition or use and projecting or claiming it as untainted property), the natural import of the phrase any process or activity connected with the proceed of crime shall also be included. In this context, it would be relevant to make reference to judgement of Hon’ble Supreme Court in case of **Associated Indem Mechanical (P) Ltd. vs. W.B. Small Industries Development Corpn. Ltd. and Others (2007) 3 SCC 607 [SGI Compilation – Volume VII – pg. 3368-3377]** wherein Hon’ble Supreme Court examining the word ‘any’ and ‘include’ in the definition of section 2(c) of W.B. Government Premises (Tenancy Regulation) Act, 1976 has held as under:

*“...The opening part of the definition of the word “premises” in Section 2(c) employs the word “any”. “Any” is a word of very wide meaning and prima facie the use of it excludes limitation. (See Angurbala Mullick v. Debabrata Mullick, AIR at p. 297) The definition of premises in Section 2(c) uses the word “includes” at two places. **It is well settled that the word “include” is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.** (See Dadaji v. Sukhdeobabu; Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Mahalakshmi Oil Mills v. State of A.P.). The inclusive definition of “District Judge” in Article 236(a) of the Constitution has been very widely construed to include hierarchy of specialized civil courts viz. Labour Courts and Industrial Courts which are not expressly included in the definition. (See State of Maharashtra v. Labour Law Practitioners’ Assn...).”*

81. It is submitted that a careful reading of the provisions of section 3 of PMLA clearly provides that as long as any person is 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, he shall be guilty of offence of money laundering. The careful reading of the provision lead to an irresistible conclusion that offence of money laundering is a continuing offence till the time person is 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.



**SUBMITTED BY :-
MR. TUSHAR MEHTA,
SOLICITOR GENERAL OF INDIA**



**Assisted by :-
Mr. Kanu Agrawal,
Panel Counsel,
Union of India**

SECTION 3 - ORIGINAL PROVISION	2013	2019
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.	3. 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 <u>including its concealment, possession, acquisition or use and projecting or claiming</u> it as untainted property shall be guilty of offence of money-laundering.	3. 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 including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering. <u>Explanation.—For the removal of doubts, it is hereby clarified that,—</u> <u>(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—</u> <u>(a) concealment; or (b) possession; or (c) acquisition; or (d) use; or (e) projecting as untainted property; or (f) claiming as untainted property, in any manner whatsoever;</u> <u>(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever."</u>

SECTION 5 - ORIGINAL PROVISION	2009	2013	2015	2018
(1) Where 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 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 order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Director or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule: Provided that no such order of attachment shall be made unless, in	(1) Where 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 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 order in writing, provisionally attach such property for a period not exceeding <u>one hundred and fifty days</u> from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Director or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule: <u>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</u>	<u>(1) Where the Director or any other officer not below the rank of Deputy Director authorized by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—</u> <u>(a) any person is in possession of any proceeds of crime; and</u> <u>(b) 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 order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:</u> <u>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 that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:</u>	Section 5 (1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason 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; and (b) 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 order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed: 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 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other	Section 5 (1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason 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; and (b) 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 order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed: 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 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country: Provided further that, notwithstanding anything contained in first proviso, 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

SECTION 5 - ORIGINAL PROVISION	2009	2013	2015	2018
relation to an offence under— (i) Paragraph 1 of Part A and Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or (ii) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985.	<u>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 nonattachment of the property is likely to frustrate any proceeding under this Act</u>	<u>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 moneylaundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.</u>	country: Provided further that, notwithstanding anything contained in <u>first proviso</u> , 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	(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 <u>Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.”;</u>

SECTION 17 - ORIGINAL PROVISION	2009	2013	2019
17. (1) Where the Director. on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person— (i) has committed any act which constitutes money-laundering, or (ii) is in possession of any proceeds of crime involved in money-laundering, or (iii) is in possession of any records relating to money-laundering, then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to— (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 for exercising the powers conferred by clause (a) 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 therefrom; (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	17. (1) Where <u>the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section</u> on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person— (i) has committed any act which constitutes money-laundering, or (ii) is in possession of any proceeds of crime involved in money-laundering, or (iii) is in possession of any records relating to money-laundering, then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to— (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 for exercising the powers conferred by clause (a) 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 therefrom; (e) make a note or an inventory of such record or property;	17. (1) Where the Director. on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person— (i) has committed any act which constitutes money-laundering, or (ii) is in possession of any proceeds of crime involved in money-laundering, or (iii) is in possession of any records relating to money-laundering, <u>or iv) is in possession of any property related to crime,</u> then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to— (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 for exercising the powers conferred by clause (a) 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 <u>property, if required or</u> make or cause to be made extracts or copies therefrom; (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: <u>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, or in cases where such report is not required to be forwarded, a similar report</u>	17. (1) Where the Director. on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person— (i) has committed any act which constitutes money-laundering, or (ii) is in possession of any proceeds of crime involved in money-laundering, or (iii) is in possession of any records relating to money-laundering, or (iv) is in possession of any property related to crime, then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to— (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 for exercising the powers conferred by clause (a) 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 property, if required or make or cause to be made extracts or copies therefrom; (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: <u>[(omitted) 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</u>

SECTION 17 - ORIGINAL PROVISION	2009	2013	2019
<p>relevant for the purposes of any investigation under this Act: Provided that no search shall be conducted unless, in relation to an offence under—(a) Paragraph 1 of Part A and Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or (b) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances.</p> <p>(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.</p> <p>(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:</p> <p>Provided that no authorisation referred to in subsection (1) shall be required for search under this subsection.</p> <p>(4) The authority, seizing any record or property under this section, shall, within a period of thirty days from such seizure, file an application, requesting for retention of such record or property, before the Adjudicating Authority.</p>	<p>(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: <u>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.</u></p> <p>(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.</p> <p>(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:</p> <p>Provided that no authorisation referred to in subsection (1) shall be required for search under this subsection.</p> <p>(4) The authority, seizing any record or property under this section, shall, within a period of thirty days from such seizure, file an application, requesting for retention of such record or property, before the Adjudicating Authority.</p>	<p><u>of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.</u></p> <p><u>1A) Where it is not practicable to seize such record or property, the officer authorized under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:</u></p> <p><u>Provided that if, at any time before its confiscation under sub-section (5) or subsection (7) of section 8 or section 58B or subsection (2A) of section 60, it becomes practical to seize a frozen property, the officer authorized under sub-section (1) may seize such property.”;</u></p> <p>(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure <u>or upon issuance of a freezing order</u>, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.</p> <p>(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence: Provided that no authorisation referred to in subsection (1) shall be required for search under this subsection.</p> <p><u>(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.</u></p>	<p><u>taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.]</u></p> <p>1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:</p> <p>Provided that if, at any time before its confiscation under sub-section (5) or subsection (7) of section 8 or section 58B or subsection (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.”;</p> <p>(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure or upon issuance of a freezing order, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.</p> <p>(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence: Provided that no authorisation referred to in subsection (1) shall be required for search under this subsection.</p> <p>(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.</p>

SECTION 19 - ORIGINAL PROVISION		2018	
<p>19. (1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.</p> <p>(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.</p> <p>(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's Court.</p>		<p>19. Power to arrest.—(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.</p> <p>(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.</p> <p>(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a <u>Special Court or</u> Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the <u>Special Court or</u> Magistrate's Court.</p>	
SECTION 24 ORIGINAL PROVISION		2013	
<p>24. 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.</p>		<p><u>24. In any proceeding relating to proceeds of crime under this Act,— (a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money laundering; and (b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money laundering.</u></p>	
SECTION 44 ORIGINAL PROVISION	2005	2013	2019
<p>44. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—</p> <p>(a) the scheduled offence and the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed: Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or</p> <p>(b) a Special Court may, upon perusal of police report of the facts which constitute an offence under this Act or upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial.</p> <p>(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the power</p>	<p>44. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—</p> <p>(a) the scheduled offence and the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed: Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or</p> <p>(b) a Special Court may, <u>[(ommitted)upon perusal of police report of the facts which constitute an offence under this Act or]</u> upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial.</p> <p>(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the power</p>	<p>44. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—</p> <p>(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed: Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or</p> <p>(b) a Special Court may, upon perusal of police report of the facts which constitute an offence under this Act or upon a complaint made by an authority authorised in this behalf under this Act take <u>cognizance of offence under section 3, without the accused being committed to it for trial.</u></p> <p><u>(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.</u></p> <p><u>(d) a Special Court while trying the scheduled offence or the offence of money laundering shall hold trial in accordance with the provisions or the Code of Criminal Procedure, 1973, as it applies to a trial before a Court of Session.</u></p> <p>(2) Nothing contained in this section shall be deemed to affect</p>	<p>44. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—</p> <p>(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed: Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or</p> <p>(b) a Special Court may, upon perusal of police report of the facts which constitute an offence under this Act or upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under section 3, without the accused being committed to it for trial.</p> <p><u>Provided that after conclusion of investigation, if no offence of moneylaundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or</u></p> <p>(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.</p> <p>(d) a Special Court while trying the scheduled offence or the offence of money laundering shall hold trial in accordance with the provisions or the Code of Criminal Procedure, 1973, as it applies to a trial before a Court of Session.</p> <p><u>Explanation.—For the removal of doubts, it is clarified that,—</u></p> <p><u>(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;</u></p> <p><u>(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for</u></p>

under clause (b) of subsection (1) of that section as if the reference to “Magistrate” in that section includes also a reference to a “Special Court” designated under section 43.	power under clause (b) of subsection (1) of that section as if the reference to “Magistrate” in that section includes also a reference to a “Special Court” designated under section 43.	the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the power under clause (b) of subsection (1) of that section as if the reference to “Magistrate” in that section includes also a reference to a “Special Court” designated under section 43.	<u>which complaint has already been filed, whether named in the original complaint or not.</u> (2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the power under clause (b) of subsection (1) of that section as if the reference to “Magistrate” in that section includes also a reference to a “Special Court” designated under section 43.
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SECTION 45 - ORIGINAL PROVISION	2005	2018	2019
45. Offences to be cognizable and non-bailable. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,— (a) every offence punishable under this Act shall be cognizable; (b) no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless— (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: Provided that a person, who is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs: Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by— (i) the Director; or (ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government. (2) The limitation on granting of bail specified in clause (b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.	45. Offences to be cognizable and non-bailable. <u>(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless”;</u> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: Provided that a person, who is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs: Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by— (i) the Director; or (ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government. <u>(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.</u> (2) The limitation on granting of bail specified in <u>[clause (b) of (omitted)]</u> sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.	45. Offences to be cognizable and non-bailable. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this Act shall be released on bail or on his own bond unless”; (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: Provided that a person, who is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs: Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by— (i) the Director; or (ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government. (1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed. (2) The limitation on granting of bail specified in [clause (b) of (omitted)] sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.	45. Offences to be cognizable and non-bailable. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this Act shall be released on bail or on his own bond unless”; (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: Provided that a person, who is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs: Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by— (i) the Director; or (ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government. (1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed. (2) The limitation on granting of bail specified in [clause (b) of (omitted)] sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail. <u>‘Explanation.—For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973, and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under section 19 and subject to the conditions enshrined under this section.'</u>

SECTION 2(1)(U) - ORIGINAL PROVISION	2015	2018	2019
“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	“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 <u>or where such property is taken or held outside the country, then the property equivalent in value held within the country</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 or where such property is taken or held outside the country, then the property equivalent in value held within the country <u>or abroad</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 or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad <u>'Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;</u>

SECTION 8 - ORIGINAL PROVISION	2009	2013	2015	2018	2019
8. (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government: Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of	8. (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 <u>or is in possession of proceeds of crime</u> , it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government: Provided that where a notice under this sub-section specifies any property as being held by a	8. (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized <u>or frozen</u> under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government: Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person: Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property. (2) The Adjudicating Authority shall, after— (a) considering the reply, if any, to the	8. (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government: Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person: Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property. (2) The Adjudicating Authority shall, after— (a) considering the reply, if any, to the notice issued under sub-section (1); (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and	8. (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government: Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person: Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property. (2) The Adjudicating Authority shall, after— (a) considering the reply, if any, to the notice issued under sub-section (1); (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and (c) taking into account all relevant materials placed on record before him, by	8. (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government: Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person: Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property. (2) The Adjudicating Authority shall, after— (a) considering the reply, if any, to the notice issued under sub-section (1); (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and (c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the

SECTION 8 - ORIGINAL PROVISION	2009	2013	2015	2018	2019
<p>such notice shall also be served upon such other person: Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.</p> <p>(2) The Adjudicating Authority shall, after—</p> <p>(a) considering the reply, if any, to the notice issued under sub-section (1);</p> <p>(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and</p> <p>(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under subsection (1) are involved in money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.</p> <p>(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in moneylaundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized under section 17 or section 18 and record a finding to that effect, such attachment or</p>	<p>person on behalf of any other person, a copy of such notice shall also be served upon such other person: Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.</p> <p>(2) The Adjudicating Authority shall, after—</p> <p>(a) considering the reply, if any, to the notice issued under sub-section (1);</p> <p>(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and</p> <p>(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under subsection (1) are involved in money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.</p> <p>(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in moneylaundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized under section 17 or section 18</p>	<p>notice issued under sub-section (1);</p> <p>(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and</p> <p>(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under subsection (1) are involved in money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.</p> <p>(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in moneylaundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—</p> <p>(a) continue during the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and; and</p> <p>(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court;</p> <p>(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed: Provided that if it is not practicable to take possession of a property frozen under subsection (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.</p>	<p>(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under subsection (1) are involved in money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.</p> <p>(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in moneylaundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—</p> <p>(a) continue during the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and; and</p> <p>(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court;</p> <p>(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed: Provided that if it is not practicable to take possession of a property frozen under subsection (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.</p> <p>(5) Where on conclusion of a trial of an offence under this Act, the Special Court</p>	<p>an order, record a finding whether all or any of the properties referred to in the notice issued under subsection (1) are involved in money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.</p> <p>(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in moneylaundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—</p> <p>(a) continue during investigation for a period not exceeding ninety days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and; and</p> <p>(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court;</p> <p>(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed: Provided that if it is not practicable to take possession of a property frozen under subsection (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.</p> <p>(5) Where on conclusion of a trial of an offence under this Act, the Special Court</p>	<p>properties referred to in the notice issued under subsection (1) are involved in money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.</p> <p>(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in moneylaundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—</p> <p>(a) continue during investigation for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and; and</p> <p>(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court;</p> <p>Explanation.—For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded</p> <p>(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed: Provided that if it is not practicable to take possession of a property frozen under subsection (1A) of section 17, the order of</p>

SECTION 8 - ORIGINAL PROVISION	2009	2013	2015	2018	2019
<p>retention of the seized property or record shall—</p> <p>(a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and</p> <p>(b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final.</p> <p>(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the attached property.</p> <p>(5) Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted the attachment of the property or retention of the seized property or record under sub-section (3) and net income, if any, shall cease to have effect. (6) Where the attachment of any property or retention of the seized property or record becomes final under clause (b) of sub-section (3), the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property.</p>	<p>and record a finding to that effect, such attachment or retention of the seized property or record shall—</p> <p>(a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and</p> <p>(b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final.</p> <p>(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the attached property.</p> <p>(5) Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted the attachment of the property or retention of the seized property or record under sub-section (3) and net income, if any, shall cease to have effect.</p> <p>(6) Where the attachment of any property or retention of the seized property or record becomes final under clause (b) of sub-section (3), the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property.</p>	<p><u>attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:</u></p> <p><u>Provided that if it is not practicable to take possession of a property frozen under subsection (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of</u></p> <p><u>(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.</u></p> <p><u>(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in moneylaundering, it shall order release of such property to the person entitled to receive it.</u></p> <p><u>(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.</u></p> <p><u>(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering: Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering.</u></p>	<p>(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.</p> <p>(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in moneylaundering, it shall order release of such property to the person entitled to receive it.</p> <p>(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.</p> <p><u>(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering: Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering.</u></p>	<p>finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.</p> <p>(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in moneylaundering, it shall order release of such property to the person entitled to receive it.</p> <p>(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.</p> <p>(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering: Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering. Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.</p>	<p>confiscation shall have the same effect as if the property had been taken possession of.</p> <p>(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.</p> <p>(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in moneylaundering, it shall order release of such property to the person entitled to receive it.</p> <p>(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.</p> <p>(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering: Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering. Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.</p>

SECTION 18 - ORIGINAL PROVISION	2009	2013	2019
<p>18. (1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about this person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act.</p> <p>(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.</p> <p>(3) 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:</p> <p>Provided that the period of twenty- four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest Gazetted Officer, superior in rank to him, or Magistrate's Court.</p> <p>(4) If the requisition under sub-section (3) 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: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the Gazetted Officer superior in rank to him, or the Magistrate's Court.</p> <p>(5) 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.</p> <p>(6) Before making the search under sub-section (1) or sub-section (5), the authority shall call upon two or more persons to attend and witness the search, and the search shall be made in the presence of such persons.</p>	<p>18. (1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about this person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act. <u>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.</u>”;</p> <p>(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.</p> <p>(3) 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: Provided that the period of twenty- four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest Gazetted Officer, superior in rank to him, or Magistrate's Court.</p> <p>(4) If the requisition under sub-section (3) 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: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the Gazetted Officer superior in rank to him, or the Magistrate's Court.</p> <p>(5) 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.</p> <p>(6) Before making the search under sub-section (1) or sub-section (5), the authority shall call upon two</p>	<p>18. (1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about this person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act. <u>“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 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, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose;</u></p> <p>(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons</p> <p>(3) 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: Provided that the period of twenty- four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest Gazetted Officer, superior in rank to him, or Magistrate's Court.</p> <p>(4) If the requisition under sub-section (3) is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the</p>	<p>18. (1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about this person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act. <u>[(omitted)]“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 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, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose;]</u></p> <p>(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.</p> <p>(3) 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: Provided that the period of twenty- four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest Gazetted Officer, superior in rank to him, or Magistrate's Court.</p> <p>(4) If the requisition under sub-section (3) 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:</p>

SECTION 18 - ORIGINAL PROVISION	2009	2013	2019
<p>(7) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.</p> <p>(8) No female shall be searched by anyone except a female.</p> <p>(9) The authority shall record the statement of the person searched under sub-section (1) or sub-section (5) in respect of the records or proceeds of crime found or seized in the course of the search: Provided that no search of any person shall be made unless, in relation to an offence under—</p> <p>(a) Paragraph 1 of Part A or Paragraph 1 or Paragraph 2 or Paragraph 3 or Paragraph 4 or Paragraph 5 of Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or</p> <p>(b) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act. 1985.</p> <p>(10) The authority, seizing any record or property under sub-section (1) shall, within a period of thirty days from such seizure, file an application requesting for retention of such record or property, before the Adjudicating Authority.</p>	<p>or more persons to attend and witness the search, and the search shall be made in the presence of such persons.</p> <p>(7) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.</p> <p>(8) No female shall be searched by anyone except a female.</p> <p>(9) The authority shall record the statement of the person searched under sub-section (1) or sub-section (5) in respect of the records or proceeds of crime found or seized in the course of the search: <u>[(omitted)Provided that no search of any person shall be made unless, in relation to an offence under— (a) Paragraph 1 of Part A or Paragraph 1 or Paragraph 2 or Paragraph 3 or Paragraph 4 or Paragraph 5 of Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or (b) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act.] 1985.]</u></p> <p>(10) The authority, seizing any record or property under sub-section (1) shall, within a period of thirty days from such seizure, file an application requesting for retention of such record or property, before the Adjudicating Authority.</p>	<p>Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the Gazetted Officer superior in rank to him, or the Magistrate’s Court.</p> <p>(5) 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.</p> <p>(6) Before making the search under sub-section (1) or sub-section (5), the authority shall call upon two or more persons to attend and witness the search, and the search shall be made in the presence of such persons.</p> <p>(7) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.</p> <p>(8) No female shall be searched by anyone except a female.</p> <p>(9) The authority shall record the statement of the person searched under sub-section (1) or sub-section (5) in respect of the records or proceeds of crime found or seized in the course of the search:</p> <p>(10) The authority, seizing any record or property under sub-section (1) shall, within a period of thirty days from such seizure, file an application requesting for retention of such record or property, before the Adjudicating Authority.</p>	<p>Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the Gazetted Officer superior in rank to him, or the Magistrate’s Court.</p> <p>(5) 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.</p> <p>(6) Before making the search under sub-section (1) or sub-section (5), the authority shall call upon two or more persons to attend and witness the search, and the search shall be made in the presence of such persons.</p> <p>(7) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.</p> <p>(8) No female shall be searched by anyone except a female.</p> <p>(9) The authority shall record the statement of the person searched under sub-section (1) or sub-section (5) in respect of the records or proceeds of crime found or seized in the course of the search:</p> <p>(10) The authority, seizing any record or property under sub-section (1) shall, within a period of thirty days from such seizure, file an application requesting for retention of such record or property, before the Adjudicating Authority.</p>

PUBLIC LAW 99-570—OCT. 27, 1986

100 STAT. 3207

*Public Law 99-570
99th Congress

An Act

To strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.

Oct. 27, 1986

[H.R. 5484]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti-Drug Abuse Act of 1986".

SEC. 2. ORGANIZATION OF ACT.

This Act is organized as follows:

TITLE I—ANTI-DRUG ENFORCEMENT

Subtitle A—Narcotics Penalties and Enforcement Act of 1986

Subtitle B—Drug Possession Penalty Act of 1986

Subtitle C—Juvenile Drug Trafficking Act of 1986

Subtitle D—Assets Forfeiture Amendments Act of 1986

Subtitle E—Controlled Substance Analogue Enforcement Act of 1986

Subtitle F—Continuing Drug Enterprise Act of 1986

Subtitle G—Controlled Substances Import and Export Act Penalties Enhancement Act of 1986

Subtitle H—Money Laundering Control Act of 1986

Subtitle I—Armed Career Criminals

Subtitle J—Authorization of Appropriations for Drug Law Enforcement

Subtitle K—State and Local Narcotics Control Assistance

Subtitle L—Study on the Use of Existing Federal Buildings as Prisons

Subtitle M—Narcotics Traffickers Deportation Act

Subtitle N—Freedom of Information Act

Subtitle O—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

Subtitle P—Manufacturing Operations

Subtitle Q—Controlled Substances Technical Amendments

Subtitle R—Precursor and Essential Chemical Review

Subtitle S—White House Conference for a Drug Free America

Subtitle T—Common Carrier Operation Under the Influence of Alcohol or Drugs

Subtitle U—Federal Drug Law Enforcement Agent Protection Act of 1986

Anti-Drug Abuse
Act of 1986.
21 USC 801 note.

*Note: This is a subsequently typeset print of the hand enrollment which was signed by the President on October 27, 1986.

United States Code, or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence."

(b) Section 1010(b)(4) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(4)), as redesignated, is amended—

Ante, p. 3207-15.

- (1) by striking out ", except as provided in paragraph (4)";
- (2) by striking out "fined not more than \$50,000" and inserting in lieu thereof "fined not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual"; and
- (3) by inserting "except in the case of 100 or more marihuana plants regardless of weight," after "marihuana,".

Subtitle H—Money Laundering Control Act of 1986

Money
Laundering
Control Act of
1986.

SEC. 1351. SHORT TITLE.

This subtitle may be cited as the "Money Laundering Control Act of 1986".

18 USC 981 note.

SEC. 1352. NEW OFFENSE FOR LAUNDERING OF MONETARY INSTRUMENTS.

(a) Chapter 95 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 1956. Laundering of monetary instruments

18 USC 1956.

"(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

"(A) with the intent to promote the carrying on of specified unlawful activity; or

"(B) knowing that the transaction is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

"(2) Whoever transports or attempts to transport a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

“(A) with the intent to promote the carrying on of specified unlawful activity; or

“(B) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part—

“(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

“(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or imprisonment for not more than twenty years, or both.

“(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1), or a transportation described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

“(1) the value of the property, funds, or monetary instruments involved in the transaction; or

“(2) \$10,000.

“(c) As used in this section—

“(1) the term ‘knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity’ means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State or Federal law, regardless of whether or not such activity is specified in paragraph (7);

“(2) the term ‘conducts’ includes initiating, concluding, or participating in initiating, or concluding a transaction;

“(3) the term ‘transaction’ includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

“(4) the term ‘financial transaction’ means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

“(5) the term ‘monetary instruments’ means coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

“(6) the term ‘financial institution’ has the definition given that term in section 5312(a)(2) of title 31, United States Code, and the regulations promulgated thereunder;

“(7) the term ‘specified unlawful activity’ means—

“(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under the Currency and Foreign Transactions Reporting Act;

18 USC 1961.

“(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

84 Stat. 1118.
31 USC 5311
note.

“(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or

21 USC 801 note.

“(D) an offense under section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 511 (relating to securities of States and private entities), section 543 (relating to smuggling goods into the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1344 (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft) of this title, section 38 of the Arms Export Control Act (22 U.S.C. 2778), section 2 (relating to criminal penalties) of the Export Administration Act of 1979 (50 U.S.C. App. 2401), section 203 (relating to criminal sanctions) of the International Emergency Economic Powers Act (50 U.S.C. 1702), or section 3 (relating to criminal violations) of the Trading with the Enemy Act (50 U.S.C. App. 3).

18 USC 152.

“(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

“(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate. Such authority of the Secretary of the Treasury shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

“(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

“(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

“(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding \$10,000.

18 USC 1957.

"§ 1957. Engaging in monetary transactions in property derived from specified unlawful activity"

"(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

"(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years, or both.

"(2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

"(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

"(d) The circumstances referred to in subsection (a) are—

"(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

"(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

"(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate. Such authority of the Secretary of the Treasury shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

"(f) As used in this section—

"(1) the term 'monetary transaction' means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined for the purposes of subchapter II of chapter 53 of title 31) by, through, or to a financial institution (as defined in section 5312 of title 31);

"(2) the term 'criminally derived property' means any property constituting, or derived from, proceeds obtained from a criminal offense; and

"(3) the term 'specified unlawful activity' has the meaning given that term in section 1956 of this title."

(b) The table of sections at the beginning of chapter 95 of title 18 is amended by adding at the end the following new items:

"1956. Laundering of monetary instruments.

"1957. Engaging in monetary transactions in property derived from specified unlawful activity."

SEC. 1353. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT.

(a) **CLARIFICATION OF RIGHT OF FINANCIAL INSTITUTIONS TO REPORT SUSPECTED VIOLATIONS.**—Section 1103(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3403(c)) is amended by adding at the end thereof the following new sentences: "Such information may

18 USC 3077.

31 USC 5311 et seq.

18 USC 1956.

include only the name or other identifying information concerning any individual or account involved in and the nature of any suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure."

(b) Section 1113(i) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(i)) is amended by inserting immediately before the period at the end thereof a comma and the following: "except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409)".

SEC. 1354. STRUCTURING TRANSACTIONS TO EVADE REPORTING REQUIREMENTS PROHIBITED.

(a) **IN GENERAL.**—Subchapter II of chapter 53 of title 31, United States Code (relating to records and reports on monetary instruments transactions) is amended by adding at the end thereof the following new section:

"§ 5324. Structuring transactions to evade reporting requirement prohibited

31 USC 5324.

"No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction—

31 USC 5313.

"(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);

"(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or

"(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions."

(b) **CLERICAL AMENDMENT.**—The table of sections for chapter 53 of title 31, United States Code, is amended by adding at the end thereof the following new item:

"5324. Structuring transactions to evade reporting requirement prohibited."

SEC. 1355. SEIZURE AND CIVIL FORFEITURE OF MONETARY INSTRUMENTS AND RELATED PROVISIONS.

(a) **CUSTOMS AUTHORITY TO CONDUCT SEARCHES AT BORDER.**—Section 5317(b) of title 31, United States Code, is amended to read as follows:

"(b) **SEARCHES AT BORDER.**—For purposes of ensuring compliance with the requirements of section 5316, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering or departing from the United States."

31 USC 5316.

31 USC 5316.

(b) **FAILURE TO REPORT EXPORT OR IMPORT OF MONETARY INSTRUMENT.**—The first sentence of section 5317(c) of title 31, United States Code (relating to seizure and forfeiture of monetary instruments in foreign commerce) is amended to read as follows: "If a report required under section 5316 with respect to any monetary instrument is not filed (or if filed, contains a material omission or misstatement of fact), the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized and forfeited to the United States Government."

SEC. 1356. COMPLIANCE AUTHORITY FOR SECRETARY OF THE TREASURY AND RELATED MATTERS.

(a) **SUMMONS POWER.**—Section 5318 of title 31, United States Code, is amended—

(1) by inserting "(a) **GENERAL POWERS OF SECRETARY.**—" before "The Secretary of the Treasury";

(2) in paragraph (1), by inserting "except as provided in subsection (b)(2)," before "delegate";

(3) by striking out "and" at the end of paragraph (2);

(4) by inserting after paragraph (2) the following new paragraphs:

"(3) examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this subchapter;

"(4) summon a financial institution, an officer or employee of a financial institution (including a former officer or employee), or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b); and";

(5) by redesignating paragraph (3) as paragraph (5); and

(6) by adding at the end the following new subsections:

"(b) **LIMITATIONS ON SUMMONS POWER.**—

"(1) **SCOPE OF POWER.**—The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91-508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

"(2) **AUTHORITY TO ISSUE.**—A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

"(c) **ADMINISTRATIVE ASPECTS OF SUMMONS.**—

"(1) **PRODUCTION AT DESIGNATED SITE.**—A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution operates or conducts business in the United States.

12 USC 1829b.
12 USC 1730d.

"(2) FEES AND TRAVEL EXPENSES.—Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States.

"(3) NO LIABILITY FOR EXPENSES.—The United States shall not be liable for any expense, other than an expense described in paragraph (2), incurred in connection with the production of books, papers, records, or other data under this section.

"(d) SERVICE OF SUMMONS.—Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

"(e) CONTUMACY OR REFUSAL.—

"(1) REFERRAL TO ATTORNEY GENERAL.—In case of contumacy by a person issued a summons under paragraph (3) or (4) of subsection (a) or a refusal by such person to obey such summons, the Secretary of the Treasury shall refer the matter to the Attorney General.

"(2) JURISDICTION OF COURT.—The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which—

"(A) the investigation which gave rise to the summons is being or has been carried on;

"(B) the person summoned is an inhabitant; or

"(C) the person summoned carries on business or may be found,

to compel compliance with the summons.

"(3) COURT ORDER.—The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding.

"(4) FAILURE TO COMPLY WITH ORDER.—Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(5) SERVICE OF PROCESS.—All process in any case under this subsection may be served in any judicial district in which such person may be found."

(b) AMENDMENT RELATING TO EXEMPTIONS GRANTED FOR MONETARY TRANSACTION REPORTING REQUIREMENTS.—Section 5318 of title 31, United States Code, is amended by adding after subsection (e) (as added by subsection (a) of this section) the following new subsection:

"(f) WRITTEN AND SIGNED STATEMENT REQUIRED.—No person shall qualify for an exemption under subsection (a)(5) unless the relevant financial institution prepares and maintains a statement which—

"(1) describes in detail the reasons why such person is qualified for such exemption; and

"(2) contains the signature of such person."

(c) CONFORMING AMENDMENTS.—

(1) Sections 5321 and 5322 of title 31, United States Code, are each amended by striking out "5318(2)" each place such term appears and inserting in lieu thereof "5318(a)(2)".

(2) The heading of section 5318 of title 31, United States Code, is amended to read as follows:

Ante, p. 3207-23.

"§ 5318. Compliance, exemptions, and summons authority".

(d) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by striking out the item relating to section 5318 and inserting in lieu thereof the following:

"5318. Compliance, exemptions, and summons authority."

SEC. 1357. PENALTY PROVISIONS.

(a) CIVIL MONEY PENALTY FOR STRUCTURED TRANSACTION VIOLATION.—Section 5321(a) of title 31, United States Code, is amended by adding at the end thereof the following new paragraph:

"(4) STRUCTURED TRANSACTION VIOLATION.—

"(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who willfully violates any provision of section 5324.

"(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transaction with respect to which such penalty is imposed.

"(C) COORDINATION WITH FORFEITURE PROVISION.—The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States under section 5317(d) in connection with the transaction with respect to which such penalty is imposed."

(b) INCREASE IN AMOUNT OF PENALTY FOR FINANCIAL INSTITUTIONS.—Section 5321(a)(1) of title 31, United States Code, is amended—

(1) by striking out "\$10,000" and inserting in lieu thereof "the greater of the amount (not to exceed \$100,000) involved in the transaction or \$25,000"; and

(2) by striking out "section 5315" each place such term appears and inserting in lieu thereof "sections 5314 and 5315".

(c) SEPARATE CIVIL MONEY PENALTY FOR VIOLATION OF SECTION 5314.—Section 5321(a) of title 31, United States Code, is amended by inserting after paragraph (4) (as added by subsection (a) of this section) the following new paragraph:

"(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

"(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who willfully violates any provision of section 5314.

"(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed—

"(i) in the case of violation of such section involving a transaction, the greater of—

"(I) the amount (not to exceed \$100,000) of the transaction; or

"(II) \$25,000; and

(ii) in the case of violation of such section involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, the greater of—

"(I) an amount (not to exceed \$100,000) equal to the balance in the account at the time of the violation; or

31 USC 5324.

“(II) \$25,000.”

(d) **SEPARATE CIVIL MONEY PENALTY FOR NEGLIGENT VIOLATION OF SUBCHAPTER.**—Section 5321(a) of title 31, United States Code, is amended by inserting after paragraph (5) (as added by subsection (d) of this section) the following new paragraph:

“(6) **NEGLIGENCE.**—The Secretary of the Treasury may impose a civil money penalty of not more than \$500 on any financial institution which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter.”

(e) **EXTENSION OF TIME LIMITATIONS FOR ASSESSMENT OF CIVIL PENALTY.**—Section 5321(b) of title 31, United States Code, is amended to read as follows:

“(b) **TIME LIMITATIONS FOR ASSESSMENTS AND COMMENCEMENT OF CIVIL ACTIONS.**—

“(1) **ASSESSMENTS.**—The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

“(2) **CIVIL ACTIONS.**—The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the 2-year period beginning on the later of—

“(A) the date the penalty was assessed; or

“(B) the date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.”

(f) **CLARIFICATION OF RELATIONSHIP BETWEEN CIVIL PENALTY AND CRIMINAL PENALTY.**—Section 5321 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

“(d) **CRIMINAL PENALTY NOT EXCLUSIVE OF CIVIL PENALTY.**—A civil money penalty may be imposed under subsection (a) with respect to any violation of this subchapter notwithstanding the fact that a criminal penalty is imposed with respect to the same violation.”

(g) **AMENDMENTS TO CRIMINAL PENALTY FOR CERTAIN OFFENSES.**—Section 5322(b) of title 31, United States Code, is amended—

- (1) by striking out “illegal activity involving transactions of” and inserting in lieu thereof “any illegal activity involving”; and
- (2) by striking out “5 years” and inserting in lieu thereof “10 years”.

(h) **CONFORMING AMENDMENT.**—Section 5321(c) of title 31, United States Code, is amended by striking out “section 5317(b)” and inserting in lieu thereof “subsection (c) or (d) of section 5317”.

31 USC 5316.

SEC. 1358. MONETARY TRANSACTION REPORTING AMENDMENTS.

(a) **CLOSELY RELATED EVENTS.**—Section 5316 of title 31, United States Code, is amended by adding at the end the following new subsection:

“(d) **CUMULATION OF CLOSELY RELATED EVENTS.**—The Secretary of the Treasury may prescribe regulations under this section defining the term ‘at one time’ for purposes of subsection (a). Such regulations may permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for the purposes of subsection (a).”

(b) **INCHOATE OFFENSE.**—Section 5316(a)(1) of title 31, United States Code, is amended—

- (1) by striking out “or attempts to transport or have transported,” and

(2) by inserting “, is about to transport,” after “transports”.

(c) **TECHNICAL AND CONFORMING AMENDMENT.**—Section 5316(a)(2) of title 31, United States Code, is amended by striking out “\$5,000” and inserting in lieu thereof “\$10,000”.

SEC. 1359. BANKING REGULATORY AGENCY SUPERVISION OF RECORD-KEEPING SYSTEMS.

(a) INSURED BANKS.—

(1) **IN GENERAL.**—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end thereof the following new subsection:

“(s) **COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.**—

“(1) **COMPLIANCE PROCEDURES REQUIRED.**—Each appropriate Federal banking agency shall prescribe regulations requiring insured banks to establish and maintain procedures reasonably designed to assure and monitor the compliance of such banks with the requirements of subchapter II of chapter 53 of title 31, United States Code.

“(2) **EXAMINATIONS OF BANK TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.**—

“(A) **IN GENERAL.**—Each examination of an insured bank by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under paragraph (1).

“(B) **EXAM REPORT REQUIREMENT.**—The report of examination shall describe any problem with the procedures maintained by the insured bank.

“(3) **ORDER TO COMPLY WITH REQUIREMENTS.**—If the appropriate Federal banking agency determines that an insured bank—

“(A) has failed to establish and maintain the procedures described in paragraph (1); or

“(B) has failed to correct any problem with the procedures maintained by such bank which was previously reported to the bank by such agency,

the agency shall issue an order in the manner prescribed in subsection (b) or (c) requiring such bank to cease and desist from its violation of this subsection or regulations prescribed under this subsection.”.

(2) **CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.**—Section 8(i)(2)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2)(i)) is amended by striking out “subsection (b) or (c)” and inserting in lieu thereof “subsection (b), (c), or (s)”.

(b) INSTITUTIONS REGULATED BY THE BANK BOARD.—

(1) **IN GENERAL.**—Section 5(d) of the Home Owners’ Loan Act of 1933 (12 U.S.C. 1464(d)) is amended by adding at the end thereof the following new paragraph:

“(16) **COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.**—

“(A) **COMPLIANCE PROCEDURES REQUIRED.**—The Board shall prescribe regulations requiring associations to establish and maintain procedures reasonably designed to assure and monitor the compliance of such associations with the requirements of subchapter II of chapter 53 of title 31, United States Code.

31 USC 5311 et
seq.

Regulations.

31 USC 5311 et
seq.

“(B) EXAMINATIONS OF ASSOCIATIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

“(i) **IN GENERAL.**—Each examination of an association by the Board shall include a review of the procedures required to be established and maintained under subparagraph (A).

“(ii) **EXAM REPORT REQUIREMENT.**—The report of examination shall describe any problem with the procedures maintained by the association.

“(C) ORDER TO COMPLY WITH REQUIREMENTS.—If the Board determines that an association—

“(i) has failed to establish and maintain the procedures described in subparagraph (A); or

“(ii) has failed to correct any problem with the procedures maintained by such association which was previously reported to the association by the Board,

the Board shall issue an order in the manner prescribed in paragraph (2) or (3) requiring such association to cease and desist from its violation of this paragraph or regulations prescribed under this paragraph.”.

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 5(d)(8)(B)(i) of the Home Owners’ Loan Act of 1933 (12 U.S.C. 1464(d)(8)(B)(i)) is amended by striking out “paragraph (2) or (3)” and inserting in lieu thereof “paragraph (2), (3), or (16)”.

(c) INSURED THRIFT INSTITUTIONS.—

(1) IN GENERAL.—Section 407 of the National Housing Act (12 U.S.C. 1730) is amended by adding at the end thereof the following new subsection:

“(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

“(1) COMPLIANCE PROCEDURES REQUIRED.—The Corporation shall prescribe regulations requiring insured institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such institutions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

Regulations.

“(2) EXAMINATIONS OF INSTITUTIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

31 USC 5311 et seq.

“(A) IN GENERAL.—Each examination of an insured institution by the Corporation shall include a review of the procedures required to be established and maintained under paragraph (1).

“(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured institution.

“(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the Corporation determines that an insured institution—

“(A) has failed to establish and maintain the procedures described in paragraph (1); or

“(B) has failed to correct any problem with the procedures maintained by such institution which was previously reported to the institution by the Corporation, the Corporation shall issue an order in the manner prescribed in subsection (e) or (f) requiring such institution to cease and desist from its violation of this subsection or regulations prescribed under this subsection.”.

(2) **CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.**—Section 407(k)(3)(A) of the National Housing Act (12 U.S.C. 1730(k)(3)(A)) is amended by striking out “subsection (e) or (f) of this section shall forfeit” and inserting in lieu thereof “subsection (e), (f), or (s) of this section shall forfeit”.

(d) **INSURED CREDIT UNIONS.**—

(1) **IN GENERAL.**—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end thereof the following new subsection:

“(q) **COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.**—

Regulations.

“(1) **COMPLIANCE PROCEDURES REQUIRED.**—The Board shall prescribe regulations requiring insured credit unions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such credit unions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

31 USC 5331 et seq.

“(2) **EXAMINATIONS OF CREDIT UNIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.**—

“(A) **IN GENERAL.**—Each examination of an insured credit union by the Board shall include a review of the procedures required to be established and maintained under paragraph (1).

“(B) **EXAM REPORT REQUIREMENT.**—The report of examination shall describe any problem with the procedures maintained by the credit union.

“(3) **ORDER TO COMPLY WITH REQUIREMENTS.**—If the Board determines that an insured credit union—

“(A) has failed to establish and maintain the procedures described in paragraph (1); or

“(B) has failed to correct any problem with the procedures maintained by such credit union which was previously reported to the credit union by the Board,

the Board shall issue an order in the manner prescribed in subsection (e) or (f) requiring such credit union to cease and desist from its violation of this subsection or regulations prescribed under this subsection.”.

(2) **CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.**—Section 206(k)(2)(A) of the Federal Credit Union Act (12 U.S.C. 1786(k)(2)(A)) (as in effect on September 1, 1986) is amended by striking out “subsection (e) or (f)” and inserting in lieu thereof “subsection (e), (f), or (q)”.

SEC. 1360. CHANGE IN BANK CONTROL ACT AMENDMENTS.

(a) **ADDITIONAL REVIEW TIME.**—

(1) **INITIAL EXTENSION AT DISCRETION OF AGENCY.**—The first sentence of section 7(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(1)) is amended by striking out “or extending up to another thirty days” and inserting in lieu thereof “or, in the discretion of the agency, extending for an additional 30 days”.

(2) **ADDITIONAL EXTENSIONS IN CASE OF INCOMPLETE OR INACCURATE NOTICE OR TO CONTINUE INVESTIGATION.**—The second sentence of section 7(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(1)) is amended to read as follows: “The period for disapproval under the preceding sentence may be extended

not to exceed 2 additional times for not more than 45 days each time if—

“(A) the agency determines that any acquiring party has not furnished all the information required under paragraph (6);

“(B) in the agency’s judgment, any material information submitted is substantially inaccurate;

“(C) the agency has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

“(D) the agency determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.”.

31 USC 5331 *et seq.*

(b) DUTY TO INVESTIGATE APPLICANTS FOR CHANGE IN CONTROL APPROVAL.—Section 7(j)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(2)) is amended—

(1) by striking out “(2)” and inserting in lieu thereof “(2)(A) NOTICE TO STATE AGENCY.—”; and

(2) by adding at the end thereof the following new subparagraphs:

“(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall—

“(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

“(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

“(C) REPORT.—The appropriate Federal banking agency shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The agency shall retain such written report as a record of the agency.”.

(c) PUBLIC COMMENT ON CHANGE OF CONTROL NOTICES.—Section 7(j)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(2)) is amended by adding after subparagraph (C) (as added by subsection (b) of this section) the following new subparagraph:

“(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the appropriate Federal banking agency shall, within a reasonable period of time—

“(i) publish the name of the insured bank proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

“(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the bank proposed to be acquired is located, before final consideration of such notice by the agency,

unless the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such bank.”.

(d) INVESTIGATIONS AND ENFORCEMENT.—Section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) is amended—

(1) by redesignating paragraphs (15) and (16) as paragraphs (16) and (17), respectively; and

(2) by inserting after paragraph (14) the following new paragraph:

“(15) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

“(A) INVESTIGATIONS.—The appropriate Federal banking agency may exercise any authority vested in such agency under section 8(n) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the agency, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

“(B) ENFORCEMENT.—Whenever it appears to the appropriate Federal banking agency that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

“(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

“(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

“(C) JURISDICTION.—

“(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the appropriate Federal banking agency under subparagraph (A) as such courts have under section 8(n).

“(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief granted under this paragraph shall be granted without requiring the posting of any bond.”

SEC. 1361. CHANGE IN SAVINGS AND LOAN CONTROL ACT AMENDMENTS.

(a) ADDITIONAL REVIEW TIME.—

(1) INITIAL EXTENSION AT DISCRETION OF AGENCY.—The first sentence of section 407(q)(1) of the National Housing Act (12 U.S.C. 1730(q)(1)) is amended by striking out “or extending up to another thirty days” and inserting in lieu thereof “or, in the discretion of the Corporation, extending for an additional 30 days”.

(2) ADDITIONAL EXTENSIONS IN CASE OF INCOMPLETE OR INACCURATE NOTICE OR TO CONTINUE INVESTIGATION.—The second sentence of section 407(q)(1) of the National Housing Act (12 U.S.C. 1730(q)(1)) is amended to read as follows: “The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

“(A) the Corporation determines that any acquiring party has not furnished all the information required under paragraph (6);

“(B) in the Corporation’s judgment, any material information submitted is substantially inaccurate;

“(C) the Corporation has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

“(D) the Corporation determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.”.

31 USC 5331 et
seq.

(b) DUTY TO INVESTIGATE APPLICANTS FOR CHANGE IN CONTROL APPROVAL.—Section 407(q)(2) of the National Housing Act (12 U.S.C. 1730(q)(2)) is amended—

(1) by striking out “(2)” and inserting in lieu thereof “(2)(A) NOTICE TO STATE AGENCY.—”; and

(2) by adding at the end thereof the following new subparagraphs:

“(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the Corporation shall—

“(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

“(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

“(C) REPORT.—The Corporation shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The Corporation shall retain such written report as a record of the Corporation.”.

(c) PUBLIC COMMENT ON CHANGE OF CONTROL NOTICES.—Section 407(q)(2) of the National Housing Act (12 U.S.C. 1730(q)(2)) is amended by adding after subparagraph (C) (as added by subsection (b) of this section) the following new subparagraph:

“(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the Corporation shall, within a reasonable period of time—

“(i) publish the name of the insured institution proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

“(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the institution proposed to be acquired is located, before final consideration of such notice by the Corporation,

unless the Corporation determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such institution.”.

(d) INVESTIGATIONS AND ENFORCEMENT.—Section 407(q) of the National Housing Act (12 U.S.C. 1730(q)) is amended—

(1) by redesignating paragraphs (16) and (17) as paragraphs (17) and (18), respectively; and

(2) by inserting after paragraph (15) the following new paragraph:

"(16) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

"(A) INVESTIGATIONS.—The Corporation may exercise any authority vested in the Corporation under paragraph (2) or (3) of subsection (m) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the Corporation, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

"(B) ENFORCEMENT.—Whenever it appears to the Corporation that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

"(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

"(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

"(C) JURISDICTION.—

"(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the Corporation under subparagraph (A) as such courts have under paragraph (2) or (3) of subsection (m).

"(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief under this paragraph shall be granted without requiring the posting of any bond."

SEC. 1362. AMENDMENTS TO DEFINITIONS.

(a) UNITED STATES AGENCIES INCLUDES THE POSTAL SERVICE.—Section 5312(a)(2)(U) of title 31, United States Code (defining financial institutions) (as redesignated by subsection (a)) is amended by inserting before the semicolon at the end the following: ", including the United States Postal Service".

(b) UNITED STATES INCLUDES CERTAIN TERRITORIES AND POSSESSIONS.—Section 5312(a)(5) of title 31, United States Code, is amended by inserting "the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands," after "Puerto Rico".

SEC. 1363. INTERNATIONAL INFORMATION EXCHANGE SYSTEM; STUDY OF FOREIGN BRANCHES OF DOMESTIC INSTITUTIONS.

(a) DISCUSSIONS ON INTERNATIONAL INFORMATION EXCHANGE SYSTEM.—The Secretary of the Treasury, in consultation with the Board of Governors of the Federal Reserve System, shall initiate discussions with the central banks or other appropriate governmental authorities of other countries and propose that an information exchange system be established to assist the efforts of each

31 USC 5315
note.

Banks and
banking.

participating country to eliminate the international flow of money derived from illicit drug operations and other criminal activities.

(b) **REPORT ON DISCUSSIONS REQUIRED.**—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall prepare and transmit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the results of discussions initiated pursuant to subsection (a).

(c) **STUDY OF MONEY LAUNDERING THROUGH FOREIGN BRANCHES OF DOMESTIC FINANCIAL INSTITUTIONS REQUIRED.**—The Secretary of the Treasury, in consultation with the Attorney General and the Board of Governors of the Federal Reserve System, shall conduct a study of—

(1) the extent to which foreign branches of domestic institutions are used—

(A) to facilitate illicit transfers of coins, currency, and other monetary instruments (as such term is defined in section 5312(a)(3) of title 31, United States Code) into and out of the United States; and

(B) to evade reporting requirements with respect to any transfer of coins, currency, and other monetary instruments (as so defined) into and out of the United States;

(2) the extent to which the law of the United States is applicable to the activities of such foreign branches; and

(3) methods for obtaining the cooperation of the country in which any such foreign branch is located for purposes of enforcing the law of the United States with respect to transfers, and reports on transfers, of such monetary instruments into and out of the United States.

(d) **REPORT ON STUDY OF FOREIGN BRANCHES REQUIRED.**—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall prepare and transmit a report to the Committee on Banking, Finance and Urban Affairs and the Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate on the results of the study conducted pursuant to subsection (c).

SEC. 1364. EFFECTIVE DATES.

(a) The amendment made by section 1354 shall apply with respect to transactions for the payment, receipt, or transfer of United States coins or currency or other monetary instruments completed after the end of the 3-month period beginning on the date of the enactment of this Act.

31 USC 5324
note.

(b) The amendments made by sections 1355(b) and 1357(a) shall apply with respect to violations committed after the end of the 3-month period beginning on the date of the enactment of this Act.

31 USC 5317
note.

(c) The amendments made by section 1357 (other than subsection (a) of such section) shall apply with respect to violations committed after the date of the enactment of this Act.

31 USC 5321
note.

(d) Any regulation prescribed under the amendments made by section 1358 shall apply with respect to transactions completed after the effective date of such regulation.

31 USC 5316
note.

(e) The regulations required to be prescribed under the amendments made by section 1359 shall take effect at the end of the 3-month period beginning on the date of the enactment of this Act.

12 USC 1464
note.

12 USC 1730
note.

(f) The amendments made by sections 1360 and 1361 shall apply with respect to notices of proposed acquisitions filed after the date of the enactment of this Act.

SEC. 1365. PREDICATE OFFENSES.

(a) Subsection (b) of section 1952 of title 18, United States Code, is amended by striking out "or" before "(2)", and by striking out the period at the end thereof and inserting in lieu thereof the following: ", or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title.".

31 USC 5331 *et*
seq.

(b) Subsection (l) of section 1961 of title 18, United States Code, is amended by inserting "section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)," after "section 1955 (relating to the prohibition of illegal gambling businesses),".

(c) Subsection (l) of section 2516 of title 18, United States Code, is amended in paragraph (c) by inserting "section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)," after "section 1955 (prohibition of relating to business enterprises of gambling),".

SEC. 1366. FORFEITURE.

(a) Title 18 of the United States Code is amended by adding after chapter 45 a new chapter 46 as follows:

"CHAPTER 46—FORFEITURE

"Sec.

"981. Civil Forfeiture.

"982. Criminal Forfeiture.

18 USC 981.

"§ 981. Civil forfeiture

"(a)(1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:

"(A) Any property, real or personal, which represents the gross receipts a person obtains, directly or indirectly, as a result of a violation of section 1956 or 1957 of this title, or which is traceable to such gross receipts.

"(B) Any property within the jurisdiction of the United States, which represents the proceeds of an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense or activity would be punishable by death or imprisonment for a term exceeding one year and which would be punishable by imprisonment for a term exceeding one year if such act or activity had occurred within the jurisdiction of the United States.

21 USC 801 note.

"(C) Any coin and currency (or other monetary instrument as the Secretary of the Treasury may prescribe) or any interest in other property, including any deposit in a financial institution, traceable to such coin or currency involved in a transaction or attempted transaction in violation of section 5313(a) or 5324 of title 31 may be seized and forfeited to the United States Government. No property or interest in property shall be seized or

forfeited if the violation is by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, officer, or employee thereof.

“(2) No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder.

“(b) Any property subject to forfeiture to the United States under subsection (a)(1)(A) or (a)(1)(B) of this section may be seized by the Attorney General or, with respect to property involved in a violation of section 1956 or 1957 of this title investigated by the Secretary of the Treasury, may be seized by the Secretary of the Treasury, and any property subject to forfeiture under subsection (a)(1)(C) of this section may be seized by the Secretary of the Treasury, in each case upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

“(1) the seizure is pursuant to a lawful arrest or search; or

“(2) the Attorney General or the Secretary of the Treasury, as the case may be, has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure, in which event proceedings under subsection (d) of this section shall be instituted promptly.

18 USC app.

“(c) Property taken or detained under this section shall not be replevable, but shall be deemed to be in the custody of the Attorney General or the Secretary of the Treasury, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General or the Secretary of the Treasury, as the case may be, may—

“(1) place the property under seal;

“(2) remove the property to a place designated by him; or

“(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

“(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General or the Secretary of the Treasury, as the case may be.

“(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General or the Secretary of the Treasury, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine to—

State and local
governments.

"(1) any other Federal agency; or
"(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property.

The Attorney General or the Secretary of the Treasury, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General or the Secretary of the Treasury pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General or the Secretary of the Treasury may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials.

"(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(g) The filing of an indictment or information alleging a violation of law which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding.

"(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

"(i) In the case of property subject to forfeiture under subsection (a)(1)(B), the following additional provisions shall, to the extent provided by treaty, apply:

"(1) Notwithstanding any other provision of law, except section 3 of the Anti Drug Abuse Act of 1986, whenever property is civilly or criminally forfeited under the Controlled Substances Act, the Attorney General may, with the concurrence of the Secretary of State, equitably transfer any conveyance, currency, and any other type of personal property which the Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under the Controlled

21 USC 801 note.

Substances Act to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. Such property when forfeited pursuant to subsection (a)(1)(B) of this section may also be transferred to a foreign country pursuant to a treaty providing for the transfer of forfeited property to such foreign country. A decision by the Attorney General pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subchapter, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General may, in his discretion, set. Transfers may be made under this subsection during a fiscal year to a country that is subject to paragraph (1)(A) of section 481(h) of the Foreign Assistance Act of 1961 (relating to restrictions on United States assistance) only if there is a certification in effect with respect to that country for that fiscal year under paragraph (2) of that section.

21 USC 801 note.

“(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including property which is sought as evidence of a crime committed in the foreign country.

22 USC 2291.

“(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

“(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

“(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

“(j) For purposes of this section—

“(1) the term ‘Attorney General’ means the Attorney General or his delegate; and

“(2) the term ‘Secretary of the Treasury’ means the Secretary of the Treasury or his delegate.

18 USC 982.

“§ 982. Criminal forfeiture

Real property.

“(a) The court, in imposing sentence on a person convicted of an offense under section 1956 or 1957 of this title shall order that the person forfeit to the United States any property, real or personal, which represents the gross receipts the person obtained, directly or indirectly, as a result of such offense, or which is traceable to such gross receipts.

“(b) The provisions of subsections 413 (c) and (e) through (o) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (c) and (e)—(o)) shall apply to property subject to forfeiture under this section, to any seizure or disposition thereof, and to any administrative or judicial proceeding in relation thereto, if not inconsistent with this section.”

(b) The chapter analysis of part I of title 18, United States Code, is amended by inserting after the item for chapter 45 the following:

“46. Forfeiture 981”.

18 USC 981 note.

SEC. 1367. SEVERABILITY CLAUSE.

If any provision of this subtitle or any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the provisions of every other part, and their application, shall not be affected thereby.

Career
Criminals
Amendment Act
of 1986.
18 USC 921 note.

Subtitle I—Armed Career Criminals

SEC. 1401. SHORT TITLE.

This subtitle may be cited as the “Career Criminals Amendment Act of 1986”.

SEC. 1402. EXPANSION OF PREDICATE OFFENSES FOR ARMED CAREER CRIMINAL PENALTIES.

(a) **IN GENERAL.**—Section 924(e)(1) of title 18, United States Code, is amended by striking out “for robbery or burglary, or both,” and inserting in lieu thereof “for a violent felony or a serious drug offense, or both,”.

(b) **DEFINITIONS.**—Section 924(e)(2) of title 18, United States Code, is amended by striking out subparagraph (A) and all that follows through subparagraph (B) and inserting in lieu thereof the following:

“(A) the term ‘serious drug offense’ means—

“(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the first section or section 3 of Public Law 96-350 (21 U.S.C. 955a et seq.), for which a maximum term of imprisonment of ten years or more is prescribed by law; or

“(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21



Anti-money laundering and counter-terrorist financing measures

United States

Mutual Evaluation Report

December 2016



Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> Lack of sufficient and effective mitigation measures against vulnerabilities of the high-end real estate agents, lawyers, accountants, trustees and CFAs due to non-coverage under comprehensive BSA AML/CFT regime. Exemptions and thresholds not supported by proven low risk. Scope issue: All investment advisers are not covered
2. National cooperation and coordination	C	The Recommendation is fully met.
3. Money laundering offense	LC	<ul style="list-style-type: none"> Mere possession is not criminalised and mere acquisition through the commission of the predicate offense is not considered ML. Tax crimes are not specifically predicates for ML. The list of predicate offenses for ML does not explicitly extend to all conduct that occurred in another country.
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> The power to confiscated instrumentalities is not available for all predicate offenses. There is no general provision to freeze/seize non-tainted assets prior to a conviction to preserve them in order to satisfy a value-based confiscation order.
5. Terrorist financing offense	C	The Recommendation is fully met.
6. Targeted financial sanctions related to terrorism & TF	LC	<ul style="list-style-type: none"> TFS have not been applied to all persons designated by the UN pursuant to UNSCRs 1267/1988/1989 Designations are not always implemented without delay.
7. Targeted financial sanctions related to proliferation	LC	<ul style="list-style-type: none"> TFS have been not been applied to all persons designated by the UN pursuant to UNSCRs 1718 and 1737.
8. Non-profit organisations	LC	<ul style="list-style-type: none"> The required 5 years retention period for records of domestic and international transaction and other information is not met in all circumstances. Not all houses of worship apply to IRS for preferential tax treatment and not all are subject to state requirements in terms of licensing/registration.
9. Financial institution secrecy laws	C	The Recommendation is fully met.
10. Customer due diligence	PC	<ul style="list-style-type: none"> Lack of CDD requirements to ascertain and verify the identity of BO (except in very limited cases). Scope issue: Not all investment advisers are covered. FIs (other than in the securities and derivatives sectors) are not explicitly required to identify and verify the identity of persons authorized to act on behalf of customers FIs are not explicitly required to understand and, as appropriate, obtain information on the purpose and intended nature of the business relationship, or understand the ownership and control structure of customers that are legal persons/arrangements. Beneficiaries of a life insurance policy are not specifically required to be included as a relevant risk factor in determining whether

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German Criminal Code (Strafgesetzbuch – StGB)

Criminal Code in the version published on 13 November 1998 (Federal Law Gazette I, p. 3322), as last amended by Article 2 of the Act of 19 June 2019 (Federal Law Gazette I, p. 844)

General Part

Chapter 1 The criminal law

Title 1 Scope of application

Section 1 No punishment without law

An act can only incur a penalty if criminal liability was established by law before the act was committed.

Section 2 Temporal application

- (1) The penalty and any incidental legal consequences are determined by the law which is in force at the time of the act.
- (2) If the threatened penalty is amended during the commission of the act, the law which is in force at the time the act is completed is to be applied.
- (3) If the law in force at the time of the completion of the act is amended before judgment, the most lenient law is to be applied.
- (4) A law which was intended to be in force only for a determinate time is, as a rule, still to be applied to acts committed whilst it was in force even after it ceases to be in force. This does not apply to the extent that a law provides otherwise.
- (5) Subsections (1) to (4) apply accordingly to the confiscation and rendering unusable of objects.
- (6) Unless otherwise provided by law, decisions as to measures of reform and prevention are to be taken according to the law which is in force at the time of decision.

Section 3 Application to offences committed on German territory

German criminal law applies to offences committed on German territory.

- (5) Whoever, by committing the offence, also intends to prevent, in whole or in part, themselves incurring a penalty or being subjected to a measure, or a penalty or measure imposed on them being enforced incurs no penalty under this provision.
- (6) Whoever commits the offence for the benefit of a relative is exempt from punishment.

Section 258a

Obstruction of prosecution or punishment in public office

- (1) If, in the cases under section 258 (1), the offender is a public official who is called to be involved in criminal proceedings or proceedings to order a measure (section 11 (1) no. 8) or, in the cases under section 258 (2), is a public official who is called to be involved in enforcing a penalty or measure, the penalty is imprisonment for a term of between six months and five years, in less serious cases imprisonment for a term not exceeding three years or a fine.
- (2) The attempt is punishable.
- (3) Section 258 (3) and (6) does not apply.

Section 259

Handling stolen goods

- (1) Whoever, for the purpose of personal enrichment or the enrichment of a third party, buys or procures by other means for themselves or a third party, disposes of or assists in disposing of property which another has stolen or otherwise obtained by an unlawful act directed against the property of another incurs a penalty of imprisonment for a term not exceeding five years or a fine.
- (2) Sections 247 and 248a apply analogously.
- (3) The attempt is punishable.

Section 260

Commercial handling of stolen goods; handling as member of gang

- (1) Whoever handles stolen goods
1. on a commercial basis or
 2. as a member of a gang whose purpose is the continued commission of robbery, theft or the handling of stolen goods
- incurs a penalty of imprisonment for a term of between six months and 10 years.
- (2) The attempt is punishable.
- (3) (repealed)

Section 260a

Commercial handling as member of gang

- (1) Whoever, on a commercial basis, handles stolen goods as a member of a gang whose purpose is the continued commission of robbery, theft or the handling of stolen goods incurs a penalty of imprisonment for a term of between one year and 10 years.
- (2) In less serious cases, the penalty is imprisonment for a term of between six months and five years.
- (3) (repealed)

Section 261

Money laundering; concealing unlawfully acquired assets

- (1) Whoever hides an object derived from one of the unlawful acts referred to in sentence 2, conceals its origin, or obstructs or endangers the investigation of its origin, its being found, its confiscation or its being secured incurs a penalty of imprisonment for a term of between three months and five years. Unlawful acts within the meaning of sentence 1 are
1. serious criminal offences,
 2. less serious criminal offences under

- a) section 108e, section 332 (1) and (3) and section 334, in each case also in conjunction with section 335a,
 - b) section 29 (1) sentence 1 no. 1 of the Narcotics Act and section 19 (1) no. 1 of the Precursors Control Act (*Grundstoffüberwachungsgesetz*),
3. less serious criminal offences under section 373 and under section 374 (2) of the Fiscal Code, in each case also in conjunction with section 12 (1) of the Common Market Organisations and Direct Payments Implementation Act (*Gesetz zur Durchführung der Gemeinsamen Marktorganisation und der Direktzahlungen*),
4. less serious criminal offences under
- a) sections 152a and 181a, section 232 (1) to (3) sentence 1 and (4), section 232a (1) and (2), section 232b (1) and (2), section 233 (1) to (3), section 233a (1) and (2), sections 242, 246, 253, 259, 263 to 264, 265c, 266, 267, 269, 271, 284 and 299, section 326 (1), (2) and (4), section 328 (1), (2) and (4) and section 348,
 - b) section 96 of the Residence Act, section 84 of the Asylum Act, section 370 of the Fiscal Code, section 119 (1) to (4) of the Securities Trading Act (*Wertpapierhandelsgesetz*), sections 143, 143a and 144 of the Trade Mark Act (*Markengesetz*), section 106 to 108b of the Copyright Act (*Urheberrechtsgesetz*), section 25 of the Utility Models Act (*Gebrauchsmustergesetz*), sections 51 and 65 of the Design Act (*Designgesetz*), section 142 of the Patent Act (*Patentgesetz*), section 10 of the Semiconductor Protection Act (*Halbleiterschutzgesetz*) and section 39 of the Plant Variety Protection Act (*Sortenschutzgesetz*)

which were committed on a commercial basis or by a member of a gang whose purpose is the continued commission of such offences and

5. less serious criminal offences under sections 89a and 89c and under section 129 and section 129a (3) and (5), in each case also in conjunction with section 129b (1), as well as less serious criminal offences committed by a member of a criminal or terrorist organisation (section 129 and section 129a, in each case also in conjunction with section 129b (1)).

Sentence 1 applies, in cases of tax evasion committed on a commercial basis or as a gang as defined in section 370 of the Fiscal Code, to expenditure saved by virtue of the tax evasion and of unlawfully obtained tax refunds and tax rebates, and, in the cases under sentence 2 no. 3, sentence 1 also applies to an object in relation to which fiscal charges have been evaded.

(2) Whoever

- 1. procures an object indicated in subsection (1) for themselves or a third party or
- 2. keeps an object indicated in subsection (1) in their custody or uses it for themselves or a third party if they were aware of the origin of the object at the time of obtaining possession of it

incurs the same penalty.

(3) The attempt is punishable.

(4) In especially serious cases, the penalty is imprisonment for a term of between six months and 10 years. An especially serious case typically occurs where the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of money laundering.

(5) Whoever, in the cases under subsections (1) or (2), is recklessly unaware of the fact that the object is derived from an unlawful act referred to in subsection (1) incurs a penalty of imprisonment for a term not exceeding two years or a fine.

(6) The act incurs no penalty pursuant to subsection (2) if a third party previously obtained the object without having thereby committed an offence.

(7) Objects relating to the offence may be confiscated. Section 74a applies.

(8) Objects derived from an offence committed abroad of the type referred to in subsection (1) are equivalent to the objects indicated in subsections (1), (2) and (5) if the offence is also punishable at the place of its commission.

(9) Whoever

1. voluntarily reports the offence to the competent authority or voluntarily occasions such a report to be made, unless the act had already been discovered, in whole or in part, at the time and the offender knew this or, based on a reasonable assessment, should have expected this or

2. in the cases under subsections (1) or (2), under the conditions of no. 1 causes the object relating to the offence to be officially secured

does not incur a penalty under subsections (1) to (5). Whoever is liable on account of participation in the prior offence also does not incur a penalty under subsections (1) to (5). Exemption from punishment under sentence 2 is ruled out if the offender or participant puts into circulation objects derived from an unlawful act as referred to in subsection (1) sentence 2 and by doing so conceals its unlawful origin.

(10) (repealed)

Section 262

Supervision of conduct

In the cases under sections 259 to 261, the court may make an order for the supervision of conduct (section 68 (1)).

Chapter 22

Fraud and embezzlement

Section 263

Fraud

(1) Whoever, with the intention of obtaining an unlawful pecuniary benefit for themselves or a third party, damages the assets of another by causing or maintaining an error under false pretences or distorting or suppressing true facts incurs a penalty of imprisonment for a term not exceeding five years or a fine.

(2) The attempt is punishable.

(3) In especially serious cases, the penalty is imprisonment for a term of between six months and 10 years. An especially serious case typically occurs where the offender

1. acts on a commercial basis or as a member of a gang whose purpose is the continued commission of forgery of documents or fraud,

2. causes a major financial loss to or acts with the intention of placing a large number of persons in danger of financial loss by the continued commission of fraud,

3. places another person in financial hardship,

4. abuses his or her powers or position as a public official or European official or

5. pretends that an insured event has happened after they or another person have set fire to an object of significant value or destroyed it, in whole or in part, by setting fire to it or caused the sinking or grounding of a ship.

(4) Section 243 (2) and sections 247 and 248a apply accordingly.

Mutual Evaluation Report

Anti-Money Laundering and Combating the
Financing of Terrorism

GERMANY

19 February 2010

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

These ratings are based only on the essential criteria set out in the Methodology, and defined in the following table, which also shows how many ratings from each category Germany obtained:

Rating Label	Description	Germany
Compliant (C)	The Recommendation is fully observed with respect to all essential criteria.	5
Largely compliant (LC)	There are only minor shortcomings, with a large majority of the essential criteria being fully met.	24
Partially compliant (PC)	The country has taken some substantive action and complies with some of the essential criteria.	15
Non-compliant (NC)	There are major shortcomings, with a large majority of the essential criteria not being met.	5
Not applicable (NA)	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.	0

Forty Recommendations	Rating	Summary of factors underlying rating ⁸¹
Legal systems		
1. ML offense	PC	<ul style="list-style-type: none"> • “Counterfeiting and piracy of products”, and “insider trading and market manipulation” are not predicate offenses to ML. • The ML offense cannot be applied to persons who commit and are convicted for the predicate offense. The inability to do this is not supported by principles that amount to fundamental principles under the FATF standards. • Issues of effectiveness: <ul style="list-style-type: none"> ○ The comparatively low level of sanctions for the offense and the burden of proof required to establish that proceeds relate to a predicate crime encourage the use of charges other than ML to pursue serious and organized crime or situations of third party ML. ○ The restriction on applying the ML offense to persons who are convicted of the predicate offense tends to result in ML investigations being dropped in favor of investigations into the predicate offense.
2. ML offense—mental element and corporate liability	LC	<ul style="list-style-type: none"> • Natural and legal persons are not subject to effective, proportionate and dissuasive sanctions for basic ML.

⁸¹ These factors are only required to be set out when the rating is less than Compliant.



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 7

MONEY LAUNDERING

Modifications etc. (not altering text)

- C1** Pt. 7 applied (24.2.2003) by [Proceeds of Crime Act 2002 \(Crown Servants\) Regulations 2003 \(S.I. 2003/173\)](#), regs. 1, 3

Offences

327 Concealing etc

- (1) A person commits an offence if he—
- (a) conceals criminal property;
 - (b) disguises criminal property;
 - (c) converts criminal property;
 - (d) transfers criminal property;
 - (e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.
- (2) But a person does not commit such an offence if—
- (a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
 - (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

Changes to legislation: Proceeds of Crime Act 2002, Part 7 is up to date with all changes known to be in force on or before 25 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

[^{F1}(2A) Nor does a person commit an offence under subsection (1) if—

- (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and
- (b) the relevant criminal conduct—
 - (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and
 - (ii) is not of a description prescribed by an order made by the Secretary of State.

(2B) In subsection (2A) “ the relevant criminal conduct ” is the criminal conduct by reference to which the property concerned is criminal property.]

[^{F2}(2C) A deposit-taking body [^{F3}, electronic money institution or payment institution] that does an act mentioned in paragraph (c) or (d) of subsection (1) does not commit an offence under that subsection if—

- (a) it does the act in operating an account maintained with it, and
- (b) the value of the criminal property concerned is less than the threshold amount determined under section 339A for the act.]

(3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

Textual Amendments

- F1** S. 327(2A)(2B) inserted (15.5.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 102(2), 178(8)**; [S.I. 2006/1085](#), art. 3
- F2** S. 327(2C) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 103(2), 178(8)**; [S.I. 2005/1521](#), art. 3(1)(c)
- F3** Words in s. 327(2C) inserted (29.6.2021) by [Financial Services Act 2021 \(c. 22\)](#), **ss. 32(2), 49(2)(b)**

Commencement Information

- I1** S. 327 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

328 Arrangements

(1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

(2) But a person does not commit such an offence if—

- (a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
- (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
- (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

Changes to legislation: *Proceeds of Crime Act 2002, Part 7 is up to date with all changes known to be in force on or before 25 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- [^{F4}(3) Nor does a person commit an offence under subsection (1) if—
- (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and
 - (b) the relevant criminal conduct—
 - (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and
 - (ii) is not of a description prescribed by an order made by the Secretary of State.
- (4) In subsection (3) “ the relevant criminal conduct ” is the criminal conduct by reference to which the property concerned is criminal property.]
- [^{F5}(5) A deposit-taking body [^{F6}, electronic money institution or payment institution] that does an act mentioned in subsection (1) does not commit an offence under that subsection if—
- (a) it does the act in operating an account maintained with it, and
 - (b) the arrangement facilitates the acquisition, retention, use or control of criminal property of a value that is less than the threshold amount determined under section 339A for the act.]

Textual Amendments

- F4** S. 328(3)(4) inserted (15.5.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 102(3), 178(8)**; [S.I. 2006/1085](#), art. 3
- F5** S. 328(5) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 103(3), 178(8)**; [S.I. 2005/1521](#), art. 3(1)(c)
- F6** Words in s. 328(5) inserted (29.6.2021) by [Financial Services Act 2021 \(c. 22\)](#), **ss. 32(3), 49(2)(b)**

Commencement Information

- I2** S. 328 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

329 Acquisition, use and possession

- (1) A person commits an offence if he—
- (a) acquires criminal property;
 - (b) uses criminal property;
 - (c) has possession of criminal property.
- (2) But a person does not commit such an offence if—
- (a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
 - (c) he acquired or used or had possession of the property for adequate consideration;

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- (d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

[^{F7}(2A) Nor does a person commit an offence under subsection (1) if—

- (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and
- (b) the relevant criminal conduct—
 - (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and
 - (ii) is not of a description prescribed by an order made by the Secretary of State.

(2B) In subsection (2A) “ the relevant criminal conduct ” is the criminal conduct by reference to which the property concerned is criminal property.]

[^{F8}(2C) A deposit-taking body [^{F9}, electronic money institution or payment institution] that does an act mentioned in subsection (1) does not commit an offence under that subsection if—

- (a) it does the act in operating an account maintained with it, and
- (b) the value of the criminal property concerned is less than the threshold amount determined under section 339A for the act.]

(3) For the purposes of this section—

- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
- (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession;
- (c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

Textual Amendments

- F7** S. 329(2A)(2B) inserted (15.5.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 102(4), 178(8)**; [S.I. 2006/1085](#), art. 3
- F8** S. 329(2C) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 103(4), 178(8)**; [S.I. 2005/1521](#), art. 3(1)(c)
- F9** Words in [s. 329\(2C\)](#) inserted (29.6.2021) by [Financial Services Act 2021 \(c. 22\)](#), **ss. 32(4), 49(2)(b)**

Commencement Information

- I3** S. 329 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

330 Failure to disclose: regulated sector

- (1) A person commits an offence if [^{F10}the conditions in subsections (2) to (4) are satisfied].
- (2) The first condition is that he—
 - (a) knows or suspects, or

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- (b) has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.
- (3) The second condition is that the information or other matter—
 - (a) on which his knowledge or suspicion is based, or
 - (b) which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a business in the regulated sector.
- [^{F11}(3A) The third condition is—
 - (a) that he can identify the other person mentioned in subsection (2) or the whereabouts of any of the laundered property, or
 - (b) that he believes, or it is reasonable to expect him to believe, that the information or other matter mentioned in subsection (3) will or may assist in identifying that other person or the whereabouts of any of the laundered property.
- (4) The fourth condition is that he does not make the required disclosure to—
 - (a) a nominated officer, or
 - (b) a person authorised for the purposes of this Part by [^{F12}the Director General of the National Crime Agency],as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.
- (5) The required disclosure is a disclosure of—
 - (a) the identity of the other person mentioned in subsection (2), if he knows it,
 - (b) the whereabouts of the laundered property, so far as he knows it, and
 - (c) the information or other matter mentioned in subsection (3).
- (5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.
- (6) But he does not commit an offence under this section if—
 - (a) he has a reasonable excuse for not making the required disclosure,
 - (b) he is a professional legal adviser [^{F13}or ^{F14}... relevant professional adviser] and—
 - (i) if he knows either of the things mentioned in subsection (5)(a) and (b), he knows the thing because of information or other matter that came to him in privileged circumstances, or
 - (ii) the information or other matter mentioned in subsection (3) came to him in privileged circumstances, or
 - (c) subsection (7) [^{F15}or (7B)] applies to him.]
- (7) This subsection applies to a person if—
 - (a) he does not know or suspect that another person is engaged in money laundering, and
 - (b) he has not been provided by his employer with such training as is specified by the Secretary of State by order for the purposes of this section.
- [^{F16}(7A) Nor does a person commit an offence under this section if—
 - (a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and

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- (b) the money laundering—
 - (i) is not unlawful under the criminal law applying in that country or territory, and
 - (ii) is not of a description prescribed in an order made by the Secretary of State.]

[^{F17}(7B) This subsection applies to a person if—

- (a) he is employed by, or is in partnership with, a professional legal adviser or a relevant professional adviser to provide the adviser with assistance or support,
- (b) the information or other matter mentioned in subsection (3) comes to the person in connection with the provision of such assistance or support, and
- (c) the information or other matter came to the adviser in privileged circumstances.]

(8) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned—

- (a) issued by a supervisory authority or any other appropriate body,
- (b) approved by the Treasury, and
- (c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(9) A disclosure to a nominated officer is a disclosure which—

- (a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section, and
- (b) is made in the course of the alleged offender's employment ^{F18}....

[^{F19}(9A) But a disclosure which satisfies paragraphs (a) and (b) of subsection (9) is not to be taken as a disclosure to a nominated officer if the person making the disclosure—

- (a) is a professional legal adviser [^{F20} or ^{F21}... relevant professional adviser],
- (b) makes it for the purpose of obtaining advice about making a disclosure under this section, and
- (c) does not intend it to be a disclosure under this section.]

(10) Information or other matter comes to a professional legal adviser [^{F22} or ^{F23}... relevant professional adviser] in privileged circumstances if it is communicated or given to him—

- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,
- (b) by (or by a representative of) a person seeking legal advice from the adviser, or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(11) But subsection (10) does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(12) Schedule 9 has effect for the purpose of determining what is—

- (a) a business in the regulated sector;
- (b) a supervisory authority.

(13) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

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- [^{F24}(14) A relevant professional adviser is an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for—
- (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
 - (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.]

Textual Amendments

- F10** Words in s. 330(1) substituted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 104\(2\), 178\(8\); S.I. 2005/1521, art. 3\(1\)\(c\)](#)
- F11** S. 330(3A)-(6) substituted for s. 330(4)-(6) (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 104\(3\), 178\(8\); S.I. 2005/1521, art. 3\(1\)\(c\) \(with art. 3\(4\)\)](#)
- F12** Words in s. 330(4)(b) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(2\), Sch. 8 para. 129; S.I. 2013/1682, art. 3\(v\)](#)
- F13** Words in s. 330(6)(b) inserted (21.2.2006) by [Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 \(Amendment\) Order 2006 \(S.I. 2006/308\), arts. 1, 2\(2\)](#)
- F14** Word in s. 330(6)(b) omitted (26.12.2007) by virtue of [Terrorism Act 2000 and Proceeds of Crime Act 2002 \(Amendment\) Regulations 2007 \(S.I. 2007/3398\), reg. 1\(2\), Sch. 2 para. 2](#)
- F15** Words in s. 330(6)(c) inserted (21.2.2006) by [Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 \(Amendment\) Order 2006 \(S.I. 2006/308\), arts. 1, 2\(3\)](#)
- F16** S. 330(7A) inserted (15.5.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 102\(5\), 178\(8\); S.I. 2006/1085, art. 3](#)
- F17** S. 330(7B) inserted (21.2.2006) by [Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 \(Amendment\) Order 2006 \(S.I. 2006/308\), arts. 1, 2\(4\)](#)
- F18** Words in s. 330(9)(b) repealed (1.7.2005) by virtue of [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 105\(2\), 178\(8\), Sch. 17 Pt. 2; S.I. 2005/1521, art. 3\(1\)\(c\)\(ee\)](#)
- F19** S. 330(9A) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 106\(2\), 178\(8\); S.I. 2005/1521, art. 3\(1\)\(c\)](#)
- F20** Words in s. 330(9A)(a) inserted (21.2.2006) by [Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 \(Amendment\) Order 2006 \(S.I. 2006/308\), arts. 1, 2\(2\)](#)
- F21** Word in s. 330(9A)(a) omitted (26.12.2007) by virtue of [Terrorism Act 2000 and Proceeds of Crime Act 2002 \(Amendment\) Regulations 2007 \(S.I. 2007/3398\), reg. 1\(2\), Sch. 2 para. 2](#)
- F22** Words in s. 330(10) inserted (21.2.2006) by [Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 \(Amendment\) Order 2006 \(S.I. 2006/308\), arts. 1, 2\(2\)](#)
- F23** Word in s. 330(10) omitted (26.12.2007) by virtue of [Terrorism Act 2000 and Proceeds of Crime Act 2002 \(Amendment\) Regulations 2007 \(S.I. 2007/3398\), reg. 1\(2\), Sch. 2 para. 2](#)
- F24** S. 330(14) inserted (21.2.2006) by [Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 \(Amendment\) Order 2006 \(S.I. 2006/308\), arts. 1, 2\(5\)](#)

Modifications etc. (not altering text)

- C2** S. 330 restricted (1.3.2004) by [The Proceeds of Crime Act 2002 \(Business in the Regulated Sector and Supervisory Authorities\) Order 2003 \(S.I. 2003/3074\), arts. 1, 4](#)

Commencement Information

- I4** S. 330 in force at 24.2.2003 by [S.I. 2003/120, art. 2, Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333, art. 14](#))

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331 Failure to disclose: nominated officers in the regulated sector

- (1) A person nominated to receive disclosures under section 330 commits an offence if the conditions in subsections (2) to (4) are satisfied.
- (2) The first condition is that he—
 - (a) knows or suspects, or
 - (b) has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.
- (3) The second condition is that the information or other matter—
 - (a) on which his knowledge or suspicion is based, or
 - (b) which gives reasonable grounds for such knowledge or suspicion, came to him in consequence of a disclosure made under section 330.
- [^{F25}(3A) The third condition is—
 - (a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under section 330,
 - (b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or
 - (c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.
- (4) The fourth condition is that he does not make the required disclosure to a person authorised for the purposes of this Part by [^{F26}the Director General of the National Crime Agency] as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.
- (5) The required disclosure is a disclosure of—
 - (a) the identity of the other person mentioned in subsection (2), if disclosed to him under section 330,
 - (b) the whereabouts of the laundered property, so far as disclosed to him under section 330, and
 - (c) the information or other matter mentioned in subsection (3).
- (5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.
- (6) But he does not commit an offence under this section if he has a reasonable excuse for not making the required disclosure.]
- [^{F27}(6A) Nor does a person commit an offence under this section if—
 - (a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and
 - (b) the money laundering—
 - (i) is not unlawful under the criminal law applying in that country or territory, and
 - (ii) is not of a description prescribed in an order made by the Secretary of State.]

Changes to legislation: *Proceeds of Crime Act 2002, Part 7 is up to date with all changes known to be in force on or before 25 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned—
- (a) issued by a supervisory authority or any other appropriate body,
 - (b) approved by the Treasury, and
 - (c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.
- (8) Schedule 9 has effect for the purpose of determining what is a supervisory authority.
- (9) An appropriate body is a body which regulates or is representative of a trade, profession, business or employment.

Textual Amendments

- F25** S. 331(3A)-(6) substituted for s. 331(4)-(6) (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 104(4)**, 178(8); [S.I. 2005/1521](#), art. 3(1)(c) (with art. 3(4))
- F26** Words in s. 331(4) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 8 para. 130**; [S.I. 2013/1682](#), art. 3(v)
- F27** S. 331(6A) inserted (15.5.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 102(6)**, 178(8); [S.I. 2006/1085](#), art. 3

Modifications etc. (not altering text)

- C3** S. 331 restricted (1.3.2004) by [The Proceeds of Crime Act 2002 \(Business in the Regulated Sector and Supervisory Authorities\) Order 2003 \(S.I. 2003/3074\)](#), arts. 1, 4

Commencement Information

- I5** S. 331 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

332 Failure to disclose: other nominated officers

- (1) A person nominated to receive disclosures under section 337 or 338 commits an offence if the conditions in subsections (2) to (4) are satisfied.
- (2) The first condition is that he knows or suspects that another person is engaged in money laundering.
- (3) The second condition is that the information or other matter on which his knowledge or suspicion is based came to him in consequence of a disclosure made under [^{F28}the applicable section].

[^{F29}(3A) The third condition is—

- (a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under the applicable section,
- (b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or
- (c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.

Changes to legislation: Proceeds of Crime Act 2002, Part 7 is up to date with all changes known to be in force on or before 25 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (4) The fourth condition is that he does not make the required disclosure to a person authorised for the purposes of this Part by ^{F30}the Director General of the National Crime Agency] as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.
- (5) The required disclosure is a disclosure of—
- (a) the identity of the other person mentioned in subsection (2), if disclosed to him under the applicable section,
 - (b) the whereabouts of the laundered property, so far as disclosed to him under the applicable section, and
 - (c) the information or other matter mentioned in subsection (3).
- (5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects that other person to be engaged in.
- (5B) The applicable section is section 337 or, as the case may be, section 338.
- (6) But he does not commit an offence under this section if he has a reasonable excuse for not making the required disclosure.]
- ^{F31}(7) Nor does a person commit an offence under this section if—
- (a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and
 - (b) the money laundering—
 - (i) is not unlawful under the criminal law applying in that country or territory, and
 - (ii) is not of a description prescribed in an order made by the Secretary of State.]

Textual Amendments

- F28** Words in s. 332(3) substituted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 104(5), 178(8)**; [S.I. 2005/1521](#), **art. 3(1)(c)**
- F29** S. 332(3A)-(6) substituted for s. 332(4)-(6) (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 104(6), 178(8)**; [S.I. 2005/1521](#), **art. 3(1)(c)** (with **art. 3(4)**)
- F30** Words in s. 332(4) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), **s. 61(2)**, **Sch. 8 para. 131**; [S.I. 2013/1682](#), **art. 3(v)**
- F31** S. 332(7) inserted (15.5.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 102(7), 178(8)**; [S.I. 2006/1085](#), **art. 3**

Commencement Information

- I6** S. 332 in force at 24.2.2003 by [S.I. 2003/120](#), **art. 2**, **Sch.** (with **arts. 3, 4**) (as amended (20.2.2003) by [S.I. 2003/333](#), **art. 14**)

^{F32}333 Tipping off

.....

Changes to legislation: *Proceeds of Crime Act 2002, Part 7 is up to date with all changes known to be in force on or before 25 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F32 S. 333 omitted (26.12.2007) by virtue of [Terrorism Act 2000 and Proceeds of Crime Act 2002 \(Amendment\) Regulations 2007 \(S.I. 2007/3398\)](#), reg. 1(2), [Sch. 2 para. 3](#)

Commencement Information

I7 S. 333 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

[^{F33} 333A Tipping off: regulated sector

- (1) A person commits an offence if—
 - (a) the person discloses any matter within subsection (2);
 - (b) the disclosure is likely to prejudice any investigation that might be conducted following the disclosure referred to in that subsection; and
 - (c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.
- (2) The matters are that the person or another person has made a disclosure under this Part—
 - (a) to a constable,
 - (b) to an officer of Revenue and Customs,
 - (c) to a nominated officer, or
 - (d) to a [^{F34}National Crime Agency officer] authorised for the purposes of this Part by the Director General of that Agency,
of information that came to that person in the course of a business in the regulated sector.
- (3) A person commits an offence if—
 - (a) the person discloses that an investigation into allegations that an offence under this Part has been committed is being contemplated or is being carried out;
 - (b) the disclosure is likely to prejudice that investigation; and
 - (c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.
- (4) A person guilty of an offence under this section is liable—
 - (a) on summary conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or to both.
- (5) This section is subject to—
 - (a) section 333B (disclosures within an undertaking or group etc),
 - (b) section 333C (other permitted disclosures between institutions etc), and
 - (c) section 333D (other permitted disclosures etc).

Textual Amendments

F33 Ss. 333A-333E inserted (26.12.2007) by [Terrorism Act 2000 and Proceeds of Crime Act 2002 \(Amendment\) Regulations 2007 \(S.I. 2007/3398\)](#), reg. 1(2), [Sch. 2 para. 4](#)

Changes to legislation: Proceeds of Crime Act 2002, Part 7 is up to date with all changes known to be in force on or before 25 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F34 Words in s. 333A(2)(d) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 8 para. 132](#); [S.I. 2013/1682](#), art. 3(v)

333B Disclosures within an undertaking or group etc

- (1) An employee, officer or partner of an undertaking does not commit an offence under section 333A if the disclosure is to an employee, officer or partner of the same undertaking.
- (2) A person does not commit an offence under section 333A in respect of a disclosure by a credit institution or a financial institution if—
 - (a) the disclosure is to a credit institution or a financial institution,
 - (b) the institution to whom the disclosure is made is situated in [^{F35}the United Kingdom or an EEA state] or in a country or territory imposing equivalent money laundering requirements, and
 - (c) both the institution making the disclosure and the institution to whom it is made belong to the same group.
- (3) In subsection (2) “group” has the same meaning as in Directive [2002/87/EC](#) of the European Parliament and of the Council of 16th December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.
- (4) A professional legal adviser or a relevant professional adviser does not commit an offence under section 333A if—
 - (a) the disclosure is to professional legal adviser or a relevant professional adviser,
 - (b) both the person making the disclosure and the person to whom it is made carry on business in [^{F36}the United Kingdom or an EEA state] or in a country or territory imposing equivalent money laundering requirements, and
 - (c) those persons perform their professional activities within different undertakings that share common ownership, management or control.

Textual Amendments

- F33** Ss. 333A-333E inserted (26.12.2007) by [Terrorism Act 2000 and Proceeds of Crime Act 2002 \(Amendment\) Regulations 2007 \(S.I. 2007/3398\)](#), reg. 1(2), [Sch. 2 para. 4](#)
- F35** Words in s. 333B(2)(b) substituted (31.12.2020) by [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/742\)](#), regs. 1, [107\(6\)](#); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F36** Words in s. 333B(4)(b) substituted (31.12.2020) by [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/742\)](#), regs. 1, [107\(6\)](#); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

333C Other permitted disclosures between institutions etc

- (1) This section applies to a disclosure—
 - (a) by a credit institution to another credit institution,
 - (b) by a financial institution to another financial institution,
 - (c) by a professional legal adviser to another professional legal adviser, or
 - (d) by a relevant professional adviser of a particular kind to another relevant professional adviser of the same kind.

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- (2) A person does not commit an offence under section 333A in respect of a disclosure to which this section applies if—
- (a) the disclosure relates to—
 - (i) a client or former client of the institution or adviser making the disclosure and the institution or adviser to whom it is made,
 - (ii) a transaction involving them both, or
 - (iii) the provision of a service involving them both;
 - (b) the disclosure is for the purpose only of preventing an offence under this Part of this Act;
 - (c) the institution or adviser to whom the disclosure is made is situated in [^{F37}the United Kingdom or an EEA state] or in a country or territory imposing equivalent money laundering requirements; and
 - (d) the institution or adviser making the disclosure and the institution or adviser to whom it is made are subject to equivalent duties of professional confidentiality and the protection of personal data [^{F38}(within the meaning of Parts 5 to 7 of the Data Protection Act 2018 (see section 3(2) and (14) of that Act))].

Textual Amendments

- F33** Ss. 333A-333E inserted (26.12.2007) by [Terrorism Act 2000 and Proceeds of Crime Act 2002 \(Amendment\) Regulations 2007 \(S.I. 2007/3398\)](#), reg. 1(2), **Sch. 2 para. 4**
- F37** Words in s. 333C(2)(c) substituted (31.12.2020) by [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/742\)](#), regs. 1, **107(7)**; 2020 c. 1, Sch. 5 para. 1(1)
- F38** Words in s. 333C(2)(d) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), **Sch. 19 para. 80** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

333D Other permitted disclosures etc

- (1) A person does not commit an offence under section 333A if the disclosure is—
- (a) to the authority that is the supervisory authority for that person by virtue of [^{F39}the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017]; ^{F40} ...
 - [^{F41}(aa) for the purposes of proceedings under section 336A (power of court to extend moratorium period);
 - (ab) made in good faith by virtue of section 339ZB (disclosures within the regulated sector); or]
 - (b) for the purpose of—
 - (i) the detection, investigation or prosecution of a criminal offence (whether in the United Kingdom or elsewhere),
 - (ii) an investigation under this Act, or
 - (iii) the enforcement of any order of a court under this Act.

[Where an application is made to extend a moratorium period under section 336A, a ^{F42}(1A) person does not commit an offence under section 333A if—

- (a) the disclosure is made to a customer or client of the person,
- (b) the customer or client appears to the person making the disclosure to have an interest in the relevant property, and

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- (c) the disclosure contains only such information as is necessary for the purposes of notifying the customer or client that the application under section 336A has been made.

“Moratorium period” and “relevant property” have the meanings given in section 336D.]

- (2) A professional legal adviser or a relevant professional adviser does not commit an offence under section 333A if the disclosure—
- (a) is to the adviser’s client, and
 - (b) is made for the purpose of dissuading the client from engaging in conduct amounting to an offence.
- (3) A person does not commit an offence under section 333A(1) if the person does not know or suspect that the disclosure is likely to have the effect mentioned in section 333A(1)(b).
- (4) A person does not commit an offence under section 333A(3) if the person does not know or suspect that the disclosure is likely to have the effect mentioned in section 333A(3)(b).

Textual Amendments

- F33** Ss. 333A-333E inserted (26.12.2007) by [Terrorism Act 2000 and Proceeds of Crime Act 2002 \(Amendment\) Regulations 2007 \(S.I. 2007/3398\)](#), reg. 1(2), **Sch. 2 para. 4**
- F39** Words in s. 333D(1)(a) substituted (26.6.2017) by [The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017 \(S.I. 2017/692\)](#), reg. 1(2), **Sch. 7 para. 6(2)** (with regs. 8, 15)
- F40** Word in s. 333D(1)(a) omitted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes, 28.6.2021 for N.I. in so far as not already in force) by virtue of [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), **Sch. 5 para. 37(2)(a)**; S.I. 2017/991, reg. 2(r) (with reg. 1(4)); S.I. 2021/724, reg. 4(h)
- F41** S. 333D(1)(aa)(ab) inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes, 28.6.2021 for N.I. in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), **Sch. 5 para. 37(2)(b)**; S.I. 2017/991, reg. 2(r) (with reg. 1(4)); S.I. 2021/724, reg. 4(h)
- F42** S. 333D(1A) inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes, 28.6.2021 for N.I. in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), **Sch. 5 para. 37(3)**; S.I. 2017/991, reg. 2(r) (with reg. 1(4)); S.I. 2021/724, reg. 4(h)

333E Interpretation of sections 333A to 333D

- (1) For the purposes of sections 333A to 333D, Schedule 9 has effect for determining—
- (a) what is a business in the regulated sector, and
 - (b) what is a supervisory authority.
- (2) In those sections—
- “credit institution” has the same meaning as in Schedule 9;
 - “financial institution” means an undertaking that carries on a business in the regulated sector by virtue of any of paragraphs (b) to (i) of paragraph 1(1) of that Schedule.
- (3) References in those sections to a disclosure by or to a credit institution or a financial institution include disclosure by or to an employee, officer or partner of the institution acting on its behalf.

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- (4) For the purposes of those sections a country or territory imposes "equivalent money laundering requirements" if it imposes requirements equivalent to those laid down in [F43 Directive 2015/849/EU of the Council of 20th May 2015] on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing[F44, as amended by Directive 2018/843 of the European Parliament and of the Council of 30th May 2018].
- (5) In those sections "relevant professional adviser" means an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for—
- (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
 - (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.]

Textual Amendments

- F33** Ss. 333A-333E inserted (26.12.2007) by [Terrorism Act 2000 and Proceeds of Crime Act 2002 \(Amendment\) Regulations 2007 \(S.I. 2007/3398\)](#), reg. 1(2), **Sch. 2 para. 4**
- F43** Words in s. 333E(4) substituted (26.6.2017) by [The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017 \(S.I. 2017/692\)](#), reg. 1(2), **Sch. 7 para. 6(3)** (with regs. 8, 15)
- F44** Words in s. 333E(4) inserted (10.1.2020) by [The Money Laundering and Terrorist Financing \(Amendment\) Regulations 2019 \(S.I. 2019/1511\)](#), regs. 1(2), **15(2)**

334 Penalties

- (1) A person guilty of an offence under section 327, 328 or 329 is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both.
- (2) A person guilty of an offence under section 330, 331[F45 or 332] is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.
- [F46(3) A person guilty of an offence under section 339(1A) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.]

Textual Amendments

- F45** Words in s. 334(2) substituted (26.12.2007) by [Terrorism Act 2000 and Proceeds of Crime Act 2002 \(Amendment\) Regulations 2007 \(S.I. 2007/3398\)](#), reg. 1(2), **Sch. 2 para. 5**
- F46** S. 334(3) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 105(3), 178(8)**; [S.I. 2005/1521](#), art. 3(1)(c)

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Commencement Information

- I8** S. 334 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

Consent

335 Appropriate consent

- (1) The appropriate consent is—
 - (a) the consent of a nominated officer to do a prohibited act if an authorised disclosure is made to the nominated officer;
 - (b) the consent of a constable to do a prohibited act if an authorised disclosure is made to a constable;
 - (c) the consent of a customs officer to do a prohibited act if an authorised disclosure is made to a customs officer.
 - (2) A person must be treated as having the appropriate consent if—
 - (a) he makes an authorised disclosure to a constable or a customs officer, and
 - (b) the condition in subsection (3) or the condition in subsection (4) is satisfied.
 - (3) The condition is that before the end of the notice period he does not receive notice from a constable or customs officer that consent to the doing of the act is refused.
 - (4) The condition is that—
 - (a) before the end of the notice period he receives notice from a constable or customs officer that consent to the doing of the act is refused, and
 - (b) the moratorium period has expired.
 - (5) The notice period is the period of seven working days starting with the first working day after the person makes the disclosure.
 - (6) The moratorium period is the period of 31 days starting with the day on which the person receives notice that consent to the doing of the act is refused.
- [^{F47}(6A) Subsection (6) is subject to—
- (a) section 336A, which enables the moratorium period to be extended by court order in accordance with that section, and
 - (b) section 336C, which provides for an automatic extension of the moratorium period in certain cases (period extended if it would otherwise end before determination of application or appeal proceedings etc).]
- (7) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom in which the person is when he makes the disclosure.
 - (8) References to a prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).
- [^{F48}(8A) Subsection (8) is subject to—
- (a) section 336A, which enables the moratorium period to be extended by court order in accordance with that section, and

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- (b) section 336C, which provides for an automatic extension of the moratorium period in certain cases (period extended if it would otherwise end before determination of application or appeal proceedings etc).]
- (9) A nominated officer is a person nominated to receive disclosures under section 338.
- (10) Subsections (1) to (4) apply for the purposes of this Part.

Textual Amendments

- F47** S. 335(6A) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 10\(2\)](#), [58\(1\)\(6\)](#); [S.I. 2017/991](#), [reg. 2\(a\)](#) (with [reg. 3\(1\)](#)); [S.I. 2021/724](#), [reg. 2\(1\)\(c\)](#)
- F48** S. 335(8A) inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 10\(3\)](#), [58\(1\)\(6\)](#); [S.I. 2017/991](#), [reg. 2\(a\)](#) (with [reg. 3\(1\)](#)); [S.I. 2021/724](#), [reg. 2\(1\)\(c\)](#)

Commencement Information

- I9** S. 335 in force at 24.2.2003 by [S.I. 2003/120](#), [art. 2](#), [Sch.](#) (with [arts. 3, 4](#)) (as amended (20.2.2003) by [S.I. 2003/333](#), [art. 14](#))

336 Nominated officer: consent

- (1) A nominated officer must not give the appropriate consent to the doing of a prohibited act unless the condition in subsection (2), the condition in subsection (3) or the condition in subsection (4) is satisfied.
- (2) The condition is that—
 - (a) he makes a disclosure that property is criminal property to a person authorised for the purposes of this Part by [^{F49}the [^{F50}Director General of the National Crime Agency]], and
 - (b) such a person gives consent to the doing of the act.
- (3) The condition is that—
 - (a) he makes a disclosure that property is criminal property to a person authorised for the purposes of this Part by [^{F51}the [^{F52}Director General of the National Crime Agency]], and
 - (b) before the end of the notice period he does not receive notice from such a person that consent to the doing of the act is refused.
- (4) The condition is that—
 - (a) he makes a disclosure that property is criminal property to a person authorised for the purposes of this Part by [^{F53}the [^{F54}Director General of the National Crime Agency]],
 - (b) before the end of the notice period he receives notice from such a person that consent to the doing of the act is refused, and
 - (c) the moratorium period has expired.
- (5) A person who is a nominated officer commits an offence if—
 - (a) he gives consent to a prohibited act in circumstances where none of the conditions in subsections (2), (3) and (4) is satisfied, and
 - (b) he knows or suspects that the act is a prohibited act.

Changes to legislation: Proceeds of Crime Act 2002, Part 7 is up to date with all changes known to be in force on or before 25 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (6) A person guilty of such an offence is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.
- (7) The notice period is the period of seven working days starting with the first working day after the nominated officer makes the disclosure.
- (8) The moratorium period is the period of 31 days starting with the day on which the nominated officer is given notice that consent to the doing of the act is refused.
- (9) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom in which the nominated officer is when he gives the appropriate consent.
- (10) References to a prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).
- (11) A nominated officer is a person nominated to receive disclosures under section 338.

Textual Amendments

- F49** Words in s. 336(2)(a) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8), [Sch. 4 para. 173](#); [S.I. 2006/378](#), art. 4(1), [Sch. para. 10](#)
- F50** Words in s. 336(2)(a) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 8 para. 133](#); [S.I. 2013/1682](#), art. 3(v)
- F51** Words in s. 336(3)(a) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8), [Sch. 4 para. 173](#); [S.I. 2006/378](#), art. 4(1), [Sch. para. 10](#)
- F52** Words in s. 336(3)(a) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 8 para. 133](#); [S.I. 2013/1682](#), art. 3(v)
- F53** Words in s. 336(4)(a) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8), [Sch. 4 para. 173](#); [S.I. 2006/378](#), art. 4(1), [Sch. para. 10](#)
- F54** Words in s. 336(4)(a) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 8 para. 133](#); [S.I. 2013/1682](#), art. 3(v)

Commencement Information

- I10** S. 336 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

^{F55} 336A Power of court to extend the moratorium period

- (1) The court may, on an application under this section, grant an extension of a moratorium period if satisfied that—
 - (a) an investigation is being carried out in relation to a relevant disclosure (but has not been completed),
 - (b) the investigation is being conducted diligently and expeditiously,
 - (c) further time is needed for conducting the investigation, and
 - (d) it is reasonable in all the circumstances for the moratorium period to be extended.

Changes to legislation: *Proceeds of Crime Act 2002, Part 7 is up to date with all changes known to be in force on or before 25 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (2) An application under this section may be made only by a senior officer.
- (3) The application must be made before the moratorium period would otherwise end.
- (4) An extension of a moratorium period must end no later than 31 days beginning with the day after the day on which the period would otherwise end.
- (5) Where a moratorium period is extended by the court under this section, it may be further extended by the court (on one or more occasions) on the making of another application.
- (6) A moratorium period extended in accordance with subsection (2) or (4) of section 336C may also be further extended by the court on the making of an application under this section.
- (7) But the court may not grant a further extension of a moratorium period if the effect would be to extend the period by more than 186 days (in total) beginning with the day after the end of the 31 day period mentioned in section 335(6) or (as the case may be) section 336(8).
- (8) Subsections (1) to (4) apply to any further extension of a moratorium period as they apply to the first extension of the period under this section.
- (9) An application under this section may be made by an immigration officer only if the officer has reasonable grounds for suspecting that conduct constituting the prohibited act in relation to which the moratorium period in question applies—
 - (a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or
 - (b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.
- (10) In subsection (9)—
 - “prohibited act” has the meaning given by section 335(8) or (as the case may be) section 336(10);
 - “relevant nationality enactment” means any enactment in—
 - (a) the British Nationality Act 1981,
 - (b) the Hong Kong Act 1985,
 - (c) the Hong Kong (War Wives and Widows) Act 1996,
 - (d) the British Nationality (Hong Kong) Act 1997,
 - (e) the British Overseas Territories Act 2002, or
 - (f) an instrument made under any of those Acts.

Textual Amendments

F55 Ss. 336A-336D inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by [Criminal Finances Act 2017](#) (c. 22), [ss. 10\(4\)](#), [58\(1\)\(6\)](#); [S.I. 2017/991](#), [reg. 2\(a\)](#) (with [reg. 3\(1\)](#)); [S.I. 2021/724](#), [reg. 2\(1\)\(c\)](#)

Changes to legislation: Proceeds of Crime Act 2002, Part 7 is up to date with all changes known to be in force on or before 25 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F55F56 336B Proceedings under section 336A: supplementary

- (1) This section applies to proceedings on an application under section 336A.
- (2) The court must determine the proceedings as soon as reasonably practicable.
- (3) The court may exclude from any part of the hearing—
 - (a) an interested person;
 - (b) anyone representing that person.
- (4) The person who made the application may apply to the court for an order that specified information upon which he or she intends to rely be withheld from—
 - (a) an interested person;
 - (b) anyone representing that person.
- (5) The court may make such an order only if satisfied that there are reasonable grounds to believe that if the specified information were disclosed—
 - (a) evidence of an offence would be interfered with or harmed,
 - (b) the gathering of information about the possible commission of an offence would be interfered with,
 - (c) a person would be interfered with or physically injured,
 - (d) the recovery of property under this Act would be hindered, or
 - (e) national security would be put at risk.
- (6) The court must direct that the following be excluded from the hearing of an application under subsection (4)—
 - (a) the interested person to whom that application relates;
 - (b) anyone representing that person.
- (7) Subject to this section, rules of court may make provision as to the practice and procedure to be followed in connection with proceedings in relation to applications under section 336A.
- (8) An appeal lies to the appropriate appeal court on a point of law arising from a decision made by the Crown Court in Northern Ireland or by the sheriff.
- (9) The appropriate appeal court may on such an appeal make any order that it considers appropriate (subject to the restriction mentioned in section 336A(7)).
- (10) The appropriate appeal court is—
 - (a) in the case of a decision of the Crown Court in Northern Ireland, the Court of Appeal in Northern Ireland;
 - (b) in the case of a decision of the sheriff, the Sheriff Appeal Court.
- (11) For rights of appeal in the case of decisions made by the Crown Court in England and Wales, see section 28 of the Senior Courts Act 1981 (appeals from Crown Court and inferior courts).

Textual Amendments

F55 Ss. 336A-336D inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by [Criminal Finances Act 2017](#) (c. 22), [ss. 10\(4\)](#), [58\(1\)\(6\)](#); [S.I. 2017/991](#), [reg. 2\(a\)](#) (with [reg. 3\(1\)](#)); [S.I. 2021/724](#), [reg. 2\(1\)\(c\)](#)

Changes to legislation: *Proceeds of Crime Act 2002, Part 7 is up to date with all changes known to be in force on or before 25 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F56 Ss. 336A-336D inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 10\(4\), 58\(1\)\(6\)](#); S.I. 2017/991, [reg. 2\(a\)](#) (with [reg. 3\(1\)](#))

^{F55}336C Extension of moratorium period pending determination of proceedings etc

- (1) A moratorium period is extended in accordance with subsection (2) where—
 - (a) an application is made to the court under section 336A for the extension (or further extension) of the moratorium period, and
 - (b) the period would (apart from that subsection) end before the court determines the application or it is otherwise disposed of.
- (2) The moratorium period is extended from the time when it would otherwise end until the court determines the application or it is otherwise disposed of.
- (3) A moratorium period is extended in accordance with subsection (4) where—
 - (a) proceedings on an appeal in respect of a decision on an application under section 336A have been brought, and
 - (b) the period would (apart from that subsection) end before the proceedings are finally determined or otherwise disposed of.
- (4) The moratorium period is extended from the time when it would otherwise end until the proceedings are finally determined or otherwise disposed of.
- (5) But the maximum period by which the moratorium period is extended by virtue of subsection (2) or (4) is 31 days beginning with the day after the day on which the period would otherwise have ended.
- (6) A moratorium period is extended in accordance with subsection (7) where—
 - (a) an application is made to the court under section 336A for an extension of the period,
 - (b) the court refuses to grant the application, and
 - (c) the period would (apart from that subsection) end before the end of the 5 day period.
- (7) The moratorium period is extended from the time when it would otherwise end until—
 - (a) the end of the 5 day period, or
 - (b) if proceedings on an appeal against the decision are brought before the end of the 5 day period, the time when those proceedings are brought.
- (8) The “5 day period” is the period of 5 working days beginning with the day on which the court refuses to grant the application.
- (9) This restriction on the overall extension of a moratorium period mentioned in section 336A(7) applies to an extension of a moratorium period in accordance with any provision of this section as it applies to an extension under an order of the court.

Textual Amendments

F55 Ss. 336A-336D inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 10\(4\), 58\(1\)\(6\)](#); S.I. 2017/991, [reg. 2\(a\)](#) (with [reg. 3\(1\)](#)); S.I. 2021/724, [reg. 2\(1\)\(c\)](#)

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F56 Ss. 336A-336D inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 10\(4\), 58\(1\)\(6\)](#); S.I. 2017/991, [reg. 2\(a\)](#) (with [reg. 3\(1\)](#))

^{F55}336D Sections 336A to 336C: interpretation

- (1) This section provides for the meaning of terms used in sections 336A to 336C (and in this section).
- (2) “The court” means—
 - (a) in relation to England and Wales or Northern Ireland, the Crown Court;
 - (b) in relation to Scotland, the sheriff.
- (3) “Interested person” means—
 - (a) the person who made the relevant disclosure, and
 - (b) any other person who appears to the person making the application under section 336A to have an interest in the relevant property.
- (4) “Moratorium period” means the period of 31 days mentioned in section 335(6) or (as the case may be) section 336(8), or any such period as extended or further extended by virtue of an order under section 336A or in accordance with any provision of section 336C.
- (5) “Relevant disclosure” means—
 - (a) where the application under section 336A relates to the moratorium period mentioned in section 335(6), the authorised disclosure mentioned in section 335(2)(a);
 - (b) where the application under section 336A relates to the moratorium period mentioned in section 336(8), the disclosure mentioned in section 336(4)(a).
- (6) “Relevant property” means any property that would be the subject of the prohibited act (within the meaning of section 335(8) or (as the case may be) section 336(10)) in relation to which the moratorium period in question applies.
- (7) In the case of an application to the Crown Court, “senior officer” means—
 - (a) the Director General of the National Crime Agency,
 - (b) any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,
 - (c) a police officer of at least the rank of inspector,
 - (d) an officer of Revenue and Customs who is not below such grade as is designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that rank,
 - (e) an immigration officer who is not below such grade as is designated by the Secretary of State as equivalent to that rank,
 - (f) a member of staff of the Financial Conduct Authority who is not below such grade as is designated by the Treasury for the purposes of this Part,
 - (g) the Director of the Serious Fraud Office (or a member of staff of that Office authorised for the purposes of section 336A by virtue of section 2C(2)), or
 - (h) an accredited financial investigator who falls within a description specified in an order made for the purposes of section 336A by the Secretary of State [^{F57}or the Welsh Ministers] under section 453.

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- (8) In the case of an application to the sheriff, “senior officer” means a procurator fiscal.
- (9) “Working day” means a day other than—
- (a) a Saturday,
 - (b) a Sunday,
 - (c) Christmas Day,
 - (d) Good Friday, or
 - (e) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the application in question under section 336A is made.]

Textual Amendments

- F55** Ss. 336A-336D inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 10\(4\)](#), 58(1)(6); S.I. 2017/991, reg. 2(a) (with [reg. 3\(1\)](#)); S.I. 2021/724, reg. 2(1)(c)
- F56** Ss. 336A-336D inserted (27.4.2017 for specified purposes, 31.10.2017 for E.W.S. in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 10\(4\)](#), 58(1)(6); S.I. 2017/991, reg. 2(a) (with [reg. 3\(1\)](#))
- F57** Words in s. 336D(7)(h) inserted (E.W.) (20.7.2018) by [The Tax Collection and Management \(Wales\) Act 2016 \(Supplemental Provision\) Regulations 2018 \(S.I. 2018/768\)](#), regs. 1(2), [2\(h\)](#)

Modifications etc. (not altering text)

- C4** S. 336D(7)(h) modified by S.I. 2018/196, Sch. para. 11D (as inserted (E.W.) (20.7.2018) by [The Proceeds of Crime Act 2002 \(References to Welsh Revenue Authority Financial Investigators\) \(Amendment\) Order 2018 \(S.I. 2018/767\)](#), arts. 1(2), [2\(3\)\(a\)](#))

Disclosures

337 Protected disclosures

- (1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (2) The first condition is that the information or other matter disclosed came to the person making the disclosure (the discloser) in the course of his trade, profession, business or employment.
- (3) The second condition is that the information or other matter—
- (a) causes the discloser to know or suspect, or
 - (b) gives him reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.
- (4) The third condition is that the disclosure is made to a constable, a customs officer or a nominated officer as soon as is practicable after the information or other matter comes to the discloser.
- [^{F58}(4A) Where a disclosure consists of a disclosure protected under subsection (1) and a disclosure of either or both of—
- (a) the identity of the other person mentioned in subsection (3), and

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- (b) the whereabouts of property forming the subject-matter of the money laundering that the discloser knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in,
- the disclosure of the thing mentioned in paragraph (a) or (b) (as well as the disclosure protected under subsection (1)) is not to be taken to breach any restriction on the disclosure of information (however imposed).]
- (5) A disclosure to a nominated officer is a disclosure which—
- (a) is made to a person nominated by the discloser's employer to receive disclosures under^{F59} section 330 or] this section, and
- (b) is made in the course of the discloser's employment^{F60}

Textual Amendments

- F58** S. 337(4A) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 104(7)**, 178(8); [S.I. 2005/1521](#), art. 3(1)(c)
- F59** Words in s. 337(5)(a) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 106(3)**, 178(8); [S.I. 2005/1521](#), art. 3(1)(c)
- F60** Words in s. 337(5)(b) repealed (1.7.2005) by virtue of [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 105(2)**, 178(8), Sch. 17 Pt. 2; [S.I. 2005/1521](#), art. 3(1)(c)(ee)

Commencement Information

- I11** S. 337 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

338 Authorised disclosures

- (1) For the purposes of this Part a disclosure is authorised if—
- (a) it is a disclosure to a constable, a customs officer or a nominated officer by the alleged offender that property is criminal property,
- (b) ^{F61}... and
- (c) the first [^{F62}, second or third] condition set out below is satisfied.
- (2) The first condition is that the disclosure is made before the alleged offender does the prohibited act.
- ^{F63}(2A) The second condition is that—
- (a) the disclosure is made while the alleged offender is doing the prohibited act,
- (b) he began to do the act at a time when, because he did not then know or suspect that the property constituted or represented a person's benefit from criminal conduct, the act was not a prohibited act, and
- (c) the disclosure is made on his own initiative and as soon as is practicable after he first knows or suspects that the property constitutes or represents a person's benefit from criminal conduct.]
- (3) The [^{F64} third] condition is that—
- (a) the disclosure is made after the alleged offender does the prohibited act,
- (b) [^{F65}he has a reasonable excuse] for his failure to make the disclosure before he did the act, and
- (c) the disclosure is made on his own initiative and as soon as it is practicable for him to make it.

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- (4) An authorised disclosure is not to be taken to breach any restriction on the disclosure of information (however imposed).
- [^{F66}(4A) Where an authorised disclosure is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by or on whose behalf it is made.]
- (5) A disclosure to a nominated officer is a disclosure which—
- (a) is made to a person nominated by the alleged offender's employer to receive authorised disclosures, and
 - (b) is made in the course of the alleged offender's employment ^{F67}....
- (6) References to the prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

Textual Amendments

- F61** S. 338(1)(b) repealed (1.7.2005) by virtue of [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 105(4)**, 178(8), [Sch. 17 Pt. 2](#); [S.I. 2005/1521](#), art. 3(1)(c)(ee)
- F62** Words in s. 338(1)(c) substituted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 106(4)**, 178(8); [S.I. 2005/1521](#), art. 3(1)(c)
- F63** S. 338(2A) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 106(5)**, 178(8); [S.I. 2005/1521](#), art. 3(1)(c)
- F64** Word in s. 338(3) substituted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 106(6)**, 178(8); [S.I. 2005/1521](#), art. 3(1)(c)
- F65** Words in s. 338(3)(b) substituted (26.12.2007) by [Terrorism Act 2000 and Proceeds of Crime Act 2002 \(Amendment\) Regulations 2007 \(S.I. 2007/3398\)](#), reg. 1(2), **Sch. 2 para. 6**
- F66** S. 338(4A) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), **ss. 37**, 88(1); [S.I. 2015/820](#), reg. 3(k)
- F67** Words in s. 338(5)(b) repealed (1.7.2005) by virtue of [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 105(2)**, 178(8), [Sch. 17 Pt. 2](#); [S.I. 2005/1521](#), art. 3(1)(c)(ee)

Commencement Information

- I12** S. 338 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

339 Form and manner of disclosures

- (1) The Secretary of State may by order prescribe the form and manner in which a disclosure under section 330, 331, 332 or 338 must be made.
- [^{F68}(1A) A person commits an offence if he makes a disclosure under section 330, 331, 332 or 338 otherwise than in the form prescribed under subsection (1) or otherwise than in the manner so prescribed.
- (1B) But a person does not commit an offence under subsection (1A) if he has a reasonable excuse for making the disclosure otherwise than in the form prescribed under subsection (1) or (as the case may be) otherwise than in the manner so prescribed.
- (2) The power under subsection (1) to prescribe the form in which a disclosure must be made includes power to provide for the form to include a request to a person making a disclosure that the person provide information specified or described in the form if he has not provided it in making the disclosure.

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(3) Where under subsection (2) a request is included in a form prescribed under subsection (1), the form must—

- (a) state that there is no obligation to comply with the request, and
- (b) explain the protection conferred by subsection (4) on a person who complies with the request.]

(4) A disclosure made in pursuance of a request under subsection (2) is not to be taken to breach any restriction on the disclosure of information (however imposed).

^{F69}(5)

^{F69}(6)

(7) Subsection (2) does not apply to a disclosure made to a nominated officer.

Textual Amendments

F68 S. 339(1A)-(3) substituted for s. 339(2)(3) (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), [ss. 105\(5\)](#), 178(8); [S.I. 2005/1521](#), art. 3(1)(c)

F69 S. 339(5)(6) repealed (E.W.) (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8)(8), [Sch. 17 Pt. 2](#); [S.I. 2005/1521](#), art. 3(1)(ee)

Commencement Information

I13 S. 339 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with [arts. 3, 4](#)) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

[^{F70}339Z]Disclosures to [^{F71}the NCA]

Where a disclosure is made under this Part to a constable or an officer of Revenue and Customs, the constable or officer of Revenue and Customs must disclose it in full to a person authorised for the purposes of this Part by the [^{F72}Director General of the National Crime Agency] as soon as practicable after it has been made.]

Textual Amendments

F70 S. 339ZA inserted (26.12.2007) by [Terrorism Act 2000 and Proceeds of Crime Act 2002 \(Amendment\) Regulations 2007 \(S.I. 2007/3398\)](#), reg. 1(2), [Sch. 2 para. 7](#)

F71 Words in s. 339ZA title substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 8 para. 134\(a\)](#); [S.I. 2013/1682](#), art. 3(v)

F72 Words in s. 339ZA substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 8 para. 134\(b\)](#); [S.I. 2013/1682](#), art. 3(v)

[^{F73}339Z]Voluntary disclosures within the regulated sector

(1) A person (A) may disclose information to one or more other persons if conditions 1 to 4 are met.

(2) Condition 1 is that—

- (a) A is carrying on a business in the regulated sector as a relevant undertaking,
- (b) the information on which the disclosure is based came to A in the course of carrying on that business, and

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- (c) the person to whom the information is to be disclosed (or each of them, where the disclosure is to more than one person) is also carrying on a business in the regulated sector as a relevant undertaking (whether or not of the same kind as A).
- (3) Condition 2 is that—
 - (a) an NCA authorised officer has requested A to make the disclosure, or
 - (b) the person to whom the information is to be disclosed (or at least one of them, where the disclosure is to more than one person) has requested A to do so.
- (4) Condition 3 is that, before A makes the disclosure, the required notification has been made to an NCA authorised officer (see section 339ZC(3) to (5)).
- (5) Condition 4 is that A is satisfied that the disclosure of the information will or may assist in determining any matter in connection with a suspicion that a person is engaged in money laundering.
- (6) A person may disclose information to A for the purposes of making a disclosure request if, and to the extent that, the person has reason to believe that A has in A's possession information that will or may assist in determining any matter in connection with a suspicion that a person is engaged in money laundering.

Textual Amendments

F73 Ss. 339ZB-339ZG inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 11**, 58(1)(6); [S.I. 2017/991](#), [reg. 2\(b\)](#); [S.I. 2017/1028](#), [reg. 2\(a\)](#)

339ZC Section 339ZB: disclosure requests and required notifications

- (1) A disclosure request must—
 - (a) state that it is made in connection with a suspicion that a person is engaged in money laundering,
 - (b) identify the person (if known),
 - (c) describe the information that is sought from A, and
 - (d) specify the person or persons to whom it is requested that the information is disclosed.
- (2) Where the disclosure request is made by a person mentioned in section 339ZB(3)(b), the request must also—
 - (a) set out the grounds for the suspicion that a person is engaged in money laundering, or
 - (b) provide such other information as the person making the request thinks appropriate for the purposes of enabling A to determine whether the information requested ought to be disclosed under section 339ZB(1).
- (3) A required notification must be made—
 - (a) in the case of a disclosure request made by an NCA authorised officer, by the person who is to disclose information under section 339ZB(1) as a result of the request;
 - (b) in the case of a disclosure request made by a person mentioned in section 339ZB(3)(b), by the person who made the request.

Changes to legislation: *Proceeds of Crime Act 2002, Part 7 is up to date with all changes known to be in force on or before 25 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (4) In a case within subsection (3)(a), the required notification must state that information is to be disclosed under section 339ZB(1).
- (5) In a case within subsection (3)(b), the required notification must—
 - (a) state that a disclosure request has been made,
 - (b) specify the person to whom the request was made,
 - (c) identify any person (if known) suspected of being engaged in money laundering in connection with whom the request was made, and
 - (d) provide all such other information that the person giving the notification would be required to give if making the required disclosure for the purposes of section 330 (see in particular subsection (5)(b) and (c) of that section).

Textual Amendments

F73 Ss. 339ZB-339ZG inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 11**, 58(1)(6); [S.I. 2017/991](#), [reg. 2\(b\)](#); [S.I. 2017/1028](#), [reg. 2\(a\)](#)

339ZD Section 339ZB: effect on required disclosures under section 330 or 331

- (1) This section applies if in any proceedings a question arises as to whether the required disclosure has been made for the purposes of section 330(4) or 331(4)—
 - (a) by a person (A) who discloses information under section 339ZB(1) as a result of a disclosure request,
 - (b) by a person (B) who makes a required notification in accordance with section 339ZC(3)(b) in connection with that request, or
 - (c) by any other person (C) to whom A discloses information under section 339ZB(1) as a result of that request.

- (2) The making of a required notification in good faith is to be treated as satisfying any requirement to make the required disclosure on the part of A, B and C.

This is subject to section 339ZE(1) to (8).

- (3) The making of a joint disclosure report in good faith is to be treated as satisfying any requirement to make the required disclosure on the part of the persons who jointly make the report.

This is subject to section 339ZE(10).

- (4) A joint disclosure report is a report to an NCA authorised officer that—
 - (a) is made jointly by A and B (whether or not also jointly with other persons to whom A discloses information under section 339ZB(1)),
 - (b) satisfies the requirements as to content mentioned in subsection (5),
 - (c) is prepared after the making of a disclosure by A to B under section 339ZB(1) in connection with a suspicion of a person's engagement in money laundering, and
 - (d) is sent to the NCA authorised officer before the end of the applicable period.
- (5) The requirements as to content are that the report must—
 - (a) explain the extent to which there are continuing grounds to suspect that the person mentioned in subsection (4)(c) is engaged in money laundering,

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- (b) identify the person (if known),
 - (c) set out the grounds for the suspicion, and
 - (d) provide any other information relevant to the matter.
- (6) The applicable period is—
 - (a) in a case where the disclosure under section 339ZB was made as a result of a disclosure request from an NCA authorised officer by virtue of subsection (3)(a) of that section, whatever period may be specified by the officer when making the request;
 - (b) in a case where the disclosure was made as a result of a disclosure request from another person by virtue of subsection (3)(b) of that section, the period of 84 days beginning with the day on which a required notification is made in connection with the request.
- (7) A joint disclosure report must be—
 - (a) approved by the nominated officer of each person that jointly makes the report, and
 - (b) signed by the nominated officer on behalf of each such person.

If there is no nominated officer the report must be approved and signed by another senior officer.
- (8) References in this section to A, B or C include—
 - (a) a nominated officer acting on behalf of A, B or C, and
 - (b) any other person who is an employee, officer or partner of A, B or C.

Textual Amendments

F73 Ss. 339ZB-339ZG inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 11](#), 58(1)(6); [S.I. 2017/991](#), [reg. 2\(b\)](#); [S.I. 2017/1028](#), [reg. 2\(a\)](#)

339ZE Limitations on application of section 339ZD(2) and (3)

- (1) Subsections (2) and (3) apply in a case where the required notification is made by A (notification made as a result of disclosure request received from NCA authorised officer).
- (2) Section 339ZD(2) has effect in the case of A, B or C only so far as relating to—
 - (a) the suspicion in connection with which the required notification is made, and
 - (b) matters known, suspected or believed as a result of the making of the disclosure request concerned.
- (3) Accordingly, section 339ZD(2) does not remove any requirement to make the required disclosure in relation to anything known, suspected or believed that does not result only from the making of the disclosure request.
- (4) Subsections (5) to (7) apply in a case where the required notification is made by B (notification made as a result of disclosure request received from another undertaking in the regulated sector).
- (5) Section 339ZD(2) has effect in the case of A or C only so far as relating to—
 - (a) the suspicion in connection with which the notification by B is made, and

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- (b) matters known, suspected or believed by A or C as a result of the making of that notification.
- (6) Accordingly, section 339ZD(2) does not remove any requirement to make the required disclosure in relation to anything known, suspected or believed that does not result only from the making of the notification.
- (7) Section 339ZD(2) has effect in the case of B only so far as relating to—
 - (a) the suspicion in connection with which the notification is made, and
 - (b) matters known, suspected or believed by B at the time of the making of the notification.
- (8) If a joint disclosure report is not made before the end of the applicable period (whether the required notification was made by A or B), section 339ZD(2)—
 - (a) has effect only so far as relating to any requirement to make the required disclosure that would have otherwise arisen within that period, and
 - (b) does not remove a requirement to make the required disclosure so far as arising after the end of that period on the part of any person in respect of matters that may become known, suspected or believed by the person after the time when the required notification was made.
- (9) If a joint disclosure report is not made before the end of the applicable period, the person who made the required notification must notify an NCA authorised officer that a report is not being made as soon as reasonably practicable after the period ends.
- (10) Section 339ZD(3) has effect only so far as relating to—
 - (a) the suspicion in connection with which the report is made, and
 - (b) matters known, suspected or believed at the time of the making of the report.
- (11) Terms used in this section have the same meanings as in section 339ZD.

Textual Amendments

F73 Ss. 339ZB-339ZG inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 11](#), 58(1)(6); [S.I. 2017/991](#), [reg. 2\(b\)](#); [S.I. 2017/1028](#), [reg. 2\(a\)](#)

339ZF Section 339ZB: supplementary

- (1) A relevant disclosure made in good faith does not breach—
 - (a) an obligation of confidence owed by the person making the disclosure, or
 - (b) any other restriction on the disclosure of information, however imposed.
- (2) But a relevant disclosure may not include information obtained from a UK law enforcement agency unless that agency consents to the disclosure.
- (3) In a case where a person is acting on behalf of another (“the undertaking”) as a nominated officer—
 - (a) a relevant disclosure by the undertaking must be made by the nominated officer on behalf of the undertaking, and
 - (b) a relevant disclosure to the undertaking must be made to that officer.

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- (4) Subsection (1) applies whether or not the conditions in section 339ZB were met in respect of the disclosure if the person making the disclosure did so in the reasonable belief that the conditions were met.
- (5) In this section—
- “relevant disclosure” means any disclosure made in compliance, or intended compliance, with section 339ZB;
 - “UK law enforcement agency” means—
 - (a) the National Crime Agency;
 - (b) a police force in England, Scotland, Northern Ireland or Wales;
 - (c) any other person operating in England, Scotland, Northern Ireland or Wales charged with the duty of preventing, detecting, investigating or prosecuting offences.

Textual Amendments

F73 Ss. 339ZB-339ZG inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 11](#), 58(1)(6); [S.I. 2017/991](#), [reg. 2\(b\)](#); [S.I. 2017/1028](#), [reg. 2\(a\)](#)

339ZG Sections 339ZB to 339ZF: interpretation

- (1) This section applies for the purposes of sections 339ZB to 339ZF.
- (2) “Disclosure request” means a request made for the purposes of condition 2 in section 339ZB(3).
- (3) “NCA authorised officer” means a person authorised for the purposes of this Part by the Director General of the National Crime Agency.
- (4) “Nominated officer” means a person nominated to receive disclosures under section 330.
- (5) “Relevant undertaking” means any of the following—
 - (a) a credit institution;
 - (b) a financial institution;
 - (c) a professional legal adviser;
 - (d) a relevant professional adviser;
 - (e) other persons (not within paragraphs (a) to (d)) whose business consists of activities listed in paragraph 1(1) of Schedule 9.
- (6) “Required disclosure” has the same meaning as in section 330(5) or (as the case may be) section 331(5).
- (7) “Required notification” means a notification made for the purposes of condition 3 in section 339ZB(4).
- (8) For the purposes of subsection (5)—
 - (a) “credit institution” has the same meaning as in Schedule 9;
 - (b) “financial institution” means an undertaking that carries on a business in the regulated sector by virtue of any of paragraphs (b) to (i) of paragraph 1(1) of that Schedule;
 - (c) “relevant professional adviser” has the meaning given by section 333E(5).

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(9) Schedule 9 has effect for determining what is a business in the regulated sector.]

Textual Amendments

F73 Ss. 339ZB-339ZG inserted (27.4.2017 for specified purposes, 31.10.2017 for specified purposes) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 11**, 58(1)(6); S.I. 2017/991, [reg. 2\(b\)](#); S.I. 2017/1028, [reg. 2\(a\)](#)

^{F74}Further information orders

Textual Amendments

F74 Ss. 339ZH-339ZK and cross-heading inserted (27.4.2017 for specified purposes, 31.10.2017 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 12**, 58(1)(6); S.I. 2017/991, [reg. 2\(c\)](#) (with [reg. 3\(2\)](#))

339ZH Further information orders

- (1) A magistrates' court or (in Scotland) the sheriff may, on an application made by a relevant person, make a further information order if satisfied that either condition 1 or condition 2 is met.
- (2) The application must—
 - (a) specify or describe the information sought under the order, and
 - (b) specify the person from whom the information is sought (“the respondent”).
- (3) A further information order is an order requiring the respondent to provide—
 - (a) the information specified or described in the application for the order, or
 - (b) such other information as the court or sheriff making the order thinks appropriate,
 so far as the information is in the possession, or under the control, of the respondent.
- (4) Condition 1 for the making of a further information order is met if—
 - (a) the information required to be given under the order would relate to a matter arising from a disclosure made under this Part,
 - (b) the respondent is the person who made the disclosure or is otherwise carrying on a business in the regulated sector,
 - (c) the information would assist in investigating whether a person is engaged in money laundering or in determining whether an investigation of that kind should be started, and
 - (d) it is reasonable in all the circumstances for the information to be provided.
- (5) Condition 2 for the making of a further information order is met if—
 - (a) the information required to be given under the order would relate to a matter arising from a disclosure made under a corresponding disclosure requirement,
 - (b) an external request has been made to the National Crime Agency for the provision of information in connection with that disclosure,
 - (c) the respondent is carrying on a business in the regulated sector,

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- (d) the information is likely to be of substantial value to the authority that made the external request in determining any matter in connection with the disclosure, and
 - (e) it is reasonable in all the circumstances for the information to be provided.
- (6) For the purposes of subsection (5), “external request” means a request made by an authority of a foreign country which has responsibility in that country for carrying out investigations into whether a corresponding money laundering offence has been committed.
- (7) A further information order must specify—
 - (a) how the information required under the order is to be provided, and
 - (b) the date by which it is to be provided.
- (8) If a person fails to comply with a further information order made by a magistrates' court, the magistrates' court may order the person to pay an amount not exceeding £5,000.
- (9) The sum mentioned in subsection (8) is to be treated as adjudged to be paid by a conviction of the court for the purposes of the Magistrates' Courts Act 1980 or (as the case may be) the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).
- (10) In order to take account of changes in the value of money the Secretary of State may by regulations substitute another sum for the sum for the time being specified in subsection (8).
- (11) Schedule 9 has effect for the purposes of this section in determining what is a business in the regulated sector.
- (12) In this section—
 - “corresponding disclosure requirement” means a requirement to make a disclosure under the law of the foreign country concerned that corresponds to a requirement imposed by virtue of this Part;
 - “corresponding money laundering offence” means an offence under the law of the foreign country concerned that would, if done in the United Kingdom, constitute an offence specified in paragraph (a), (b) or (c) of section 340(11);
 - “foreign country” means a country or territory outside the United Kingdom;
 - “relevant person” means—
 - (a) in the case of an application to a magistrates' court, the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose, or
 - (b) in the case of an application to the sheriff, a procurator fiscal.

339ZI Statements

- (1) A statement made by a person in response to a further information order may not be used in evidence against the person in criminal proceedings.
- (2) Subsection (1) does not apply—
 - (a) in the case of proceedings under this Part,
 - (b) on a prosecution for perjury, or

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- (c) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).
- (3) A statement may not be used by virtue of subsection (2)(c) unless—
 - (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked,
 by or on behalf of the person in the proceedings arising out of the prosecution.
- (4) In subsection (2)(b) the reference to a prosecution for perjury is—
 - (a) in the case of England and Wales, a reference to a prosecution for an offence under section 5 of the Perjury Act 1911;
 - (b) in the case of Northern Ireland, a reference to a prosecution for an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)).

Modifications etc. (not altering text)

- C5** S. 339ZI applied by S.I. 2003/425, art. 12A(3) (as inserted (31.1.2018) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) \(Amendment\) Order 2017](#) (S.I. 2017/1280), art. 1(3), [Sch. para. 3](#))
- C6** S. 339ZI applied by S.I. 2003/425, art. 12B(3) (as inserted (31.1.2018) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) \(Amendment\) Order 2017](#) (S.I. 2017/1280), art. 1(3), [Sch. para. 3](#))
- C7** S. 339ZI applied by S.I. 2003/425, art. 22A(3) (as inserted (31.1.2018) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) \(Amendment\) Order 2017](#) (S.I. 2017/1280), art. 1(3), [Sch. para. 4](#))
- C8** S. 339ZI applied by S.I. 2003/425, art. 22B(3) (as inserted (31.1.2018) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) \(Amendment\) Order 2017](#) (S.I. 2017/1280), art. 1(3), [Sch. para. 4](#))
- C9** S. 339ZI applied by S.I. 2003/425, art. 32A(3) (as inserted (31.1.2018) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) \(Amendment\) Order 2017](#) (S.I. 2017/1280), art. 1(3), [Sch. para. 5](#))
- C10** S. 339ZI applied by S.I. 2003/425, art. 32B(3) (as inserted (31.1.2018) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) \(Amendment\) Order 2017](#) (S.I. 2017/1280), art. 1(3), [Sch. para. 5](#))

339ZJ Appeals

- (1) An appeal from a decision on an application for a further information order lies to the relevant appeal court.
- (2) An appeal under this section lies at the instance of any person who was a party to the proceedings on the application.
- (3) The “relevant appeal court” is—
 - (a) the Crown Court, in the case of a decision made by a magistrates' court in England and Wales;
 - (b) a county court, in the case of a decision made by a magistrates' court in Northern Ireland;
 - (c) the Sheriff Appeal Court, in the case of a decision made by the sheriff.

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- (4) On an appeal under this section the relevant appeal court may—
- (a) make or (as the case may be) discharge a further information order, or
 - (b) vary the order.

339ZK Supplementary

- (1) A further information order does not confer the right to require a person to provide privileged information.
- (2) “Privileged information” is information which a person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court or, in Scotland, legal privilege as defined by section 412.
- (3) Information provided in pursuance of a further information order is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (4) An application for a further information order may be heard and determined in private.
- (5) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to further information orders.]

[^{F75}Threshold amounts

Textual Amendments

F75 S. 339A and cross-heading inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005](#) (c. 15), [ss. 103\(5\)](#), 178(8); [S.I. 2005/1521](#), art. 3(1)(c)

339A Threshold amounts

- (1) This section applies for the purposes of sections 327(2C), 328(5) and 329(2C).
- (2) The threshold amount for acts done by a deposit-taking body [^{F76}, electronic money institution or payment institution] in operating an account is £250 unless a higher amount is specified under the following provisions of this section (in which event it is that higher amount).
- (3) An officer of Revenue and Customs, or a constable, may specify the threshold amount for acts done by a deposit-taking body [^{F77}, electronic money institution or payment institution] in operating an account—
 - (a) when he gives consent, or gives notice refusing consent, to the [^{F78}body's or institution's] doing of an act mentioned in section 327(1), 328(1) or 329(1) in opening, or operating, the account or a related account, or
 - (b) on a request from the [^{F79}body or institution].
- (4) Where the threshold amount for acts done in operating an account is specified under subsection (3) or this subsection, an officer of Revenue and Customs, or a constable, may vary the amount (whether on a request from the deposit-taking body [^{F80}, electronic money institution or payment institution] or otherwise) by specifying a different amount.

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- (5) Different threshold amounts may be specified under subsections (3) and (4) for different acts done in operating the same account.
- (6) The amount specified under subsection (3) or (4) as the threshold amount for acts done in operating an account must, when specified, not be less than the amount specified in subsection (2).
- (7) The Secretary of State may by order vary the amount for the time being specified in subsection (2).
- (8) For the purposes of this section, an account is related to another if each is maintained with the same deposit-taking body [^{F81}, electronic money institution or payment institution] and there is a person who, in relation to each account, is the person or one of the persons entitled to instruct the body [^{F82} or institution] as respects the operation of the account.]

Textual Amendments

- F76** Words in s. 339A(2) inserted (29.6.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 32(5)(a), 49(2)(b)
- F77** Words in s. 339A(3) inserted (29.6.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 32(5)(b), 49(2)(b)
- F78** Words in s. 339A(3)(a) substituted (29.6.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 32(5)(c), 49(2)(b)
- F79** Words in s. 339A(3)(b) substituted (29.6.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 32(5)(d), 49(2)(b)
- F80** Words in s. 339A(4) inserted (29.6.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 32(5)(e), 49(2)(b)
- F81** Words in s. 339A(8) inserted (29.6.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 32(5)(f)(i), 49(2)(b)
- F82** Words in s. 339A(8) inserted (29.6.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 32(5)(f)(ii), 49(2)(b)

Interpretation

340 Interpretation

- (1) This section applies for the purposes of this Part.
- (2) Criminal conduct is conduct which—
 - (a) constitutes an offence in any part of the United Kingdom, or
 - (b) would constitute an offence in any part of the United Kingdom if it occurred there.
- (3) Property is criminal property if—
 - (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and
 - (b) the alleged offender knows or suspects that it constitutes or represents such a benefit.
- (4) It is immaterial—
 - (a) who carried out the conduct;
 - (b) who benefited from it;
 - (c) whether the conduct occurred before or after the passing of this Act.

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- (5) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.
- (6) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.
- (7) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.
- (8) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.
- (9) Property is all property wherever situated and includes—
 - (a) money;
 - (b) all forms of property, real or personal, heritable or moveable;
 - (c) things in action and other intangible or incorporeal property.
- (10) The following rules apply in relation to property—
 - (a) property is obtained by a person if he obtains an interest in it;
 - (b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;
 - (c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;
 - (d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).
- (11) Money laundering is an act which—
 - (a) constitutes an offence under section 327, 328 or 329,
 - (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),
 - (c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or
 - (d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom.
- (12) For the purposes of a disclosure to a nominated officer—
 - (a) references to a person's employer include any body, association or organisation (including a voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward), and
 - (b) references to employment must be construed accordingly.
- (13) References to a constable include references to a person authorised for the purposes of this Part by [^{F83}the [^{F84}Director General of the National Crime Agency]].
- [^{F85}(14) “Deposit-taking body” means—
 - (a) a business which engages in the activity of accepting deposits, ^{F86}...
 - (b) the National Savings Bank [^{F87}, or

Changes to legislation: Proceeds of Crime Act 2002, Part 7 is up to date with all changes known to be in force on or before 25 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (c) a person specified, or of a description specified, in regulations made by the Treasury or the Secretary of State.]]

[^{F88}(14A) In subsection (14)(a)—

- (a) the reference to the activity of accepting deposits is a reference to that activity so far as it is, for the time being, a regulated activity for the purposes of the Financial Services and Markets Act 2000 by virtue of an order under section 22 of that Act, but
- (b) the reference to a business which engages in that activity does not include a person specified, or of a description specified, in regulations made by the Treasury or the Secretary of State.

(14B) Before making regulations under subsection (14A)(b), the Treasury or the Secretary of State (as appropriate) must consult such persons likely to be affected by the regulations, or such representatives of such persons, as they consider appropriate.

(14C) “Electronic money institution” has the same meaning as in the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations).]

[^{F89}(15) “Further information order” means an order made under section 339ZH.]

[^{F90}(16) “Payment institution” means an authorised payment institution or a small payment institution (each as defined in regulation 2 of the Payment Services Regulations 2017 (S.I. 2017/752)).]

Textual Amendments

- F83** Words in s. 340(13) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8), [Sch. 4 para. 174](#); S.I. 2006/378, art. 4(1), [Sch. para. 10](#)
- F84** Words in s. 340(13) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 8 para. 135](#); S.I. 2013/1682, art. 3(v)
- F85** S. 340(14) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), [ss. 103\(6\)](#), 178(8); S.I. 2005/1521, art. 3(1)(c)
- F86** Word in s. 340(14)(a) omitted (29.6.2021) by virtue of [Financial Services Act 2021 \(c. 22\)](#), [ss. 32\(6\)\(a\)\(i\)](#), 49(2)(b)
- F87** S. 340(14)(c) and word inserted (29.6.2021) by [Financial Services Act 2021 \(c. 22\)](#), [ss. 32\(6\)\(a\)\(ii\)](#), 49(2)(b)
- F88** S. 340(14A)–(14C) inserted (29.6.2021) by [Financial Services Act 2021 \(c. 22\)](#), [ss. 32\(6\)\(b\)](#), 49(2)(b)
- F89** S. 340(15) inserted (27.4.2017 for specified purposes, 31.10.2017 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 38](#); S.I. 2017/991, reg. 2(s)
- F90** S. 340(16) inserted (29.6.2021) by [Financial Services Act 2021 \(c. 22\)](#), [ss. 32\(6\)\(c\)](#), 49(2)(b)

Modifications etc. (not altering text)

- C11** S. 340(11)(b) modified (E.W.N.I.) (1.10.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 6 para. 44\(a\)](#) (with [Sch. 13 para. 5](#)); S.I. 2008/2504, art. 2(a)

Commencement Information

- I14** S. 340 in force at 24.2.2003 by S.I. 2003/120, art. 2, [Sch.](#) (with [arts. 3, 4](#)) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

Changes to legislation:

Proceeds of Crime Act 2002, Part 7 is up to date with all changes known to be in force on or before 25 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2003/120 art. 3 5 by [S.I. 2003/333 art. 14\(2\)](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 13(5)(a)(iia) inserted by [2015 c. 30 Sch. 5 para. 15\(3\)\(d\)](#)

FATF



Anti-money laundering and counter-terrorist financing measures

United Kingdom

Mutual Evaluation Report

December 2018



Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendations	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	<ul style="list-style-type: none"> Guidance provided in the MLRs as to lower risk factors (e.g. clients or businesses based in the EU) are not always based on risk
2. National co-operation and co-ordination	C	<ul style="list-style-type: none"> The Recommendation is fully met
3. Money laundering offences	C	<ul style="list-style-type: none"> The Recommendation is fully met
4. Confiscation and provisional measures	C	<ul style="list-style-type: none"> The Recommendation is fully met
5. Terrorist financing offence	C	<ul style="list-style-type: none"> The Recommendation is fully met
6. Targeted financial sanctions related to terrorism & TF	LC	<ul style="list-style-type: none"> The requirement to freeze assets that are jointly owned is not expressly stated in the regulations or legislation although guidance assists to provide some clarity on the issue The communication of designations by OFSI is not immediate and can take up to 3-4 days Under the domestic listing mechanism, there are no specific provisions in law to protect the rights of bona fide third parties
7. Targeted financial sanctions related to proliferation	LC	<ul style="list-style-type: none"> The requirement to freeze assets that are jointly owned is not expressly stated in the regulations or legislation although guidance assists to provide some clarity on the issue The communication of designations by OFSI is not immediate and can take up to 3-4 days Most supervisors, other than the FCA, rely on very general provisions to undertake checks on sanctions compliance, which would benefit from further clarification and consistency
8. Non-profit organisations	C	<ul style="list-style-type: none"> The Recommendation is fully met
9. Financial institution secrecy laws	C	<ul style="list-style-type: none"> The Recommendation is fully met
10. Customer due diligence	LC	<ul style="list-style-type: none"> There is no explicit requirement to understand the ownership and control structure of customers that are legal persons (although FIs are likely to collect some of this information as a step in identifying the customers' beneficial owner) There is no explicit requirement for FI's to understand the nature of the customer's business The requirement to identify and verify the names of senior managers is not absolute (FIs are only required to take reasonable measures) and the requirements for legal arrangements are not clearly specified in line with c.10.9 While broad requirements exist, there is no specific requirement for FIs to include the beneficiary of a life insurance policy as a potential ML/TF risk factor and there is no specific requirement to take enhanced measures at the time of pay-out The Money Laundering Regulations provide guidance on lower risks in relation to EEA members which is not based on an assessment of risk



Criminal Code Act 1995

No. 12, 1995

Compilation No. 138

Compilation date: 28 March 2021

Includes amendments up to: Act No. 13, 2021

Registered: 20 April 2021

This compilation is in 2 volumes

Volume 1: sections 1–5
Schedule (sections 1.1–261.3)
Volume 2: Schedule (sections 268.1–490.7)
Schedule (Dictionary)
Endnotes

Each volume has its own contents

This compilation includes a commenced amendment made by Act No. 13, 2020. Amendments made by Act No. 13, 2021 have not commenced but are noted in the endnotes.

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Criminal Code Act 1995* that shows the text of the law as amended and in force on 28 March 2021 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Chapter 10—National infrastructure

Part 10.2—Money laundering

Division 400—Money laundering

400.1 Definitions

(1) In this Division:

ADI (authorised deposit-taking institution) means:

- (a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or
- (b) the Reserve Bank of Australia; or
- (c) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

Australian Capital Territory indictable offence means an offence against a law of the Australian Capital Territory that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

banking transaction includes:

- (a) any transaction made at an ADI; and
- (b) any transaction involving a money order.

Commonwealth indictable offence means an offence against a law of the Commonwealth, or a law of a Territory (other than the Australian Capital Territory and the Northern Territory), that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

deals with money or other property has the meaning given by section 400.2.

director, in relation to a company, means:

- (a) any person occupying or acting in the position of director of the company, by whatever name called and whether or not

Section 400.1

validly appointed to occupy or duly authorised to act in the position; and

- (b) any person in accordance with whose directions or instructions the directors of the company are accustomed to act, other than when those directors only do so:
 - (i) in the proper performance of the functions attaching to the person's professional capacity; or
 - (ii) in their business relationship with the person.

effective control has a meaning affected by section 400.2AA.

export money or other property, from Australia, includes transfer money or other property from Australia by an electronic communication.

foreign indictable offence means an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted an offence against:

- (a) a law of the Commonwealth; or
 - (b) a law of a State or Territory connected with the offence;
- that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

Note: See subsection (3) for when a law of a State or Territory is connected with the offence.

foreign offence means an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted an offence against:

- (a) a law of the Commonwealth; or
- (b) a law of a State; or
- (c) a law of a Territory.

import money or other property, into Australia, includes transfer money or other property to Australia by an electronic communication.

instrument of crime: money or other property is an instrument of crime if it is used in the commission of, or used to facilitate the commission of, an offence against a law of the Commonwealth, a State, a Territory or a foreign country that may be dealt with as an

Section 400.1

indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

Northern Territory indictable offence means an offence against a law of the Northern Territory that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

proceeds of general crime means any money or other property that is wholly or partly derived or realised, directly or indirectly, by any person from the commission of:

- (a) an offence against a law of the Commonwealth, a State or a Territory; or
- (b) a foreign offence.

proceeds of general crime offence provision means an offence against any of the following provisions:

- (a) subsection 400.2B(2);
- (b) subsection 400.2B(3);
- (c) subsection 400.2B(5);
- (d) subsection 400.2B(6);
- (e) subsection 400.2B(8);
- (f) subsection 400.2B(9);
- (g) subsection 400.3(1A);
- (h) subsection 400.3(1B);
- (i) subsection 400.3(2A);
- (j) subsection 400.3(2B);
- (k) subsection 400.3(3A);
- (l) subsection 400.3(3B);
- (m) subsection 400.4(1A);
- (n) subsection 400.4(1B);
- (o) subsection 400.4(2A);
- (p) subsection 400.4(2B);
- (q) subsection 400.4(3A);
- (r) subsection 400.4(3B).

proceeds of indictable crime means:

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- (a) any money or other property that is wholly or partly derived or realised, directly or indirectly, by any person from the commission of a particular offence against a law of the Commonwealth, a State, a Territory or a foreign country that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence); or
- (b) any money or other property that is wholly or partly derived or realised, directly or indirectly, by any person from the commission of an offence of a particular kind against a law of the Commonwealth, a State, a Territory or a foreign country that may be dealt with as an indictable offence (even if an offence of that kind may, in some circumstances, be dealt with as a summary offence).

property means real or personal property of every description, whether situated in Australia or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property.

State indictable offence means an offence against a law of a State that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

- (2) To avoid doubt, a reference in this Division to **money or other property** includes a reference to financial instruments, cards and other objects that represent money or can be exchanged for money, whether or not they have intrinsic value.
- (3) For the purposes of the definition of **foreign indictable offence** in subsection (1), a State or Territory is connected with the offence if:
 - (a) a dealing in money or property takes place in the State or Territory; and
 - (b) the money or property would be proceeds of indictable crime, or could become an instrument of crime, in relation to the offence if the offence were a foreign indictable offence.

400.2 Definition of deals with money or other property

- (1) For the purposes of this Division, a person **deals with money or other property** if the person does any of the following:

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- (a) receives, possesses, conceals or disposes of money or other property;
 - (b) imports money or other property into Australia;
 - (c) exports money or other property from Australia;
 - (d) engages in a banking transaction relating to money or other property.
- (2) For the purposes of this Division, if:
 - (a) a person (the **first person**) engages in conduct; and
 - (b) the first person's conduct causes another person to deal with money or other property (within the meaning of subsection (1)); and
 - (c) the first person is reckless as to whether the first person's conduct causes the other person to deal with the money or property;the first person is taken to have dealt with the money or property.
- (3) For the purposes of subsection (2), it is immaterial whether the identity of the other person can be established.
- (4) For the purposes of subsection (2), the conduct of a person **causes** another person to deal with money or other property (within the meaning of subsection (1)) if the conduct substantially contributes to the other person dealing with the money or property (within the meaning of subsection (1)).
- (5) For the purposes of subsection (4), it is immaterial whether the identity of the other person can be established.

400.2AA Effective control of money or property

- (1) For the purposes of this Division, a person may have **effective control** of money or other property whether or not the person has:
 - (a) a legal or equitable estate or interest in the money or property; or
 - (b) a right, power or privilege in connection with the money or property.

Section 400.2A

- (2) For the purposes of this Division, if money or other property is held on trust for the ultimate benefit of a person, the person is taken to have *effective control* of the money or property.
- (3) For the purposes of this Division, in determining whether or not a person has effective control of money or other property, regard may be had to:
 - (a) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the money or property; and
 - (b) a trust that has a relationship to the money or property; and
 - (c) family, domestic and business relationships between:
 - (i) persons having an interest in the money or property, or in companies of the kind referred to in paragraph (a) or trusts of the kind referred to in paragraph (b); and
 - (ii) other persons.
- (4) For the purposes of this section, family relationships are taken to include the following (without limitation):
 - (a) relationships between de facto partners;
 - (b) relationships of child and parent that arise if someone is the child of a person because of the definition of *child* in the Dictionary;
 - (c) relationships traced through relationships mentioned in paragraphs (a) and (b).
- (5) To avoid doubt, for the purposes of this Division, more than one person may have *effective control* of money or other property.

400.2A Application of offences relating to possible instruments of crime

- (1) This section affects the application of sections 400.2B, 400.3, 400.4, 400.5, 400.6, 400.7 and 400.8 so far as they relate to a person dealing with money or other property that:
 - (a) is intended by the person to become an instrument of crime; or
 - (b) is at risk of becoming an instrument of crime.

Section 400.2B

- (2) Those sections apply if either or both of the following apply:
- (a) a circumstance described in subsection (3) exists;
 - (b) a circumstance described in subsection (4) exists.
- (3) One circumstance is that money or other property is intended to become, or at risk of becoming, an instrument of crime in relation to an offence that is:
- (a) a Commonwealth indictable offence; or
 - (b) a foreign indictable offence; or
 - (c) a State indictable offence that has a federal aspect; or
 - (d) an Australian Capital Territory indictable offence; or
 - (e) a Northern Territory indictable offence.

Note: The prosecution need not prove the existence of any fault element for the nature of the offence: see section 400.11.

- (4) Another circumstance is that the dealing with the money or other property occurs:
- (a) in the course of or for the purposes of importation of goods into, or exportation of goods from, Australia; or
 - (b) by means of a communication using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
 - (c) in the course of banking (other than State banking that does not extend beyond the limits of the State concerned); or
 - (d) outside Australia.

- (5) Absolute liability applies to subsections (3) and (4).

Note: For absolute liability, see section 6.2.

400.2B Proceeds of crime etc.—money or property worth \$10,000,000 or more

Tier 1 offences

- (1) A person commits an offence if:
- (a) the person deals with money or other property; and
 - (b) either:

Section 400.2B

- (i) the money or property is, and the person believes it to be, proceeds of indictable crime; or
- (ii) the person intends that the money or property will become an instrument of crime; and
- (c) at the time of the dealing, the value of the money and other property is \$10,000,000 or more.

Penalty: Imprisonment for life.

- (2) A person commits an offence if:
- (a) the person engages in conduct in relation to money or other property; and
 - (b) the money or property is, and the person believes it to be, proceeds of general crime; and
 - (c) the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;
 - (vii) any rights in respect of the money or property;
 - (viii) the identity of any person who has rights in respect of the money or property;
 - (ix) the identity of any person who has effective control of the money or property; and
 - (d) when the conduct occurs, the value of the money and other property is \$10,000,000 or more.

Penalty: Imprisonment for life.

- (3) A person commits an offence if:
- (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
 - (b) for each occasion, the money or property is, and the person believes it to be, proceeds of general crime; and

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- (c) for each occasion, the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;
 - (vii) any rights in respect of the money or property;
 - (viii) the identity of any person who has rights in respect of the money or property;
 - (ix) the identity of any person who has effective control of the money or property; and
- (d) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$10,000,000 or more.

Penalty: Imprisonment for life.

Tier 2 offences

- (4) A person commits an offence if:
 - (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of indictable crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
 - (c) the person is reckless as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
 - (d) at the time of the dealing, the value of the money and other property is \$10,000,000 or more.

Penalty: Imprisonment for 15 years, or 900 penalty units, or both.

- (5) A person commits an offence if:

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- (a) the person engages in conduct in relation to money or other property; and
- (b) the money or property is proceeds of general crime; and
- (c) the person is reckless as to the fact that the money or property is proceeds of general crime; and
- (d) the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;
 - (vii) any rights in respect of the money or property;
 - (viii) the identity of any person who has rights in respect of the money or property;
 - (ix) the identity of any person who has effective control of the money or property; and
- (e) when the conduct occurs, the value of the money and other property is \$10,000,000 or more.

Penalty: Imprisonment for 15 years, or 900 penalty units, or both.

- (6) A person commits an offence if:
 - (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
 - (b) for each occasion, the money or property is proceeds of general crime; and
 - (c) for each occasion, the person is reckless as to the fact that the money or property is proceeds of general crime; and
 - (d) for each occasion, the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;

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- (v) any disposition of the money or property;
- (vi) any movement of the money or property;
- (vii) any rights in respect of the money or property;
- (viii) the identity of any person who has rights in respect of the money or property;
- (ix) the identity of any person who has effective control of the money or property; and
- (e) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$10,000,000 or more.

Penalty: Imprisonment for 15 years, or 900 penalty units, or both.

Tier 3 offences

- (7) A person commits an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of indictable crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
 - (c) the person is negligent as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
 - (d) at the time of the dealing, the value of the money and other property is \$10,000,000 or more.

Penalty: Imprisonment for 6 years, or 360 penalty units, or both.

- (8) A person commits an offence if:
- (a) the person engages in conduct in relation to money or other property; and
 - (b) the money or property is proceeds of general crime; and
 - (c) the person is negligent as to the fact that the money or property is proceeds of general crime; and

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- (d) the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;
 - (vii) any rights in respect of the money or property;
 - (viii) the identity of any person who has rights in respect of the money or property;
 - (ix) the identity of any person who has effective control of the money or property; and
- (e) when the conduct occurs, the value of the money and other property is \$10,000,000 or more.

Penalty: Imprisonment for 6 years, or 360 penalty units, or both.

- (9) A person commits an offence if:
 - (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
 - (b) for each occasion, the money or property is proceeds of general crime; and
 - (c) for each occasion, the person is negligent as to the fact that the money or property is proceeds of general crime; and
 - (d) for each occasion, the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;
 - (vii) any rights in respect of the money or property;
 - (viii) the identity of any person who has rights in respect of the money or property;

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- (ix) the identity of any person who has effective control of the money or property; and
- (e) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$10,000,000 or more.

Penalty: Imprisonment for 6 years, or 360 penalty units, or both.

Absolute liability

- (10) Absolute liability applies to paragraphs (1)(c), (2)(d), (3)(d), (4)(d), (5)(e), (6)(e), (7)(d), (8)(e) and (9)(e).

Note 1: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:

- (a) is intended by the person to become an instrument of crime; or
- (b) is at risk of becoming an instrument of crime.

400.3 Proceeds of crime etc.—money or property worth \$1,000,000 or more

Tier 1 offences

- (1) A person commits an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is, and the person believes it to be, proceeds of indictable crime; or
 - (ii) the person intends that the money or property will become an instrument of crime; and
 - (c) at the time of the dealing, the value of the money and other property is \$1,000,000 or more.

Penalty: Imprisonment for 25 years, or 1500 penalty units, or both.

- (1A) A person commits an offence if:

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- (a) the person engages in conduct in relation to money or other property; and
- (b) the money or property is, and the person believes it to be, proceeds of general crime; and
- (c) the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;
 - (vii) any rights in respect of the money or property;
 - (viii) the identity of any person who has rights in respect of the money or property;
 - (ix) the identity of any person who has effective control of the money or property; and
- (d) when the conduct occurs, the value of the money and other property is \$1,000,000 or more.

Penalty: Imprisonment for 25 years, or 1500 penalty units, or both.

(1B) A person commits an offence if:

- (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
- (b) for each occasion, the money or property is, and the person believes it to be, proceeds of general crime; and
- (c) for each occasion, the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;

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- (vii) any rights in respect of the money or property;
- (viii) the identity of any person who has rights in respect of the money or property;
- (ix) the identity of any person who has effective control of the money or property; and
- (d) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$1,000,000 or more.

Penalty: Imprisonment for 25 years, or 1500 penalty units, or both.

Tier 2 offences

- (2) A person commits an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of indictable crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
 - (c) the person is reckless as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
 - (d) at the time of the dealing, the value of the money and other property is \$1,000,000 or more.

Penalty: Imprisonment for 12 years, or 720 penalty units, or both.

- (2A) A person commits an offence if:
- (a) the person engages in conduct in relation to money or other property; and
 - (b) the money or property is proceeds of general crime; and
 - (c) the person is reckless as to the fact that the money or property is proceeds of general crime; and
 - (d) the conduct concealed or disguised any or all of the following:

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- (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;
 - (vii) any rights in respect of the money or property;
 - (viii) the identity of any person who has rights in respect of the money or property;
 - (ix) the identity of any person who has effective control of the money or property; and
- (e) when the conduct occurs, the value of the money and other property is \$1,000,000 or more.

Penalty: Imprisonment for 12 years, or 720 penalty units, or both.

(2B) A person commits an offence if:

- (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
- (b) for each occasion, the money or property is proceeds of general crime; and
- (c) for each occasion, the person is reckless as to the fact that the money or property is proceeds of general crime; and
- (d) for each occasion, the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;
 - (vii) any rights in respect of the money or property;
 - (viii) the identity of any person who has rights in respect of the money or property;
 - (ix) the identity of any person who has effective control of the money or property; and

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- (e) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$1,000,000 or more.

Penalty: Imprisonment for 12 years, or 720 penalty units, or both.

Tier 3 offences

- (3) A person commits an offence if:
 - (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of indictable crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
 - (c) the person is negligent as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
 - (d) at the time of the dealing, the value of the money and other property is \$1,000,000 or more.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

- (3A) A person commits an offence if:
 - (a) the person engages in conduct in relation to money or other property; and
 - (b) the money or property is proceeds of general crime; and
 - (c) the person is negligent as to the fact that the money or property is proceeds of general crime; and
 - (d) the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;

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- (vii) any rights in respect of the money or property;
- (viii) the identity of any person who has rights in respect of the money or property;
- (ix) the identity of any person who has effective control of the money or property; and
- (e) when the conduct occurs, the value of the money and other property is \$1,000,000 or more.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

(3B) A person commits an offence if:

- (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
- (b) for each occasion, the money or property is proceeds of general crime; and
- (c) for each occasion, the person is negligent as to the fact that the money or property is proceeds of general crime; and
- (d) for each occasion, the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;
 - (vii) any rights in respect of the money or property;
 - (viii) the identity of any person who has rights in respect of the money or property;
 - (ix) the identity of any person who has effective control of the money or property; and
- (e) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$1,000,000 or more.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

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Absolute liability

- (4) Absolute liability applies to paragraphs (1)(c), (1A)(d), (1B)(d), (2)(d), (2A)(e), (2B)(e), (3)(d), (3A)(e) and (3B)(e).

Note 1: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:

- (a) is intended by the person to become an instrument of crime; or
- (b) is at risk of becoming an instrument of crime.

400.4 Proceeds of crime etc.—money or property worth \$100,000 or more

Tier 1 offences

- (1) A person commits an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is, and the person believes it to be, proceeds of indictable crime; or
 - (ii) the person intends that the money or property will become an instrument of crime; and
 - (c) at the time of the dealing, the value of the money and other property is \$100,000 or more.

Penalty: Imprisonment for 20 years, or 1200 penalty units, or both.

- (1A) A person commits an offence if:
- (a) the person engages in conduct in relation to money or other property; and
 - (b) the money or property is, and the person believes it to be, proceeds of general crime; and
 - (c) the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;

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- (iii) the source of the money or property;
- (iv) the location of the money or property;
- (v) any disposition of the money or property;
- (vi) any movement of the money or property;
- (vii) any rights in respect of the money or property;
- (viii) the identity of any person who has rights in respect of the money or property;
- (ix) the identity of any person who has effective control of the money or property; and
- (d) when the conduct occurs, the value of the money and other property is \$100,000 or more.

Penalty: Imprisonment for 20 years, or 1200 penalty units, or both.

(1B) A person commits an offence if:

- (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
- (b) for each occasion, the money or property is, and the person believes it to be, proceeds of general crime; and
- (c) for each occasion, the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;
 - (vii) any rights in respect of the money or property;
 - (viii) the identity of any person who has rights in respect of the money or property;
 - (ix) the identity of any person who has effective control of the money or property; and
- (d) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$100,000 or more.

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Penalty: Imprisonment for 20 years, or 1200 penalty units, or both.

Tier 2 offences

- (2) A person commits an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of indictable crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
 - (c) the person is reckless as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
 - (d) at the time of the dealing, the value of the money and other property is \$100,000 or more.

Penalty: Imprisonment for 10 years, or 600 penalty units, or both.

- (2A) A person commits an offence if:
- (a) the person engages in conduct in relation to money or other property; and
 - (b) the money or property is proceeds of general crime; and
 - (c) the person is reckless as to the fact that the money or property is proceeds of general crime; and
 - (d) the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;
 - (vii) any rights in respect of the money or property;

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- (viii) the identity of any person who has rights in respect of the money or property;
- (ix) the identity of any person who has effective control of the money or property; and
- (e) when the conduct occurs, the value of the money and other property is \$100,000 or more.

Penalty: Imprisonment for 10 years, or 600 penalty units, or both.

(2B) A person commits an offence if:

- (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
- (b) for each occasion, the money or property is proceeds of general crime; and
- (c) for each occasion, the person is reckless as to the fact that the money or property is proceeds of general crime; and
- (d) for each occasion, the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;
 - (vii) any rights in respect of the money or property;
 - (viii) the identity of any person who has rights in respect of the money or property;
 - (ix) the identity of any person who has effective control of the money or property; and
- (e) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$100,000 or more.

Penalty: Imprisonment for 10 years, or 600 penalty units, or both.

Tier 3 offences

(3) A person commits an offence if:

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- (a) the person deals with money or other property; and
- (b) either:
 - (i) the money or property is proceeds of indictable crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
- (c) the person is negligent as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
- (d) at the time of the dealing, the value of the money and other property is \$100,000 or more.

Penalty: Imprisonment for 4 years, or 240 penalty units, or both.

(3A) A person commits an offence if:

- (a) the person engages in conduct in relation to money or other property; and
- (b) the money or property is proceeds of general crime; and
- (c) the person is negligent as to the fact that the money or property is proceeds of general crime; and
- (d) the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;
 - (vii) any rights in respect of the money or property;
 - (viii) the identity of any person who has rights in respect of the money or property;
 - (ix) the identity of any person who has effective control of the money or property; and
- (e) when the conduct occurs, the value of the money and other property is \$100,000 or more.

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Penalty: Imprisonment for 4 years, or 240 penalty units, or both.

(3B) A person commits an offence if:

- (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
- (b) for each occasion, the money or property is proceeds of general crime; and
- (c) for each occasion, the person is negligent as to the fact that the money or property is proceeds of general crime; and
- (d) for each occasion, the conduct concealed or disguised any or all of the following:
 - (i) the nature of the money or property;
 - (ii) the value of the money or property;
 - (iii) the source of the money or property;
 - (iv) the location of the money or property;
 - (v) any disposition of the money or property;
 - (vi) any movement of the money or property;
 - (vii) any rights in respect of the money or property;
 - (viii) the identity of any person who has rights in respect of the money or property;
 - (ix) the identity of any person who has effective control of the money or property; and
- (e) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$100,000 or more.

Penalty: Imprisonment for 4 years, or 240 penalty units, or both.

Absolute liability

(4) Absolute liability applies to paragraphs (1)(c), (1A)(d), (1B)(d), (2)(d), (2A)(e), (2B)(e), (3)(d), (3A)(e) and (3B)(e).

Note 1: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:

- (a) is intended by the person to become an instrument of crime; or
- (b) is at risk of becoming an instrument of crime.

400.5 Proceeds of crime etc.—money or property worth \$50,000 or more

- (1) A person commits an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is, and the person believes it to be, proceeds of indictable crime; or
 - (ii) the person intends that the money or property will become an instrument of crime; and
 - (c) at the time of the dealing, the value of the money and other property is \$50,000 or more.

Penalty: Imprisonment for 15 years, or 900 penalty units, or both.

- (2) A person commits an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of indictable crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
 - (c) the person is reckless as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
 - (d) at the time of the dealing, the value of the money and other property is \$50,000 or more.

Penalty: Imprisonment for 7 years, or 420 penalty units, or both.

- (3) A person commits an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of indictable crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and

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- (c) the person is negligent as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
- (d) at the time of the dealing, the value of the money and other property is \$50,000 or more.

Penalty: Imprisonment for 3 years, or 180 penalty units, or both.

- (4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note 1: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:

- (a) is intended by the person to become an instrument of crime; or
- (b) is at risk of becoming an instrument of crime.

400.6 Proceeds of crime etc.—money or property worth \$10,000 or more

- (1) A person commits an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is, and the person believes it to be, proceeds of indictable crime; or
 - (ii) the person intends that the money or property will become an instrument of crime; and
 - (c) at the time of the dealing, the value of the money and other property is \$10,000 or more.

Penalty: Imprisonment for 10 years, or 600 penalty units, or both.

- (2) A person commits an offence if:
- (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of indictable crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and

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- (c) the person is reckless as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
- (d) at the time of the dealing, the value of the money and other property is \$10,000 or more.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

- (3) A person commits an offence if:
 - (a) the person deals with money or other property; and
 - (b) either:
 - (i) the money or property is proceeds of indictable crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
 - (c) the person is negligent as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
 - (d) at the time of the dealing, the value of the money and other property is \$10,000 or more.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

- (4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note 1: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:

- (a) is intended by the person to become an instrument of crime; or
- (b) is at risk of becoming an instrument of crime.

400.7 Proceeds of crime etc.—money or property worth \$1,000 or more

- (1) A person commits an offence if:
 - (a) the person deals with money or other property; and
 - (b) either:

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- (i) the money or property is, and the person believes it to be, proceeds of indictable crime; or
- (ii) the person intends that the money or property will become an instrument of crime; and
- (c) at the time of the dealing, the value of the money and other property is \$1,000 or more.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

(2) A person commits an offence if:

- (a) the person deals with money or other property; and
- (b) either:
 - (i) the money or property is proceeds of indictable crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
- (c) the person is reckless as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
- (d) at the time of the dealing, the value of the money and other property is \$1,000 or more.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

(3) A person commits an offence if:

- (a) the person deals with money or other property; and
- (b) either:
 - (i) the money or property is proceeds of indictable crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
- (c) the person is negligent as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
- (d) at the time of the dealing, the value of the money and other property is \$1,000 or more.

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Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

(4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note 1: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:

- (a) is intended by the person to become an instrument of crime; or
- (b) is at risk of becoming an instrument of crime.

400.8 Proceeds of crime etc.—money or property of any value

(1) A person commits an offence if:

- (a) the person deals with money or other property; and
- (b) either:
 - (i) the money or property is, and the person believes it to be, proceeds of indictable crime; or
 - (ii) the person intends that the money or property will become an instrument of crime.

Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

(2) A person commits an offence if:

- (a) the person deals with money or other property; and
- (b) either:
 - (i) the money or property is proceeds of indictable crime; or
 - (ii) there is a risk that the money or property will become an instrument of crime; and
- (c) the person is reckless as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires).

Penalty: Imprisonment for 6 months, or 30 penalty units, or both.

(3) A person commits an offence if:

- (a) the person deals with money or other property; and
- (b) either:

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- (i) the money or property is proceeds of indictable crime;
or
- (ii) there is a risk that the money or property will become an instrument of crime; and
- (c) the person is negligent as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires).

Penalty: 10 penalty units.

Note: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:

- (a) is intended by the person to become an instrument of crime; or
- (b) is at risk of becoming an instrument of crime.

400.9 Dealing with property reasonably suspected of being proceeds of crime etc.

- (1AA) A person commits an offence if:
- (a) the person deals with money or other property; and
 - (b) it is reasonable to suspect that the money or property is proceeds of indictable crime; and
 - (c) at the time of the dealing, the value of the money and other property is \$10,000,000 or more.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

- (1AB) A person commits an offence if:
- (a) the person deals with money or other property; and
 - (b) it is reasonable to suspect that the money or property is proceeds of indictable crime; and
 - (c) at the time of the dealing, the value of the money and other property is \$1,000,000 or more.

Penalty: Imprisonment for 4 years, or 240 penalty units, or both.

- (1) A person commits an offence if:
- (a) the person deals with money or other property; and

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- (b) it is reasonable to suspect that the money or property is proceeds of indictable crime; and
- (c) at the time of the dealing, the value of the money and other property is \$100,000 or more.

Penalty: Imprisonment for 3 years, or 180 penalty units, or both.

(1A) A person commits an offence if:

- (a) the person deals with money or other property; and
- (b) it is reasonable to suspect that the money or property is proceeds of indictable crime; and
- (c) at the time of the dealing, the value of the money and other property is less than \$100,000.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

(2) For the purposes of this section, it is taken to be reasonable to suspect that money or other property is proceeds of indictable crime if:

- (a) the conduct constituting the offence involves a number of transactions that are structured or arranged to avoid the reporting requirements of the *Financial Transaction Reports Act 1988* that would otherwise apply to the transactions; or
- (aa) the conduct involves a number of transactions that are structured or arranged to avoid the reporting requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* that would otherwise apply to the transactions; or
- (b) the conduct involves using one or more accounts held with ADIs in false names; or
- (ba) the conduct amounts to an offence against section 139, 140 or 141 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; or
- (c) the value of the money and property involved in the conduct is, in the opinion of the trier of fact, grossly out of proportion to the defendant's income and expenditure over a reasonable period within which the conduct occurs; or

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- (d) the conduct involves a significant cash transaction within the meaning of the *Financial Transaction Reports Act 1988*, and the defendant:
 - (i) has contravened his or her obligations under that Act relating to reporting the transaction; or
 - (ii) has given false or misleading information in purported compliance with those obligations; or
- (da) the conduct involves a threshold transaction (within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*) and the defendant:
 - (i) has contravened the defendant's obligations under that Act relating to reporting the transaction; or
 - (ii) has given false or misleading information in purported compliance with those obligations; or
- (e) the defendant:
 - (i) has stated that the conduct was engaged in on behalf of or at the request of another person; and
 - (ii) has not provided information enabling the other person to be identified and located.
- (4) Absolute liability applies to paragraphs (1AA)(b) and (c), (1AB)(b) and (c), (1)(b) and (c) and (1A)(b) and (c).
- (5) This section does not apply if the defendant proves that he or she had no reasonable grounds for suspecting that the money or property was derived or realised, directly or indirectly, from some form of unlawful activity.

Note: A defendant bears a legal burden in relation to the matter in subsection (5) (see section 13.4).

400.10 Mistake of fact as to the value of money or property

- (1) A person is not criminally responsible for an offence against section 400.2B, 400.3, 400.4, 400.5, 400.6, 400.7 or 400.9 (other than an offence against a proceeds of general crime offence provision) in relation to money or property if:
 - (a) at or before the time of dealing with the money or property, the person considered what was the value of the money or

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property, and was under a mistaken but reasonable belief about that value; and

- (aa) in a case where the dealing continued during a period—the person had that belief throughout that period; and
- (b) had the value been what the person believed it to be, the person's conduct would have constituted another offence against this Division for which the maximum penalty, in penalty units, is less than the maximum penalty, in penalty units, for the offence charged.

Example: Assume that a person deals with money or property that is the proceeds of indictable crime. While the person believes it to be proceeds of indictable crime, he or she is under a mistaken but reasonable belief that it is worth \$90,000 when it is in fact worth \$120,000.

That belief is a defence to an offence against subsection 400.4(1) (which deals with money or property of a value of \$100,000 or more). However, the person would commit an offence against subsection 400.5(1) (which deals with money or property of a value of \$10,000 or more). Section 400.14 allows for an alternative verdict of guilty of an offence against subsection 400.5(1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3)).

- (1A) A person is not criminally responsible for an offence against a proceeds of general crime offence provision that relates to engaging in conduct in relation to money or property if:
- (a) at or before the time of engaging in the conduct, the person considered what was the value of the money or property, and was under a mistaken but reasonable belief about that value; and
 - (b) in a case where the conduct continued during a period—the person had that belief throughout that period; and
 - (c) had the value been what the person believed it to be, the person's conduct would have constituted another offence against this Division for which the maximum penalty, in penalty units, is less than the maximum penalty, in penalty units, for the offence charged.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3)).

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- (2) A person may be regarded as having considered what the value of the money or property was if:
- (a) he or she had considered, on a previous occasion, what the value of the money or property was in the circumstances surrounding that occasion; and
 - (b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

400.10A Effect of money or property being provided as part of a controlled operation—proceeds of indictable crime

- (1) In a prosecution for an offence by a person against section 400.2B, 400.3, 400.4, 400.5, 400.6, 400.7 or 400.8 (other than an offence against a proceeds of general crime offence provision) in relation to the person dealing with money or other property, it is not necessary to prove that the money or property is proceeds of indictable crime if it is proved that, as part of a controlled operation in relation to suspected offences against this Division, either of the following provided the money or property:
- (a) a law enforcement participant in the controlled operation;
 - (b) a civilian participant in the controlled operation, acting in accordance with the instructions of a law enforcement officer.

- (2) In this section:

civilian participant in a controlled operation has the meaning given by Part IAB of the *Crimes Act 1914*.

controlled operation has the meaning given by Part IAB of the *Crimes Act 1914*.

law enforcement officer has the meaning given by subsection 3(1) of the *Crimes Act 1914*.

law enforcement participant in a controlled operation has the meaning given by Part IAB of the *Crimes Act 1914*.

400.10B Effect of money or property being provided as part of a controlled operation—proceeds of general crime

- (1) In a prosecution for an offence against a proceeds of general crime offence provision by a person in relation to the person engaging in conduct in relation to money or other property, it is not necessary to prove that the money or property is proceeds of general crime if it is proved that, as part of a controlled operation in relation to suspected offences against this Division, either of the following provided the money or property:
- (a) a law enforcement participant in the controlled operation;
 - (b) a civilian participant in the controlled operation, acting in accordance with the instructions of a law enforcement officer.
- (2) In this section:

civilian participant in a controlled operation has the meaning given by Part IAB of the *Crimes Act 1914*.

controlled operation has the meaning given by Part IAB of the *Crimes Act 1914*.

400.11 Proof of certain matters relating to kinds of offences not required

In a prosecution for an offence against a provision of this Division, it is not necessary to prove the existence of any fault element in relation to any of the following:

- (a) whether an offence may be dealt with as an indictable offence;
- (b) whether an offence is an indictable offence;
- (c) whether an offence is a Commonwealth indictable offence;
- (d) whether an offence is a foreign indictable offence;
- (e) whether an offence is a State indictable offence;
- (f) whether an offence is an Australian Capital Territory indictable offence;
- (g) whether an offence is a Northern Territory indictable offence;
- (h) whether an offence is a foreign offence.

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400.12 Combining several contraventions in a single charge

- (1) A single charge of an offence against a provision of this Division (other than a proceeds of general crime offence provision) may be about 2 or more instances of the defendant engaging in conduct (at the same time or different times) that constitutes an offence against a provision of this Division (other than a proceeds of general crime offence provision).
- (2) If:
 - (a) a single charge is about 2 or more such instances; and
 - (b) the value of the money and other property dealt with is an element of the offence in question;that value is taken to be the sum of the values of the money and other property dealt with in respect of each of those instances.

400.13 Proof of other offences is not required

- (1) To avoid doubt, it is not necessary, in order to prove for the purposes of this Division that money or property is proceeds of general crime, to establish that:
 - (a) a particular offence, or an offence of a particular kind, was committed in relation to the money or property; or
 - (b) a particular person committed an offence, or an offence of a particular kind, in relation to the money or property.
- (1A) To avoid doubt, it is not necessary, in order to prove for the purposes of this Division that money or property is proceeds of indictable crime covered by paragraph (a) of the definition of ***proceeds of indictable crime*** in subsection 400.1(1), to establish that a particular person committed an offence in relation to the money or property.
- (1B) To avoid doubt, it is not necessary, in order to prove for the purposes of this Division that money or property is proceeds of indictable crime covered by paragraph (b) of the definition of ***proceeds of indictable crime*** in subsection 400.1(1), to establish that:
 - (a) a particular offence was committed in relation to the money or property; or

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- (b) a particular person committed an offence in relation to the money or property.
- (2) To avoid doubt, it is not necessary, in order to prove for the purposes of this Division an intention or risk that money or property will be an instrument of crime, to establish that:
 - (a) an intention or risk that a particular offence will be committed in relation to the money or property; or
 - (b) an intention or risk that a particular person will commit an offence in relation to the money or property.

400.14 Alternative verdicts

If, on a trial for an offence against a provision of this Division (the *offence charged*), the trier of fact:

- (a) is not satisfied that the defendant is guilty of the offence charged; but
- (b) is otherwise satisfied that the defendant is guilty of another offence against this Division for which the maximum penalty, in penalty units, is less than the maximum penalty, in penalty units, for the offence charged;

the trier of fact may find the defendant not guilty of the offence charged but guilty of the other offence, so long as the person has been accorded procedural fairness in relation to that finding of guilt.

400.14A Recklessness as to nature of money or property sufficient for offence of attempt to commit an offence against certain provisions of this Part

- (1) Despite subsection 11.1(3), for the offence of attempting to commit an offence against any of the following provisions:
 - (a) subsection 400.2B(4);
 - (b) subsection 400.2B(5);
 - (c) subsection 400.2B(6);
 - (d) subsection 400.2B(7);
 - (e) subsection 400.2B(8);
 - (f) subsection 400.2B(9);

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- (g) subsection 400.3(2);
- (h) subsection 400.3(2A);
- (i) subsection 400.3(2B);
- (j) subsection 400.3(3);
- (k) subsection 400.3(3A);
- (l) subsection 400.3(3B);
- (m) subsection 400.4(2);
- (n) subsection 400.4(2A);
- (o) subsection 400.4(2B);
- (p) subsection 400.4(3);
- (q) subsection 400.4(3A);
- (r) subsection 400.4(3B);
- (s) subsection 400.5(2);
- (t) subsection 400.5(3);
- (u) subsection 400.6(2);
- (v) subsection 400.6(3);
- (w) subsection 400.7(2);
- (x) subsection 400.7(3);
- (y) subsection 400.8(2);
- (z) subsection 400.8(3);

recklessness is the fault element in relation to whichever of the following is a physical element of the offence attempted:

- (za) that money or property is proceeds of indictable crime;
- (zb) that money or property is proceeds of general crime.

Note: Proof of intention, knowledge or recklessness will satisfy a fault element of recklessness: see subsection 5.4(4)

400.15 Geographical jurisdiction

- (1) A person does not commit an offence against this Division unless:
 - (a) the conduct constituting the alleged offence occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or

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- (b) except in the case of an alleged offence against a proceeds of general crime offence provision—the conduct constituting the alleged offence occurs wholly outside Australia (but not on board an Australian aircraft or an Australian ship) and the money or other property:
 - (i) is proceeds of indictable crime; or
 - (ii) is intended to become an instrument of crime; or
 - (iii) is at risk of becoming an instrument of crime;in relation to a Commonwealth indictable offence, a State indictable offence, an Australian Capital Territory indictable offence or a Northern Territory indictable offence; or
- (ba) in the case of an alleged offence against a proceeds of general crime offence provision:
 - (i) the conduct constituting the alleged offence occurs wholly outside Australia (but not on board an Australian aircraft or an Australian ship); and
 - (ii) the money or other property is proceeds of general crime in relation to an offence against a law of the Commonwealth, an offence against a law of a State, an offence against a law of the Australian Capital Territory or an offence against a law of the Northern Territory; or
- (c) the conduct constituting the alleged offence occurs wholly outside Australia and:
 - (i) at the time of the alleged offence, the person is an Australian citizen; or
 - (ii) at the time of the alleged offence, the person is a resident of Australia; or
 - (iii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or
- (d) all of the following conditions are satisfied:
 - (i) the alleged offence is an ancillary offence;
 - (ii) the conduct constituting the alleged offence occurs wholly outside Australia;
 - (iii) the conduct constituting the primary offence to which the ancillary offence relates occurs, or is intended by the person to occur, wholly or partly in Australia or wholly

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or partly on board an Australian aircraft or an Australian ship.

Note: The expression *offence* is given an extended meaning by subsection 11.2(1), section 11.3 and subsection 11.6(1).

Defence—primary offence

- (2) A person does not commit an offence against this Division if:
- (a) the alleged offence is a primary offence; and
 - (b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
 - (c) paragraph (1)(b) of this section does not apply; and
 - (d) the person is neither:
 - (i) an Australian citizen; nor
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
 - (e) there is not in force in:
 - (i) the foreign country where the conduct constituting the alleged offence occurs; or
 - (ii) the part of the foreign country where the conduct constituting the alleged offence occurs;a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the offence against this Division.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3).

- (3) For the purposes of the application of subsection 13.3(3) to an offence, subsection (2) of this section is taken to be an exception provided by the law creating the offence.

Defence—ancillary offence

- (4) A person does not commit an offence against this Division if:
- (a) the alleged offence is an ancillary offence; and

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- (b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
- (c) the conduct constituting the primary offence to which the ancillary offence relates occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
- (d) paragraph (1)(b) of this section does not apply (and would not apply if the conduct described in paragraph (c) of this subsection occurred as intended); and
- (e) the person is neither:
 - (i) an Australian citizen; nor
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
- (f) there is not in force in:
 - (i) the foreign country where the conduct constituting the primary offence to which the ancillary offence relates occurs, or is intended by the person to occur; or
 - (ii) the part of the foreign country where the conduct constituting the primary offence to which the ancillary offence relates or is intended by the person to occur;a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the primary offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3).

- (5) For the purposes of the application of subsection 13.3(3) to an offence, subsection (4) of this section is taken to be an exception provided by the law creating the offence.

Extended application of sections 16.1, 16.2 and 16.3

- (6) Section 16.1, except paragraph 16.1(1)(a), applies in relation to an offence against this Division (in addition to the application of that section apart from this subsection).

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Note: Section 16.1 requires the Attorney-General's consent for prosecution of an offence if the alleged conduct occurred wholly in a foreign country in certain circumstances.

- (7) Sections 16.2 and 16.3 apply for the purposes of this Division in the same way as they apply for the purposes of Part 2.7.

Note: Section 16.2 treats the sending of things and electronic communications into and out of Australia as conduct occurring partly in Australia. Section 16.3 affects the meaning of *Australia*.

400.16 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.



Anti-money laundering and counter-terrorist financing measures

Australia

Mutual Evaluation Report

April 2015



Table 2: Compliance with FATF Recommendations

Compliance with FATF Recommendations			
Recommendation		Rating	Factor(s) underlying the rating
1.	Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> • Mitigation policies have not been taken to mitigate high risks identified in the NTA related to certain entities and services. • Most main, but not all, ML risks were identified and properly assessed. • Reporting entities are not required to mitigate or carry out enhanced measures for high risks, identified by the authorities. • Exemptions, and the application of simplified measures, are not based solely on low risk but include other variables such as regulatory burden and the desirability of promoting the risk-based approach. • Scope issue - accountants, lawyers, trust and company service providers, most dealers in precious metals & stones, and real estate agents are not reporting entities and thus not subject to risk mitigation requirements.
2.	National cooperation and coordination	LC	<ul style="list-style-type: none"> • Australia does not have a formalised AML/CTF policy that draws on risks identified in the NTA and NRA.
3.	Money laundering offence	C	The Recommendation is fully met.
4.	Confiscation and provisional measures	C	The Recommendation is fully met.
5.	Terrorist financing offence	LC	<ul style="list-style-type: none"> • The Australian definition of 'terrorist act' is somewhat narrower than the definition in Articles 2(1)(a) and (b) of the TF Convention. • The provision or collection of funds to be used by an individual terrorist for any purpose is not covered.
6.	Targeted financial sanctions related to terrorism & TF	C	The Recommendation is fully met.
7.	Targeted financial sanctions related to proliferation	C	The Recommendation is fully met.