

56

**STANDING COMMITTEE ON FINANCE
(2011-12)**

FIFTEENTH LOK SABHA

**Ministry of Finance
(Department of Revenue)**

**The Prevention of Money Laundering
(Amendment) Bill, 2011**

FIFTY-SIXTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

May, 2012/ Vaisakha, 1934 (Saka)

FIFTY-SIXTH REPORT

STANDING COMMITTEE ON FINANCE
(2011-2012)

(FIFTEENTH LOK SABHA)

Ministry of Finance
(Department of Revenue)

**The Prevention of Money Laundering
(Amendment) Bill, 2011**

Presented to Lok Sabha on 9 May, 2012

Laid in Rajya Sabha on 9 May, 2012



LOK SABHA SECRETARIAT
NEW DELHI

May, 2012/ Vaisakha, 1934 (Saka)

CONTENTS

Page No.

COMPOSITION OF THE COMMITTEE (iii)

INTRODUCTION (iv)

REPORT

I.	Introduction	1
II.	Salient features of the Bill	2
III.	Financial Action Task Force (FATF)	8
IV.	Mutual Evaluation of India by FATF	10
V.	Role of Financial Intelligence Unit- India (FIU-IND)	11
VI.	Role of Directorate of Enforcement	11
VII.	Trailing the flow of money :	
	(a) Multi-layered transactions and round-tripping	13
	(b) Participatory Notes and Stock Markets : Role of SEBI	14
VIII.	Money-Laundering and Generation of unaccounted money	18
IX.	Trade-based money laundering	20
X.	Onus of proof-distinction between bonafide and malafide transactions	21
XI.	Beneficial ownership	22
XII.	Persons carrying on designated business or profession	23
XIII.	Persons engaged in safe-keeping	24
XIV.	Audit	24
XV.	Imposition of Fine	26
XVI.	Maintenance of Records	27
XVII.	Electronic verification of identity	28
XVII.	Adequacy of manpower and training requirements	28
XIX.	Manageability of financial data and capacity of banking system	29
XX.	Fast-tracking of cases	30

APPENDICES

I.	Minutes of the sittings of the Committee held on 9 April, 2012 and 8 May, 2012
II.	The Prevention of Money Laundering (Amendment) Bill, 2011

COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2011-12

Shri Yashwant Sinha - Chairman

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi
3. Shri Jayant Chaudhary
4. Shri Harishchandra Deoram Chavan
5. Shri Bhakta Charan Das
6. Shri Gurudas Dasgupta
7. Shri Nishikant Dubey
8. Shri Chandrakant Khaire
9. Shri Bhartruhari Mahtab
10. Shri Anjan Kumar Yadav M.
11. Shri Prem Das Rai
12. Dr. Kavuru Sambasiva Rao
13. Shri Rayapati S. Rao
14. Shri Magunta Sreenivasulu Reddy
15. Shri Sarvey Sathyanarayana
16. Shri G.M. Siddeswara
17. Shri N. Dharam Singh
18. Shri Yashvir Singh
19. Shri Manicka Tagore
20. Shri R. Thamaraiselvan
21. Dr. M. Thambidurai

RAJYA SABHA

22. Smt. Renuka Chowdhury*
23. Shri Ravi Shankar Prasad*
24. Shri Vijay Jawaharlal Darda
25. Shri Piyush Goyal
26. Shri P. Rajeeve *
27. Shri Satish Chandra Misra
28. Dr. Mahendra Prasad *
29. Dr. K.V.P. Ramachandra Rao
30. Shri Yogendra P. Trivedi
31. Vacant

SECRETARIAT

1. Shri A.K. Singh - Joint Secretary
2. Shri R.K. Jain - Director
3. Shri Ramkumar Suryanarayanan - Deputy Secretary

**Nominated to be the Member of the Standing Committee on Finance w.e.f 4th May, 2012*

INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Fifty-sixth Report on the Prevention of Money Laundering (Amendment) Bill, 2011.

2. The Prevention of Money Laundering (Amendment) Bill, 2011 introduced in Lok Sabha on 27 December, 2011, was referred to the Committee on 5 January, 2012 for examination and report thereon, by the Speaker, Lok Sabha under rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained written information on various provisions contained in the aforesaid Bill from the Ministry of Finance (Department of Revenue).

4. Written views/memoranda were received from the Indian Banks' Association (IBA), Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI) and Federation of Indian Chamber of Commerce and Industry (FICCI).

5. The Committee, at their sitting held on 9 April, 2012 took evidence of the representatives of the Ministry of Finance (Department of Revenue).

6. The Committee, at their sitting held on 08 May, 2012 considered and adopted the draft report and authorized the Chairman to finalise the same and present it to the Parliament.

7. The Committee wish to express their thanks to the officials of the Ministry of Finance (Department of Revenue) for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the Bill.

8. The Committee also wish to express their thanks to the Indian Banks' Association (IBA), Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI) and Federation of Indian Chamber of Commerce and Industry (FICCI) for placing before them their considered views on the Bill in the form of memoranda.

9. For facility of reference, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

New Delhi;
8 May, 2012
18 Vaisakha, 1934(Saka)

YASHWANT SINHA,
Chairman,
Standing Committee on Finance.

REPORT

Introduction

The Prevention of Money Laundering Act, 2002 (PMLA) 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. The PMLA was brought into the statute to implement the resolution and declaration made under the Political Declaration and Global Programme of Action against Money Laundering adopted by the General Assembly of the United Nations in 1998. The PMLA has been amended first in 2005 and thereafter in 2009 subsequent to the presentation of Report by the Standing Committee on Finance on 19 December, 2008 to overcome some of the difficulties that were being faced in its enforcement and to increase the coverage of the Act to include payment system operators, etc.

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 (FATF) 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.

The anti-money laundering legislative framework of the country has been evaluated by the Financial Action Task Force (FATF), an inter-Governmental body, for development and promotion of policies to combat money laundering and terrorist financing. A comprehensive evaluation of the country's legislative and administrative framework for prevention of money laundering and countering financing of terror was made by the FATF in November/December, 2009. The mutual evaluation report prepared after the comprehensive evaluation identified several shortcomings in the existing administrative and legislative framework to handle activities related to prevention of money laundering. An action plan was prepared by the Government of India, which was submitted to FATF. This action

plan lists various short-term and medium-term measures which are required to be taken. This action plan also envisages several amendments in the PMLA so that the legislative and administrative framework of the country to prevent money laundering and countering financing of terror becomes more effective and capable of handling the new evolving threats. The amendments proposed are stated to be based not only on the mutual evaluation report of the FATF but also the Government's own experiences in the implementation of the PMLA. Accordingly, the Prevention of Money Laundering (Amendment) Bill, 2011 was introduced in Parliament and subsequently referred by the Hon'ble Speaker, Lok Sabha to the Standing Committee on Finance of Parliament on 5 January, 2012 for examination and Report thereon.

II. Salient features of the Amendment Bill

1. 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' .

2. 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.

3. 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.

4. 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 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.

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).

(iii) **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.

(v) **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.

5. Amendment in provisions implemented by Enforcement Directorate:

(i) **Attachment of property:** The present Act in section 5 stipulates that the person from whom property is attached must “have been charged of having committed a scheduled offence”. It is proposed to be deleted as property may come to rest with someone, who has nothing to do with the scheduled offence or even the money-laundering offence. Procedure for attachment is at present done as provided in the Second Schedule to the Income Tax Act, 196. Now it is proposed in section 5(1) that the procedure will be prescribed separately. Time for Adjudicating Authority to confirm attachment of property by ED has been proposed to be increased from **150 days to 180 days**.

(ii) **Freezing of property:** At present PMLA provides for attachment of property after charge sheet u/s 173 CrPC has been filed in scheduled offence case and seizure of property after FIR u/s 157 CrPC has been filed in scheduled

offence case. However, in a number of situations it may not be practicable to seize a record or property. In such cases, there has to be a provision for freezing such property, so that it can be seized or attached and confiscated later. The new **sub-section 17(1A)** is proposed to be added for this purpose. Consequential changes are also proposed in a number of places in the Act, where “seizure” under section 17 or 18 is referred to.

At present under PMLA search & seizure can be done only after FIR u/s 157 CrPC has been forwarded to a Magistrate (in scheduled offence cases where FIRs are required). However, in cases where FIR is not required (e.g. Forest Act violation, Copyrights Act violation), search & seizure can take place only after charge sheet is filed. This may happen after a prolonged gap and chances of disappearance of proceeds of crime cannot be ruled out. To obviate this problem it is now **proposed in the proviso to section 17(1) to undertake search & seizure in such cases (where there is no requirement to file FIR) after the investigating officer files a report (similar to FIR) to a superior officer.**

(iii) **Making confiscation independent of conviction:** At present attachment of property becomes final under section 8(3) “after the guilt of the person is proved in the trial court and order of such trial court becomes final”. Problems are faced in such cases where money-laundering has been done by a person who has not committed the scheduled offence or where property has come to rest with someone who has not committed any offence. Therefore, 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.

(iv) **Amendment relating to the procedure of confiscation:** PMLA provides 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 judgment in the predicate offence/money-laundering case.

A new sub section 7 is proposed to be inserted in section 8 to address confiscation or release of property by the Special Court when a trial cannot take place in a case on account of death or accused being declared proclaimed offender or for any other reason.

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.

(v) **Retention and presumption provisions:**

In the existing Act, section 20 relates to retention of “property” and section 21 to “records”. It is now proposed to combine these 2 sections to cover retention of both property and records. Further the time limit for retention is proposed to be increased from 3 months to 6 months, that is, 180 days in line with the extension of time limit for attachment under section 5.

(vi) **Presumption that records or property** (sec 22) found in possession of person who is searched or surveyed that it belongs to the person, contents are true, signature is correct, etc. is proposed to be extended when such record or property is produced by a person before an investigating officer, or has been resumed or seized from the custody of a person by LEA in course of investigation in the predicate offence under the provisions of any other Act.

6. Burden of Proof: The existing provision in section 24 reads as- ‘ 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.’ There can be situations where the accused may cleverly pass off the property to someone to avoid confiscation. To take care of these eventualities section 24 is proposed to be amended as below-

Section 24: In any proceedings relating to proceeds of crime under this Act, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money-laundering.

7. Committing of cases to Special Court: Presently PMLA requires under sec 43(1) & 44(1) that trial for both the predicate offence and the money-laundering offence to take place in the Special Court (Sessions court). When ED files a charge sheet under money-laundering case, the court where the scheduled offence trial is taking place has to commit that case to the Special Court and to obviate any problem it is specifically mentioned that **the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.**

8. Officers empowered and required to assist: New officers are being added to sec 54, who are “empowered and required to assist authorities in enforcement of the Act.

9. Appeal against the order of Appellate Tribunal to lie in the Supreme Court: Under the existing provision in section 42, an appeal against the order of the Appellate Tribunal lies before High Court within the jurisdiction of which the aggrieved party resides or carries on its business. Since the attached properties may be located in different parts of the country in a particular case, the appeals can be filed in various High Courts in the country in the same case. Hence, such provision is likely to lead a situation where order of Money Laundering Tribunal might be reversed by one High Court and upheld by another High Court. In order to obviate this difficulty, it is proposed in section 42 that the appeal may lie before the Supreme Court. Concurrently it is also proposed in section 28 to raise the status of the Appellate Tribunal on the lines of the Appellate Tribunals under the SEBI Act.

10. 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.

III. FINANCIAL ACTION TASK FORCE (FATF)

The Financial Action Task Force (FATF) is an intergovernmental body that works for the development of standards for combating money laundering and terrorist financing. It also ensures adherence to its standards by making sure that countries across the world bring about legislative and regulatory reforms in these areas. It further monitors the progress of the anti-money laundering efforts of its members. Forty plus nine recommendations of FATF are considered as global standards on Anti-money laundering and combating of financing of terrorism.

Benefits of implementing the FATF Recommendations:

The benefits of implementing the FATF Recommendations have been stated to be as under :

- 1. Securing a more transparent and stable financial system that is more attractive to foreign investors:** Corrupt and opaque financial systems are inherently unstable. Excessive money laundering can cause increased volatility of international capital flows and exchange rates, market disparities, and distortions of investment and trade flows.
- 2. Ensure that financial institutions are not vulnerable to infiltration or abuse by organised crime groups:** Financial institutions that are exploited in this manner are exposed to reputational risk, financial instability, diminished public confidence, threats to safety and soundness and other losses.
- 3. Build the capacity to fight terrorism and trace terrorist money:** Terrorists need money to finance attacks. Tracing this money is one of the few preventive tools that governments have against terrorism.

4. **Meet binding international obligations, and avoid the risk of sanctions or other action by the international community:** The international community- through numerous international treaties, United Nations Security Council Resolutions and best practices- has endorsed the FATF Recommendations at the highest political level.

5. **Avoid becoming a haven for criminals:** Countries with weak AML/CFT systems are attractive to criminals because they provide an environment in which criminals can enjoy the profits of their crimes and finance their illicit activities with little fear of facing punishment.

Membership of India: Pursuant to the decision of the Core Group on Security, India submitted its application for the membership of FATF in 2003. India was accorded the status of an 'observer' by the FATF in the year 2006. As part of technical procedure to qualify for membership, India underwent a mutual evaluation process. A FATF Mutual Evaluation (ME) Team visited India in December 2009 for on-site discussions and evaluation of Indian legislative, regulatory and institutional framework for AML/CFT against each of the 40+9 recommendations of FATF. The Mutual Evaluation Report pointed out the deficiencies in AML/CFT framework of India. Subsequently, India has suggested an Action Plan with short, medium and long term objectives to address the specific issues raised in the Mutual Evaluation Report that includes proposed amendments in the PMLA. With these amendments, it is believed that PMLA would largely conform to the global standards and help in strengthening and coordinating efforts of national and international intelligence, investigation and enforcement agencies in combating money laundering and terrorist financing.

After submission of India's Action Plan with an assurance of Finance Minister that India will bring about changes in legislations, regulatory and institutional framework to conform to FATF standards, membership was granted to India in June 2010.

IV. MUTUAL EVALUATION OF INDIA BY FATF

The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of India in terms of the Forty Recommendations and the Nine Special Recommendations on Terrorist Financing of the Financial Action Task Force (FATF) was carried out by FATF during 2009 and 2010. The FATF team of experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering and financing of terrorism through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as assessed the capacity, the implementation and the effectiveness of all these systems. The Mutual Evaluation Report (MER) of FATF was released in June 2010, which was discussed and adopted in the June Plenary of FATF at Paris. India was admitted as a member of FATF based on the findings of MER.

However, the MER 2010 highlighted certain deficiencies in the AML legislation which adversely affected the ratings on a few FATF recommendations. The areas are broadly summarized below:

- a) Commodities market out of the ambit of PMLA
- b) DNFBP sector not subjected to PMLA (except Casino)
- c) Effectiveness concerns due to absence of ML conviction
- d) Identification and verification of beneficial ownership of legal persons
- e) Ineffective sanctions regime for non-compliance.

India has suggested an Action Plan with short, medium and long term objectives to address the specific issues raised in the MER 2010 that includes proposed amendments in the PMLA.

V. ROLE OF FINANCIAL INTELLIGENCE UNIT-INDIA (FIU-IND)

Financial Intelligence Units (FIUs) are specialized government agencies created to act as an interface between financial sector and law enforcement agencies for collecting, analysing and disseminating information, particularly about suspicious financial transactions.

Financial Intelligence Unit-India (FIU-IND) was set up by the Government of India on 18th November, 2004 as an administrative FIU i.e. a central national agency responsible for receiving, analyzing and disseminating information related to suspicious financial transactions. It receives prescribed information from various entities in financial sector under the Prevention of Money Laundering Act 2002 (PMLA) and in appropriate cases disseminates information to relevant intelligence/ law enforcement agencies which include Central Board of Direct Taxes, Central Board of Excise & Customs Enforcement Directorate, Narcotics Control Bureau, Central Bureau of Investigation, Intelligence agencies and regulators of financial sector. FIU-IND does not investigate cases. It is an independent body reporting to the Economic Intelligence Council headed by the Finance Minister. For administrative purposes, FIU-IND is under the control of Department of Revenue, Ministry of Finance. FIU-IND is headed by the Director, who is of the rank of Joint Secretary to the Government of India.

Section 12 of PMLA requires every banking company, financial institution and intermediary (referred to as reporting entities) to verify the identity of all its clients in the manner prescribed, maintain records of transactions and identity of clients and furnish information of prescribed transactions to the Director, Financial Intelligence Unit-India.

VI. ROLE OF DIRECTORATE OF ENFORCEMENT

The Directorate of Enforcement is statutorily notified for investigating the offence of money laundering under PMLA and to take the consequential actions of attaching the proceeds of crime involved in money laundering and for prosecuting the persons. The Directorate of Enforcement has the powers to carry

out survey, searches, seizures and arrest besides attachment and confiscation of proceeds of crime or property involved in money laundering.

The Directorate is presently headed by the Director, a Special Secretary level officer who is appointed as per Section 25 of the CVC Act, 2003. The Legal wing is headed by the Additional Director (Prosecution) assisted by Deputy Legal Advisor and Assistant Legal Advisor.

Presently, PMLA has 156 sections covering 28 acts as scheduled offences.

The following enforcement actions can be taken under PMLA for preventing money laundering:

- (i) Provisional attachment of property derived or obtained as result of criminal activity relating to a scheduled offence. The same may be confiscated and vested with Central Government free from all encumbrances once the guilt of the accused person for the scheduled offence is proved in the Trial Court and the conviction attains finality.
- (ii) Persons found guilty of an offence of Money Laundering are punishable with rigorous imprisonment for a term which shall not be less than three years but may extend up to seven years and shall also liable for fine up to Rs 5 lakhs. In the case of schedule offence under NDPS Act, the punishment may extend up to ten years.

The scheduled offences are investigated by various Law Enforcement Agencies such as State Police, NCB, CBI, Customs, SEBI and other Central and State Agencies. As per scheme of the Act, at present, the confiscation of property is linked with conviction in trial of scheduled offence. In case the accused is acquitted and the acquittal attains finality, the attachment of properties shall cease to have effect.

The provisional attachment of proceeds of crime as well as property involved in money laundering is made by the authorised officers of the Directorate as per the provisions contained under Section 5 of PMLA.

ISSUES RELATING TO AMENDMENT BILL

Several pertinent issues relating to the Amendment Bill were raised by the Committee and discussed with the representatives of Ministry of Finance (Department of Revenue). These included suggestions received from organisations / institutions such as IBA, RBI, SEBI and FICCI. Written information / replies was also obtained from the Ministry.

VII. TRAILING THE FLOW OF MONEY

(a) Multi-layered transactions and round-tripping

7 (a) During the oral evidence tendered by the representatives of the Department of Revenue, the Committee desired to know whether there was a way the layering transactions across several countries be limited so that it was easier to trail the flow of money and whether the FATF could be sensitized of the numerous layers through which transactions were routed so that a standard in this regard could be formulated by it.

The Ministry have inter-alia submitted in this regard that the FATF has issued recommendations that takes into account the risk posed by such multi-jurisdictional entities and have recommended measures to mitigate the risk in their revised recommendations issued in Feb.2012.

The Committee further desired to know about the method to detect the round tripping of black money from India through the Foreign Investment and whether the new Amendment would help in that regard.

The Ministry have replied as below :

“As per the scheme of the PMLA, the Directorate of Enforcement initiates investigations on registration of FIR for a scheduled offence by the concerned law enforcement agency. However, evasion of income tax, which leads to generation of black money, is not a scheduled offence under PMLA. It may be mentioned that in certain cases where charge sheets have been filed by CBI concerning scheduled offences under IPC and Prevention of Corruption Act, the Directorate of Enforcement is conducting investigations under PMLA”.

The Committee, while expressing their serious concern over multi-layering of transactions across countries including the round-tripping of unaccounted money generated from India, would recommend that the Government should take concrete steps to mitigate the risks posed by such multi-jurisdictional entities and their transactions. The enforcement mechanism requires to be sensitized for this purpose.

In this context, the Committee note that Clause 58 A of the Bill provides that where on conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering has not taken place or the property in India is not involved in money-laundering, the designated Special Court shall on an application moved by the concerned official, order release of such property.

It has been pointed out that the above provision is drafted in such a manner as to make it mandatory on the part of the Special Court to release the property, in case the person is acquitted by the corresponding law of any other country. This amounts to abridgement of powers of local court. **The Committee would recommend that Clause 58A may be suitably re-drafted so as to restore the power of the local court in India to decide matters on its merits, even when the person is acquitted by an overseas court.**

(b) Participatory Notes and Stock Markets : Role of SEBI

The Committee during the oral evidence also enquired as to what steps SEBI was taking to stop generation of Black Money through Participatory Notes.

The Ministry in their post-evidence reply have elaborated as under :

“With a view to regulate issuance of Participatory Notes (PNs) with Indian underlying securities, the SEBI (FII) Regulations, 1995 was amended in January, 2004 by inserting Regulation 15A, which requires that PNs can be issued only to those entities which are regulated by the relevant regulatory authority in the countries of their incorporation and are subject to compliance of "Know Your Client" norms. Further, downstream

issuance or transfer of the instruments can be made only to a regulated entity.

The FII's who issue PNs against underlying Indian securities are required to report issued and outstanding PNs to SEBI in a prescribed format. In the year 2003, Regulation 20(A) was inserted in the SEBI (FII) Regulations which obligates FII's to fully disclose information concerning off-shore derivative instruments issued by them, as and when and in such form as the Board may require.

As per the extant regulatory structure, FII's, which are registered with SEBI and are issuing PNs are required to submit to SEBI a monthly report in a prescribed format. As per the format, FII's report the following information:

- Name and Location of the person to whom the PNs are issued
- Type of the investor
- Name and jurisdiction of the Regulator by whom the person holding the PNs is regulated
- Nature of Underlying security
- Quantity and Value of PNs issued/ redeemed/ outstanding

Further, FII's can issue PNs to regulated entities only and are further required to submit an undertaking which states that they have not issued PNs to Resident Indians/ NRIs.

The PN issuing FII's are also required to provide the following undertaking along with the monthly report:

"We undertake that the beneficial owner and the person(s) to whom the Offshore Derivative Instrument is issued in compliance with Regulation 15A of SEBI (FII) Regulations. We also undertake that the KYC compliance norms have been followed for the beneficial owner of the Offshore Derivative Instrument"

As per our records, the FII's issuing PNs are regularly submitting the reports with the requisite information and undertakings".

Further, elaborating on this issue, the Ministry have submitted that :

"Based on reports being filed with SEBI, it may be stated that out of the 1765 FII's registered with SEBI as of March 2012, 30 FII's are issuing PNs. Of these, about 8 FII's account for the bulk of PNs being issued. The PN issuing entities are large sized reputed Financial Institutions with presence in a host of markets globally. They issue PNs directly or indirectly through global financial centers such as London, Hong Kong, Singapore etc which have Anti-Money Laundering (AML) and Combating Financing of

Terrorism (CFT) regulations in place. Additionally, FII investments into India are also subject to Indian Anti-Money Laundering laws. As stated above, SEBI, on its part, has mandated that PNs with Indian underlyings can only be issued to regulated entities subject to 'Know-Your-Client' norms.

Investment in the stock market by individual investors as well as by institutional investors takes place by the use of funds channelised through bank accounts. Banks maintain details of each account holder in accordance with the Know Your Customer norms which have been put in place by the banking regulator. The foreign currency/monetary flows in India's domestic market is not monitored by SEBI. It is monitored by Reserve Bank of India".

The Committee further enquired as to what steps SEBI has taken to stop infusion of black money in secondary market.

The Ministry have submitted as follows :

"SEBI has been continuously taking steps to prevent money laundering. Some of the major initiatives taken by SEBI in this regard are as follows :

I. SEBI has issued a master circular on anti-money laundering in line with the FATF recommendations and PMLA Act, 2002. In terms of this circular, intermediaries in securities market are required to frame policies and procedures to effectively manage the risks based on categorization of clients as low, medium or high risk. The circular also gives an illustrative list of clients belonging to high risk category and high risk geographies. Intermediaries are required to carry out higher due diligence process in respect of clients of high risk category. Intermediaries are required to report cash transaction reports and suspicious transaction reports to Financial Intelligence Unit (FIU).

II. FATF through its public statements inform the specific lists of geographies and jurisdictions of higher risk. This list of high risk jurisdictions as received from the Ministry of Finance is regularly communicated to the intermediaries. The intermediaries are required to carry out enhanced due diligence of clients from these high risk jurisdictions.

III. Because of constant monitoring and inspections, as mentioned above, the compliance level of the intermediaries has improved considerably. As a result, during inspections no serious violations are observed. Wherever necessary, monetary penalties are also imposed.

All transactions in securities market are required to be carried out through banking channels. Money invested through stock exchanges is required to come from the client's own account only.

The Committee enquired whether the amended PMLA would be an answer to the rampant money laundering taking place through the stock market by allowing/ facilitating huge overseas funding of Indian companies, the sources of which are not clear from doubts and whether this Act was going to only harass small people or can catch hold of big corporate.

The Ministry have inter-alia submitted as under :

“The offences under section 12-A read with section 24 (Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control) of the Securities and Exchange Board of India Act, 1992 are already covered in the Schedule of offences under PMLA. Further, section 70 of PMLA provides for imposition of fine on companies for the offence of money laundering as well as on every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, if on completion of the trial for prosecution, the guilt of the company and its officers is established. As per the Amendment Bill, section 4 of PMLA is being amended to remove the maximum limit of fine of Rs.5 lacs and it is being left for the trial Court to adjudge the quantum of fine having regard to the gravity of the offence of money laundering committed by the company or any individual”.

The Committee have been informed that the Participatory Notes (PNs) being issued by FIIs are being regulated by SEBI and that the PNs can be issued to regulated entities only. However, the Committee are surprised to learn that other investments in the stock market including foreign currency flows by both individual and institutional investors are not being monitored by SEBI. The Committee would like the SEBI to set up a coordination mechanism in this regard with RBI so that funds flow into the domestic stock / securities markets is properly monitored.

In the Committee's view, scrutiny of fund flows into the markets cannot be left to individual banks, as tainted money flowing into markets remains a distinct possibility. Suitable amendments may therefore be made in the Bill to monitor and curb possible money laundering taking

place through stock / securities markets. All the regulatory and intelligence agencies including the RBI, SEBI, FIU (IND), the Enforcement Directorate, the Directorate of Revenue Intelligence and Investigation Wing of Income Tax Department should set up a monitoring / coordination mechanism for this purpose, while remaining alert to such financial flows.

VIII. MONEY-LAUNDERING AND GENERATION OF UNACCOUNTED MONEY

The Committee specifically sought to know whether PMLA amendments will address black money generated through the illegitimate mining and sale of iron ore and other minerals and illegal land acquisition in the real estate sector and whether the proposed amendment would provide mechanism to trace the money trail of mining related transactions.

The Ministry have replied in their post-evidence note that :

“Cases of illegal mining of iron ore in the States of Karnataka and Andhra Pradesh, based on the charge sheet filed by CBI for the scheduled offence, is currently under investigation by the Directorate of Enforcement under PMLA”.

The Committee further enquired on the issue of sources of money-laundering and desired to know as to which authority was mandated to determine whether the correct production level is reported or not.

The Ministry have submitted in their reply that Central Excise now acts on self assessment and self removal basis. If there is any complaint with regard to goods being moved without any payment or under reporting of production, the Excise Department takes care of it.

In this connection, the Committee also desired to know the details of cases detected by the Intelligence wing of the Income Tax Department and whether there were enough personnel in the Dept. to handle this.

The Ministry have explained the position as below :

“The Income Tax department takes action against tax evasion based on information / complaints, which are processed and verified. Information

technology tools are used appropriately for processing and verification of such information. During the last three financial years, unaccounted assets worth Rs.2,620 crore, including cash amounting to Rs.1,235 crore, have been seized and undisclosed income of Rs.28,040 crore has been detected by the Investigation Directorates of the Central Board of Direct Taxes. Besides, during income tax assessment proceedings also, under-reported or misreported incomes are detected and brought to tax”.

On the manpower side, they have submitted that :

“There is acute shortage of both man-power and budgetary resources in the Income Tax department, particularly in the Investigation Directorates. Increasing number of taxpayers, processing of large quantum of data collected, new responsibilities, and increasing expectations of taxpayers for international quality services have necessitated increase in manpower resources of the department. The department has, accordingly, submitted a proposal for cadre restructuring seeking about 20,000 additional manpower in different grades. Complementary budgetary resources will be required to fund the expenditure for hiring, training, equipping and meeting employment expenses of thus additional manpower. It is also to be noted that as against the average global cost of 1 % – 1.5 %, the cost of collection of the Income Tax department is less than 0.58 %, indicating shortage of resources”.

The Committee, while further probing the issue of large unaccounted money leading to money-laundering activities, asked as to what effective infrastructure has been put in place to de-accelerate the generation of black money.

The Ministry on this point have explained as under :

“The Income Tax Department has set up an Integrated Taxpayer Data Management System (ITDMS) to electronically collate information collected from various sources, i.e. Tax Returns, TDS returns, Annual Information Returns, information collected by the Central Information Branches (CIB), etc. The same is utilized for investigation of tax evasion information / complaints, including for developing cases for search and seizure action. Information received from Financial Intelligence Unit (FIU-IND) regarding suspicious transactions from various banks and financial institutions are also investigated by the Income Tax Department”.

While elaborating on the efforts made by the Department to augment revenue, the Ministry have submitted that persistent efforts made by the Income Tax Department and its investigative machinery have resulted in substantial

increase in Direct Tax revenue collections, indicating increased voluntary compliance and reduction of black money and tax evasion.

The Department of Revenue have submitted that the Income Tax Department has set up an Integrated Taxpayer Data Management System (ITDMS) to electronically collate information collected from different sources and that “the efforts made by the Department have resulted in substantial increase in direct tax revenue, indicating increased voluntary compliance and reduction of black money and tax evasion”. The Committee, however, do not share the optimism of the Department on the revenue front, as there is widespread perception of tax avoidance and evasion leading to large-scale generation of unaccounted money in the economy. Tax-GDP ratio has also been only stagnating. Incidence of under-reporting of production levels as also under-invoicing of exports and over-invoicing of imports are also major factors behind generation of unaccounted money, which eventually leads to money-laundering. Thus, the Government, specially the Department of Revenue, must always remain alive to the sources engendering unaccounted money in the country, if they have to counter the menace of money-laundering. Needless to emphasise, this requires concerted planning and coordinated enforcement action on the part of all the enforcement agencies functioning under the Department. The Committee desire a status report on the existing framework, its efficacy and measures taken by the Department of Revenue in this regard. The Committee would also expect the Department to plug loopholes in the existing framework including related enactments, taking into account all the aspects engendering generation of unaccounted money.

IX. TRADE-BASED MONEY-LAUNDERING

The Committee sought to know as to how many cases were registered involving trade based money laundering (TBML) and as to how PMLA would deal with trade-based money laundering.

In their post-evidence submission, the Ministry stated as below :

“Trade based money laundering has not been distinguished from other forms of money laundering as a distinct offence. Hence, no separate data is available showing the number of TBML cases. Whenever proceeds of crime generated out of offences listed in the Schedule to PMLA are laundered through trade, the necessary action of attachment of such proceeds and further legal proceedings under PMLA are initiated. In addition, offences under section 135 of the Customs Act, 1962 is also a scheduled offence under PMLA. As and when the Customs Department launches prosecution in cases of evasion of customs duties, the Directorate of Enforcement takes up investigation in such cases under PMLA”.

The Committee would like the Department of Revenue to take into reckoning and incorporate incidence of trade-based money laundering, which has not been distinguished so far as a money-laundering offence. The Department also requires to maintain a comprehensive data-base in this regard, which will enable them to tap trade-based offences.

X. ONUS OF PROOF-DISTINCTION BETWEEN BONAFIDE AND MALAFIDE TRANSACTION

The Committee expressed their concern that the onus of proof that the property is not proceeds of crime being on the accused was rather stringent.

The Ministry clarified their position as under :

“As per existing section 24 of PMLA, already there is a provision that when a person is accused of having committed the offence of money laundering under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused. This section is being amended to provide that in any proceedings relating to proceeds of crime under PMLA, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money laundering. By virtue of this amendment, the burden of proof would not only be on the accused but on anyone who is in possession of the proceeds of crime”.

In this context, the Committee desired a specific clarification as to whether this Act can distinguish between bonafide and malafide transactions of property so that innocent persons, who end up with any property, are not penalized.

The Ministry have sought to clarify that :

“Section 8 of PMLA adequately safeguards the interests of persons who are not found to be involved in the offence of money laundering”.

The Committee recommend that the prescribed onus of proof that the property in question is not out of proceeds of money-laundering crime, being not only on the accused but also on anyone who is in possession of the proceeds of crime, should be subject to adequate safeguards to protect the innocent.

XI. BENEFICIAL OWNERSHIP

Clause 2 (i)(fa) reads as :

“beneficial owner” means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person”.

The proposed amendment contemplates that identification of the beneficial owners is to be done by the reporting entity in respect of such clients as may be prescribed. The Central Government will specify the categories of customers in respect of whom banks will be required to verify the beneficial owner. It has been pointed out that even if such requirement may be restricted to certain specified clients, ascertaining beneficial owners will be extremely difficult task for the banks.

On this issue, the Ministry have stated their position as below :

“PMLA in present form imposes obligation on the reporting entities and does not impose obligation on clients. This is in conformity with the FATF standards which do not impose any direct obligation on clients to declare beneficial ownership while undertaking transaction with the bank”.

They have further added that :

“FATF standards also mention that “where the financial institution is unable to comply with the applicable requirements, it should be required not to open the account, commence business relations or perform the transaction; or should be required to terminate the business relationship; and should consider making a suspicious transactions report in relation to the customer.” Thus there is distinct obligation not to open account if the

beneficial ownership cannot be ascertained. This aspect, which has been mentioned in the circulars of the regulators, should address the concern of the banks”.

The Committee note that the anti-money laundering law in its present form does not impose any obligation on clients, but it casts responsibility on the reporting entities only to ascertain ‘beneficial ownership’. According to the Ministry, FATF standards do not impose any direct obligation on clients to declare beneficial ownership while transacting with the bank. The reporting entities are also required to make a suspicious transactions report in relation to their customer. Further, there is distinct obligation not to open account, if the beneficial ownership cannot be ascertained. The Committee are, however, of the view that clients as well may be required to declare ‘beneficial ownership’ while undertaking transaction with the bank. Further, the Committee believe that considering the large volume of transactions, which banks are required to deal with, it may not be possible for the banks to ascertain “the beneficial owners” involved in all such transactions. Therefore, the Committee would recommend appropriate parameters clearly defining the nature and scope of “suspicious transactions” and its “beneficial ownership”, enabling their systematic sifting from general transactions, so that these transactions are reported by banks only after prima facie examination based on such parameters / guidelines.

XII. PERSONS CARRYING ON DESIGNATED BUSINESS OR PROFESSION

Clause 2 (ii)(ha) reads as :

“client” means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting”.

It has been suggested that in the definition of “reporting entities”, travel agents, vehicle sellers who deal in large value cash transactions, may also be included.

The Ministry have however submitted that the Government does not agree with the suggestion.

The Committee would recommend that the definition of ‘reporting entities’ may be widened so as to include categories such as travel agents, vehicle sellers / dealers etc., who deal in large value cash transactions.

XIII. PERSONS ENGAGED IN SAFE KEEPING AND ADMINISTRATION OF CASH AND LIQUID SECURITIES ON BEHALF OF OTHER PERSONS

Clause 2 (ix)(sa)(v) reads as :

“person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government”.

It has been suggested that necessary changes may be made in the proposed amendments to exclude any obligation on the part of banks to verify contents of the safe deposit lockers to satisfy themselves that they are not proceeds of crime.

The Ministry have again submitted that the Government does not agree with the suggestion.

Banks, as represented by the IBA, have submitted that it will be very difficult for the banks to examine and verify each transaction carried out by their clients, especially in the case of safe deposit lockers, which is a safety facility extended to the general public. The Committee would recommend that an appropriate declaration from the customer may be secured in the case of safe deposit lockers maintained by banks, so that the ordinary bank customer is not inconvenienced.

XIV. AUDIT

Clause 11 (ii) (1A) reads as :

“(1A) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an

accountant from amongst a panel of accountants, maintained by the Central Government for this purpose”.

It is proposed to amend section 13 of the PMLA Act making provision enabling the Director to cause an inquiry to be made with regard to the obligations of the reporting entity (Banks and Financial Institutions) and also cause an audit of the records of the reporting entity by an accountant from amongst a panel of accountants maintained by the Central Government for this purpose. As far as the banks are concerned, they are already subject to audit by the Statutory Auditors as well as annual inspection by the Reserve Bank of India. In the course of such audit and inspection the records of the banks are verified to check whether all the requirements under the PMLA Act have been complied with the banks. The banks as represented by the IBA are, therefore, of the view that there is no need for one more audit to be conducted by the auditors appointed by the Central Government. If the Director is of the view that the records of a particular bank are not being maintained or there are any other non-compliances, the same can be reported to the Reserve Bank of India who can do the necessary verification during the annual inspection or by conducting a special inspection, if necessary.

The Ministry have however not agreed to this suggestion.

The Committee are of the view that causing an additional audit of the banks to be conducted under the proposed Bill may only create duplication and put needless burden on the banks, as they are already subject to audit by the Statutory Auditors as well as annual inspection by the RBI. The Committee would, therefore, suggest that in the course of such audit and inspection, the records of the banks can be mandated to be verified for their compliances under the anti-money laundering law as well. Necessary instructions in this regard may be issued separately.

XV. IMPOSITION OF FINE

Clause 4 reads as :

“In section 4 of the principal Act, the words “which may extend to five lakh rupees” shall be omitted”.

It has been suggested that there may be an upper limit for the fine. Moreover, a percentage of the amount of money laundered may be considered as the fine. It has also been suggested that since the proposed amendment to impose fine on the entity does not make any distinction between Directors who are in charge of and responsible to the company for the conduct of its business and other Directors like Independent Directors, nominee Directors, etc., it would be desirable to limit the ambit of the clause only to Directors and employees entrusted with the day-to-day conduct of business.

The Ministry have submitted their comments as follows :

“Recommendation 17 of FATF prescribes that countries should ensure that effective, proportionate and dissuasive sanctions on natural or legal persons who fail to comply with anti-money laundering or terrorist financing requirements, is imposed. As per the existing provisions in section 4, the fine cannot exceed Rs. 5 lakh. This amount appears disproportionately low, given the gravity of the offence of money laundering and particularly so for a legal person. 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. It needs to be left to judgment of the court to decide the quantum of fine”.

The proposed amendments seek to empower the authorities to give directions / warnings and impose fines on the directors and employees of the reporting entities. The Committee, however, find that this does not make any distinction between Directors who are in charge of and responsible to the company for the conduct of its business and other Directors (Independent Directors, Nominee Directors etc.) It would therefore be desirable to limit the ambit to Directors and employees who are responsible and entrusted with the conduct of the day-to-day business

of the reporting entity and who are entrusted with the task of complying with the provisions of PMLA.

XVI. MAINTENANCE OF RECORDS

Clause 9 (sub-clause 3 and 4) reads as :

“(3) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of ten years from the date of transaction between a client and the reporting entity.

(4) The records referred to in clause (e) of sub-section (1) shall be maintained for a period of ten years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later”.

It has been pointed out that from the proposed amendments it appears that even documents related to transactions would have to be maintained till ten years from the date of cessation of business relationship or the closing of the account, whichever is later. This implies that if the customer in case of banking account does not close his account, such documents will become permanent documents and have to be maintained forever.

The Ministry’s submission on this issue is as follows :

“FATF standards require maintenance of records of transactions for at least five years. In case of records obtained through CDD measures etc., they have to be maintained for at least five years after the business relationship has ended. This period under PMLA is ten years. The assumption that ‘even documents related to transactions would have to be maintained till ten years from the date of cessation of business relationship’ is not factually correct as obligation under PMLA is to maintain record of all transactions for a period of ten years from the date of transaction”.

The Committee desire that it may not be necessary to maintain all kinds of records for a period of ten years from the date of transaction between a client and the reporting entity. If the business relationship between a client and the reporting entity has ended or the account has been closed, the period for maintenance of records may be reduced to five years. Clause 9 may be clarified / modified accordingly.

XVII. ELECTRONIC VERIFICATION OF IDENTITY

It has been suggested that inclusion of Electronic verification of identity would provide flexibility for the banks and financial institutions in ensuring KYC compliance, which may otherwise become increasingly time-consuming.

The Ministry have submitted that :

“The procedure and manner of verification and list of officially valid documents is specified in the PML Rules and circulars of the regulators. This suggestion can be examined and considered while amending the PML Rules. The Government, therefore, does not consider that any amendment in PMLA will be required for this purpose. The proposed section 12(1)(c) already uses words, “as may be prescribed”.

The Committee would suggest that provision for electronic verification of identity may be made in the Rules, as it would help the banks and financial institutions in ensuring KYC compliance.

XVIII. ADEQUACY OF MANPOWER AND TRAINING REQUIREMENTS

The Committee during the oral evidence expressed their concern as to whether the Law Enforcement Agencies and banks are properly equipped with manpower and requisite information technology to handle the additional responsibilities brought about by the amending PMLA.

The Ministry in their post-evidence reply stated as follows :

“The Directorate of Enforcement has been sanctioned additional manpower which will be adequate to effectively deal with the cases of money laundering under PMLA. The process of induction of the sanctioned additional manpower is already underway by direct recruitment, promotion and deputation. The Directorate of Enforcement is also enhancing its technological capabilities through the NIC for greater application of IT in its work processes.

The proposed amendments to Section 12 and 13 of the PML Act do not place any additional obligations on the banks as compared to the present requirements. It may be mentioned that after introduction of Core Banking Solutions (CBS) by banks maintenance and retrieval of records is no longer manpower intensive”.

On being enquired as to whether there were adequate personnel in the Enforcement Directorate to effectively implement the PMLA. The Ministry in a written note have submitted that the sanctioned strength of the officers and staff at various levels in the Directorate of Enforcement has been recently increased from 745 to 2064 in order to enhance its operational effectiveness having regard to the increase in work relating to PMLA. Recruitment has been undertaken in three phases.

The Committee desired to know the Ministry's views on the desirability of large training budget for the organizations for training of their personnel in overseas crime enforcement agencies.

The Ministry have expressed their view as under :

“The suggestion of the Committee is well taken. While the officers at various levels are already being sent on training to other countries for upgrading of their skills in fiscal crimes, capacity building in investigating money laundering offences etc., the Dept. will take further steps to augment training in related areas”.

The Committee find although the sanctioned strength of the nodal enforcement agency under the PMLA, namely the Enforcement Directorate has been substantially enhanced, their effective strength still remains inadequate. The Committee are therefore of the view that all the agencies entrusted with key responsibilities under PMLA, especially the FIU-IND and the Enforcement Directorate should be adequately staffed with requisite skills to meet their operational requirements. They should also be provided professional training in line with international standards. The Committee would like to emphasise that the operational effectiveness of enforcement agencies should not suffer for want of staff and training.

XIX. MANAGEABILITY OF FINANCIAL DATA

On the issue of manageability, the Committee specifically enquired about reduction in the volume of financial data received under the PMLA reporting framework so that attention is focused on larger cases

The Ministry's reply in this regard is re-produced as under :

“Under the FATF standards, two kinds of reports are required to be filed with FIU- (1) STRs, which are irrespective of any monetary value and (2) threshold based report e.g. Cash Transaction Reports (CTRs). In terms of numbers, CTRs constitute the bulk of financial information received in FIU. In some major countries(*) the reporting threshold for CTR is at the level of \$ 10,000. In India, this threshold is Rs.10 lakh, which is substantially higher than \$ 10,000 and therefore raising it further only to reduce the volume of financial data may not be desirable.

FIU-IND is in advanced stage of rolling out Project FINnet which has been designed with the objective to adopt industry best practice and appropriate technology to collect, analyse and disseminate financial information. Project FINnet would harness data mining and business intelligence tools for identifying actionable cases from the financial data received from the reporting entities”.

The Committee believe that the volume of financial data required under PMLA may become very unwieldy and hence unmanageable. It would also require large number of staff which Government may not be able to provide. The Committee would, therefore, suggest that certain parameters / thresholds may be stipulated so that all kinds of data are not processed. The proposed framework should thus focus on larger cases and laundering-prone categories / sectors.

In this context, the Committee would suggest that a comprehensive data-base would be useful for analyzing the complex inter-relationship among the transactions and entities and their trend and pattern over time.

XX. FAST-TRACKING OF CASES

On the question of expediting the cases, the Committee desired to know whether this law bring about fast-tracking of cases and speed in investigation.

The Ministry have explained that :

“With the sanction of additional manpower to the Directorate of Enforcement, the investigations under PMLA are expected to be conducted expeditiously. Secrecy in concerned matters is being maintained. Further, section 43 of PMLA provides for designating Courts of Session as Special Courts for trial of the offence of money laundering punishable under section 4 *ibid*”.

The Committee would not like the enquiries under PMLA to become open-ended without any concrete outcomes. It is, therefore, necessary that time-lines are prescribed for completing the investigative process. If fruitful action has to be taken against money-laundering, it is important that cases are fast-tracked, the culprits punished and the proceeds confiscated without any delay. Special courts, being set up to decide cases of money-laundering should be geared up to help achieve this objective without any hitch.

With the modifications and amendments suggested by the Committee, it is expected that the PMLA would substantially conform to the global standards and help in strengthening and coordinating efforts of both national and international intelligence, investigation and enforcement agencies in combating money laundering and terror-financing. In this context, the Committee would like to once again emphasise that the anti-money laundering law should seek to tighten any laxity in the existing enforcement mechanism and secure speedier convictions in a stipulated time-frame.

New Delhi;
08 May, 2012
18 Vaisakha, 1934 (Saka)

YASHWANT SINHA,
Chairman,
Standing Committee on Finance

MINUTES OF THE SEVENTEENTH SITTING OF THE STANDING COMMITTEE ON FINANCE (2011-12)

The Committee sat on Monday, the 9th April, 2012 from 1430 hrs to 1645 hrs.

PRESENT

Shri Yashwant Sinha – **Chairman**

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi
3. Shri Bhakta Charan Das
4. Shri Gurudas Dasgupta
5. Shri Nishikant Dubey
6. Shri Prem Das Rai
7. Shri Rayapati S. Rao
8. Shri Yashvir Singh
9. Shri Manica Tagore
10. Dr. M. Thambidurai

RAJYA SABHA

11. Shri Piyush Goyal
12. Shri Satish Chandra Misra
13. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1. Shri A.K. Singh – Joint Secretary
2. Shri Ramkumar Suryanarayanan – Deputy Secretary
3. Smt. Meenakshi Sharma – Deputy Secretary
4. Shri Kulmohan Singh Arora – Under Secretary

Part I

(1430 hrs. to 1515 hrs.)

WITNESSES

Confederation of Indian Industry (CII)

1. Shri Anshuman Magazine, Chairman & MD, CB Richard Ellis, South Asia Pvt. Ltd.
2. Shri Kalyan Chakarabarty, Director, Red Fort Capital
3. Shri Babu Khan, Director & Head – Infrastructure, CII
4. Shri Sunil K. Misra, Director – Public Policy, CII

2. XX XX XX XX
XX XX XX XX

The witnesses then withdrew.

Part II

(1515 hrs. to 1645 hrs.)

WITNESSES

1. Shri R.S. Gujral, Finance Secretary & Secretary (Revenue)
2. Shri V.K. Garg, Joint Secretary (TRU-II), Department of Revenue
3. Shri Bimal Julka, Additional Secretary & DG (DOC), Department of Economic Affairs
4. Shri Umesh Kumar, Joint Secretary, Department of Financial Services
5. Shri Rajan S. Katoch, Director (Enforcement)
6. Shri S.K. Sawhney, Special Director of Enforcement
7. Shri Balesh Kumar, Special Director of Enforcement
8. Shri Praveen Kumar Tiwari, Director (FIU-IND)
9. Shri B. Mahapatra, Executive Director, Reserve Bank of India (RBI)
10. Shri G.S. Hegde, Principal Legal Advisor, RBI
11. Shri S.K. Jha, DGM, RBI
12. Shri P.K. Nagpal, Executive Director, SEBI
13. Shri Kuneel Prem, CSO(L), IRDA

3. The Committee, thereafter took oral evidence of the Ministry of Finance (Department of Revenue) on 'the prevention of Money Laundering (Amendment) Bill, 2011. The major issues discussed included mutual evaluation report of Financial Action Task Force (FATF) on prevention of money laundering, amendments proposed in the Bill as per recommendations of FATF, generation of black money through Participatory Notes, round-tripping of black money, generation of black money through the illegitimate sale of iron ore and other minerals, illegal land acquisition in the real estate sector and mechanism existing to deaccelerate the generation of black money etc. The Chairman directed the representatives of the Ministry of Finance (Department of Revenue) to furnish replies to the points raised by the Members during the discussion within a week's time.

A verbatim record of proceedings was kept.

The witnesses then withdrew.

The Committee then adjourned at 1645 hours.

MINUTES OF THE NINETEENTH SITTING OF THE STANDING COMMITTEE ON FINANCE (2011-12)

The Committee sat on Tuesday, the 08th May, 2012 from 1000 hrs to 11045 hrs.

PRESENT

Shri Yashwant Sinha – **Chairman**

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi
3. Shri Harishchandra Deoram Chavan
4. Shri Nishikant Dubey
5. Shri Bhartruhari Mahtab
6. Shri Prem Das Rai
7. Dr. Kavuru Sambasiva Rao
8. Shri Rayapati S. Rao
9. Shri Magunta Sreenivasulu Reddy
10. Shri G.M. Siddeswara

RAJYA SABHA

11. Smt. Renuka Chowdhury
12. Shri Piyush Goyal
13. Dr. K.V.P. Ramachandra Rao
14. Shri Yogendra P. Trivedi

SECRETARIAT

1. Shri A.K. Singh – Joint Secretary
2. Shri R.K. Jain – Director
3. Shri Ramkumar Suryanarayanan – Deputy Secretary
4. Shri Kulmohan Singh Arora – Under Secretary

2. The Committee took up the draft Report on the 'Prevention of Money Laundering (Amendment) Bill, 2011 for consideration and adoption.

3. The Committee adopted the above draft report with some minor modifications as suggested by Members. The Committee authorised the Chairman to finalise the Report in the light of the modifications suggested and present the same to Parliament.

The Committee then adjourned.