

Financial Intelligence Unit – India (FIU-IND)

Financial Intelligence Unit – India (FIU-IND) was set by the Government of India in 2004 as the central national agency responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions. FIU-IND is also responsible for coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering and related crimes. FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister.

Functions of FIU-IND

The main function of FIU-IND is to receive cash/suspicious transaction reports, analyse them and, as appropriate, disseminate valuable financial information to intelligence/enforcement agencies and regulatory authorities . The functions of FIU-IND are:

- **Collection of Information:** Act as the central reception point for receiving Cash Transaction reports (CTRs) and Suspicious Transaction Reports (STRs) from various reporting entities.
- **Analysis of Information:** Analyze received information in order to uncover patterns of transactions suggesting suspicion of money laundering and related crimes.
- **Sharing of Information:** Share information with national intelligence/law enforcement agencies, national regulatory authorities and foreign Financial Intelligence Units.
- **Act as Central Repository:** Establish and maintain national data base on cash transactions and suspicious transactions on the basis of reports received from reporting entities.
- **Coordination:** Coordinate and strengthen collection and sharing of financial intelligence through an effective national, regional and global network to combat money laundering and related crimes.
- **Research and Analysis:** Monitor and identify strategic key areas on money laundering trends, typologies and developments.

Organisational Set-up

FIU-IND is a multi disciplinary body headed by a Director. Personnel in this Unit are being inducted from different organizations namely Central Board of Direct Taxes (CBDT), Central Board of Excise and Customs (CBEC), Reserve Bank of India (RBI), Securities Exchange Board of India (SEBI), Department of Legal Affairs and Intelligence agencies.

Authorities at FIU-IND

According to Section 48 of the Prevention of Money Laundering Act, 2002 there shall be the following classes of authorities for the purposes of this Act, namely:-

- (a) Director or Additional Director or Joint Director,
- (b) Deputy Director,
- (c) Assistant Director, and
- (d) such other class of officers as may be appointed for the purposes of this Act.

Appointment of Authorities

As per Section 49 of the Prevention of Money Laundering Act, 2002:

(1) The Central Government may appoint such persons as it thinks fit to be authorities for the purposes of this Act.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director or an Additional Director or a Joint Director or a Deputy Director or an Assistant Director appointed under that sub-section to appoint other authorities below the rank of an Assistant Director.

(3) Subject to such conditions and limitations as the Central Government may impose, an authority may exercise the powers and discharge the duties conferred or imposed on it under this Act.

Director and officers subordinate to him deemed to be public servants

Section 40 of the Prevention of Money Laundering Act, 2002 declares the Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Director and the officers subordinate to him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

Powers of the Director

Section 13 of the Prevention of Money Laundering Act, 2002 confers following powers on the Director to ensure compliance:

(1) The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit.

(2) If the Director, in the course of any inquiry, finds that a banking company, financial institution or an intermediary or any of its officers has failed to comply with the provisions contained in section 12, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.

(3) The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.

Powers of authorities regarding summons, production of documents and to give evidence:

Section 50 of the Prevention of Money Laundering Act, 2002 confers following powers of summons, production of documents and to give evidence etc.:

(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a banking company, financial institution or a company, and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not -

- (a) impound any records without recording his reasons for so doing; or
- (b) retain in his custody any such records for a period exceeding three months, without obtaining the prior approval of the Director.

Assistance from other authorities for enforcement of the Act

Section 54 of the Prevention of Money Laundering Act, 2002 empowers and requires various authorities to assist in the enforcement of the act. The following officers are empowered and required to assist the authorities in the enforcement of this Act, namely:-

- (a) officers of the Customs and Central Excise Departments;
- (b) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);
- (c) income-tax authorities under sub-section (1) of section 117 of the Income-tax Act, 1961 (43 of 1961);
- (d) officers of the stock exchange recognised under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (f) officers of Police;
- (g) officers of enforcement appointed under sub-section (1) of section 36 of the Foreign Exchange Management Act, 1973 (40 of 1999);
- (h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (i) officers of any other body corporate constituted or established under a Central Act or a State Act;
- (j) such other officers of the Central Government, State Government, local authorities or banking companies as the Central Government may, by notification, specify, in this behalf.

Agreements with foreign countries

Section 56 of the Prevention of Money Laundering Act, 2002 provides for agreements with foreign countries to facilitate exchange of information with them:

- (1) The Central Government may enter into an agreement with the Government of any country outside India for-
- (a) enforcing the provisions of this Act;
 - (b) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act.

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

- (2) The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

Disclosure of information

Section 66 of the Prevention of Money Laundering Act, 2002 provides for disclosure of information to other officers, authority or body:

The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to-

- (i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or
- (ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf, any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law.

Recovery of fines

Section 69 of the Prevention of Money Laundering Act, 2002 refers to recovery of fines. Where any fine imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule 11 of the Income-tax Act, 1961 (43 of 1961) for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

The new network, called FINnet (Financial Intelligence Network), is a technology-based secure platform for bringing together investigative and enforcement agencies to collect, analyse and disseminate valuable financial information for combating money laundering and related crimes.

Restriction on Civil Court Jurisdiction

Section 41 of the Prevention of Money Laundering Act, 2002 says that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

Appeal to Appellate Tribunal

Section 26 of the Prevention of Money Laundering Act, 2002 deals with appeal to Appellate Tribunal.

(1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

(2) Any banking company, financial institution or intermediary aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.

(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may, after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made

Right of Appellant

Section 39 of the Prevention of Money Laundering Act, 2002 provides for the right of the appellant.

(1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised representative of his choice to present his case before the Appellate Tribunal.

Explanation - For the purposes of this sub-section, the expression "authorized representative" shall have the same meaning as assigned to it under sub-section (2) of section 288 of the Income Tax Act, 1961.

(2) The Central Government or the Director may authorise one or more authorised

representatives or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

Appeal to High Court

Section 42 of the Prevention of Money Laundering Act, 2002 provides for appeal to High Court:

“Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.-For the purposes of this section, "High Court" means-

- (i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and
- (ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

Offences which can be seen by Special Courts

Section 44 of the Prevention of Money Laundering Act, 2002 provides for trial by Special Courts:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

- a. the schedule offence and the offence punishable under section 4 shall be tried only by the Special Court constituted for the area in which the offence has been committed;

Provided that the Special Court, trying a schedule offence before the commencement of this Act, shall continue to try such scheduled offence, or

- b. a Special Court may, 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.

(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 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (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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