

EIGHTIETH REPORT

STANDING COMMITTEE ON FINANCE
(2008-09)

(FOURTEENTH LOK SABHA)

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

THE PREVENTION OF MONEY-
LAUNDERING (AMENDMENT)
BILL, 2008

Presented to Lok Sabha on 19 December, 2008

Laid in Rajya Sabha on 19 December, 2008



LOK SABHA SECRETARIAT
NEW DELHI

December, 2008/Agrahayana, 1930 (Saka)

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COMPOSITION OF STANDING COMMITTEE ON FINANCE
(2008-2009)

Shri Ananth Kumar—*Chairman*

MEMBERS

Lok Sabha

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3. Shri Gurudas Dasgupta
4. Shri Shyama Charan Gupta
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18. Shri M.A. Kharabela Swain
19. Shri Suresh Prabhakar Prabhu
20. Shri Ramakrishna Badiga*
21. Vacant#

*Nominated to this Committee *w.e.f.* 26.8.2008.

#Vacant *w.e.f.* 14.11.2008 on nomination of Shri Brajesh Pathak to Rajya Sabha.

(iv)

Rajya Sabha

22. Shri Raashid Alvi
23. Shri M. Venkaiah Naidu
24. Shri S.S. Ahluwalia
25. Shri Mahendra Mohan
26. Shri C. Ramachandraiah
27. Shri Vijay J. Darda
28. Shri S. Anbalagan
29. Shri Moinul Hassan
30. Shri K.V.P. Ramachandra Rao
31. Shri Shivanand Tiwari

SECRETARIAT

1. Shri R.C. Ahuja — *Additional Secretary*
2. Shri A.K. Singh — *Director*
3. Shri T.G. Chandrasekhar — *Deputy Secretary*
4. Shri Ram Kumar Suryanarayanan — *Deputy Secretary Gr-II*

INTRODUCTION

I, the Chairman of the Standing Committee on Finance having been authorised by the Committee to present the Report on their behalf, present this Eightieth Report on the Prevention of Money-Laundering (Amendment) Bill, 2008.

2. The Prevention of Money-Laundering (Amendment) Bill, 2008, introduced in Rajya Sabha on 17 October, 2008 was referred to the Committee on 31 October, 2008 for examination and report thereon, by the Hon'ble Speaker, Lok Sabha as desired by Chairman, Rajya Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

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

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

5. The Committee took evidence of the representatives of the Ministry of Finance (Department of Revenue) and Reserve Bank of India (RBI) at their sitting held on 15 December, 2008. The Committee at their sitting held on 16 December, 2008 took evidence of the representatives of the Institute of Chartered Accountants of India (ICAI), the Institute of Company Secretaries of India (ICSI) and Federation of Indian Chambers of Commerce and Industry (FICCI). The Committee also took evidence of the Securities and Exchange Board of India (SEBI) and Indian Banks' Association (IBA), at their sitting held on 17 December, 2008.

(vi)

6. The Committee considered and adopted the report at their sitting held on 18 December, 2008.

7. The Committee wish to express their thanks to the representatives of the Ministry of Finance (Department of Revenue) and the representatives of RBI, SEBI and IBA 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 ICAI, ICSI, FICCI, ASSOCHAM and PHDCCI for furnishing Memoranda and to the representatives of ICAI, ICSI and FICCI for appearing before the Committee and placing their views.

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

NEW DELHI;
18 December, 2008

27 Agrahayana, 1930 (Saka)

ANANTH KUMAR,
Chairman,
Standing Committee on Finance.

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**STANDING COMMITTEE ON
FINANCE
(2008-2009)**

FOURTEENTH LOK SABHA

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

**THE PREVENTION OF MONEY-
LAUNDERING (AMENDMENT)
BILL, 2008**

EIGHTIETH REPORT



Satyameva Jayate

**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2008/Agrahayana, 1930 (Saka)

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REPORT

I. BACKGROUND

The process of money laundering involves cleansing of money earned through illegal activities like extortion, drug trafficking and gun running etc. The tainted money is projected as clean money through intricate processes of placement, layering and laundering. The serious threat posed by money laundering to the financial systems and sovereignty was being progressively realized by various countries of the world. As a consequence of this realization, the international community took the following initiatives to curb the menace of money-laundering:—

- (i) The 1998 United Nations Convention against illicit traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention of 1998), provided a comprehensive legal definition of money laundering. This definition has formed the basis of subsequent legislations on anti-money laundering Laws of various countries;
- (ii) 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 money laundering; and
- (iii) The Financial Action Task Force on money laundering (FATF), 1989 made 40 recommendations, which provide the foundation for comprehensive legislation to combat the problem of money laundering. The recommendations were classified under various heads. Some of the important heads are:—
 - (a) Declaration of laundering of moneys earned through serious crimes should be treated a criminal offence;

- (b) To work out modalities of disclosure by financial institutions regarding suspicious transactions;
 - (c) Confiscation of the proceeds of crime;
 - (d) Declaring money laundering to be an extraditable offence; and
 - (e) Promoting international co-operation in investigation of money laundering.
- (iv) Political Declaration and Global Programme of Action adopted by UN General Assembly by its Resolution No. S 17/2 of 23rd February, 1990 *inter-alia* resolved the mechanism to prevent using of financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.

2. The Ministry of Finance had appointed an inter-ministerial Committee to look into all aspects of money laundering and to suggest suitable legislation, if necessary. The Committee in their report submitted to the Ministry in July, 1997, pointed out *inter-alia* that money laundering was posing serious threat to the financial systems of our country. The Committee suggested enactment of a comprehensive legislation to deal with this problem.

3. Addressing the need for the enactment of a focused legislation for preventing money laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanism for co-ordinating measures for combating money laundering etc., the Prevention of Money-laundering Bill, 1998 was introduced in Lok Sabha on the 4th August, 1998. The Hon'ble Speaker referred the Bill to the Standing Committee on Finance, which presented its Report on the 4th March 1999 to Lok Sabha. After incorporating the recommendations of the Standing Committee, the Government introduced the Prevention of Money Laundering Bill, 1999 in Parliament on October 29, 1999. The Bill was enacted on 17 January, 2003.

(a) The Prevention of Money-Laundering Act, 2002 (PMLA)

4. The Prevention of Money-Laundering Act, 2002 (PMLA) was brought into force in 2005 to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. The Act also addressed 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.

5. The Prevention of Money Laundering Act, 2002 (PMLA 2002) forms the core of the legal framework put in place by India to combat money laundering. PMLA 2002 and the Rules notified there under came into force with effect from July 1, 2005. Director, Financial Intelligence Unit (FIU-IND) and Director (Enforcement) have been conferred with exclusive and concurrent powers under relevant sections of the Act to implement the provisions of the Act.

6. The PMLA 2002 and rules notified thereunder impose obligation on banking companies, financial institutions and intermediaries to verify identity of clients, maintain records and furnish information to FIU-IND. PMLA 2002 defines money laundering offence and provides for the freezing, seizure and confiscation of the proceeds of crime.

(b) The Prevention of Money Laundering (Amendment) Bill, 2008

7. To further strengthen India's Anti Money Laundering/ Countering Financing of Terrorism (AML/CFT) legal framework, various agencies including Ministries and Departments of the Central Government and the State Governments have reportedly forwarded proposals to the Ministry of Finance to amend the PMLA. These are sought to be implemented through the Prevention of Money Laundering (Amendment) Bill, 2008. The Bill was introduced in Rajya Sabha on 17 October, 2008 and was referred to the Standing Committee on Finance on 31 October, 2008 for examination and report thereon.

8. The Prevention of Money-laundering (Amendment) Bill, 2008 seeks to bring certain financial institutions like Full Fledged Money Changers, Money Transfer Service Providers such as Western Union and International Payment Gateways including VISA and Master Card within the reporting regime of the Act. The Bill incorporates provisions to combat financing of terrorism and it introduces a new category of offences, which have cross-border implications. The Bill seeks to amend the Act, to provide, *inter alia*, to:

- (a) include institutions like Full Fledged Money Changers and Money Transfer Service Providers and to bring the business activities such as casinos under the reporting regime of the Act;
- (b) make provisions for the 'offences with cross border implications' and to add new Part C in the Schedule to the Act for such offences;
- (c) ensure that the investigating agency can attach any property and search a person only after completing investigation and also to enhance the period of provisional attachment of property from 90 days to 150 days;
- (d) empower the Enforcement Directorate to search the premises immediately after the offence is committed and the police has filed a report under section 157 of Code of Criminal Procedure, 1973;
- (e) increase the age of retirement of Chairperson and Members of the Adjudicating Authority from 62 years to 65 years;
- (f) provide mandatory consultation with the Chief Justice of India before removal of the Chairperson or a Member of the Appellate Tribunal;

- (g) enable the Central Government to return the confiscated property to the requesting country in order to implement the provisions of the United Nations Convention Against Corruption; and
- (h) expand the scope of the Act by adding certain offences in Part A and Part B of the Schedule to the Act.

9. With a view to seeking clarification on the proposals of the Bill, the Committee have, apart from taking evidence of the representatives of the Ministry of Finance (Department of Revenue), Reserve Bank of India, Securities and Exchange Board of India (SEBI) and the Indian Banks' Association (IBA), sought the written views of the Chambers of Commerce in the form of memoranda. The Committee also heard the views of the representatives of Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) and the Federation of Indian Chambers of Commerce and Industry (FICCI).

10. The Committee believe that it has become imperative to strengthen the country's legal framework for preventing money laundering and counter financing of terrorism. Enacting the Prevention of Money Laundering (Amendment) Bill, 2008 is a step in this direction. In the course of their deliberations on the specific proposals of the Bill, the Committee felt that apart from modifying some of the provisions, certain additional measures and concerted efforts are required to achieve the intended objectives. The Committee are of the view that international norms/guidelines like those of OECD group of nations should also be taken into account apart from plugging other avenues generating illegal funds like hawala etc. for effective enforcement of anti-money laundering law. Some of the provisions and the observations and recommendations of the Committee are dealt with in the subsequent sections of this report.

II. CLAUSES 2(1) (da) AND 2 (1) (rb) — DEFINITIONS
OF AUTHORISED PERSON AND PAYMENT
SYSTEM OPERATOR

11. The Clauses 2 (1) (da) and 2 (1) (rb), which seek to incorporate the definitions of 'Authorised person' and 'payment system operator' for bringing Full Fledged Money Changers (FFMC), Money Transfer Service Providers (MTSP such as Western Union Money Transfer) and international payment gateways (such as Visa and Master Card) within the Act's reporting regime read as under:—

Clause 2 (1) (da) — Authorised Person

In section 2 of the Prevention of Money-Laundering Act, 2002, (hereinafter referred to as the principal Act), in sub-section (1),

(i) after clause (d), the following clause shall be inserted, namely:—

(da) "authorised person" means an authorised person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999, and includes a person who has been authorised or given general or special permission by the Reserve Bank of India and overseas principals with whom the person so authorised or having general or special permission conducts a service involving international money transfer;

Clause 2(1) (rb) — 'Payment System Operator'

Payment System Operator means any person, who operates, maintains, facilitates or sustains a payment system involving the use of credit card or any other similar card or system, which enables payment to be effected between a payer and a beneficiary.

12. By way of giving the rationale for proposing to incorporate the definition of 'Authorised Person' and 'Payment System Operator' in the Prevention of Money Laundering Act, the Ministry of Finance (Department of Revenue) in their Background Note, submitted, *inter-alia* as follows:

"The firms and companies that undertake money changing business under sub section (1) of section 10 of the Foreign Exchange Management Act (FEMA) and carry on inward money transfer services under the Money Transfer Services Scheme (MTSS) in terms of section 3 of FEMA are authorized by the Reserve Bank of India (RBI) which gives specific permission to these firms and companies. However, the sector of International Payment Gateways at present is unregulated in terms of anti money laundering measures. It is now proposed to bring Full-Fledged Money Changers (FFMCs), Money Transfer Service Providers (MTSP such as Western Union Money Transfer) and International Payment Gateways (such as Visa and Master Card) within the Act's reporting regime by inserting new definitions of "authorised person" and "payment system operator" and amending the definition of "Financial Institution."

13. The RBI, in their written memorandum on incorporation of the definition of 'Authorised person', as proposed, stated as follows:—

"The insertion of the phrase 'authorised persons' as defined in clause (c) of section 2 of FEMA, 1999 at sub-section 2(da) of the proposed PMLA Bill, 2008 would facilitate covering Full Fledged Money Changers under the purview of Section 12 of PMLA, 2002. As regards Money Transfer Service Providers, these may be brought under the purview of PMLA by also including a person authorized under Section 4 of Payment and Settlement Act, 2007 for undertaking such business. Accordingly, the proposed amendment may be recast as 'authorised person' means an authorised person as defined in clause (c) of section 2 of Foreign Exchange Management Act, 1999 and includes a person who has

been authorized or given general or special permission by the Reserve Bank of India under Section 4 of the Payment and Settlement System Act, 2007 to operate a payment system, as defined under Section 2(1)(i) of the Act *ibid*, with whom the person so authorized or having general or special permission conducts a service involving international money transfer.”

14. Similarly, on the proposed incorporation of the definition of ‘Payment System Operator’, the RBI, in their Memorandum submitted *inter-alia* as follows:

“it would be more appropriate if the ‘payment system operator’ proposed in the Bill is defined as per definition of ‘system provider’ as defined in sub-section 2 (1) (q) read with sub-section 2 (1) (i) of Payment and Settlement Act, 2007. This would also help including Money Transfer Service Providers under the purview of PMLA”.

15. Section 4 of the Payment and Settlement System Act, 2007 relating to issue of authorization by the Reserve Bank for commencing or operating a payment system provides as under:

- (1) No person, other than the Reserve Bank, shall commence or operate a payment system except under and in accordance with an authorisation issued by the Reserve Bank under the provisions of this Act:

Provided that nothing contained in this section shall apply to:—

- (a) the continued operation of an existing payment system on commencement of this Act for a period not exceeding six months from such commencement, unless within such period, the operator of such payment system obtains an authorisation under this Act or the application for authorisation made under Section 7 of this Act is refused by the Reserve Bank;

- (b) any person acting as the duly appointed agent of another person to whom the payment is due;
 - (c) a company accepting payments either from its holding company or any of its subsidiary companies or from any other company which is also a subsidiary of the same holding company;
 - (d) any other person whom the Reserve Bank may, after considering the interests of monetary policy or efficient operation of payment systems, the size of any payment system or for any other reason, by notification, exempt from the provisions of this section.
- (2) The Reserve Bank may, under sub-section (1) of this section, authorise a company or corporation to operate or regulate the existing clearing houses or new clearing houses of banks in order to have a common retail clearing house system for the banks throughout the country:

Provided, however, that not less than fifty-one per cent of the equity of such company or corporation shall be held by public sector banks.

Explanation.— For the purposes of this clause, “public sector banks” shall include a “corresponding new bank”, “State Bank of India” and “subsidiary bank” as defined in Section 5 of the Banking Regulation Act, 1949.

16. The definitions of Payment System and System provider as per the Payment and Settlement Systems Act, 2007 read as under:—

Sec. 2(i) “payment system” means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them, but does not include a stock exchange;

Explanation.— For the purposes of this clause, “payment system” includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations;

(q) “system provider” means a person who operates an authorised payment system.

17. In this regard, when specifically enquired by the Committee about the aforesaid suggestion made by RBI, the Secretary, Department of Revenue in his deposition before the Committee informed as under:

“...Definition of ‘authorised persons’ is proposed to be adopted from section 2 (c) of the Foreign Exchange Management Act, 1999 with a view to bringing all entities, including FFMCs, authorised by the Reserve Bank under the Act. Further, definition of ‘payment system provider’ is proposed to be adopted from the Payment and Settlement System Act, 2007. With adoption of these definitions and their inclusion in ‘financial institutions’ as proposed in clause 2(iii) of the proposed Bill, all institutions authorised by the RBI under FEMA and Payment and Settlement System Act will be brought within the ambit of reporting entities under Section 12 of the PMLA. This is expected to strengthen our hands in the matter of financing of unlawful activities, including terrorism.”

18. While incorporation of the definitions of ‘authorized person’ and ‘payment system operator’ as proposed in Clause 2 (1) (da) and Clause 2 (1) (rb) is intended to facilitate covering money transfer service providers, full-fledged money changers, and international payment gateways etc. under the purview of the PMLA, the RBI has suggested aligning the definitions, as proposed, with the provisions and definitions of the Payment and Settlement Systems Act, 2007. The Committee note in this regard that the provisions of the Section 4 of the Payment and Settlement Systems

Act, 2007 provide for authorization of operation of payment system by the RBI, and the definition of payment system as contained in the Act *ibid* specifically covers *inter-alia* money transfer operations or similar operations. With a view to leaving no scope for ambiguity in the provisions proposed in the Bill for bringing money transfer operators etc. under the purview of the PMLA, the Committee recommend that as suggested by RBI and as indicated by the Revenue Secretary in his deposition, the definitions of the terms, 'authorized person', and 'payment system operator' may be made more comprehensive and in consonance with the provisions of the Payment and Settlement System Act, 2007.

III. CLAUSE 2(ja)—DESIGNATED BUSINESS OR PROFESSION

19. Clause 2 (ja) proposed to be added in Sub-section (1) of Section 2 so as to *inter-alia* cover 'casinos' reads as under:—

(ja) 'designated business or profession' means carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino or such other activities as the Central Government may, by notification, so designate, from time to time.

20. In this regard, SEBI, in their written memorandum, *inter-alia* submitted as under :—

"It may be considered whether apart from casinos, other Designated Non Financial Businesses and Professions (DNFBP) as defined in the 'Financial Action Task Force (FATF) Methodology for Assessing Compliance with FATF 40 Recommendations and FATF 9 Special Recommendations' may be brought under the compliance and reporting regime of the Act. As per FATF methodology, Designated non-financial businesses and professions mean Casinos (which also includes internet casinos), Real Estate Agents, Dealers in Precious Metals, Dealers in Precious Stones, Lawyers, Notaries, Other Independent Legal Professionals and Accountants, Trust and Company Service Providers and are required to take certain action as provided in recommendation 12 and 16 of the FATF recommendations."

21. However, the Ministry of Finance (Department of Revenue) in their Background Note stated as under:—

"Worldwide, certain Designated Non Financial Businesses and Professions (DNFBPs) such as lawyers, chartered accountants, gold or gems dealers, property dealers, casinos etc., also fall within

the reporting regime of the Anti Money Laundering laws. In the Indian context, it is not feasible to include all these entities in PMLA's reporting regime just now. However, there are some active 'Casinos' in India. It is proposed to bring casinos within the ambit of PMLA's reporting obligations by inserting a generic definition of the term in the Act, there being no existing definition of 'casino' in any statute."

22. While it has been proposed to bring casinos within the ambit of PMLA by incorporating a generic definition of the term, in Clause 2 (ja), as pointed out by SEBI, other Designated Non-Financial Businesses and Professions such as gold or gems dealers etc. would continue to remain outside the purview of the Money Laundering Act. The Committee understand that many countries that are signatories to the Financial Action Task Force (FATF) have included such designated businesses and professions under the ambit of money laundering legislations. In the Indian context, however, the Ministry of Finance have felt that presently it was not feasible to expand the ambit of the PMLA to cover such designated entities and professions. With a view to making the compliance and reporting regime under the law more broad-based and comprehensive, the Committee, nevertheless, recommend that the Government consider expanding the ambit of the law by covering such designated entities and activities causing suspicion.

IV. CLAUSE 2 (ra) — OFFENCES OF CROSS BORDER IMPLICATIONS

23. At present, PMLA does not provide for considering predicate offences committed outside India as scheduled offences to be tried in India. Further, it is possible that proceeds of crime are remitted to India or are transferred or an attempt is made to transfer them out of India. To cover these situations and in order to include conduct that occurred in another country, which constitutes an offence in that country and is an offence in India, as a scheduled offence under PMLA, a new definition of “offence of cross-border implications” is proposed to be inserted as clause (ra) in sub-section (1) of section 2 of the PML Act, which reads as under:—

Clause (ra) – “offence of cross border implications” means.—

- (i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person remits the proceeds of such conduct or part thereof to India; or
- (ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

24. It has been further proposed that *vide* Clause 11 of the Bill, in Section 60 of the principal Act, after sub-Section (6), the following sub-Section shall be inserted, namely:—

“When any property in India is confiscated as a result of execution of a request from a contracting State in accordance with the

provisions of this Act, the Central Government may either return such property to the requesting State or compensate that State by disposal of such property on mutually agreed terms that would take into account deduction for reasonable expenses incurred in investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property.”

25. The Secretary, Department of Revenue in his deposition further elaborated on the offences listed in the PMLA, 2002 as below:—

“Whoever indulges or attempts or assists in any process or activity connected with the “proceeds of crime” and projecting it as untainted property shall be guilty under the Section. “Proceeds of crime” is defined as property derived by any person as a result of criminal activity relating to a “scheduled offence.”

Thus, proceeds from all criminal activities do not constitute money laundering; only those included in the Schedule will apply. These offences are also called predicate offences. The Schedule to the Prevention of Money Laundering Act has two parts, namely, Part A and Part B. Part A includes offences under Section 121 and 121A of the Indian Penal Code of waging war against the Government of India as well as certain offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. Part B, on the other hand, includes a number of offences under the Indian Penal Code, Arms Act and certain offences under the Wild Life (Protection) Act. “Scheduled offence” has been further defined as all offences specified under Part A or those offences specified under Part B, where the total value involved is Rs. 30 lakh or more. It can thus be seen that the structure of the Act criminalizes money laundering, only if the value involved in the offence is more than Rs. 30 lakh except in respect of offences of waging war and drug trafficking. This threshold limit of Rs. 30 lakh has been fixed in order that the provisions of the Prevention of Money Laundering Act, a stringent Act, are not misused by the field level implementing agencies.

Another important feature of the Act is the obligation under Section 12 of the Act of banking companies, financial institutions and intermediaries to maintain certain records of transactions, furnishing information on transactions and to verify and maintain records of identity of its clients. The authority to which such records are to be sent is the Director, Financial Intelligence Unit – India (FIU-IND) whose responsibility it is to analyze such information and disseminate it to the concerned authorities such as Central Board of Excise and Customs, Central Board of Direct Taxes, Enforcement Directorate, Intelligence Bureau etc.

The Act also provides for attachment, adjudication and confiscation of proceeds of crime. It also gives powers of summons, search and seizure to officers concerned. An Adjudicating Authority is set up for deciding on confiscation of property, an Appellate Tribunal to hear appeals. The case under the Prevention of Money Laundering Act as well as the basic predicate offence, has to be prosecuted in Special Courts.

One of the important weaknesses in the Act is the threshold limit of Rs. 30 lakh which applies uniformly to most of the predicate offences *i.e.* offences included in the Schedule. In the context of preventing money laundering and combating terrorism, questions have been repeatedly asked by international agencies as well as other member countries of such organisations as to how effective our response can be, if money laundering cases less than the threshold limit are not even criminalized. It is felt that international cooperation will be greatly strengthened if the threshold limit is relaxed for those cases which have cross-border implications and for offences against property under Chapter-XVII of the Indian Penal Code with specific reference to theft, extortion, robbery, dacoity, criminal misappropriation etc. One of the important components of the proposed amendment is in this direction. A Part-C has been added to the Schedule, wherein offences under Part-A or Part-B without any monetary threshold

or offences against property under Chapter-XVII of the Indian Penal Code are all included, if it is an offence of cross-border implication. "Offence of cross-border implication" is also defined. Through this amendment, it is proposed to remove the weakness of not being able to bring cases less than the threshold limit also under the ambit of the Money Laundering law. At the same time, for offences which do not have cross-border implications, the threshold limit of Rs. 30 lakh will remain.

As already indicated, Part-A of the Schedule which has no threshold limit included only waging of war and drug offences. It is now proposed to amend the Act so that Part-A will include offences relating to counterfeit currency, opium, poppy, cannabis, controlled drugs, important offences under the Explosive Substance Act and all the major offences under Unlawful Activities (Prevention) Act.

The Unlawful Activities (Prevention) Act is particularly relevant because it includes offences of terrorist act, raising fund for terrorist act, conspiracy for terrorism, harbouring of terrorists, being a member of a terrorist gang or organisation, holding proceeds of terrorism, support given to terrorist organisations, etc. Even in part B, which has a threshold limit of Rs.30 lakh, several new offences have been added. These include a number of offences under the IPC, additional offences under the Wild Life (Protection) Act and Prevention of Corruption Act, new offences under the Explosives Act, SEBI Act, Customs Act, Transplantation of Human Organs Act, Juvenile Justice (Care and Protection of Children) Act, Emigration Act, Passports Act, Foreigners' Act, Copyright Act, Trade Marks Act, Information Technology Act, etc. These will substantially strengthen our legislation criminalising money laundering, whenever such offences are involved."

26. Although the Bill envisages covering offences having cross-border implications under the PMLA, the Committee are constrained to observe that it is extremely difficult to track the

transfer of funds and financing of terrorist activity in the absence of bilateral agreements. The Committee, therefore, desire that MOUs for mutual co-operation in this regard should be concluded with other countries. This will ensure that the provisions contained in the Bill, which are of far reaching nature, do not become infructuous in pursuing cross border offences including terrorism and money-trail arising therefrom. In this connection, the Committee desire that the proposed amendment in Section 11 of the Bill providing for return of confiscated property located within the country to the requesting/contracting State should not remain merely one- sided and reciprocal arrangements ought to be enabled.

27. The Committee would also like to emphasise that keeping in view the recent surge in cross border terrorism, it is necessary that the enforcement agencies galvanize their machinery so as to keep themselves abreast of the emerging trends of money laundering and terror funding. In view of the enormity of the problem, it is imperative that appropriate computer programme/ anti-money laundering software, specially with regard to suspicious transactions, should be developed and constantly updated for this purpose. The reporting instrument developed to monitor transactions, namely, Know Your Customer (KYC) also needs to be strengthened by way of fresh guidelines by the regulator. There should be a provision by way of test-check and quarterly audit to verify the KYC information furnished by clients. The requisite information should be available online with restricted access to all the user agencies and, any gross violation of KYC guidelines including those relating to old accounts should be made punishable.

V. OTHER SCHEDULED OFFENCES

(i) SEBI's suggestion regarding Investor Protection

28. The Prevention of Money Laundering (Amendment) Bill, 2008 also seeks to extend the scope by adding certain predicate offences in Part-B of the Schedule which, *inter-alia*, includes "Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

29. In this regard, SEBI, in their written memorandum, submitted as follows:—

"One consequence of such inclusion of predicate offences in the Schedule is that proceeds in respect of Fraudulent and Unfair Trade Practices (FUTP), Insider Trading and Takeover violations will now be subject to attachment by Director under Section 5 of Prevention of Money Laundering Act (PMLA) and can be confiscated by Central Government under Section 8 and confiscated proceeds will vest absolutely in Central Government under section 9, if same is treated as proceeds of crime or charged having committed scheduled offences.

In this context, it may be mentioned that SEBI has ordered refunds in cases such as manipulation in primary issues. Similarly, in the case of IPO irregularities, SEBI has directed reallocation of shares to the retail investors. However, with the inclusion of above provisions in PML Act as predicate offences, such proceeds will be liable to be attached under PMLA and investors in such case will not be entitled to refund or reallocation. Hence it is suggested that there should be a specific provision in PMLA to enable refund

of proceeds attached under PMLA in respect of above offence (which is proposed to be included as a predicate offence) to the investors and that such proceeds are not liable to be confiscated.”

(ii) IBA’s suggestion regarding Counterfeit Notes

30. In connection with possession of counterfeit currency (shifted from Part-B to Part-A in the schedule in the Bill) Indian Banks’ Association (IBA) have suggested in their memorandum as follows:—

“In the ordinary course of business inspite of exercising caution, even if a single piece of counterfeit currency note escapes scrutiny and finds place in the cash balance at any branch of a bank, the enforcement agency could charge the branch with the offence under Part ‘A’ of the Schedule to the Act. We appreciate the need for shifting the Section 489-A and 489-B of IPC from Part ‘B’ to Part ‘A’ of the Schedule to meet the international obligations to curb the financing of terrorism. But, we apprehend that this may cause unintended inconvenience to the genuine customers and Banks who may unknowingly receive one or two pieces of counterfeit notes. In our opinion, it would be more appropriate, if some threshold limit say Rs. 100,000/- (Rs. one lac) is fixed in respect of the offences under section 489-A and 489-B of the IPC. However, since the issue has also larger implications for the banking industry, the matter may need to be debated thoroughly.”

31. The Committee find substantial credence in the contention made by SEBI that addition of paragraph 8 to Part B of the Schedule to PMLA to include “Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control” leaves the possibility of depriving the investors of refunds or reallocation of shares that may be ordered by SEBI in cases

involving manipulations of primary issues, etc. The Committee are, therefore, of the opinion that as suggested by SEBI, it may be necessary to incorporate a specific provision in the PMLA to make the proceeds from such offences not liable to confiscation, and to enable refund of such proceeds.

32. Keeping in view the suggestion of Indian Banks' Association (IBA) for providing a threshold with regard to possession of counterfeit currency in bank dealing, the Committee would suggest that an appropriate threshold may be fixed in this regard so that genuine dealings are duly protected.

VI. CLAUSES 6 AND 7 — AMENDMENT OF SECTION 17 AND SECTION 18 — POWERS OF SEARCH AND SEIZURE

33. Clause 6, proposing to amend section 17 of the principal Act, reads as follows:

In sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

“Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in the Schedule before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be,”

34. Clause 7, proposing to amend Section 18 of the principal Act reads as follows:

In section 18 of the principal Act,-

(i) in sub-section (1), the following proviso shall be inserted, namely:

“Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be.”;

(ii) in sub-section (9), the proviso shall be omitted.

35. While elaborating the rationale of the above proposal, the Ministry of Finance (Department of Revenue), in their background note have submitted as below:—

“The existing proviso (i) of sub-section (1) of section 5 and proviso (a) of sub-section (9) of section 18 of PML Act provide that a report under section 173 of the Code of Criminal Procedure is to be forwarded to a Magistrate before action is taken by the investigating agency under PML Act. Similarly, proviso (ii) of sub-section (1) of section 5 and proviso (b) to sub-section (9) of section 18 provide for “a police report” or “a complaint” being filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs Psychotropic Substance Act,(NDPS) 1985, before initiating attachment proceedings under sub-section (1) of section 5 and search proceedings against any person under sub-section (9) of section 18.

In respect of scheduled offences that the police authorities are authorized to investigate, the Magistrate or court will take cognizance of the offence on receipt of a police report under section 173 of the Code of Criminal Procedure. However, in respect of scheduled offences that non-police agencies investigate, there is a clear provision in some of the Acts, such as NDPS Act, Wild Life (Protection) Act, Antiquities and Art Treasure Act and Securities and Exchange Board of India Act, that Courts will take cognizance upon receipt of complaint from authorized persons. Hence, the provisos to sub-section (1) of section 5 and sub-section(9) of section 18 of PML Act are proposed to be substituted by a new formulation to enable the investigating agency under this Act to take up the matter at the stage of filing of report by police authorities under section 173 of the Code of Criminal Procedure in those offences where police authorities are investigating agencies and at the stage of filing of complaint before the Magistrate or court by authorized persons in respect of those offences in which non-police authorities are the

investigating agencies. This will also take care of the anomaly in the existing law that attachments and searches of persons cannot be carried out under PML Act in cases where the predicate offence is under the Wildlife Protection Act wherein only non police agencies carry out investigations and no report under section 173 of the Code of Criminal Procedure is filed by them.”

36. The Committee note that an amendment has been proposed in Sections 17 and 18 of PMLA 2002 to enable the investigating agency to take up the matter at the stage of filing of report by police authorities or filing of complaint before the magistrate or court by authorized persons in respect of offences in which non police authorities are the investigating agencies. The Committee desire that this provision coupled with the existing powers of confiscation and attachment of property should not lead to any kind of overbearing conduct by officials. The Committee, therefore, expect that adequate safeguard measures will be put in place to ensure that the powers vested in the enforcement authorities are used judiciously and do not result in any undue harassment of individuals.

VII. CLAUSE 9 — REMOVAL OF CHAIRPERSON AND
MEMBER OF APPELLATE TRIBUNAL

37. Clause 32 of the Principal Act which deals with the resignation and removal of the Chairperson and Members of Appellate Tribunal reads as under:—

“Resignation and removal— (1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairperson or any other Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity, after an inquiry made by a person appointed by the President in which such Chairperson or any other Member concerned had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.”

38. The proposed Bill intends to add the following proviso to Sub-section 2 of Section 32 of the Principal Act:—

“Provided that the Chief Justice of India shall be consulted before removal of the Chairperson or a Member who was appointed on the recommendation of the Chief Justice of India.”

39. The Ministry of Finance, in their Background Note on the Bill giving their rationale for making amendments to the section 32 of the Principal Act states as under:—

“Since the appointment of Chairperson and Member of the Appellate Tribunal is to be made on the recommendation of the Chief Justice of India, it logically follows that his removal should only be undertaken in consultation with the Chief Justice of India. In view of this, it is proposed to insert a proviso in sub-section (2) of section 32 to provide for consultation with Chief Justice of India before removal of the Chairperson or Member of the Appellate Tribunal who was appointed in consultation with the Chief Justice of India.”

40. Clause 28 of the Principal Act prescribing qualifications for appointment of Chairperson and Members of Appellate Tribunal do not require consultation with Chief Justice of India before appointing them unless the person considered to be appointed is a sitting Judge of High Court or Supreme Court. Clause 28 of Principal Act is given below:—

“Qualifications for appointment.— (1) A person shall not be qualified for appointment as Chairperson unless he is or has been a Judge of the Supreme Court or of a High Court or is qualified to be a Judge of the High Court.

(2) A person shall not be qualified for appointment as a Member unless he—

- *(a) is or has been a Judge of a High Court; or
- (b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years; or
- (c) has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or

*The Bill proposes to omit this clause.

equivalent post in that Service for at least three years;
or

- (d) has been a member of the Indian Economic Service and has held the post of Joint Secretary or equivalent post in that Service for at least three years; or
- (e) has been a member of the Indian Customs and Central Excise Service and has held the post of a Joint Secretary or equivalent post in that Service for at least three years;
or
- (f) has been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949) or as a registered accountant under any law for the time being in force or partly as a registered accountant and partly as a chartered accountant for at least ten years:

Provided that one of the members of the Appellate Tribunal shall be from category mentioned in clause (f); or

- (g) has been a member of the Indian Audit and Accounts Service and has held the post of Joint Secretary or equivalent post in that Service for at least three years.
- (3) No sitting Judge of the Supreme Court or of a High Court shall be appointed under this section except after consultation with the Chief Justice of India.”

41. The Committee note that similar to the provision in the principal Act for appointment of a sitting Judge of Supreme Court or High Court as Chairperson of the Appellate Tribunal, prior consultation with the Chief Justice of India has also been proposed now with regard to the removal process as well of Chairperson, if he is a sitting Judge of the Supreme Court or High Court. While

observing that this amendment is in tune with the related provision in the principal Act, the Committee are, however, not satisfied with the prescription regarding eligibility qualifications provided in the principal Act, wherein even a person qualified to be a Judge of the High Court is eligible for appointment as Chairperson of the Appellate Tribunal. The Committee are of the considered view that only a sitting or retired Judge of the Supreme Court or High Court should be eligible for appointment as Chairperson of the Appellate Tribunal in order to preserve the judicial character of the Tribunal.

The Committee further note that the Principal Act provides for practice of accountancy as a Chartered Accountant as one of the eligibility criteria for appointment as Member of the Appellate Tribunal. The Committee, however, feel that the eligibility criteria needs to be made more broad-based by including similar professionals like Company Secretaries with requisite experience.

VIII. ADOPTION OF INTERNATIONAL STANDARDS OF FINANCIAL ACTION TASK FORCE (FATF)

42. The Financial Action Task Force (FATF) on Money Laundering is an inter-governmental body, which sets standards, and develops and promotes policies to combat money laundering and terrorist financing. It currently has 33 members: 31 countries and Governments and two international organizations; and more than 20 observers. In recent years the FATF has noted increasingly sophisticated combinations of techniques, such as the increased use of legal persons to disguise the true ownership and control of illegal proceeds, and an increased use of professionals to provide advice and assistance in laundering criminal funds. The FATF now calls upon all countries to take the necessary steps to bring their national systems for combating money laundering and terrorist financing into compliance with the new FATF recommendations, and to effectively implement these measures.

43. Explaining the purpose and objectives of Financial Action Task Force (FATF), the representative of the Ministry of Finance (Department of Economic Affairs) appearing before the Committee on 15.12.2008 stated *inter-alia* as follows:—

“It primarily had two purposes. Its first purpose was to generate necessary political will to bring about the National legislative changes. But more importantly, the second purpose was to establish global standards and measures for combating money-laundering, terrorist financing and fostering international cooperation amongst countries. In 1990, they issued what are called 40 recommendations.”

44. In response to a specific query as to whether Pakistan is one of the members of the Task Force, the representative stated as follows:—

“It is not a Member. In fact, it is a country on which a directive has recently been issued by the FATF. We are also not yet a member...

This body, as I mentioned, established and issued forty standards for dealing with anti money-laundering; plus nine standards to deal with combating the financing of terror. Together these forty plus nine recommendations have, so to say, become the global standard for assessing whether countries are in alignment with accepted benchmarks on fighting money-laundering and terror.

In 1998 India was actually identified by the FATF as strategically important and was invited to make its application for becoming a member. The first step that was required is to become a member of a regional body. So, we became member of the Asia Pacific Group which is the regional body of FATF countries of this region. In 2003, the Government sent an explicit request communicating what is called the political commitment of the Government to subscribe to the FATF principles. In 2005, another fresh communication was issued by the new Government reiterating what had been communicated in 2003. And then the formal process of the FATF evaluation started.

We have been granted what is called ‘observer status’ during which a mutual evaluation is done to evaluate whether we are in compliance with these forty plus nine standards. The first thing the evaluation found out, and this was an evaluation done in 2005, was that we had not covered all of what are called 20 serious predicate offences listed in the forty plus nine recommendations. It is in a bid to handle this particular recommendation that we should cover all of the 20 designated crimes in the FATF recommendation that, among other things, this amendment is being attempted.

9/10 crimes, depending on the exact legal definition that we follow, are right now not included in our PML Act. One of the major purposes of the amendment Act would be to bring all these designated offences within the definition of our legislation. Just to give an example, many other countries have done a reverse process. They have done a process whereby any crime in a country automatically is covered in the PML legislation.

To just supplement the point that the Revenue Secretary was making, there is a criminal legislation, for instance in IPC, which criminalizes, let us say the act of murder. PML Act goes beyond that and says, if there is an illegal proceeds of crime from that act of murder and if that illegal proceeds were used and layered with legal money and passed off as non-legal money, then you commit the offence of money-laundering under our Act.

Many countries have done a simple legislation and have said, for instance in UK, any crime automatically, if the proceeds of crime are there and are hidden, constitutes a PML offence in that country. India consciously decided, and at the instance very explicitly of the previous Standing Committee, that if you include every petty crime it will not be possible to manage it in a practical fashion. Therefore, we adopted what is called the serious offence approach. So, we listed out offences in Part A and Part B.

Now what we have discovered is some serious offences as accepted by the international community have not got included in our legislation. Just to give one example, trafficking in animal skins is a designated offence already. But trafficking in human beings who are alive is not a designated offence. So, there were such anomalies. I am just giving one example to prove a point. The idea was to include all of the 20 offences that have been identified by the international community collectively. The hope is that with this our case for becoming a member of the FATF, not merely an observer, would actually get stronger and we would actually be able to influence events and outcomes that are

happening in the FATF, one of which the Hon. Chairman alluded to, namely, Pakistan has been given an explicit directive and other member countries have been told that if Pakistan does not deal with these directives, other FATF member countries should stop having financial transactions with entities in Pakistan.

So, it is that kind of seriousness with which the FATF is approaching the business and it was our belief that we should do all that we can do legislatively to become compliant with FATF standards.”

45. The Committee note that presently we only have an ‘observer’ status with the inter-governmental Financial Action Task Force (FATF) on money laundering. The Committee desire that the Government must take necessary initiative to become a full fledged member of FATF to enable sharing of information and multi-lateral intelligence. The Committee further note that as submitted by a representative of Ministry of Finance (Department of Economic Affairs), Pakistan has been given a directive by FATF and its non-compliance would result in FATF member countries stopping financial transactions with entities in Pakistan. The Committee would now like the Government to take this matter to its logical end. The Government should also impress upon other member countries of FATF to ensure that countries abetting terrorism are sternly dealt with.

NEW DELHI;
18 December, 2008

27 Agrahayana, 1930 (Saka)

ANANTH KUMAR,
Chairman,
Standing Committee on Finance.

APPENDIX I

MINUTES OF THE ELEVENTH SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Monday, the 15th December, 2008 from
1600 hours to 1745 hrs.

PRESENT

Shri Ananth Kumar — *Chairman*

MEMBERS

Lok Sabha

2. Shri Rupchand Pal
3. Shri P.S. Gadhavi
4. Shri R. Prabhu
5. Shri K.S. Rao
6. Shri Magunta Sreenivasulu Reddy
7. Shri M.A. Kharabela Swain

Rajya Sabha

8. Shri M. Venkaiah Naidu
9. Shri Mahendra Mohan
10. Shri Moinul Hassan
11. Shri Shivanand Tiwari

SECRETARIAT

- | | | |
|----------------------------|---|-----------------------------|
| 1. Shri R.C. Ahuja | — | <i>Additional Secretary</i> |
| 2. Shri A.K. Singh | — | <i>Director</i> |
| 3. Shri T.G. Chandrasekhar | — | <i>Deputy Secretary</i> |
| 4. Shri Srinivasulu Gunda | — | <i>Deputy Secretary-II</i> |
| 5. Shri R.K. Suryanarayan | — | <i>Deputy Secretary-II</i> |

WITNESSES

Ministry of Finance (Department of Revenue)

1. Shri P.V. Bhide, Secretary
2. Shri Jose Cyriac, Additional Secretary
3. Dr. K.P. Krishnan, Joint Secretary
4. Shri Arun Goel, Director, Financial Intelligence Unit
5. Shri Arun Mathur, Director, Enforcement
6. Smt Priya V.K. Singh, Director, Coordination

Reserve Bank of India (RBI)

1. Dr. D. Subbarao, Governor
2. Shri Anand Sinha, Executive Director
3. Shri Vinay Bajjal, Chief General Manager

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee.

3. The Chairman then informed the Members that the Minister of Parliamentary Affairs had requested him to expedite finalisation of the report of the Committee on the Prevention of Money Laundering (Amendment) Bill, 2008 and requested the Members to give their opinion on the matter. Members expressed the unanimous view that the provisions of the Bill needed to be examined in detail before finalisation of the Report.

4. On a specific query by the Chairman, the officers of the Secretariat informed that there was no formal communication from the Government requesting for expediting the finalisation of the report of the Committee on the Bill.

5. The Committee, first, heard the views of the representatives of Ministry of Finance (Department of Revenue) on the salient features of the Prevention of Money Laundering (Amendment) Bill, 2008 and

subsequently, the Committee separately heard the views of the Governor, Reserve Bank of India on the subject.

6. Attention of the witnesses was invited to the provisions contained in Direction 55 of the Directions by the Speaker.

7. The major issues discussed were lacunae in the Prevention of Money Laundering Act, 2002, multilateral agreement for sharing information on money laundering, India's participation in Financial Action Task Force (FATF), inclusion of Designated business/profession under the ambit of proposed Act, etc.

8. The Committee directed the representatives to furnish written replies to the points raised by the Members immediately.

9. The witnesses then withdrew.

A verbatim record of proceedings has been kept.

The Committee then adjourned.

MINUTES OF THE TWELFTH SITTING OF THE STANDING
COMMITTEE ON FINANCE

The Committee sat on Tuesday, the 16th December, 2008 from
1700 hrs. to 1800 hrs.

PRESENT

Shri Ananth Kumar — *Chairman*

MEMBERS

Lok Sabha

2. Shri Gurudas Dasgupta
3. Shri A. Krishnaswamy
4. Shri Bhartruhari Mahtab
5. Shri Rupchand Pal
6. Shri P.S. Gadhavi
7. Shri K.S. Rao
8. Shri Lakshman Seth
9. Shri M.A. Kharabela Swain
10. Shri Suresh Prabhakar Prabhu

Rajya Sabha

11. Shri Raashid Alvi
12. Shri Mahendra Mohan
13. Shri Vijay J. Darda
14. Shri K.V.P. Ramachandra Rao

SECRETARIAT

- | | | |
|----------------------------|---|-----------------------------|
| 1. Shri R.C. Ahuja | — | <i>Additional Secretary</i> |
| 2. Shri A.K. Singh | — | <i>Director</i> |
| 3. Shri T.G. Chandrasekhar | — | <i>Deputy Secretary</i> |
| 4. Shri R.K. Suryanarayan | — | <i>Deputy Secretary-II</i> |

PART-I

(1700 to 1740 hrs.)

WITNESSES

Federation of Indian Chambers of Commerce and Industry (FICCI)

1. Mr. Prasanna Kotian, Head-Corporate Affairs, South Asia, Western Union Services India Pvt. Ltd.
2. Ms. Navita Vinayak, Deputy Director, FICCI
3. Ms. Shweta Vij, Research Associate, FICCI

The Institute of Company Secretaries of India (ICSI)

1. Shri Sanjay Grover, Council Member
2. Shri N.K. Jain, Secretary & CEO
3. Shri Sutanu Sinha, Director
4. Mrs. Lakshmi Arun, Education Officer

The Institute of Chartered Accountants of India (ICAI)

1. Shri Ved Jain, President
2. Shri Uttam Prakash Agarwal, Vice-President
3. Mr. T. Karthikeyan, Acting Secretary
4. Dr. Alok Ray, Sr. Deputy Secretary

2. At the outset, the Chairman welcomed the representatives of Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) and Federation of Indian Chambers of Commerce & Industry (FICCI) to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then took oral evidence of the representatives of ICAI, ICSI and FICCI on the provisions contained in the Prevention of Money Laundering (Amendment) Bill, 2008. The major issues discussed related to strengthening of KYC norms, regular verification of these norms, expanding the infrastructure of Financial Intelligence Unit (FIU), duration of maintenance of records under clause 5 of the Bill etc.

A verbatim record of proceedings has been kept.

The witnesses then withdraw.

PART-II

(1740 to 1800 hrs.)

4.	**	**	**	**
5.	**	**	**	**

The Committee then adjourned.

MINUTES OF THE THIRTEENTH SITTING OF THE STANDING
COMMITTEE ON FINANCE

The Committee sat on Wednesday, the 17th December, 2008 from
1500 hrs. to 1545 hrs.

PRESENT

Shri Ananth Kumar — *Chairman*

MEMBERS

Lok Sabha

2. Shri Madhusudan Mistry
3. Shri Rupchand Pal
4. Shri P.S. Gadhavi
5. Shri R. Prabhu
6. Shri K.S. Rao
7. Shri Lakshman Seth
8. Shri Suresh Prabhakar Prabhu

Rajya Sabha

9. Shri Mahendra Mohan
10. Shri Vijay J. Darda
11. Shri S. Anbalagan
12. Shri Moinul Hassan

SECRETARIAT

1. Shri A.K. Singh — *Director*
2. Shri T.G. Chandrasekhar — *Deputy Secretary*
3. Shri Srinivasulu Gunda — *Deputy Secretary-II*
4. Shri R.K. Suryanarayan — *Deputy Secretary-II*

WITNESSES

Securities and Exchange Board of India (SEBI)

- (i) Shri C.B. Bhawe, Chairman
- (ii) Shri S. Raman, Chief General Manager

Indian Banks' Association (IBA)

- (i) Shri T.S. Narayanasami, Chairman & Managing Director
- (ii) Shri M.R. Umarji, Chief Advisor – Legal

2. At the outset, the Chairman welcomed the representatives of the Securities and Exchange Board of India (SEBI) and Indian Banks' Association (IBA) to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then took oral evidence of the representatives of SEBI and IBA on the provisions contained in the Prevention of Money Laundering (Amendment) Bill, 2008. The major issues discussed related to identity of the foreign institutional investors investing in Indian capital market through Participatory Note Route (PNs), bringing FIIs under the ambit of PMLA, prescribing threshold limit on the amount involved in crimes mentioned in section 489A & B of IPC, approval of Chief Justice of India for appointment/removal of Chairperson/Members of Appellate Tribunal, strengthening KYC norms etc.

4. The Chairman then directed the representatives to furnish written replies on certain points raised by the Members to which replies were not readily available with them.

The witnesses then withdraw.

A verbatim record of proceedings has been kept.

The Committee then adjourned.

MINUTES OF THE FOURTEENTH SITTING OF THE STANDING
COMMITTEE ON FINANCE

The Committee sat on Thursday, the 18th December, 2008 from
1000 hrs. to 1050 hrs.

PRESENT

Shri Ananth Kumar — *Chairman*

MEMBERS

Lok Sabha

2. Shri Vijoy Krishna
3. Shri A. Krishnaswamy
4. Dr. Rajesh Kumar Mishra
5. Shri Bhartruhari Mahtab
6. Shri Rupchand Pal
7. Shri P.S. Gadhavi
8. Shri M.A. Kharabela Swain

Rajya Sabha

9. Shri S.S. Ahluwalia
10. Shri Mahendra Mohan
11. Shri Vijay J. Darda
12. Shri S. Anbalagan
13. Shri Moinul Hassan
14. Shri K.V.P. Ramachandra Rao
15. Shri Shivanand Tiwari

SECRETARIAT

1. Shri R.C. Ahuja — *Additional Secretary*
2. Shri A.K. Singh — *Director*
3. Shri T.G. Chandrasekhar — *Deputy Secretary*
4. Shri R.K. Suryanarayan — *Deputy Secretary-II*

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee.

3. The Committee took up for consideration, the draft report on the Prevention of Money Laundering (Amendment) Bill, 2008 and adopted the same with modifications as shown in the Annexure.

4. The Committee then authorized the Chairman to finalise the reports in the light of the modifications made and present the same to Parliament.

A verbatim record of proceedings has been kept.

The Committee then adjourned.

ANNEXURE

Modifications made in the draft report on the Prevention of Money-Laundering (Amendment) Bill, 2008 of the Ministry of Finance (Department of Revenue).

Para	Line	Modification
1	2	3
10	2	For “anti-money laundering legal framework”, Read “legal framework for preventing money laundering,”
	7	After “...the intended objectives,” Insert “The Committee are of the view that international norms/guidelines like those of OECD group of nations should also be taken into account apart from plugging other avenues generating illegal funds like hawala etc. for effective enforcement of money laundering law”.
22	14	For “...with suspicious track record”, Read “...causing suspicion”,
27	10	After “....guidelines by the regulator”,

1

2

3

Insert

“There should be a provision by way of test-check and quarterly audit to verify the KYC information furnished by clients”.

12

After

“...all the user agencies”,

Add

“...and, any gross violation of KYC guidelines including those relating to old accounts should be made punishable”.

APPENDIX II

AS INTRODUCED IN THE RAJYA SABHA

Bill No. XXXI of 2008

THE PREVENTION OF MONEY-LAUNDERING (AMENDMENT) BILL, 2008

A

BILL

further to amend the Prevention of Money-laundering Act, 2002.

BE it enacted by Parliament in the Fifty-ninth
Year of the Republic of India as follows:—

1. (1) This Act may be called the Prevention of Money-laundering (Amendment) Act, 2008. Short title and commencement.

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

15 of 2003. 2. In section 2 of the Prevention of Money-laundering Act, 2002 (hereinafter referred to as the principal Act), in sub-section (1),— Amendment of section 2.

(i) after clause (d), the following clause shall be inserted, namely:—

42 of 1999. ‘(da) “authorised person” means an authorised person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 and includes a person who has been authorised or given general or special permission by the Reserve Bank of India and overseas principals with whom the person so authorised or having general or special permission conducts a service involving international money transfer.’;

(ii) after clause (j), the following clause shall be inserted, namely:—

‘(ja) “designated business or profession” means carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino or such other activities as the Central Government may, by notification, so designate, from time to time;’;

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

(iv) in clause (q), after the words and figures “Reserve Bank of India Act, 1934”, the words “and includes a person carrying on designated business 2 of 1934. or profession” shall be inserted;

(v) after clause (r), the following clauses shall be inserted, namely:—

‘(ra) “offence of cross border implications”, means—

(i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person remits the proceeds of such conduct or part thereof to India; or

(ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or

part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

Explanation.—Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money-laundering (Amendment) Act, 2008.;

(rb) “payment system operator” means any person, who operates, maintains, facilitates or sustains a payment system involving the use of credit card or any other similar card or system, which enables payment to be effected between a payer and a beneficiary;’.

(vi) in clause (y), for sub-clause (ii), the following clauses shall be inserted, namely:—

“(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more: or

(iii) the offences specified under Part C of the Schedule.”.

3. In section 5 of the principal Act, in sub-section (l),— Amendment of section 5.

(a) for the words “ninety days”, the words “one hundred and fifty days” shall be substituted:

(b) for the proviso, the following proviso shall be substituted, namely:—

“Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be;”.

Amendment
of section 6.

4. In Section 6 of the principal Act,—

(i) in sub-section (1), for the words “one or more Adjudicating Authorities”, the words “an Adjudicating Authority” shall be substituted;

(ii) in the proviso to sub-section (8), for the word “sixty-two”, the word “sixty-five” shall be substituted.

Amendment
of section 12.

5. In section 12 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2)(a) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of ten years from the date of transactions between the clients and the banking company or financial institution or intermediary, as the case may be;

(b) the records referred to in clause (c) of sub-section (1) shall be maintained for a period of ten years from the date of cessation of transactions between the clients and the

banking company or financial institution or intermediary, as the case may be.”.

6. In section 17 of the principal Act, in sub-section (l), for the proviso, the following proviso shall be substituted, namely:—

Amendment
of section 17.

2 of 1974. “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.”

7. In section 18 of the principal Act,—

Amendment
of section 18.

(i) in sub-section (l), the following proviso shall be inserted, namely:—

2 of 1974. “Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure., 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be.”;

(ii) in sub-section (9), the proviso shall be omitted.

8. In section 28 of the principal Act, in sub-section (2), clause (a) shall be omitted.

Amendment
of section 28.

Amendment of section 32. 9. In section 32 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely:—

“Provided that the Chief Justice of India shall be consulted before removal of the Chairperson or a Member who was appointed on the recommendation of the Chief Justice of India”.

Amendment of section 38. 10. In section 38 of the principal Act, for the words “one or more of the other Members”, the words “third Member” shall be substituted.

Amendment of section 60. 11. In section 60 of the principal Act, after sub-section (6), the following sub-section shall be inserted, namely:—

“(7)When any property in India is confiscated as a result of execution of a request from a contracting State in accordance with the provisions of this Act, the Central Government may either return such property to the requesting State or compensate that State by disposal of such property on mutually agreed terms that would take into account deduction for reasonable expenses incurred in investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property.”.

Amendment of schedule. 12. In the principal Act, in the Schedule,—

(i) in Part A,—

(a) in Paragraph 1, after section 121A and the entry relating thereto, the following

sections and the entries shall be inserted, namely:—

Section	Description of offence
"489A	Counterfeiting currency notes or bank notes.
489B	Using as genuine, forged or counterfeit currency notes or bank notes.";

(b) in Paragraph 2, for sections, 15, 18 and 20 and the entries relating thereto, the following sections and the entries shall be substituted, namely:—

Section	Description of offence
"15	Contravention in relation to poppy straw.
16	Contravention in relation to coca plant and coca leaves.
17	Contravention in relation to prepared opium.
18	Contravention in relation to opium poppy and opium.
19	Embezzlement of opium by cultivator.
20	Contravention in relation to cannabis plant and cannabis.
21	Contravention in relation to manufactured drugs and preparations.";

(c) after Paragraph 2, the following Paragraphs shall be inserted, namely:—

PARAGRAPH 3

OFFENCES UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908

Section	Description of offence
3	Causing explosion likely to endanger life or property.

Section	Description of offence
4	Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property.
5	Making or possessing explosives under suspicious circumstances.

PARAGRAPH 4

OFFENCES UNDER THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

Section	Description of offence
10 read with section 3	Penalty for being member of an unlawful association, etc.
11 read with sections 3 and 7	Penalty for dealing with funds of an unlawful association.
13 read with section 3	Punishment for unlawful activities.
16 read with section 15	Punishment for terrorist act.
17	Punishment for raising fund for terrorist act.
18	Punishment for conspiracy, etc.
19	Punishment for harbouring, etc.
20	Punishment for being member of terrorist gang or organisation.
21	Punishment for holding proceeds of terrorism.
38	Offence relating to membership of a terrorist organisation.

Section	Description of offence
39	Offence relating to support given to a terrorist organisation.
40	Offence of raising fund for a terrorist organisation.”;

(ii) in Part B,—

(a) for paragraph 1, the following paragraph shall be substituted, namely:—

“PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

Section	Description of offence
120B	Criminal conspiracy.
255	Counterfeiting Government stamp.
257	Making or selling instrument for counterfeiting Government stamp.
258	Sale of counterfeit Government stamp.
259	Having possession of counterfeit Government stamp.
260	Using as genuine a Government stamp known to be counterfeit.
302	Murder.
304	Punishment for culpable homicide not amounting to murder.
307	Attempt to murder.

Section	Description of offence
308	Attempt to commit culpable homicide.
327	Voluntarily causing hurt to extort property, or to constrain to an illegal act.
329	Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.
364A	Kidnapping for ransom, etc.
384 to 389	Offences relating to extortion.
392 to 402	Offences relating to robbery and dacoity.
411	Dishonestly receiving stolen property.
412	Dishonestly receiving property stolen in the commission of a dacoity.
413	Habitually dealing in stolen property.
414	Assisting in concealment of stolen property.
467	Forgery of valuable security, will, etc.
471	Using as genuine a forged document or electronic record.
472 and 473	Making or processing counterfeit seal, etc., with intent to commit forgery.
475 and 476	Counterfeiting device or mark.
481	Using a false property mark.
482	Punishment for using a false property mark.
483	Counterfeiting a property mark used by another.
484	Counterfeiting a mark used by a public servant.

Section	Description of offence
485	Making or possession of any instrument for counterfeiting a property mark.
486	Selling goods marked with a counterfeit property mark.
487	Making a false mark upon any receptacle containing goods.
488	Punishment for making use of any such false mark.”.

(b) in Paragraph 3, before section 51 read with section 17A and the entry relating thereto, the following section and the entry shall be inserted namely:-

Section	Description of offence
“51 read with section 9	Hunting of wild animals.”;

(c) in Paragraph 5, after section 10 and the entry relating thereto, the following section and the entry shall be inserted, namely:-

Section	Description of offence
“13	Criminal misconduct by a public servant.”;

(d) after Paragraph 5, the following Paragraphs shall be inserted, namely:-

“PARAGRAPH 6

OFFENCES UNDER THE EXPLOSIVES ACT, 1884

Section	Description of offence
9-B	Punishment for certain offences.
9-C	Offences by Companies.

PARAGRAPH 7

OFFENCES UNDER THE ANTIQUITIES AND ARTS TREASURES ACT, 1972

Section	Description of offence
25 read with section 3.	Contravention of export trade in antiquities and art treasures.
28	Offences by Companies.

PARAGRAPH 8

OFFENCES UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

Section	Description of offence
12A read with section 24	Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

PARAGRAPH 9

OFFENCES UNDER THE CUSTOMS ACT, 1962

Section	Description of offence
135	Evasion of duty or prohibitions.

PARAGRAPH 10

OFFENCES UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

Section	Description of offence
16	Punishment for enforcement of bonded labour.
18	Punishment for extracting bonded labour under the bonded labour system.
20	Abetment to be an offence.

PARAGRAPH 11

OFFENCES UNDER THE CHILD LABOUR (PROHIBITION AND REGULATION)
ACT, 1986

Section	Description of offence
14	Punishment for employment of any child to work in contravention of the provisions of section 3.

PARAGRAPH 12

OFFENCES UNDER THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

Section	Description of offence
18	Punishment for removal of human organ without authority.
19	Punishment for commercial dealings in human organs.
20	Punishment for contravention of any other provision of this Act.

PARAGRAPH 13

OFFENCES UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF
CHILDREN) ACT, 2000

Section	Description of offence
23	Punishment for cruelty to juvenile or child.
24	Employment of juvenile or child for begging.
25	Penalty for giving intoxicating liquor or narcotic drug of psychotropic substance to juvenile or child.
26	Exploitation of juvenile or child employee.

PARAGRAPH 14

OFFENCES UNDER THE EMIGRATION ACT, 1983

Section	Description of offence
24	Offences and penalties.

PARAGRAPH 15

OFFENCES UNDER THE PASSPORTS ACT, 1967

Section	Description of offence
12	Offences and penalties.

PARAGRAPH 16

OFFENCES UNDER THE FOREIGNERS ACT, 1946

Section	Description of offence
14	Penalty for contravention of provisions of the Act, etc.
14B	Penalty for using forged passport.
14C	Penalty for abetment.

PARAGRAPH 17

OFFENCES UNDER THE COPYRIGHT ACT, 1957

Section	Description of offence
63	Offence of infringement of copyright or other rights conferred by this Act.
63A	Enhanced penalty on second and subsequent convictions.

Section	Description of offence
63B	Knowing use of infringing copy of computer programme.
68A	Penalty for contravention of section 52A.

PARAGRAPH 18

OFFENCES UNDER THE TRADE MARKS ACT, 1999

Section	Description of offence
103	Penalty for applying false trade marks, trade descriptions, etc.
104	Penalty for selling goods or providing services to which false trademark or false trade description is applied.
105	Enhanced penalty on second or subsequent conviction.
107	Penalty for falsely representing a trade mark as registered.
120	Punishment of abetment in India of acts done out of India.

PARAGRAPH 19

OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000

Section	Description of offence
72	Penalty for breach of confidentiality and privacy.
75	Act to apply for offence or contravention committed outside India.

PARAGRAPH 20

OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002

Section	Description of offence
55 read with 6	Penalties for contravention of section 6, etc.

PARAGRAPH 21

OFFENCES UNDER THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

Section	Description of offence
70 read with 68	Penalty for applying false denomination, etc.
71 read with 68	Penalty for selling varieties to which false denomination is applied.
72 read with 68	Penalty for falsely representing a variety as registered.
73 read with 68	Penalty for subsequent offence.

PARAGRAPH 22

OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986

Section	Description of offence
15 read with 7	Penalty for discharging environmental pollutants.
15 read with 8	Penalty for handling hazardous substance.

PARAGRAPH 23

OFFENCES UNDER THE WATER (PREVENTION AND
CONTROL OF POLLUTION ACT, 1974)

Section	Description of offence
41(2)	Penalty for pollution of stream or well.
43	Penalty for contravention of provisions of section 24.

PARAGRAPH 24

OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION)
ACT, 1981

Section	Description of offence
37	Failure to comply with the provisions for operating industrial plant.

PARAGRAPH 25

OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL ACT AGAINST
SAFETY OF MARITIME NAVIGATION AND FIXED PLATFORMS ON
CONTINENTAL SHELF ACT, 2002

Section	Description of offence
3	Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc."

(iii) after Part B, the following Part shall be inserted, namely:—

"PART C

An offence which is the offence of cross border implications and is specified in,—

(1) Part A; or

(2) Part B without any monetary threshold; or

(3) the offences against property under Chapter XVII of the Indian Penal Code."

STATEMENT OF OBJECTS AND REASONS

The Prevention of Money-laundering Act, 2002 was brought into force in 2005 to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. The Act also addressed 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 2005 to remove the difficulties in implementation of the Act.

2. The Prevention of Money-laundering (Amendment) Bill, 2008 seeks to bring certain financial institutions like Full Fledged Money Changers, Money Transfer Service Providers such as Western Union and International Payment Gateways including VISA and Master Card within the reporting regime of the Act. The Bill incorporates provisions to combat financing of terrorism and it introduces a new category of offences which have cross-border implications. The Bill seeks to amend the Act, to provide, *inter alia*, to-

- (a) include institutions like Full Fledged Money Changers and Money Transfer Service Providers and to bring the business activities such as casinos under the reporting regime of the Act;
- (b) make provisions for the 'offences with cross border implications' and to add new Part C in the Schedule to the Act for such offences;
- (c) ensure that the investigating agency can attach any property and search a person only after completing investigation and also to enhance the period of provisional attachment of property from 90 days to 150 days;
- (d) empower the Enforcement Directorate to search the premises immediately after the offence is committed and the police

has filed a report under section 157 of Code of Criminal Procedure, 1973;

- (e) increase the age of retirement of Chairperson and Members of the Adjudicating Authority from 62 years to 65 years;
- (f) provide mandatory consultation with the Chief Justice of India before removal of the Chairperson or a Member of the Appellate Tribunal;
- (g) enable the Central Government to return the confiscated property to the requesting country in order to implement the provisions of the United Nations Convention Against Corruption; and
- (h) expand the scope of the Act by adding certain offences in Part A and Part B of the Schedule to the Act.

3. The Bill seeks to achieve the above objects.

NEW DELHI;
The 9th July, 2008.

P. CHIDAMBARAM.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill empowers the Central Government to notify, from time-to-time, an activity for playing games of chance for cash or kind as 'designated business or profession' for the purpose of bringing them into the reporting regime under the Act.

2. The matters in respect of which notification may be issued are generally matters of details and administrative procedure. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

(15 OF 2003)

* * * * *

2. (1) In this Act, unless the context otherwise requires,— Definitions.

2 of 1934. (1) "financial institution" means a financial institution as defined in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 and includes a chit fund company, a co-operative bank, a housing finance institution and a non-banking financial company;

(q) "non-banking financial company" shall have the same meaning as assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934;

* * * * *

CHAPTER III

ATTACHMENT, ADJUDICATION AND CONFISCATION

5. (1) Where the Director, or any other officer not below the rank of Deputy Director authorised by him for the purpose 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— Attachment of property involved in money-laundering.

(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: 43 of 1961.

Provided that no such order of attachment shall be made unless, in 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 2 of 1974.

(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. 61 of 1985.

* * * * *

Adjudicating Authorities, composition, powers, etc.

6. (1) The Central Government shall, by notification, appoint one or more Adjudicating Authorities to exercise jurisdiction, powers and authority conferred by or under this Act.

* * * * *

(8) The Chairperson and every Member shall hold office as such for a term of five years from the date on which he enters upon his office;

Provided that no Chairperson or other member shall hold office as such after he has attained the age of sixty-two years.

* * * * *

CHAPTER IV

OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

12. (1) * * * * *

Banking companies, financial institutions and intermediaries to maintain records.

(2) The records referred to in sub-section (1) shall be maintained for a period of ten years from the date of cessation of the transactions between the clients and the banking company or financial institution or intermediary, as the case may be.

* * * * *

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—

Search and seizure.

* * * * *

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
2 of 1974.

(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.
61 of 1985.

* * * * *

18. (1) * * * * *

Search of persons.

(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—

(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

2 of 1974.

(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.

61 of 1985.

* * * * *

Qualifications for appointment.

28. (1) * * * * *

(2) A person shall not be qualified for appointment as a Member unless he—

(a) is or has been a Judge of a High Court; or

* * * * *

Decision to be by majority.

38. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

* * * * *

THE SCHEDULE

[See section 2(y)]

PART A

* * * * *

PARAGRAPH 2

OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC
SUBSTANCES ACT, 1985

Section	Description of Offence
15	Contravention in relation to poppy straw.
18	Contravention in relation to opium poppy and opium.
20	Contravention in relation to cannabis plants cannabis.
* * * * *	

PART B

PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

Section	Description of Offence
1	2
302	Murder.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with the intention of causing death.
307	Attempt to murder.
308	Attempt to commit culpable homicide.

1	2
327	Voluntarily causing hurt to extort property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence.
329	Voluntarily causing grievous hurt to extort property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence.
364A	Kidnapping for ransom, etc.
384 to 389	Offences relating to extortion.
392 to 402	Offences relating to robbery and dacoity.
467	Forgery of a valuable security, will or authority to make or transfer any valuable security, or to receive any money, etc.
489A	Counterfeiting currency notes or bank notes.
489B	Using a genuine, forged or counterfeit currency notes or bank notes.
*	*
*	*
*	*

RAJYA SABHA

A

BILL

further to amend the Prevention of Money-Laundering Act, 2002.

(Shri P. Chidambaram, Minister of Finance)

RAJYA SABHA

ERRATA

TO

THE PREVENTION OF MONEY LAUNDERING BILL, 2008

(To be/As Introduced in the Rajya Sabha)

Sl. No.	Page No.	Line(s) No(s).	For	Read
1.	5	11	relatiang	relating
2.	6	38	Arts	Art
3.	9	27	Protection	(Protection)
4.	10	8	Supression	Suppression