
SEARCH, SEIZURE, IMPOUNDING OF RECORDS

4.1 POWERS OF OFFICERS FOR EFFECTIVE IMPLEMENTATION OF ACT

Director or any other officer not below the rank of Deputy Director authorised by him for purpose of this section, can authorise a person to search of any building, place, vessel, vehicle or aircraft where he has reason to suspect that records relating to money-laundering or proceeds of crime are kept [section 17(1) of Prevention of Money Laundering Act].

Section 18(1) of Prevention of Money Laundering Act empowers Central Government to authorise a person to order search of a person. The authorised person can order search of a person if he has reasons to believe that a person has secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful or relevant to any proceedings under the Act.

Director of Enforcement under FEMA has been authorised for this purpose under Notification No. GSR 441(E) dated 1-7-2005.

All officers not below the rank of Assistant Directors in the Directorate of Enforcement are empowered to search persons and to seize such record of property which may be useful or relevant under the Act - Notification No. 8/2013/SO 2309(E) dated 26-7-2013.

Prevention of Money-laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material

to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005 make relevant provisions, which are summarised below.

4.1-1 Search under the Act

Director or any person authorised by him can further authorise any officer subordinate to him for search under section 17(1) of Prevention of Money Laundering Act.

The authorisation shall be in prescribed form I. Search can be conducted only after a report is forwarded to a magistrate or complaint is filed before magistrate or Court.

Search will be before two local persons as '*panchas*'. The authority can obtain entry by breaking locks or door etc. He can stop any vehicle, vessel or aircraft to be stopped. Occupier or building place, vehicle etc. is permitted to be present during search [rule 3].

4.1-2 Procedure relating to seizure and freezing

Officer or Authority may freeze or seize any record or property found as a result of search.

If it is not practicable to seize any record or property, the officer may make an order to freeze the property. After such order, the property cannot be transferred or dealt with without permission of the officer. The order shall be served on the person concerned - section 17(1A) of Prevention of Money Laundering Act.

The officer can hand it over to the person from whom goods were seized, for safe custody. Seizure memo shall be prepared [rule 4].

Seizure memo will be in prescribed form II.

Code of Criminal Procedure will apply to the search and seizure [rule 5].

4.1-3 Impounding of records

Any records produced before impounding authority can be impounded by him and taken in his custody under section 50(5) Prevention of Money Laundering Act.

He can obtain assistance of police.

'Impounding authority' for purpose of section 50(5) of the Prevention of Money Laundering Act means Director, Additional Director, Joint/Deputy/Assistant Director appointed by Central Government.

Reasons for impounding records should be recorded in writing by Assistant/Deputy Director. These cannot be retained beyond period of three months without previous approval of Joint Director [*proviso* to section 50(5) of Prevention of Money Laundering Act]

The impounding authority shall prepare inventory of impounded records. Once copy of such inventory shall be given to person from whom records were seized and one copy will be sent to Director [rule 6].

Impounded records may be retained by impounding authority.

These powers are with Directorate of Enforcement under FEMA.

4.1-4 Forwarding copies of report of search, seizure and freezing

The authority will prepare an index of copy of reasons recorded for search, along with the 'material' in his possession and send it to Adjudicating Authority in sealed envelope.

'Material' means material in possession of authority after search and seizure. It includes report forwarded to Magistrate or police report lodged - rule 2(1)(k).

Sealed envelope will be marked 'confidential'. The sealed envelope will be kept in an outer envelope, which will be marked 'confidential'. Proper records will be maintained by authority.

The Adjudicating Authority will issue acknowledgement in prescribed form IV [rule 9].

These will be retained for at least 10 years [rule 10].

4.1-5 Summons for attendance

Director, Additional Director can issue summons to a person to attend at his office along with documents prescribed [section 50(2) of Prevention of Money Laundering Act].

Person summoned is bound to attend and state truth upon any subject respecting which he is examined. He will make statement and produce such documents as required [section 50(3) of Prevention of Money Laundering Act].

The records produced can be impounded by the authority for reason to be recorded. Records cannot be kept beyond three months without approval of Director [section 50(5) of Prevention of Money Laundering Act].

The summons will be in prescribed form V.

These powers are with Directorate of Enforcement under FEMA.

4.2 RETENTION OF SEIZED PROPERTY

Property seized under section 17 or 18 of Prevention of Money Laundering Act or frozen under section 17(1A) of Prevention of Money Laundering Act can be retained by authorised officer, if he has reason to believe that such property is required to be retained for adjudication under section 8 of Prevention of Money Laundering Act - section 20(1) of Prevention of Money Laundering Act.

The property can be retained for a period of 180 days from day on which the asset was seized or frozen [section 20(1) of Prevention of Money Laundering Act].

Details of property seized or frozen have to be informed to Adjudicating Authority in prescribed manner [section 20(2) of Prevention of Money Laundering Act].

Director of Enforcement under FEMA has been empowered to retain such property as per Notification No. GSR 441(E) dated 1-7-2005.

The seized property is required to be returned to person from whom it was seized after 180 days, unless Adjudicating Authority permits retention of property beyond this period [section 20(3) of Prevention of Money Laundering Act].

4.2-1 Procedure for retention of property

Provisions are contained in Prevention of Money-laundering (the Manner of Forwarding a Copy of the Order of Retention of Seized Property along with the Material to the Adjudicating Authority and the Period of its Retention) Rules, 2005.

Director can authorise a person under section 20(1) of the Prevention of Money Laundering Act as 'authorised officer'. The authorised officer will prepare index of copy of order of retention of seized property and 'material'. 'Material' means any material in possession of authorised officer on the basis of which he has recorded reasons

u/s 20(1) of the Act. The report will be in sealed envelope. Authorised Officer will maintain proper records.

These powers are with Directorate of Enforcement under FEMA.

The sealed envelope along with Acknowledgement slip will be sent to Adjudicating Authority, as required under section 20(2) of Prevention of Money Laundering Act.

The Adjudicating Authority or officer authorised by him will acknowledge the receipt in form II to authorised officer.

The report and material will be kept by Adjudicating Authority at least for ten years.

4.3 PROVISIONAL ATTACHMENT OF PROPERTY

Property involved in money-laundering can be provisionally attached under section 5(1) of Prevention of Money Laundering Act.

Authority appointed under the Act (Director, Joint Director or Deputy Director) can provisionally attach property upto 180 days, if he has reasons to believe that such person is in possession of proceeds or crime and the proceeds of crime are likely to be concealed or transferred or dealt with in any manner which will frustrate the proceedings of confiscation of such proceeds of crime. [section 5(1) of Prevention of Money Laundering Act].

The reasons to believe should be recorded in writing. The reasons should be sent in sealed envelope to adjudicating authority along with copy of the attachment order. [section 5(2)]. Procedure to be followed for issuing order of provisional attachment has been specified in Prevention of Money-Laundering (Issuance of Provisional Attachment Order) Rules, 2013.

The procedure to be followed and the forms to be used have been specified in Prevention of Money Laundering (the Manner of Forwarding a Copy of the Order of Provisional Attachment of Property along with the Material, and Copy of the Reasons along with the Material in Respect of Survey, to the Adjudicating Authority and its Period of Retention) Rules, 2005.

Director of Enforcement under FEMA has been empowered to attach the property, vide Notification No. 441(E) dated 1-7-2005.

The order of provisional attachment should be made only after report is forwarded to Magistrate under section 173 of Criminal

Procedure Code for taking cognizance - first proviso to section 5(1) of Prevention of Money Laundering Act.

In case of urgency, where property is likely to be disappear, the provisional attachment can be made even before filing report with Magistrate - second proviso to section 5(1) of Prevention of Money Laundering Act.

Validity of second proviso of section 5(1) of the Prevention of Money Laundering Act has been upheld in *J Sekar v. UOI* (2018) 145 SCL 537 = 89 taxmann.com 159 (Del HC DB).

Meaning of 'attachment' - 'Attachment' means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III of the Act [section rule 2(d) of Prevention of Money Laundering (Receipt and Management of Confiscated Properties) Rules, 2005].

4.3-1 Procedure for provisional attachment

Prevention of Money-Laundering (the Manner of Forwarding a Copy of the Order of Provisional Attachment of Property along with the Material, and Copy of the Reasons along with Material in Respect of Survey, to the Adjudicating Authority and its Period of Retention) Rules, 2005 make provision for procedure for forwarding copy of order of provisional attachment.

4.3-2 Forwarding copy of provisional attachment of property to adjudicating authority

As per rule 3, Director or authorised officer shall prepare an index of copy of order and the material, sign each page and shall also write a letter while forwarding the index, order and 'material' to the Adjudicating Authority in a sealed envelope. Acknowledgement slip in form-I shall be placed in the envelope before sealing it.

'Material' for purpose of section 5(1) means material in possession of Director or authorised offer on the basis of which he has recorded reasons. The 'material' will include report forwarded to Magistrate, police report, complaint filed for taking cognizance of offence by Special Court etc. [rule 2(f) of Prevention of Money Laundering (the Manner of Forwarding a Copy of the Order of Provisional Attachment of Property along with the Material, and Copy of the Reasons along

with the Material in respect of Survey, to the Adjudicating Authority and its Period of Retention) Rules, 2005.

Sealed envelope will be marked 'confidential' and put in outer envelope. It will be forwarded to Adjudicating Authority. It will be acknowledged by Adjudicating Authority in form III. These records will be preserved by Adjudicating Authority for at least 10 years.

4.3-3 Forwarding copy of reasons along with material in respect of survey

As per rule 4, authority appointed under section 48 of the Act will prepare index of copy of reasons and material in respect of survey, sign each page and shall also write a letter while forwarding the index, order and 'material' to the Adjudicating Authority in a sealed envelope.

Acknowledgement slip in form-II shall be placed in the envelope before sealing it. 'Material' means material in possession of Director or authorised officer on the basis of which he has recorded reasons.

The 'material' for purpose of section 16(1) means material in possession of authority on the basis of which he has recorded reasons [rule 2(g) of Prevention of Money Laundering (the Manner of Forwarding a Copy of the Order of Provisional Attachment of Property along with the Material, and Copy of the Reasons along with the Material in respect of Survey, to the Adjudicating Authority and its Period of Retention) Rules, 2005.

Sealed envelope will be marked 'confidential' and put in outer envelope. It will be forwarded to Adjudicating Authority. It will be acknowledged by Adjudicating Authority in form III. These records will be preserved by Adjudicating Authority for at least 10 years.

4.4 RECEIPT, MANAGEMENT AND DISPOSAL OF CONFISCATED PROPERTIES

If adjudicating Authority decides that the property is involved in money laundering, he can order that the property shall be attached, or if already attached, the attachment will continue till order of trial court becomes final [section 8(3) of Prevention of Money Laundering Act].

If the person is found to be guilty finally by trial court, Adjudicating Authority shall confiscate the attached property after giving oppor-

tunity of hearing, after order of trial court has become final [section 8(5) of Prevention of Money Laundering Act].

The property ordered to be confiscated by Adjudicating Authority u/s 8(5) will vest absolutely in Central Government. [section 9 Prevention of Money Laundering Act].

Procedure to be followed for taking possession of attached property confirmed by adjudicating authority has been prescribed in Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013.

Central Government will appoint Administrator to receive and manage property which has been confiscated as per order of Adjudicating Authority u/s 8(6) [section 10(1) of Prevention of Money Laundering Act].

Administrator will take measures to dispose of the property vested in Central Government under section 9 of Prevention of Money Laundering Act [section 10(3) of Prevention of Money Laundering Act]

Special Directors of Enforcement of the Regional Offices of the Directorate of Enforcement have been appointed as Administrators to receive and manage property confiscated under section 8(6) of the Prevention of Money Laundering Act.

The procedure to be followed for handing over confiscated property to administrator has been specified in Prevention of Money-Laundering (Receipt and Management of Confiscated Properties) Rules, 2005.

Property purchased from offender under PMLA for consideration cannot be attached - Property purchased from offender under PMLA for consideration cannot be attached when the buyer is not related to offender - *Ms Kiran Mazumdar v. Deputy Director, Director of Enforcement* (2018) 149 SCL 132 = 96 taxmann.com 365 (PMLAT)
* *Vivek Mathias v. Deputy Director, Director of Enforcement* (2018) 149 SCL 195 = 96 taxmann.com 388 (PMLAT).

4.4-1 Procedure for receipt and management of property

Prevention of Money Laundering (Receipt and Management of Confiscated Properties) Rules, 2005 make provision for receipt and management of confiscated properties.

Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules,

2013 make provision for procedure relating to taking possession of attached or frozen properties confirmed by Adjudicating Authority.

Central Government will appoint 'administrator' u/s 10(1) of the Act. He will receive the property confiscated under Act. He will mark the property properly. If the confiscated property cannot be removed from place of attachment, Administrator will arrange for proper maintenance and custody of the property at the place of attachment. Cash, securities, bullion etc. will be kept for same custody in Government treasury, RBI or SBI or any authorised Bank [rule 4].

Administrator will maintain register in prescribed form I for movable property and in form II for immovable property.

Interestingly, rules make no provision as to how the Administrator will dispose of the property.

4.5 ARREST OF A PERSON

Director, Deputy Director or any other officer authorised by Central Government can arrest a person, if he has reason to believe that he is guilty of offense punishable under the Act. The reasons should be based on material in his possession and should be recorded in writing [section 19(1) of Prevention of Money Laundering Act].

Directorate of Enforcement under FEMA have been empowered for this purpose.

Offences under Prevention of Money Laundering Act are cognizable and non-bailable, notwithstanding anything contrary to Criminal Procedure Code. Officers under the Prevention of Money Laundering Act can arrest a person without warrant, subject to conditions in sections 19 and 45 of Prevention of Money Laundering Act - *Explanation* to section 45(2) of Prevention of Money Laundering Act inserted w.e.f. 1-8-2019.

This provision has been given retrospective effect, as the drafting of section 45 of Prevention of Money Laundering Act was faulty.

Person arrested is required to be produced before Judicial Magistrate of Metropolitan Magistrate within 24 hours [section 19(2) of Prevention of Money Laundering Act].

After arrest, report with 'material' is to be sent to Adjudicating Authority, as required u/s 19(2). Procedures for the same are contained in Prevention of Money Laundering (the Forms and the Manner of

Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005.

Director, Deputy/Assistant Director of Enforcement under FEMA can be authorised as 'Arresting Officer' by Central Government. Arrest order will be in form III.

Acknowledgement will be issued by Adjudicating Authority. 'Material' means any information or material in possession of Director or Deputy Director or Assistant Director on the basis of which he has recorded reasons under section 19(1) of the Act. Copy of order of arrest and material will be retained by Adjudicating Authority for at least 10 years.

Procedure to be followed for arrest and forwarding copy of a person has been specified in Prevention of Money-Laundering (the Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005.