

Standing Committee Report Summary

The Prevention of Money Laundering (Amendment) Bill, 2011

- The Standing Committee on Finance submitted its 56th Report on ‘The Prevention of Money Laundering (Amendment) Bill on May 9, 2012. The Chairman was Mr. Yashwant Sinha. The Bill was introduced in the Lok Sabha on December 27, 2011. The Bill seeks to amend the Prevention of Money Laundering Act, 2002.
- The Bill provides that if a criminal court outside India, under the corresponding law of the respective country, finds that the offence of money laundering has not taken place, the local court (in India) shall release the property on receiving an application for the same. The Committee felt that this would lead to an abridgement of powers of the local court as the Clause makes it mandatory for the court to release the property. The Committee recommended that this Clause be redrafted so that the local courts have the power to decide even when the person is acquitted in a case outside India.
- Participatory Notes being issued by Foreign Institutional Investors (FIIs) are regulated by SEBI. However, other investments in the stock market such as foreign currency flows by individuals and institutions are not monitored by SEBI. The Committee recommended that all regulatory and intelligence agencies should set up a monitoring and coordination mechanism to curb money laundering taking place through stock and securities markets.
- In the context of generation of unaccounted money, the Committee recommended that there should be planning and coordination between the enforcement agencies. The Committee suggested that there should be a status report based on the existing framework, its efficacy and measures taken by the Department of Revenue to check the generation of unaccounted money.
- The Committee suggested that under-invoicing of exports and over-invoicing of imports are also major factors that lead to generation of unaccounted money. The Committee recommended that the Department of Revenue should take into account the incidence of trade based money laundering, which is not considered as a money laundering offence so far.
- The Bill states that in proceedings relating to money laundering, the funds shall be presumed to be involved in the offence, unless proven otherwise. The Committee recommended that this Clause should be subject to adequate safeguards to protect the innocent.
- In the Bill, “beneficial owner” is an individual who ultimately owns or controls a reporting entity or the person on whose behalf the transaction is being conducted. The responsibility is on the reporting entity to ascertain beneficial ownership but not on the clients. The Committee recommended that clients may also declare beneficial ownership while undertaking a transaction.
- In the case of bank customers who hold safe deposits, the Bill proposes that the banks should verify that they do not hold any proceeds of crime. The Committee recommended that an appropriate declaration from the customers (holding safe deposit lockers) may be secured.
- The Committee suggested that instead of conducting a fresh audit as per the anti-money laundering law, banks should also be checked for compliance under this law in the course of the regular audit and inspection of their records.
- The Bill states that every reporting entity shall maintain its records for a period of 10 years from the date of the transaction between the client and the reporting entity. The Committee suggested that if the business relationship between the client and the entity has ended, then the records may be maintained for a period of five years.
- The Committee recommended that all staff of the key agencies entrusted with the responsibilities under this Bill, especially the Financial Intelligence Unit – India and the Enforcement Directorate shall be trained as per international standards.
- The Committee felt that the volume of financial data required under money laundering will be very large and hence unmanageable. It recommended that certain thresholds could be stipulated so that the focus is on larger cases and on categories prone to laundering. It also suggested that a comprehensive data base would be useful to analyse the inter-relationship between transactions and the trend over time.
- The Committee also recommended that to make this law effective in curbing the generation of unaccounted money, it is essential to prescribe strict timelines for cases and completing the investigative process. The Special Courts being set up to look at money laundering cases should achieve this objective.

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