

29 APR 2005

AS INTRODUCED IN LOK SABHA

Bill No. 64 of 2005

THE PREVENTION OF MONEY-LAUNDERING (AMENDMENT)
BILL, 2005

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

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

CHAPTER I

PRELIMINARY

5 1. (1) This Act may be called the Prevention of Money-laundering (Amendment) Act, 2005.

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 and different dates may be appointed for different provisions of this Act.

- Amendment of section 2. 2. In section 2 of the Prevention of Money-laundering Act, 2002 (hereinafter referred to as the principal Act), after clause (n), the following clause shall be inserted, namely:— 15 of 2003.
- “(na) “investigation” includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence;” 5
- Amendment of section 28. 3. In section 28 of the principal Act, —
- (a) in sub-section (1), for the words “High Court”, the words “High Court or is qualified to be a Judge of the High Court” shall be substituted;
- (b) after sub-section (3), the following sub-section shall be inserted, namely:—
- “(4) The Chairperson or a Member holding a post as such in any other Tribunal, established under any law for the time being in force, in addition to his being a Chairperson or a Member of that Tribunal, may be appointed as Chairperson or Member, as the case may be, of the Appellate Tribunal under this Act.” 10
- Omission of section 29. 4. Section 29 of the principal Act shall be omitted.
- Amendment of section 30. 5. In section 30 of the principal Act, for the words “terms and conditions of service”, at both the places where they occur, the words and brackets “terms and conditions of service (including tenure of office)” shall be substituted. 15
- Amendment of section 44. 6. In section 44 of the principal Act, in sub-section (1), in clause (b), the words “upon perusal of police report of the facts which constitute an offence under this Act or” shall be omitted. 20
- Amendment of section 45. 7. In section 45 of the principal Act, —
- (a) in sub-section (1), for the portion beginning with the words and figures “Notwithstanding anything contained in the Code of Criminal Procedure, 1973” and ending with the words “on his own bond unless —”, the following shall be substituted, namely:— 25
- “Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless —”; 2 of 1974.
- (b) after sub-section (1), the following sub-section shall be inserted, namely:— 30
- “(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.”; 35
- (c) in sub-section (2), the words, brackets and letter “clause (b) of” shall be omitted.
- Amendment of section 73. 8. In section 73 of the principal Act, in sub-section (2),—
- (a) in clause (s), for the words “terms and conditions of service”, the words and brackets “terms and conditions of service (including tenure of office)” shall be substituted; 40
- (b) after clause (u), the following clause shall be inserted, namely:—
- “(ua) conditions subject to which a police officer may be authorised to investigate into an offence under sub-section (1A) of section 45.”

STATEMENT OF OBJECTS AND REASONS

The Prevention of Money-Laundering Act, 2002 was enacted 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 had become necessary to implement the Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1999 which called upon the Member States to adopt national money-laundering legislation and programme. The said Act had been enacted, broadly incorporating, the recommendations of the Standing Committee on Finance in its report presented to the Lok Sabha on the 4th March, 1999, and laid on the Table of the Rajya Sabha on the 8th March, 1999 and the recommendations of the Select Committee of Rajya Sabha given in its report presented to the Rajya Sabha on the 24th July, 2000.

2. Steps are being taken by the Central Government to implement the provisions of the Prevention of Money-Laundering Act, 2002 which, *inter alia*, includes the entrusting the enforcement of the said Act to the Directorate of Enforcement in the Ministry of Finance, setting up of four Benches of Adjudicating Authorities, setting up of the Appellate Tribunal, etc. However, certain difficulties were envisaged while planning the implementation of the Act. In order to ensure effective implementation and to remove certain difficulties in the implementation of the aforesaid Act, it is proposed to amend the aforesaid Act, *inter alia*, so as to —

(a) provide that the Chairperson or a Member of any other Tribunal may be appointed (in addition to their holding the post as such) the Chairperson or a Member of the Appellate Tribunal, as the case may be, under the Prevention of Money-Laundering Act, 2002;

(b) provide that a police officer shall investigate an offence, under the Prevention of Money-Laundering Act, 2002 only after he has been specifically authorised by the Central Government, subject to such conditions as may be specified by the rules;

(c) omit clause (a) of sub-section (1) of section 45 of the Prevention of Money-Laundering Act, 2002, which provides that every offence punishable under that Act shall be cognizable;

(d) make other amendments which are consequential in nature.

3. The Bill seeks to achieve the above objects.

NEW DELHI;

P. CHIDAMBARAM.

The 21st April, 2005.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Section 73 of the Prevention of Money-Laundering Act, 2002 confers powers upon the Central Government to make rules for carrying out the provisions of the said Act. Clause (s) of sub-section (2) confers powers upon the Central Government to make rules in respect of the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under the said Act. Sub-clause (a) of clause 8 of the Bill proposes to amend the said clause (s) of sub-section (2) of section 73 of the aforesaid Act, so as to confer power upon the Central Government to make rules relating to the tenure of the office of the Chairperson and the Members of the Appellate Tribunal in addition to their salary and allowances payable to them and their other terms and conditions of service.

2. Sub-clause (b) of clause 8 of the Bill proposes to confer power upon the Central Government to make rules providing the conditions, subject to which a police officer may be authorised to investigate into an offence, under the new sub-section (1A) of section 45 of the Act proposed to be inserted vide sub-clause (b) of clause 7 of the Bill.

3. The rules made by the Central Government shall be laid, as soon as may be, after they are made, before each House of Parliament.

4. The matters in respect of which the rules may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. 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) *	*	*	*	*
(n) *	*	*	*	*
28. (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.				Qualifications for appointment.
*	*	*	*	*
29. The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office:				Term of office.
Provided that no Chairperson or other Member shall hold office as such after he has attained,—				
(a) in the case of the Chairperson, the age of sixty-eight years;				
(b) in the case of any other Member, the age of sixty-five years.				
*	*	*	*	*
30. The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed.				Conditions of service.
Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or any other Member shall be varied to his disadvantage after appointment.				
*	*	*	*	*
44. (1) *	*	*	*	*
(b) a Special Court may, upon perusal of police report of the facts which constitute an offence under this Act or upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial.				Offences triable by Special Courts.
*	*	*	*	*
45. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—				Offences to be cognizable and non-bailable.
(a) every offence punishable under this Act shall be cognizable;				
(b) no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless—				
(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and				
(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:				
Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:				
Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—				

2 of 1974.

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

2 of 1974.

(2) The limitation on granting of bail specified in clause (b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

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73. (1) *

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

* * * * *

(s) the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under section 30;

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LOK SABHA

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

(Shri P. Chidambaram, Minister of Finance)