

Prevention of Money-laundering (Forms, Search and Seizure and the Manner of Forwarding the Records and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005

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Prevention of Money-laundering (Forms, Search and Seizure and the Manner of Forwarding the Records and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005

In exercise of the powers conferred by sub-sec. (1) read with clause (a), clause (m), clause (n), clause (o) and clause (w) of sub-sec. (2), of Sec. 73 of the Prevention of Money-laundering Act, 2002 (15 of 2003), the Central Government hereby makes the following rules relating to the Forms, search and seizure and the manner of forwarding a copy of the reasons and the material relating to search and seizure and search of person to the

Adjudicating Authority, impounding and custody of records and the period of retention thereof, namely:

1. Short title and commencement :-

(1) These rules may be called the Prevention of Money-laundering (Forms, Search and Seizure 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.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions :-

(1) In these rules, unless the context otherwise requires,

(a) "Act" means the Prevention of Money-laundering Act, 2002 (15 of 2003);

(b) "Adjudicating Authority" means an Adjudicating Authority appointed under sub-sec. (1) of Sec. 6 of the Act;

(c) "authority" for the purposes of sub-sec. (2) of Sec. 17 of the Act means an officer subordinate to the Director and authorised by the Director under sub-sec. (1) of Sec. 17 of the Act;

(d) "authority" for the purposes of sub-sec. (1) of Sec. 18 of the Act means an authority from among the classes of authorities specified in Sec. 48 of the Act, authorized by the Central Government by general or special order;

(e) "designated officer" means the officer designated by the Adjudicating Authority for the purpose of sub-rule (1) of Rule 10;

(f) "Director" for the purpose of sub-sec. (1) of Sec. 17 of the Act means the Director appointed under sub-sec. (1) of Sec. 49 of the Act;

(g) "Director" or "Additional Director" or "Joint Director" or "Deputy Director" or "Assistant Director" for the purpose of sub-sec. (5) of Sec. 50 of the Act, means a Director or Additional Director or Joint Director or Deputy Director or Assistant Director appointed by the Central Government under sub-sec. (1) of Sec. 49 of the Act;

(h) "Form" means forms appended to these rules;

(i) "impounding authority" for the purpose of sub-sec. (5) of Sec.

50 of the Act, means the Director or Additional Director or Joint Director or Deputy Director or Assistant Director appointed by the Central Government under sub-sec. (1) of Sec. 49 of the Act;

(j) "material for the purpose of sub-sec. (2) of Sec. 17 of the Act means the material in possession of the authority referred to in clause (d) of sub-rule (1) of Rule 2, after search and seizure, under sub-sec. (1) of Sec. 17 of the Act, including

(i) a report forwarded to a Magistrate under Sec. 173 of the Code of Criminal Procedure, 1973 (2 of 1974) in relation to an offence under paragraph 1 of Part A and Part B of the Schedule; or

(ii) a police report or a complaint filed for taking cognizance of an offence by the Special Court constituted under sub-sec. (1) of Sec. 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) in relation to an offence under paragraph 2 of Part A of the Schedule;

(k) "material" for the purpose of sub-sec. (2) of Sec. 18 of the Act means the material in possession of the authority referred to in clause (e) of sub-rule (1) of Rule 2, after search and seizure, under sub-sec. (1) of Sec. 18 of the Act, including

(i) a report forwarded to a Magistrate under Sec. 173 of the Code of Criminal Procedure, 1973 (2 of 1974) in relation to an offence under 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; or

(ii) a police report or a complaint filed for taking cognizance of an offence by the Special Court constituted under sub-sec. (1) of Sec. 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) in relation to an offence under paragraph 2 of Part A of the Schedule;

(l) "place" means a place, where an act which constitutes the commission of the offence of money-laundering is carried on and includes any other place whether any activity is carried on therein or not, in which the person carrying on such activity states that any of his records or any part of his property relating to such act are or is kept;

(m) "records" include the records maintained in the form of books or stored in a computer or tapes or discs or in any other electronic

form or transcribed information of any type whether expressed in ordinary or machine language and such other documents as may be useful for the purposes of these rules;

(n) "Schedule" means the Schedule to the Act;

(o) "Section" means a section of the Act.

(p) "Summoning Officer" means an officer who has the power to summon any person under sub-sec. (2) of Sec. 50 of the Act.

(2) All other words and expressions used and not defined in these rules but denned in the Act shall have the meaning respectively assigned to them in the Act.

3. Procedure relating to search. :-

(1) The Director may authorize any officer subordinate to him for the purposes of sub-sec. (1) of Sec. 17 of the Act and such authorization shall be in Form I appended to these rules

(2) The authority referred to in clause (c) of sub-rule (1) of Rule 2, shall be empowered to

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

(b) break open the lock of any door, box, jocker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) seize any record or property found as a result of such search;

(d) place marks of identification on such record or make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act.

Provided that no search under sub-sec. (1) of Sec. 17 of the Act shall be conducted, unless

(a) in relation to an offence under paragraph 1 of Part A and Part B of the Schedule, a report under Sec. 173 of the Code of Criminal Procedure, 1973 (2 of 1974) has been forwarded to a Magistrate;

or

(b) in relation to an offence under 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-sec. (1) of Sec. 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);

(3) Before making a search, the authority, shall

(a) where a building or place is to be searched, call upon two or more respectable persons of that locality in which the building or place to be searched is situated; and

(b) where a vessel, vehicle or aircraft is to be searched, call upon any two or more respectable persons, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(4) Any person in charge of, or, in any building place, vessel, vehicle or aircraft shall, on production of the authorisation, allow the authority free ingress thereto and afford all reasonable facilities for search therein.

(5) If ingress into such building or place cannot be obtained, it shall be lawful for the authority executing the authorisation, with such assistance of police officers or of such other officers as specified in Sec. 54 of the Act, as may be required, to enter such building or place and search therein and in order to effect an entrance into such building or place, to break open any lock of any door or window of any building or place, whether that of the person to be searched or of any other person, if after production of authorisation and demand of admittance duly made, he cannot otherwise obtain admittance;

Provided that, if any such building or place is an apartment in actual occupancy of a woman, who according to custom does not appear in public, the authority shall before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing and may then break open the apartment and enter it.

(6) If ingress into any vessel, vehicle or aircraft authorized to be searched cannot be obtained because such vessel, vehicle or aircraft is moving or for any other reason, it shall be lawful for the

authority executing the authorisation, with such assistance as may be required of police officers and such officers, as specified in Sec. 54 of the Act, to stop any such vessel or vehicle or in the case of an aircraft, compel it to stop or land, and search any part of the vessel, vehicle or aircraft, and in order to effect an entrance into such vessel, vehicle or aircraft to break open any door or window of any such vessel, vehicle or aircraft, whether that of the person to be searched or of any other person, if after production of the authorisation and demand of admittance duly made, he cannot otherwise obtain admittance;

Provided that if any such vessel, vehicle or aircraft is occupied by a woman, who according to custom does not appear in public, the authority shall, before entering such vessel, vehicle or aircraft, give notice to such woman that she is liberty to withdraw and shall afford her every reasonable facility for withdrawing and may then break open the door of any vessel, vehicle or aircraft and enter it.

(7) The authority may require any person who, is the owner, or has the immediate possession, or control, of any box, locker, safe almirah or any other receptacle situated in such building, place, vessel, vehicle or aircraft, to open the same and allow access to inspect or examine its contents, and, where the keys thereof are not available or where such person fails to comply with any such requirement, may break open the lock of such box, locker, safe almirah or other receptacle which the authority may deem necessary for carrying out all or any of the purposes specified by the Director in this behalf.

(8) The occupant of the building, place, vessel, vehicle or aircraft searched, including the person in charge of such vessel vehicle or aircraft, or some person on his behalf, shall be permitted to attend during the search.

4. Procedure relating to seizure. :-

(1) The authority may seize any record or property found as a result of search of any building, place vessel, vehicle or aircraft: Provided that where it is not practicable to seize any record or property, the authority may serve an order on the owner or the person who is in immediate possession or control of any such record of property that he shall not remove, part with or otherwise deal with it except with the previous permission of the authority, who may take such steps as may be necessary for ensuring such

compliance.

(2) The authority shall prepare a seizure memo (inventory of items) in Form II appended to these rules which shall be delivered to the occupant of the building, place, vessel, vehicle or aircraft searched, including the person in charge of such vessel, vehicle or aircraft, or some person on his behalf and the authority shall also forward a copy of the inventory so prepared to the Director and the Adjudicating Authority.

(3) The authority shall place or cause to be placed the records of properties including bullion, jewellery and other valuable articles and things seized during the search in a package which shall contain the details of the bullion, jewellery and other valuable article and things placed therein, such packages shall bear an identification mark and the seal of the authority, and the occupant of such building, place vehicle or aircraft, including the person in charge of such vessel, vehicle or aircraft searched or any other person on his behalf shall also be permitted to place his seal on packages.

(4) A copy of the list prepared in accordance with sub-rule (3) shall be delivered to the occupant of the building, place, vehicle or aircraft, including the person incharge of such vessel, vehicle or aircraft searched or any other person on his behalf and the authority shall also forward a copy thereof to the Director and the Adjudicating Authority.

5. Applicability of the provisions of the Code of Criminal Procedure, 1973. :-

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of the Act relating to search and seizure.

6. Impounding of records. :-

(1) The impounding authority may impound any records produced before him in any proceedings under the Act: Provided that where the impounding authority is a Deputy Director or an Assistant Director, he shall not impound any records without recording his reasons in writing, and shall immediately forward such reasons to the Director.

(2) If the impounding authority requires assistance of police or officers of the Central Government, or both, it shall be lawful for

him to seek such assistance as necessary under Sec. 54 of the Act while impounding any records under sub-sec. (5) of Sec. 50 of the Act.

(3) The impounding authority, other than the Director, shall prepare an inventory of impounded records in triplicate. Where the impounding authority is the Director, he shall prepare such inventory in duplicate.

(4) Each page of an inventory of records shall be signed by the impounding authority and the person from whom records have been impounded. In case where the person from whom records have been impounded refuses to sign, the impounding authority shall record such refusal therein.

(5) The impounding authority other than the Director shall give one copy of such inventory to the person from whom records have been impounded and shall forward immediately one copy to the Director while retaining one copy with him. Where the impounding authority is the Director, he shall give one copy of such inventory to the person from whom records have been impounded and shall retain one copy with him.

(6) The impounding authority other than the Director may, after obtaining the previous approval of the Director in writing return any records impounded under this rule, to the person from whom records were impounded if such records are no longer useful and relevant for any proceedings under this Act.

7. Custody of records. :-

Any records impounded by the impounding authority under sub-sec. (5) of Sec. 50 of the Act may be retained in his custody:

Provided that where the impounding authority is a Deputy Director or an Assistant Director he shall not retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director in writing.

8. Manner of forwarding of a copy of the reasons and the material relating to search and seizure under sub-sec. (2) of Sec. 17 of the Act and search of persons under sub-sec. (2) of Sec. 18 of the Act to the Adjudicating Authority. :-

(1) The authority, as the case may be, shall prepare an index of a copy of the reasons recorded along with the material in his

possession and sign each page of such index and shall also write a letter while forwarding copy of reasons and material to the Adjudicating Authority in a sealed envelope.

(2) The authority as the case may be, shall place an acknowledgement slip in Form-III appended to these rules inside the envelope before sealing it.

(3) The authority, as the case may be, shall indicate a reference number and date of despatch on the sealed envelope.

(4) The sealed envelope shall be marked "Confidential" and "To be opened by the addressee only" and the complete address of the Adjudicating Authority including his name shall be mentioned on the sealed envelope with official seal.

(5) The authority, as the case may be, shall place the sealed envelope inside the outer envelope, and shall place an acknowledgement slip in Form-IV appended to these rules.

(6) The outer envelope shall be sealed and marked "Confidential" Complete address of the Adjudicating Authority shall be mentioned on the sealed outer envelope.

(7) The authority, as the case may be, shall maintain registers and other records such as acknowledgement slip register, dak register for the purposes of this rule and shall ensure that necessary entries are made in the register immediately as soon as copy of the reasons along with the material are forwarded to the Adjudicating Authority.

9. Acknowledgement of receipt of a copy of the reasons and the material relating to search and seizure and search of person by the Adjudicating Authority. :-

(1) On receipt of the outer sealed envelope along with Form-IV, the Adjudicating Authority or in his absence, the designated officer of the office of Adjudicating Authority shall forward Form-IV duly filled in, signed and his name legibly written below his signature. The seal of the office of the Adjudicating Authority shall be affixed before forwarding Form-IV to the authority as a token of receipt of the sealed envelope.

(2) The Adjudicating Authority shall, on opening of the sealed envelope, forward Form-III duly filled in, signed and his name legibly written below his signature. The seal of the office of the

Adjudicating Authority shall be affixed before forwarding of Form-III to the authority as a token of receipt of a copy of the reasons and the material.

(3) The Adjudicating Authority shall maintain registers and other records such as acknowledgement slip register, dak register and register showing details of receipt of a copy of the reasons recorded along with the material for the purposes of this rule and shall ensure that necessary entries are made in the register immediately on receipt of such copy of the reasons and the material.

10. Period of retention of copy of the reasons and the material relating to search and seizure and search of persons by the Adjudicating Authority. :-

(1) The Adjudicating Authority shall retain copy of the reasons and the material relating to search and seizure and search of persons for a period of ten years or if, before the expiry of the said period of ten years,

(i) any proceedings under Sec. 8 of the Act have been commenced, until the disposal of such proceedings, or

(ii) where an appeal has been preferred to the Appellate Tribunal under Sec. 26 of the Act, until the disposal of such appeal by the Appellate Tribunal, or

(iii) where an appeal has been filed in the High Court under Sec. 42 of the Act, until the disposal of such appeal by the High Court. whichever is later.

11. Forms of records :-

The Summoning Officer shall, while exercising powers under sub-secs. (2) and (3) of Sec. 50 of the Act, issue summons in Form-V appended to these rules.

12. Interpretation. :-

If any question arises relating to the interpretation of these rules, the matter shall be referred to the Central Government and the decision of the Central Government shall be final.