Content of PMLA, 2002.

1. Background of PMLA
2. Need for special act on Money Laundering
3. Why the term laundering
4. Definition of Money Laundering
5. Process of Money Laundering – Placement, Layering and Integration
6. Implementation of PMLA, 2002
7. Obligations of Financial Institutions
8. Scheme of the PMLA – Civil Liability and Criminal Liability
9. Provisions for Preventing Money Laundering
10. Schedule Offences
11. Punishment for offence under PMLA
12. Case Studies
13. Is PMLA overplayed?
14. Conclusion.

“World over, Money Laundering is considered a serious threat to any legalized financial system and the nations are always looking for ways and means to curb this menace. India is no exception to this and faces severe challenges in handling this widespread phenomenon, which derails the national economy from its tracs. Hence, the need to constantly strive to cover the loopholes which facilitate money laundering. One such step by the Legislature is enacting the PMLA, 2002 with the object to curtail money laundering and prevent crimes like drug trafficking, extortion, bank frauds etc., which are now a days committed in calculated, organized and sophisticated manner. ML channels are often used to convert the criminal proceeds related to Scheduled Offences into legitimate funds.”

Justice Chandra Sekhar.

Money Laundering Stats

Estimates: Income / profits generated from Drug Trafficking activities alone in the range of USD 500 billion

The ML business transactions 2.5% to 5% of Global GDP.

If the ML is unchecked:

It destabilize the economy

Distort Social Fabric

Encourages Corruption

On account of Globalization and advent of Digital / Net Banking the funds can be transferred from one country to another with great speed.

Funds are relocated in Tax haven countries where regulatory is weak.

Banking secrecy is one hurdle.

Money Laundering.....

- The money generated in large scale due to crimes:-

  Trade in narcotics, smuggling, trade in banned and prohibited, corruption, counterfeiting currency, arms & ammunition, selling national secrets etc.,
- Huge quantum of money cannot be transferred and used without banking channels
- Money required to be converted into untainted money through banking channels
- Process by which illegal funds and assets are converted into legitimate funds and assets.
- Money laundering is to switch Black Money or Dirty Money is called Money Laundering.
- Interpol defined in 1995 “**Is an act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources”**

Money Laundering…..

Causes:

Revenue Loss (It is minor issue)

Major Issues: Tainted Money used:-

Funding Terrorists and Terrorist Activities

Neighboring Countries involved

Menace is International

Prevent serious crime is to make difficult to convert Black Money into White Money.

UN General Assembly adopted General Resolution 1998 all member countries should adopt legislation on Money Laundering

UNSC Resolution "Suppression of the Financing Terrorism" in 1999 and became effective 10-April-2002.

Money laundering common sources – illegal money

- Typical Sources
- Drug Trafficking
- Original of Crime – Exp: Extortion, Prostitution, kidnapping, contract killing, gambling, drug adulation, bank frauds, corruption et.,
- Slush funds maintained by big corporates Exp: Bribery, payment to political parties, politician. (Demonetization)
- International trafficking in human beings
- Smuggling Exp: Gold, Artifacts etc.,
- **Tax Evasion.**

Money Laundering

- Financial Action Task Force established July, 1989.
- The Political Declaration and Global Programme of Action adopted by UN General Assembly 23-Feb-1990.

  Intention member States to develop mechanism to prevent financial institutions and banking channels used for ML for drug trafficking – to enact legislation to prevent.
- Another declaration United Nations – World Drug Problem on 10-June-1998 to combat ML

Money Laundering

- A process by which money or other assets obtained as proceeds of crime are exchanged for clean money" or other assets with no obvious link to their criminal origins

(Integration of proceeds of crime)

Money Laundering

- The process of making funds derived from criminal activity appear as though they have no connection with the illicit activity and were generated from legitimate sources.
- The process by which **illegal funds and assets are converted into legitimate funds and assets**
- Through money laundering, the launderer transforms
  - **the monetary proceeds**
  - derived from criminal activity
  - **into funds with an apparently legal source**

Stages of Money Laundering

- **Placement**

  The physical disposal of bulk cash proceeds derived from illegal activity.
- **Layering**

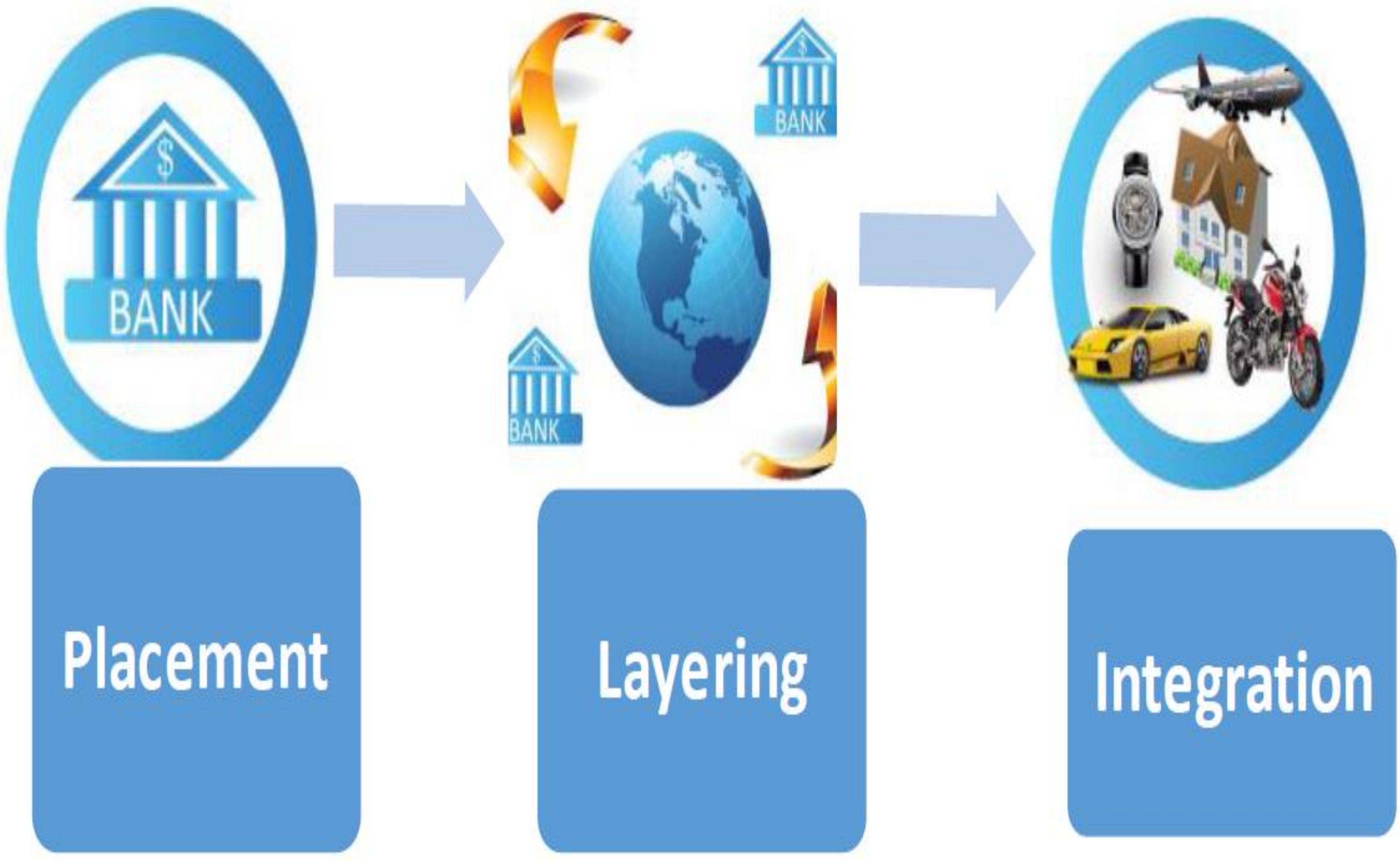
  Separation of illicit proceeds from their source by undertaking layers of financial transactions designed to

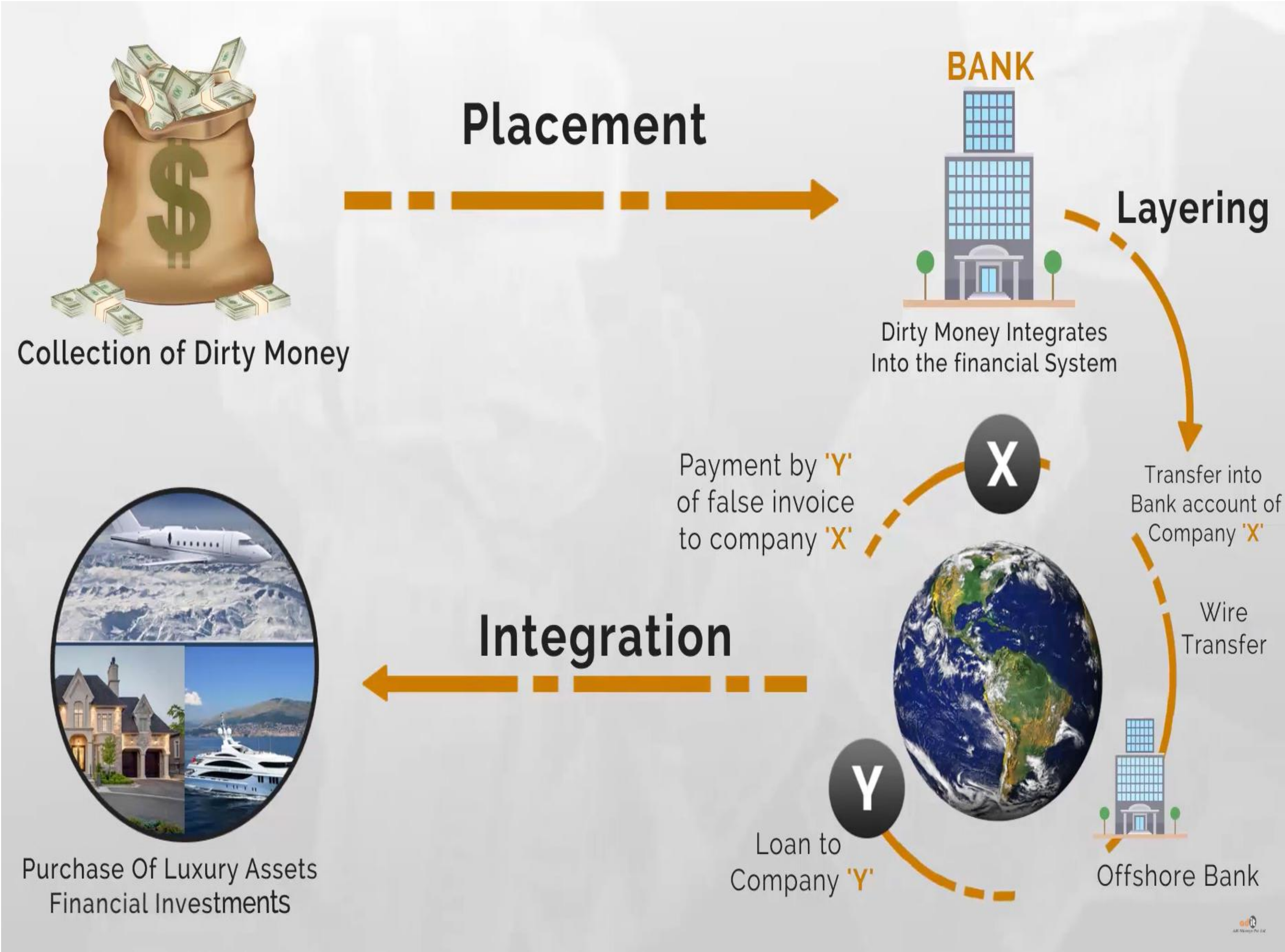
  (a) disguise/conceal audit trial and

  (b) provide anonymity.
- **Integration**

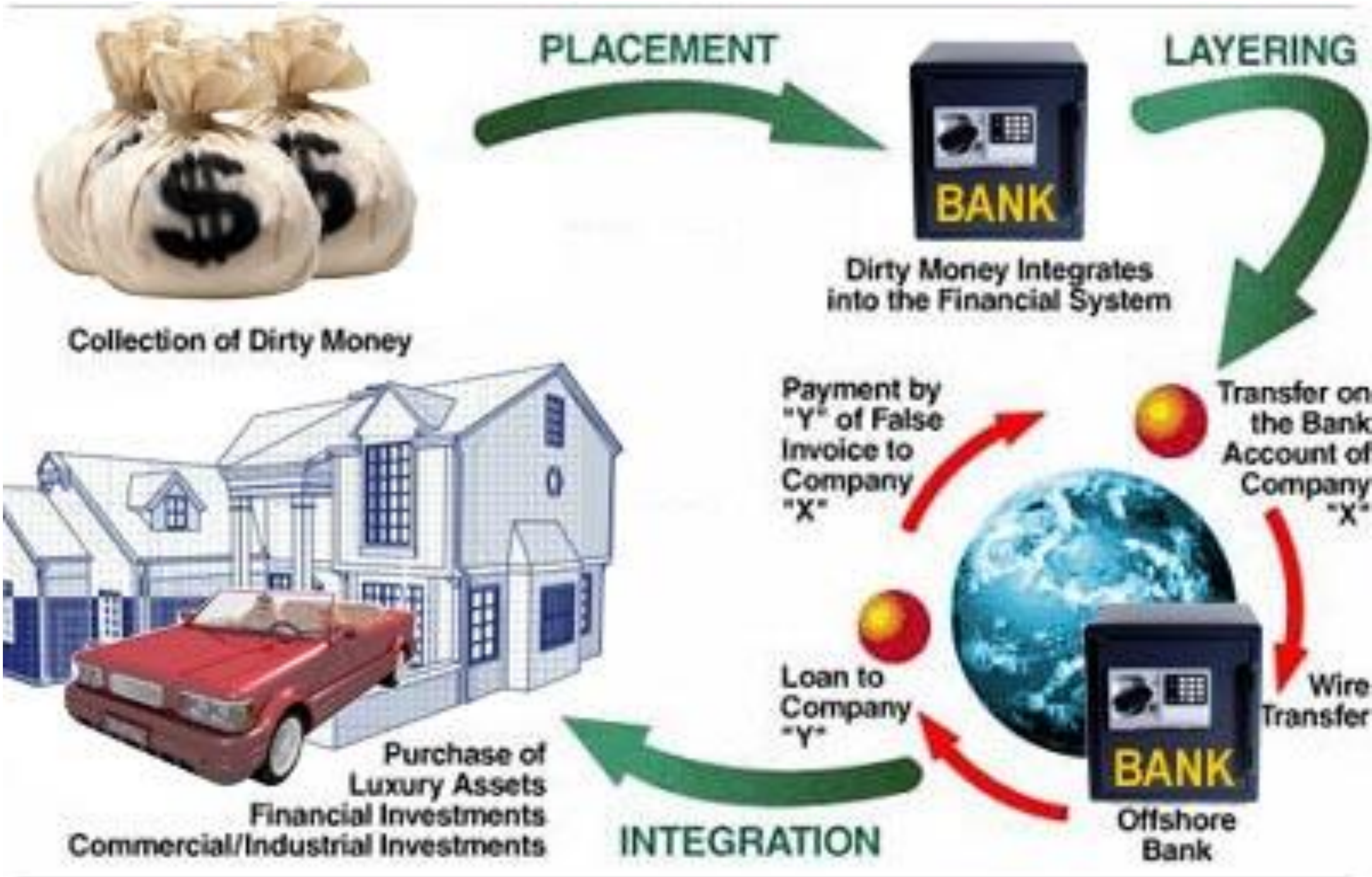
  Placing the laundered proceeds back into the economy in such a way that they enter the financial **system as normal/ legitimate funds.**

Stages of Money Laundering



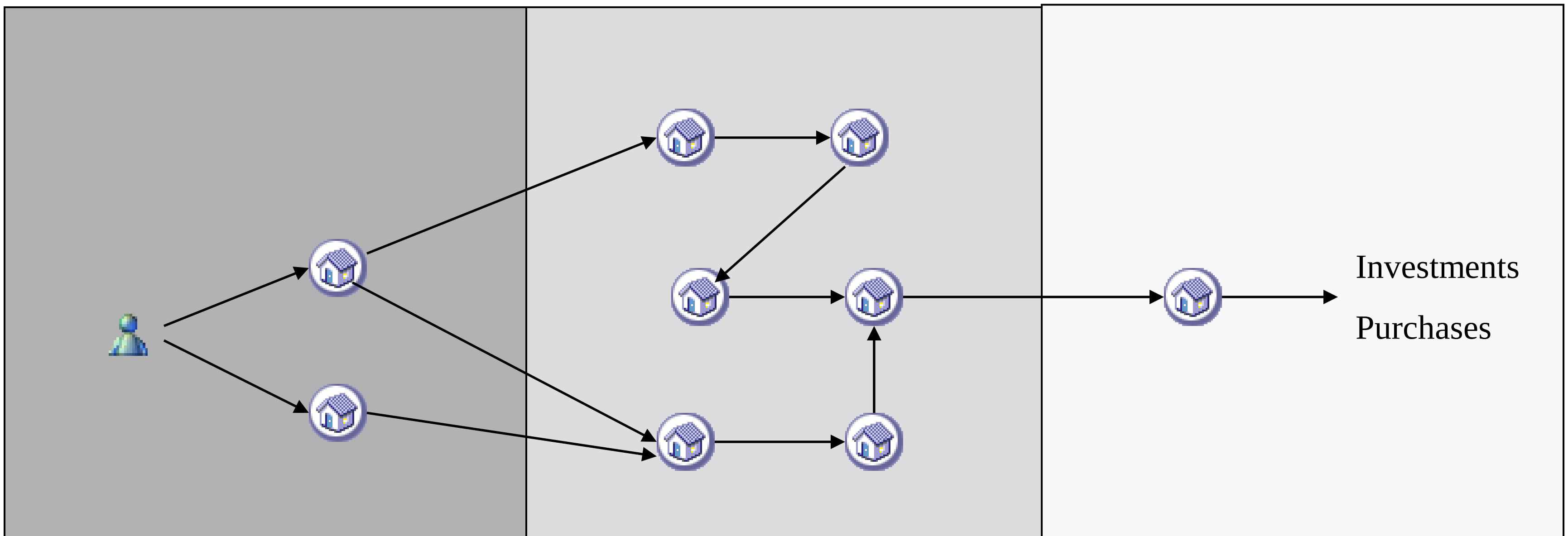

Placement
BANK
Layering
Collection of Dirty Money
Dirty Money Integrates
Into the financial System
X
Payment by 'Y'
of false invoice
to company 'X'
Transfer into
Bank account of
Company 'X'
Wire
Transfer
Integration
Y
Loan to
Company 'Y'
Offshore Bank
Purchase Of Luxury Assets
Financial Investments

Money Laundering Process



What is Money Laundering ?

Money Laundering is the process by which illegal funds and assets are converted into legitimate funds and assets.



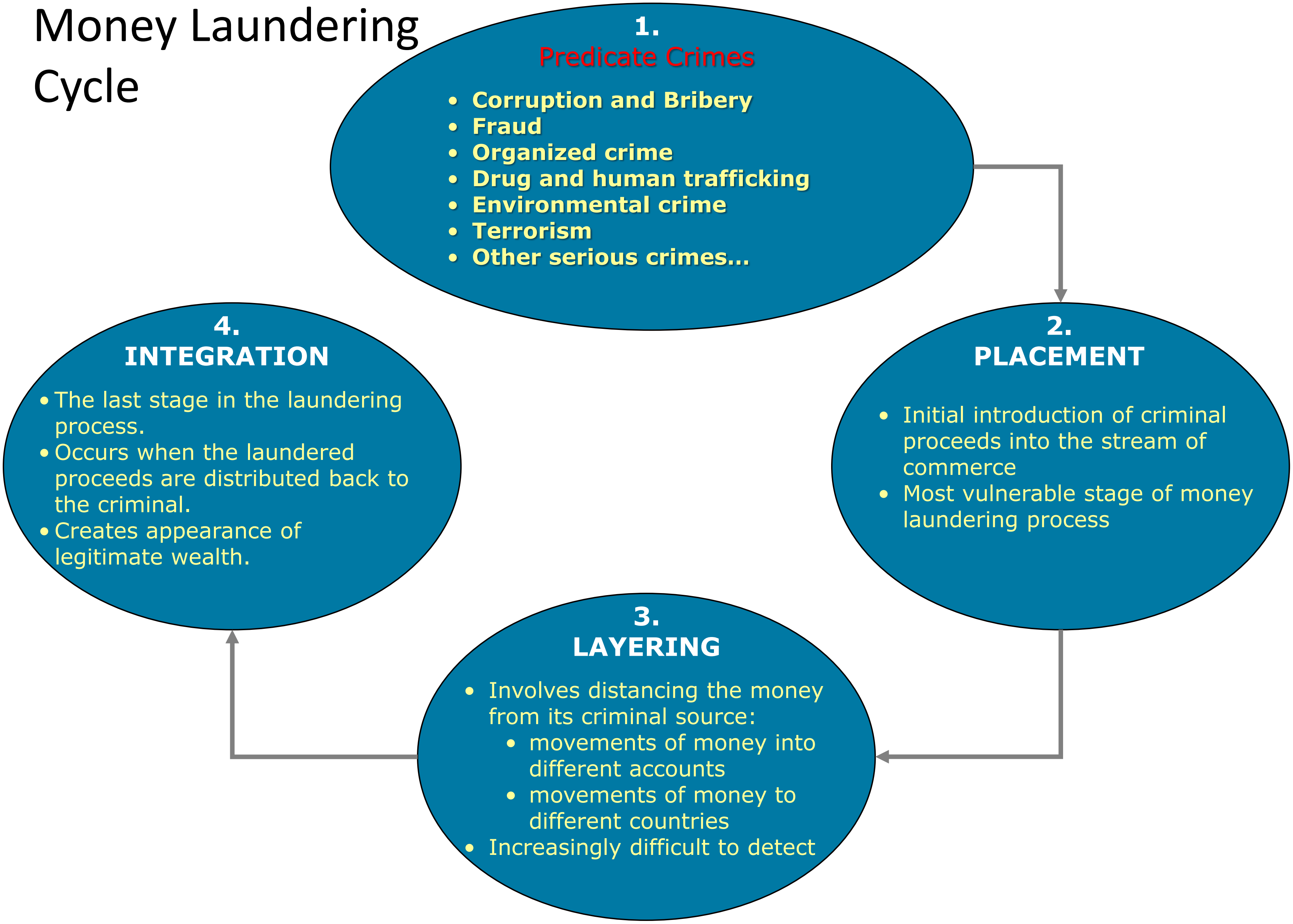
Placement: Illegal funds or assets are first brought into the financial system

Layering: Use of multiple accounts, banks, intermediaries, corporations, trusts, countries to disguise the origin.

Integration: Laundered funds are made available as apparently legitimate funds.

Important: *All money laundering transactions need not go through this three-stage process*.

Money Laundering Cycle



Parliamentary History of the Law.

- In India PML Bill, 1998 was introduced on 04-Aug-1998
- The Bill referred to Standing Committee on Finance – Report presented on 04-Mar-1999 – 11 Recommendations.
- Act Passed in the year 2002 and President assent on 17-01-2003
- Came into force on 01-07-2005
- The Act substantially amended 2009, 2013, 2015, 2016, 2018 and in 2019.

Preamble to PMLA 2002

"An Act to

To prevent money laundering and

To provide for confiscation of property

derived from, or

involved in money laundering

and

for matters connected or incidental thereto"

PMLA 2002 – Property

Sec 2 (*v*)

"property" means any **property or assets of every description,**
whether corporeal or incorporeal,
movable or immovable,
tangible or intangible and
includes deeds and instruments evidencing title to, or interest in, such property or assets,
wherever located;

PMLA 2002: Key Concepts

- Offence of Money Laundering – attempt to indulge or knowingly assist or knowingly is a party or is actually involved in any process or activity connected to proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property .
- Proceeds of Crime - Assets obtained as a result of Criminal activity related to **Scheduled Offence**

Money Laundering

- Section 3: **Offence of money-laundering** of the Prevention of Money Laundering Act, 2002 (PMLA) as

- "**whosoever** directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in **any process or activity** connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering".
- Sec 2 (s); Person: Individual, HUF, a Company, a firm, an AOP incorporated or not, evert artificial judicial person (some exceptions) agency/office or branch owned or controlled by any of the persons

Important sections of PMLA, 2002

- CHAPTER II - OFFENCE OF MONEY-LAUNDERING

3. Offence of money-laundering.—Whosoever

directly or indirectly attempts to indulge or

knowingly assists or

knowingly is a party or

is actually involved in any process or

activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

- 2[*Explanation.*—For the removal of doubts, it is hereby clarified that,—
- (*i*) a person shall be **guilty of offence of money-laundering if such person is found** to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—
- (a) concealment; or (*b*) possession; or (*c*) acquisition; or (*d*) use; or (*e*) projecting as untainted property; or (*f*) claiming as untainted property, in any manner whatsoever;
- (*ii*) the process or activity connected with proceeds of **crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime** by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

Important sections of PMLA, 2002

- CHAPTER II - OFFENCE OF MONEY-LAUNDERING
- **4. Punishment for money-laundering.—**Whoever commits the offence of money-laundering shall be punishable with **rigorous imprisonment** for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine ~~(Rupees 5 lakhs omitted in 2013)~~
- Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.
- The date of Crime (Scheduled Offences) is not relevant and the date when the person is found involved in any activity connected with the proceeds of crime and projecting it as untainted property would be relevant for the purpose of prosecution under Sec 3.

Important sections of PMLA, 2002

CHAPTER III - ATTACHMENT, ADJUDICATION AND CONFISCATION

Sec 5. Attachment of property involved in money-laundering.

- Enforcement Director, has **reason to believe** (the reason for such belief to be recorded in writing), **on the basis of material in his possession**, that—
- (*a*) any person is in possession of any proceeds of crime; and
- (*b*) 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
- ED immediately refer to with material to Adjudicating Officer with Order of Attachment.
- Attachment of shall cease to have effect after the expiry of sixty days
- ED should file a complaint within 30 days to the Adjudicating Authority.
- Though the Attachment Order passed, the accused sill can enjoy the property.

Important sections of PMLA, 2002

Sec 8. Adjudication – The Adjudicating Authority (Procedure) Regulations, 2013

The Adjudicating Authority has reason to believe that any person has committed an offence

Issue Show Cause Notice to the person (within 30 days) calling upon him to indicate the sources of his income, earning or assets, why properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Sec 9: Vesting Property with Central Government

Confiscation order Passed by Director, the property will vest with the GoI, free from all encumberances

- **10. Management of properties confiscated under this Chapter.—**
- Officer of Central Government will administer the Property and also dispose the property.

Important sections of PMLA, 2002

11. Power regarding summons, production of documents and evidence, etc.

The Powers vested by Adjudicating Authority as judicial proceedings as IPC, 1860

The Adjudicating Authority, have the powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

- (*a*) discovery and inspection;
- (*b*) enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath;
- (*c*) compelling the production of records;
- (*d*) receiving evidence on affidavits;
- (*e*) issuing commissions for examination of witnesses and documents; and
- (*f*) any other matter which may be prescribed.

(*2*) All the persons so summoned should attend

Search and seizure

Sec 17Search and seizure

Deputy Director authorised by him for the purposes of this section,] 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—

- (i) has committed any act which constitutes money-laundering, or
- (ii) is in possession of any proceeds of crime involved in money-laundering, or
- (iii) is in possession of any records relating to money-laundering,
- (iv) freeze such property

Sec 18 Search of persons.

Important sections of PMLA, 2002

Section 24 Burden of Proof

- In any proceeding relating to proceeds of crime under this Act,—

  (a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, **unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering**; and

  (b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.]

Section 26 **Appeal to Appellate Tribunal**

the Director or any person aggrieved by an order made by the Adjudicating Authority may prefer an appeal to the Appellate Tribunal.

- Any reporting entity aggrieved by any
- Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed:

Important sections of PMLA, 2002

19. Power to arrest.—(*1*) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

Difference between Detention and Arrest

Whether the person is charged with a crime.

Detention: A person is not formally charged with committing a crime but his freedom is not curtailed. With restrictions of movement, he is kept in Police Custody. During the detention, he is questioned or interrogated by the detaining authorities. After questioning the person may be released.

Arrest: The person is formally charged for a crime and when he is arrested, then he has to be produced before a Magistrate within 24 hours.

Important sections of PMLA, 2002

Section 44 Offences triable by Special Court:

(*1*) Notwithstanding anything contained in the **Code of Criminal Procedure, 1973 (2 of 1974),—**

- [1][(*a*) an offence punishable under section 4 and any scheduled offence connected to the offence under that section **shall be triable by the Special Court** constituted for the area in which the offence has been committed

Section 45: Offences to be cognizable and non-bailable.—(*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [2][under this Act] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given a 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:**

PMLA Agencies involved

- Financial Intelligence Unit for verification of identity of clients, maintenance of records and reporting (FIU-IND)
- Enforcement Directorate for investigation of and prosecution for money-laundering offences
- Serious Fraud Investigation Office (SFIO)
- Combating Financial Terrorism (CFT) – NIA
- CBDT, RBI, SEBI, DGFT etc

PMLA Liability – Criminal Liability

Money Laundering is basically deals with proceeds of Crime – Directly or Indirectly

The Act provides both Civil and Criminal Liability

Criminal Liability:

Crime results in tainted money is a separate offence under various laws – Schedule

The punishment is to the person involved directly or indirectly actually committing that offence

Involvement is Criminal Offence under IPC

Criminal Offence will be tried by Special Courts – under Specific Acts –

PMLA Liability – Criminal Liability

Civil Liability and Criminal Liability is NOT Joint Trial

The Court of Sessions is designated as Special Court

Appeal against Special Court is High Court.

In Telangana – Special Courts

1. Court of Metropolitan Sessions Judge, Hyderabad
2. Court of Metropolitan Sessions Judge, Cyberabad
3. Court of Principal Special Judge for trial of CBI cases, Hyderabad.

PMLA Liability – Civil Liability

Property involved in the Money Laundering can be attached and frozen by Central Government and later confiscated.

Directorate of Enforcement is authorized

Adjudicating Authority – Dy Director, Jt. Director under PMLA

Appeal against Adjudicating Authority is Appellant Tribunal – Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 [SAFEMA}

Appeal against AT is High Court.

PMLA Liability – Civil Liability

PMLA, 2002 has frames 11 Rules

Important Rules:

The Adjudicating Authority (Procedure Regulations) 2013

The Prevention of Money Laundering (issuance Provisional Attachment Order) Rules, 2013

The Prevention of Money Laundering (Taking Possession of Attached Properties confirmed by Adjudicating Authority) Rules, 2013.

The Prevention of Money Laundering (Restoration of Property) Rules, 2016

PMLA

Sensitive Areas

Gold Markets

Diamond Markets

PEPS / corruption

Misuse of Non-Profit Organizations / NGOs

Ponzi Schemes, MLM, Gold Forest Schemes

Modus Operandi

Back-to-Back Loans

Third Party Payments

International Trade / Trade Finance

Off-shore Banks

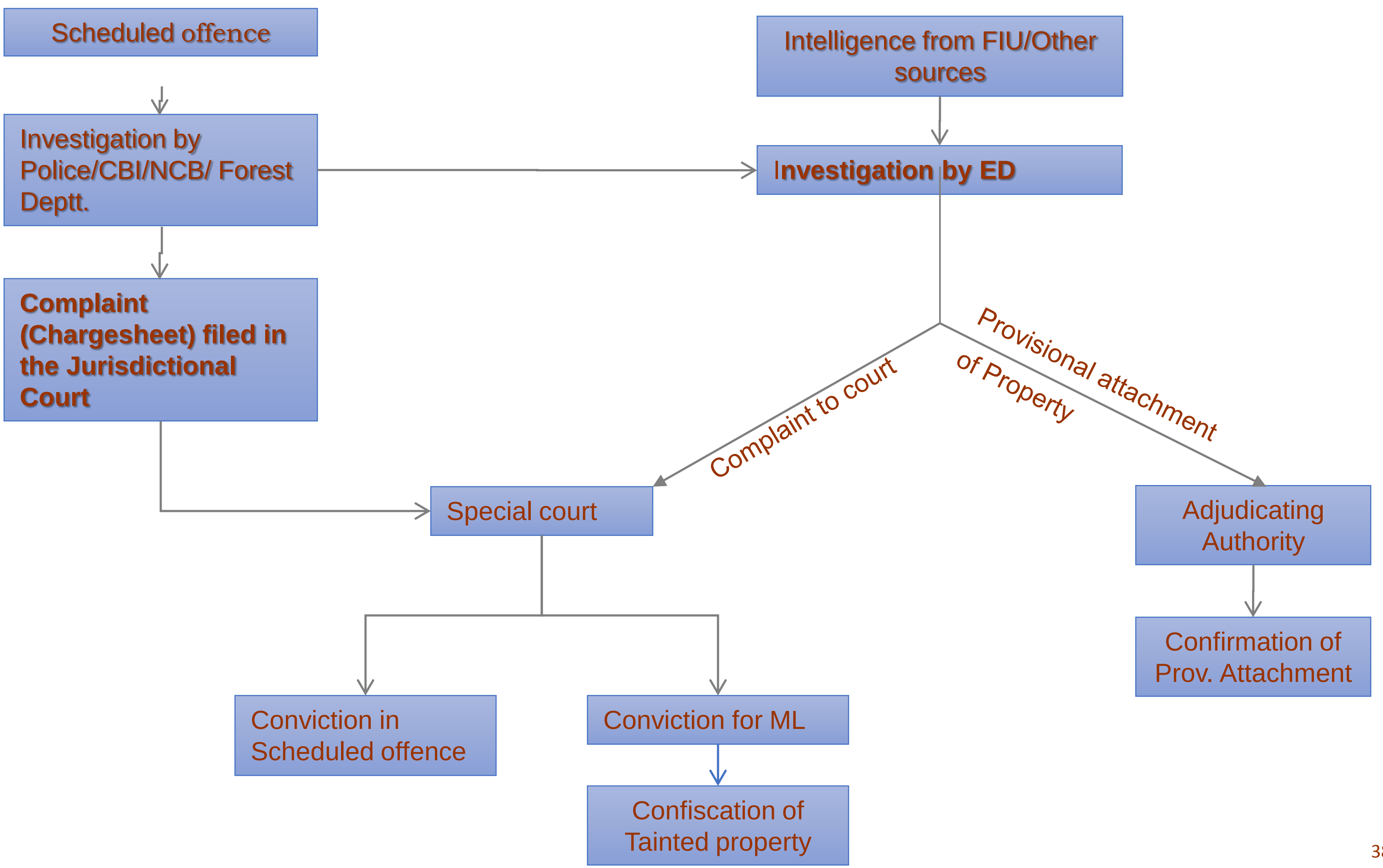
Shell Companies

Alternative Payment Systems

Hawala Market

Insurance Policies

Flow of Events



Scheduled Offences

Part A: 156 Scheduled Offences under 28 criminal acts

- Indian Penal Code (IPC): Sec 120B, 420, 421
- Narcotic Drugs And Psychotropic Substances Act (NDPS)
- **Unlawful Activities (Prevention) Act (UAPA)**
- Explosive Substances Act

Part B: Offences under Customs Act, 1962

Sec – 132: False declaration, false documents etc.,

Part C: An offence which is offence of cross border implications and is specified in:

Part A or Property under IPC or offence of willful attempt to evade tax, penalty or interest referred to Black Money (undisclosed income and assets) and Imposition of Tax Act, 2015

Scheduled Offences

- Arms Act
- Wild life Protection Act
- Immoral Traffic Act
- **Prevention of Corruption Act**
- The Explosive Act
- **SEBI Act**
- **Customs Act**
- Bonded Labour System (Abolition) Act
- Child Labour (Prohibition and regulation)Act
- Trans Plantation of Human Organ Act
- The Juvenile Justice Act
- The Emigration Act
- The Passports Act
- The Foreigners Act

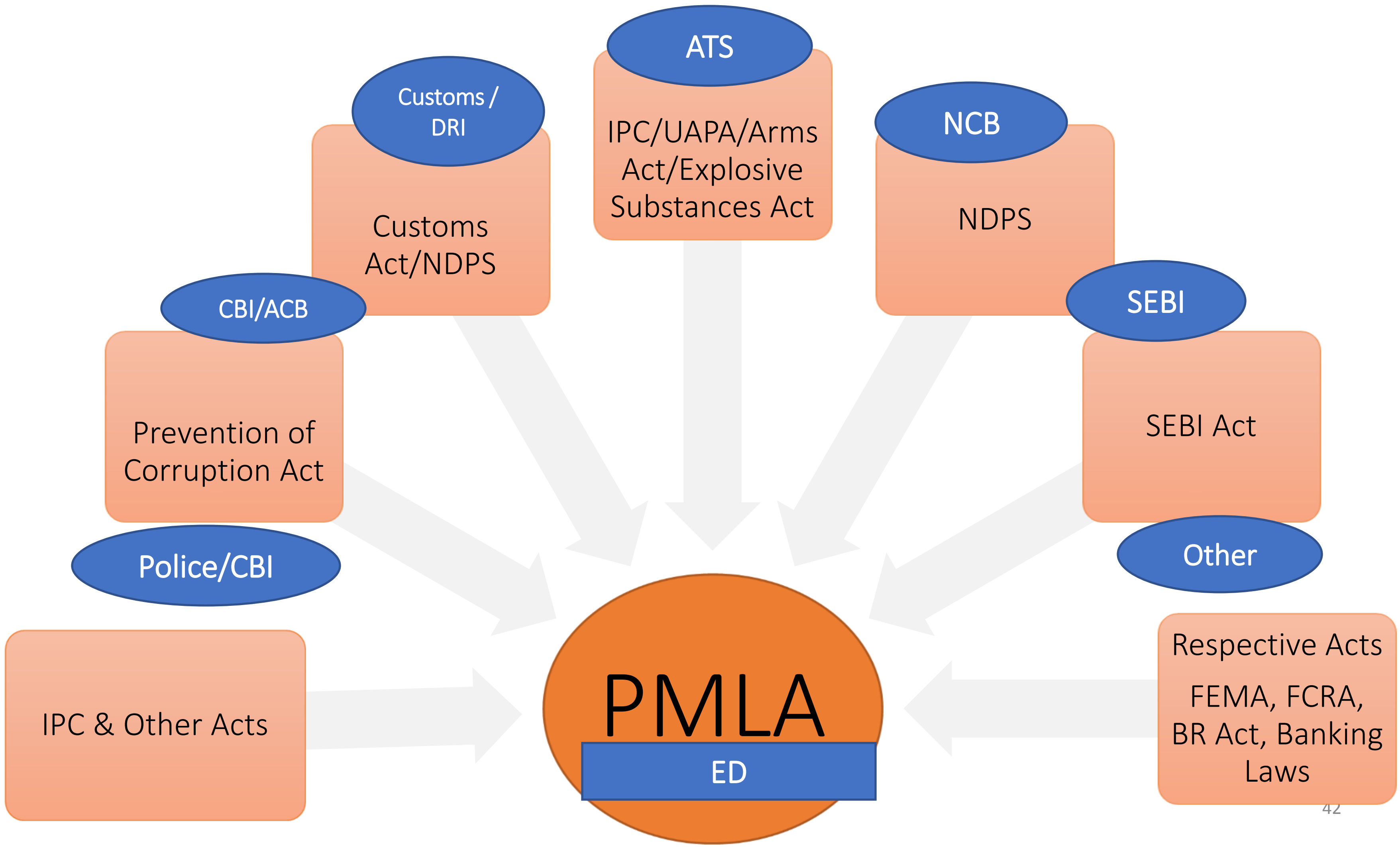
- The Copyright Act
- The Trade Marks Act
- The Information Technology Act
- The Biological Diversity Act
- The Protection of Plant Varieties And Farmers Right Act
- The Environmental Protection Act
- The Water (Prevention and Control of Pollution) Act
- The Air (Prevention and Control of Pollution) Act

Schedule Offences –

- Part A: IPC: 120B – Criminal Conspiracy; 121 and 121 A– Waging War or attempting to War, Conspiracy to commit offences; 302 – Murder etc., Offences under Narcotic Drugs and Psychotropic Substances Act, Explosives Substances Act, The Arms Act, PCA,
- Part B: False Declaration under Customs Act- Amount involving Rs 1 crore and above.; PCA; Companies Act etc.,
- Part C: Cross Border implications of Part A or Offences under IPC; Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
- Generally Part C offences of to evade any tax, penalty or interest.

PMLA: A Multi-Agency perspective

Sec 54. Certain officers to assist in inquiry



Trade Based Money Laundering

There are three main methods by which criminal organisations and terrorist financiers move money for the purpose of disguising its origins and integrating it into the formal economy.

- **use of the financial system;**
- **physical movement of money (e.g. through the use of cash couriers);**
- **through the physical movement of goods through the trade system**.

- **Anything that can be priced can be mispriced 'false pricing is done every day, in every jurisdiction, on a large percentage of import and export transactions' that TBML 'is the most commonly used technique for generating and transferring dirty money—money that breaks laws in its origin, movement and use'.**

Trade based money laundering

•Trade-based money laundering is defined as the process of disguising the proceeds of crime and moving **value** through the use of trade transactions in an attempt to legitimise their illicit origins.

•In practice, this can be achieved through the misrepresentation of the **price, quantity or quality of imports or exports.** Moreover, trade-based money laundering techniques vary in complexity and are frequently used in combination with other money laundering techniques to further obscure the money trail.

Examples of Trade-Based Money Laundering

- Over- and under-invoicing of goods and services;
- Multiple invoicing of goods and services;
- Falsely described goods and services.

TBML Traditional typologies

- Under invoicing of goods
- Over invoicing of goods
- Multiple Invoicing / Transactions
- Forged Documents
- Short Shipments / Over shipments
- Phantom Shipping
- Merchanting Trade
- High Sea Sales
- Transfer Pricing
- Misrepresentation of Goods

TBML Traditional typologies

- Barter Trade
- Import Factoring
- Export Factoring
- **Forfaiting**
- Pre-shipment Credit
- Post Shipment Credit
- Buyers' Credit
- Suppliers' Credit
- **Structured Commodity Finance**
- **Alternative Payment System**

Impact of Trade Price Manipulation

Under Invoiced Exports	Over Invoiced Imports
Money Laundering from illegal activities	Money Laundering from illegal activities
Terrorist Financing	Terrorist Financing
IT avoidance / evasion	IT avoidance / evasion
Capital Flight	Capital Flight
Avoid Export surcharge	Excessive domestic prices, under price control
Illegal commission	Illegal commission
Over invoiced Exports	**Under invoiced Imports**
Invasive export subsidies	Avoid / reduce import duties
	Dumping at below market prices

Trade Based Money Laundering

Money Moved Out	Money Moved In
By importing goods at overvalued prices or exporting at undervalued prices	By importing goods at undervalued prices or exporting the goods at overvalued prices

Trade Based Money Laundering

Common Methods

Banking and Financial Systems:
Bills of Exchange
Letter of Credit, Inward Remittances,
The *Commercial Invoice*
The *Transport Document*:- Bill of Lading, Airway Bill, Railway Consignment Note
The *Insurance Document*
The *Certificate of Origin*
A *Packing List*

Under voicing of Goods

Exporter Ships 1 million Pens @ USD 1 each whereas actual price is USD 2 each

Company A

A-India

USD 1 Million is moved from exporter B to importer A

Company B

B-Malaysia

A-India Importer remits payment for 1 million Pens @ USD 1 each. Company A can sell extra and can distribute USD 1 million as per direction of company B in Malaysia

“Reasons for Suspicion” for banking companies

- **Activity in accounts**
  - Unusual activity compared with past transactions
  - Sudden activity in dormant accounts
  - Activity inconsistent with what would be expected from declared business

- **Identity of client**
  - False identification documents
  - Identification documents which could not be verified within reasonable time
  - Accounts opened with names very close to other established business entities

- **Background of client**
  - Suspicious background or links with known criminals

- **Multiple accounts**
  - Large number of accounts having a common account holder, introducer or authorized signatory with no rationale
  - Unexplained transfers between multiple accounts with no rationale

"Reasons for Suspicion" for banking companies

- **Nature of transactions**
  - Unusual or unjustified complexity
  - No economic rationale or bona fide purpose
  - Frequent purchases of drafts or other negotiable instruments with cash
  - Nature of transactions inconsistent with what would be expected from declared business

- **Value of transactions**
  - Value just under the reporting threshold amount in an apparent attempt to avoid reporting
  - Value inconsistent with the client's apparent financial standing

Examples of Suspicious Transactions

- False Identification Documents
  - Welcome pack returned
  - No person found/address found to be false
- Identity Matching- Match with watch-lists
  - Name and DOB of account holder matched with INTERPOL most wanted list
- Transactions inconsistent with customers’ profile (business)
  - Number of transactions in a period
  - Value of transaction (s) (Retired employee)
  - Turnover in Account

Examples of Suspicious Transactions

- Multiple cash deposits at various cities all over India
  - Nigerian student
- Outward remittance of cash deposits
  - 7 related entities deposited cash in their accounts
  - Claimed it to be sale proceeds of mobile phones
  - Entire amount remitted outwards for claimed import
- Non Financial Indicators
  - Usage of Lockers

How to Recognize TBML to form suspicious worth reporting- Some Clues:

(1) Items shipped that are inconsistent with the nature of the customer's business (e.g., a steel company that starts dealing in paper products, or an information technology company suddenly dealing in bulk pharmaceuticals);

(2) Customers conducting business in high-risk jurisdictions;

(3) Customers shipping items through high-risk jurisdictions, including transit through non-cooperative countries;

(4) Customers involved in potentially high-risk activities, including those subject to export/import restrictions (e.g., equipment for military or police organizations of foreign governments, weapons, ammunition, chemical mixtures, classified defense articles, sensitive technical data, nuclear materials, precious gems, or certain natural resources such as metals, ore and crude oil);

How to Recognize TBML to form suspicious worth reporting- Some Clues:

(5) Obvious over- or under-pricing of goods and services;

(6) Obvious misrepresentation of quantity or type of goods imported or exported

(7) A transaction structure that appears unnecessarily complex and designed to obscure the transaction's true nature; in Merchanting Trade.

(8) A shipment that does not make economic sense (e.g., the use of a 40- foot container to transport a small amount of relatively low-value goods);

(9) Shipment size that appears inconsistent with the scale of the exporter or importer's regular business activities;

(10) A type of commodity being shipped that appears inconsistent with the exporter or importer's regular business activities;

(11) A transaction that involves receipt of cash or payment of proceeds (or other payments) from third-party entities that have no apparent connection with the transaction;

How to Recognize TBML to form suspicious worth reporting- Some Clues:

(12) A transaction that involves front (or shell) companies;

(13) Shipment locations or description of goods that are not consistent with the letter of credit;

(14) Documentation showing a higher or lower value or cost of merchandise than that which was declared to customs or paid by the importer;

(15) Letters of credit that are amended significantly without reasonable justification or that include changes to the beneficiary or location of payment;

(16) Significant discrepancies between the description of the commodity on the bill of lading and the invoice;

How to Recognize TBML to form suspicious worth reporting- Some Clues:

(17) Significant discrepancies between the actual goods shipped and the descriptions of the goods on the bill of lading and/or invoice;

(18) A transaction that involves the use of repeatedly amended or frequently extended letters of credit; and

(19) A transaction that involves commodities designated as "high risk" for money laundering activities, such as goods that present valuation problems or high value, high turnover consumer goods

How to Recognize TBML to form suspicious worth reporting- Some Clues:

(20) Inward Remittances immediately withdrawn/transferred from the account.

(21) Documents look suspicious prima facie

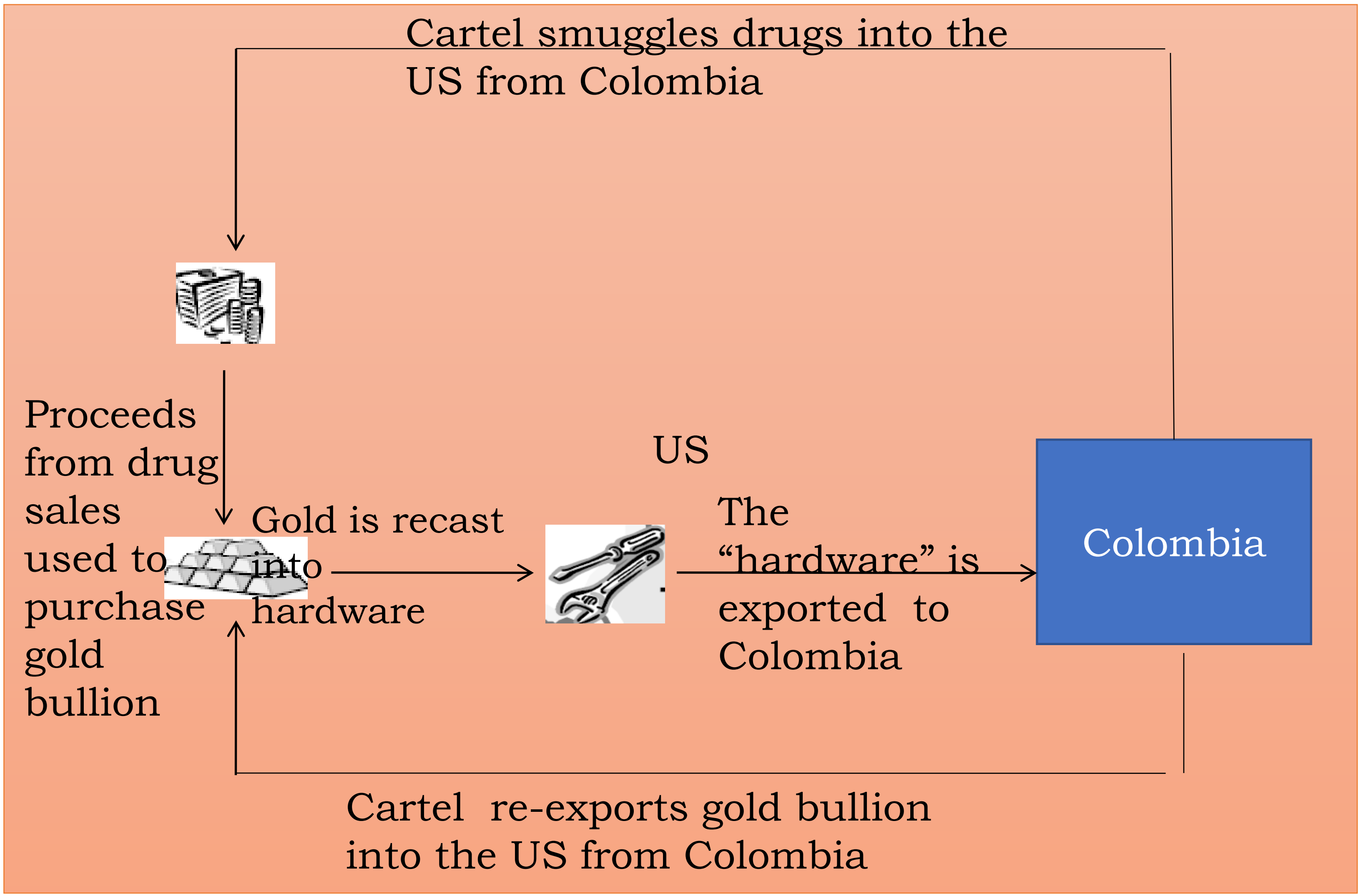
(22) High proportion of high sea sales/Merchanting Trade

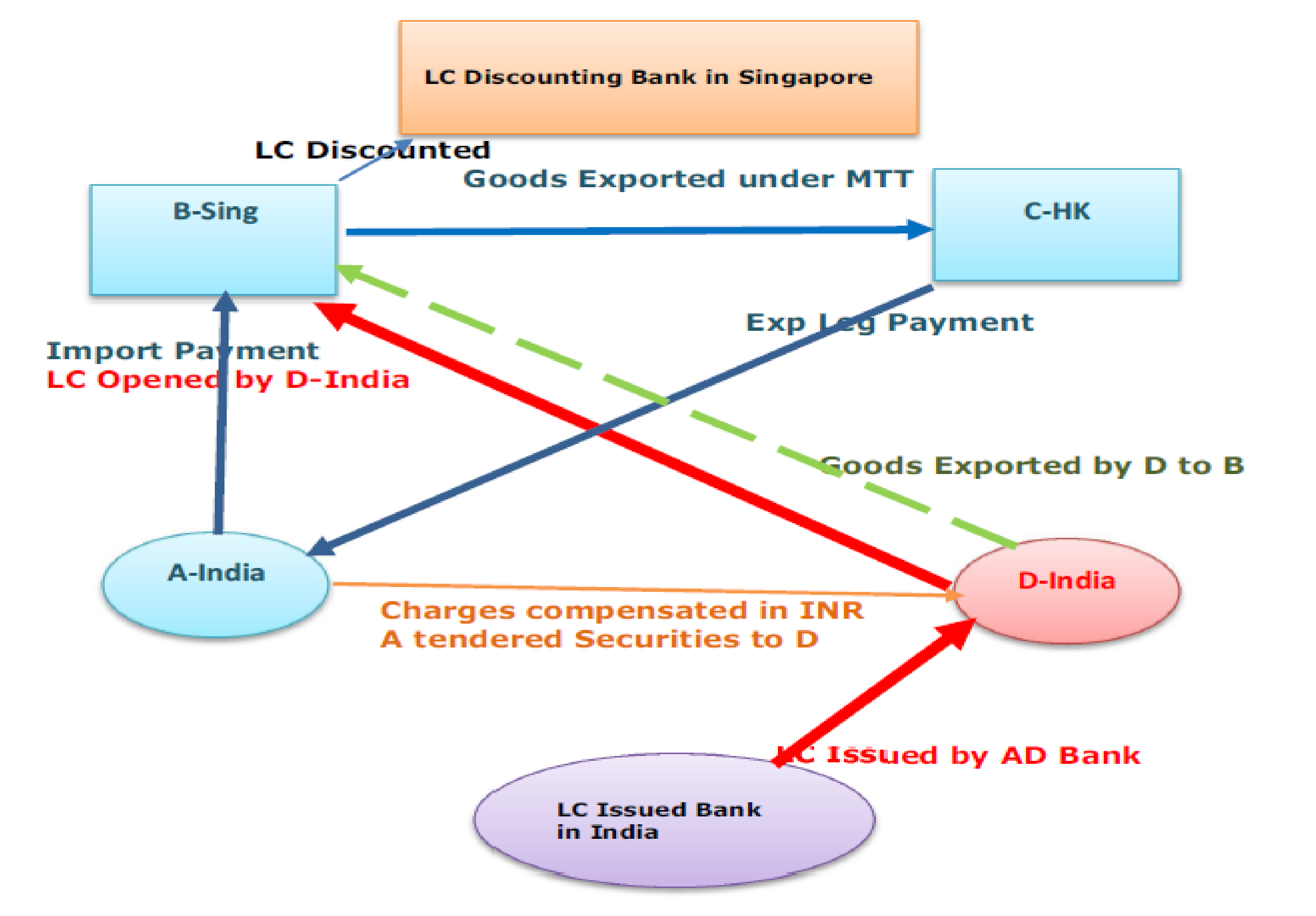
(23) Import Payment of old bills without justification / documents.

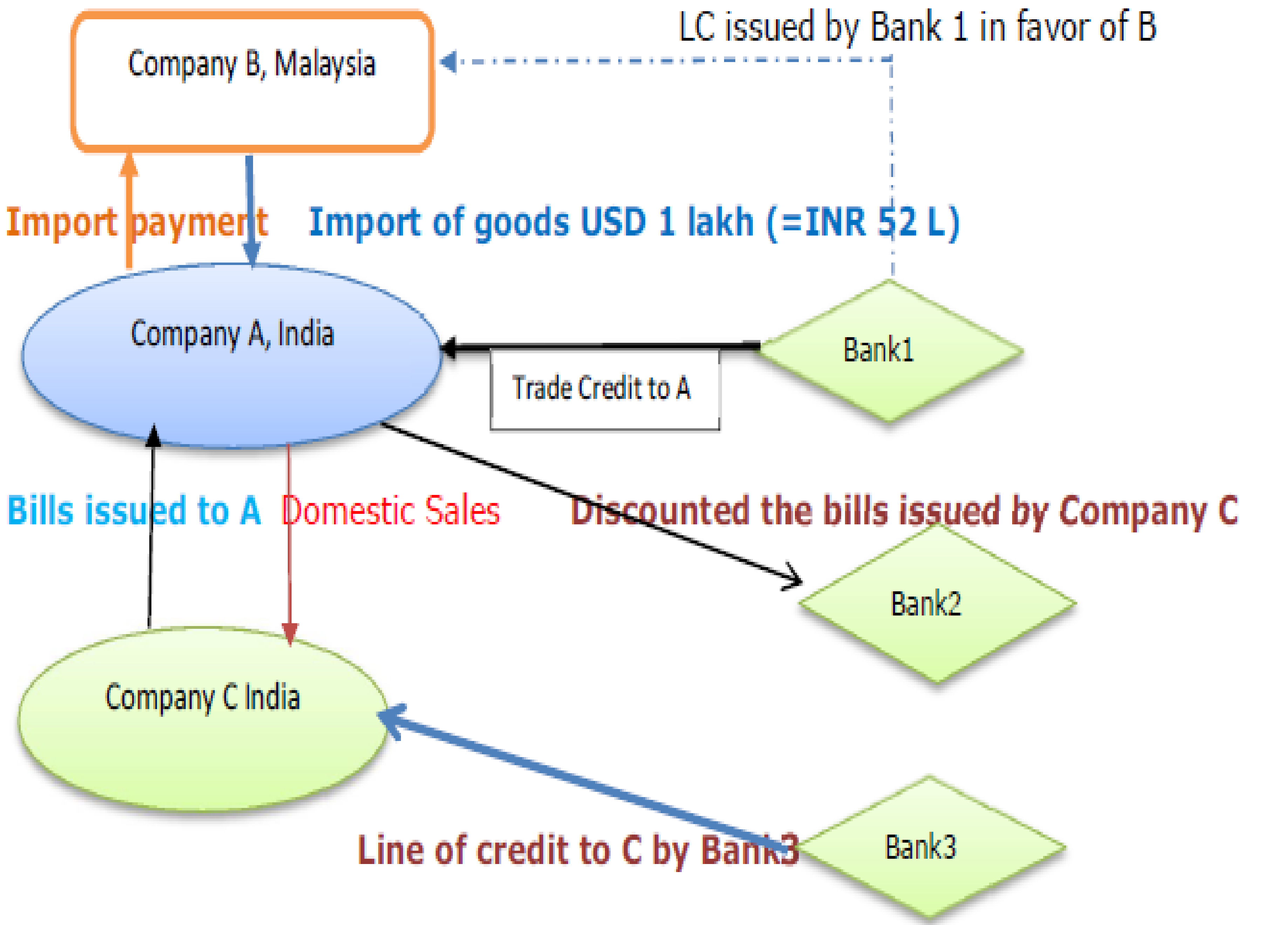
(24) Repeated import and export of same item of high value.

(25) Crypto Currency

Use of Gold Bullion




LC Discounting Bank in Singapore
LC Discounted
Goods Exported under MTT
B-Sing
C-HK
Exp Leg Payment
Import Payment
LC Opened by D-India
Goods Exported by D to B
A-India
D-India
Charges compensated in INR
A tendered Securities to D
LC Issued by AD Bank
LC Issued Bank
in India


Company B, Malaysia
LC issued by Bank 1 in favor of B
Import payment
Import of goods USD 1 lakh (=INR 52 L)
Company A, India
Bank1
Trade Credit to A
Bills issued to A
Domestic Sales
Discounted the bills issued by Company C
Bank2
Company C India
Line of credit to C by Bank3
Bank3

Analysis

In this case study, international trade was mis-used to fraudulently obtain funds from banks and from domestic company and launder proceeds through trade channels. By resorting to cross-border transactions, it became easy to deceive the banks and the domestic companies as it is generally difficult to verify the genuineness of the other end of the international trade transactions pipeline. Further, by using accomplice suppliers and accomplice customers, the entire movement of mis-declared goods was fully controlled by the main person Mr. X and thereby it escaped detection for years. The trade finance channels of the bank, LC, trade credit, bill discounting were all used to circulate the funds.

Red Flags

1. Mis-declaration of value (over-valuation) of goods.

2. Series of cross border transactions in the same goods between related companies.

3. Use of factoring companies to finance trade transactions between related companies.

4. Despite an industry-wide recession, the ability of a company to generate large funds from trade.

5. Direct payment through LC from banks to overseas suppliers on trade credit application of the domestic trader.

CASE STUDY 4

Company X-India located in India received advance remittance from Company Y-HK (Hong Kong) located in foreign jurisdiction for a promise to export consignments of diamonds.

Company X-India filed falsely declared and forged documents with the Bank-India to show the overvalued exports of diamond without having made any shipment.

To give a colour of authenticity, Company X-India also fabricated purchase invoices to show local purchases of diamonds, whereas no purchases of diamonds had actually ever taken place.

Company X-India received export payments through trade finance arrangements via an open accounting system from Company Y-HK.

Company X-India had received substantial cash deposits in India from the public on the promise of high returns via a fraudulent Ponzi Scheme.

Company X-India transferred large amounts of public deposits to company Y-HK through hawala (Alternative Remittance System).

Company X-India indulged in round tripping by receiving back as export earnings the financial value which it had transferred abroad as hawala.

Predicate offences of cheating, criminal conspiracy and forgery of documents occurred.

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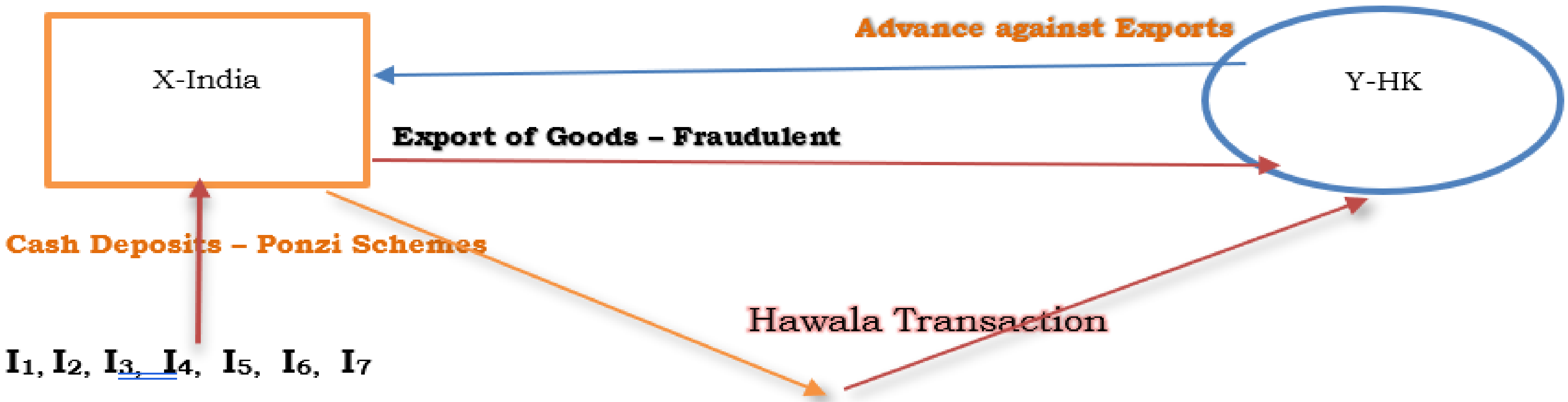

Modus Operandi

In this case, the proceeds of crime were generated through the fraud perpetrated on general public under a Ponzi scheme which was then laundered through fraudulent and bogus exports. Such proceeds of crime were transferred abroad through alternative remittance system. Money was received back from abroad through banking channels as export remittance. Round tripping of money and its laundering occurred through TBML. Company X-India had a network of associate companies established in many jurisdictions abroad. In this case, on the trade side, overvaluation of export goods and under shipment (no shipment) of goods was done. Proceeds of Crime were moved abroad by using alternative remittance system (hawala) and then round tripping occurred through open accounting system.

Red flags

1. Export of goods without any corresponding purchase of raw materials or finished goods.
2. Sudden increase in volume of exports by a new exporter.
3. Advance inward remittance against exports without justifiable reasons.
4. Export documents which are not duly authenticated by export regulating agency were accepted by the bank.


Thank you