

# **THE PREVENTION OF MONEYLAUNDERING ACT, 2002**

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## **SCHEME OF THE ACT**

**10 Chapters    75 Sections    one Schedule**

<b>Chapter NO.</b>	<b>Section No.</b>	<b>Description</b>
<b>I</b>	<b>1 and 2</b>	<b>Short tittle, extent &amp; commencement &amp; defination</b>
<b>II</b>	<b>3 and 4</b>	<b>Offences and punishment of Money Laundering</b>
<b>III</b>	<b>5 to 11</b>	<b>Attachment of Property, Adjudication and confiscation</b>
<b>IV</b>	<b>12 to 15</b>	<b>Obligation of Banking Companies, Financial Companies, Financial Institution and intermediaries</b>
<b>V</b>	<b>16 to 24</b>	<b>Summons, Searches, seizers, retention, presumptions etc</b>
<b>VI</b>	<b>25 to 42</b>	<b>Establishments, Composition, Qualification, powers and procedures of Appellant Tribunals</b>
<b>VII</b>	<b>43 to 47</b>	<b>Provision regarding special courts</b>
<b>VIII</b>	<b>48 to 54</b>	<b>Various Authorities, their appointment, powers and jurisdictions</b>
<b>IX</b>	<b>55 to 61</b>	<b>Reciprocal Arrangements for assisting in certain matters</b>
<b>X</b>	<b>62 to 75</b>	<b>Miscellaneous Provisions</b>

**Schedule**  
**Part A**  
**Part B**  
**Part C**

## **Agency Administers the Prevention of Money Laundering Act, 2002**

The Directorate of Enforcement in the Department of Revenue, Ministry of Finance is responsible for investigating the cases of offence of money laundering under Prevention of Money Laundering Act, 2002.

Investigation usually begins with the registration of an Enforcement Case Information Report (also known as ECIR) which sets the investigation into motion.

Financial Intelligence Unit - India (FIU-IND) under the Department of Revenue, Ministry of Finance is the central national agency responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions to enforcement agencies and foreign FIUs.

## **Parliamentary History of the Law.**

- **The PMLA Act, 2002 after being passed by both the houses received the assent of the president on 17<sup>th</sup> January, 2003 and made applicable with effect from 1<sup>st</sup> July, 2005.**
- **1<sup>st</sup> Amendment was made in the year 2009 and was made applicable with effect from 1<sup>st</sup> June, 2009.**
- **2<sup>nd</sup> Amendment was made in the year 2012 which was made applicable with effect from 15<sup>th</sup> February, 2013.**
- **3<sup>rd</sup> Amendment was made in the year 2017 which was made applicable with effect from ..**
- **4<sup>th</sup> Amendment was made in the year 2018 which was made applicable with effect from 19<sup>th</sup> April 2018**

# Objective

- The PMLA seeks to combat money laundering in India and has 3 main objectives:
- To Prevent and Control Money Laundering
- To Confiscate and Seize the property obtained from the Laundered Money
- To deal with any other issue connected with Money Laundering in India

# Predicate Offence

A predicate offense is committed for the purpose of committing the greater crime

Every Scheduled Offence is a Predicate Offence. The Scheduled Offence is called Predicate Offence and the occurrence of the same is a pre requisite for initiating investigation into the offence of money laundering.

## **Example of Predicate Offence:**

- Bribery, Blackmail and Extortion
- Fraud
- Theft
- Money Laundering
- Counterfeiting
- Illegal Betting, or operating a betting ring

## **Who Investigates Predicate/Scheduled Offences**

Predicate Offences are investigated by agencies such as Police, Customs, SEBI, NCB and CBI, etc. under their respective Acts.

## **International response to tackle Money Laundering**

**Financial Action Task Force (FATF)** on Money Laundering was established by the G-7 Summit in Paris in 1989 to develop a co-ordinated international response.

One of the first tasks of the FATF was to develop Recommendations, which set out the measures national governments should take to implement effective anti-money laundering programmes. India is an active member of the FATF.

FATF on review of the compliance of recommendation by the member countries put the countries in **grey list and black list**

## **Section 3 of Money-Laundering Act, 2002**

The offence of '**Money Laundering**' is defined under Section 3 of the PMLA, which, for ease of understanding, can be deconstructed as :

Whosoever :

- directly or indirectly,
- attempts to indulge, or
- knowingly assists, or
- knowingly is 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.



## **Section 2(y) – Schedule Offences**

- (i) The offences specified under Part A of the Schedule listed in 28 paragraphs or
- (ii) The offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more. **With effect from 15<sup>th</sup> February, 2013 limit of Rs Thirty Lakhs has been removed and all these offences are included in part A and now there is no monetary limit to proceed under PMLA**
- (iii) The offences specified under Part C of the Schedule which deals with International Boundaries.

# Scheduled Offences

Schedule to PMLA has 156 Offences under 28 criminal acts

- Indian Penal Code (IPC)
- Narcotic Drugs And Psychotropic Substances Act (NDPS)
- Unlawful Activities (Prevention) Act (UAPA)
- Explosive Substances Act

# 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

# Stages in Money Laundering

**Placement :** Illegal funds or assets are bought into the financial system.

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

**Integration:** Funds are made available as apparently legitimate.

## **Section 2 (u) - Proceeds of Crime**

Any property- derived or obtained,

- directly or indirectly, by any person
- as a result of criminal activity
- relating to a scheduled offence

Or

Value of the any such property.

**Finance Act, 2015 further amended the definition of “Proceeds of Crime” by inclusion of Properties held outside India**

# Section 2 (s)- Person

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and
- (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;

## **Section 2 (1) (v) – Definition of Property**

“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.

# **METHODS / TYPOLOGIES AND TOOLS**

The various techniques used to launder money are referred below as:

- **Retail Business**
- **Wholesale trade**
- **Manufacturing units**
- **Charity shows**
- **Lottery tickets**
- **Racecourses**
- **Casinos**
- **Large numbers of bank accounts**
- **Property**
- **Inheritance laws**
- **Commodities market**
- **Securities market**
- **Insurance sector**
- **Agricultural sector in India**
- **Amnesty schemes**
- **Indira Vikas Patras: bearer certificates with no identification requirement**
- **Use of Gold/Diamond/Precious Gems**
- **Use of fake identity**
- **Role of facilitator**



## **Legal Obligation under PMLA towards FIU**

PMLA impose obligations on following reporting entities:

- banking companies
- financial institutions
- intermediaries of the securities market
- Persons carrying on designated business or profession

to

- maintain records
- furnish information
- verify identity of clients

## **OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES**

- Every banking company, financial institution and intermediary should –
- maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month;
- furnish information of such transactions to the Director;
- verify and maintain the records of the identity of all its clients.

**“Intermediary” under PMLA includes persons registered under Section 12 of the Securities and Exchange Board of India (SEBI) Act, 1992:**

- Stock brokers
- Sub-brokers
- Share transfer agents
- Bankers to an issue
- Trustees to trust deed
- Registrars to issue
- Merchant bankers
- Underwriters
- Portfolio Managers
- Investment advisers
- Depositories
- Custodian of securities
- Foreign institutional investors
- Credit rating agencies
- Venture capital funds
- Collective investment schemes including mutual funds

# **Persons carrying on designated business or profession under PMLA includes**

- (i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;
- (ii) a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908) as may be notified by the Central Government;
- (iii) real estate agent, as may be notified by the Central Government;
- (iv) dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;
- (v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or
- (vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time-to-time;

## **MAINTENANCE OF RECORDS**

- "Records" include the records maintained in the form of books or stored in a computer or such other form as may be prescribed. (Sec 2(1)(w) of PMLA, 2002)
- Section 12 (1) (a) of the Act makes it mandatory for every banking company, financial institution and intermediary to maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month.

# FURNISHING OF INFORMATION

- Reports prescribed under PMLA, 2002
- The Prevention of Money laundering Act, 2002 and the Rules there under requires every reporting entity (banking company, financial institution and intermediaries) to furnish the following reports:
  - Cash Transaction reports (CTRs)
  - Suspicious Transaction Reports (STRs)
  - Counterfeit Currency Reports (CCRs)
  - **Non Profit Organisation reports (NPRs)**

## **Non Profit Organisation**

- Charitable trusts, whether temples, churches or mosques, nongovernment organisations (NGOs), educational institutions or societies, if registered as non-profit organisations (NPOs), will not only have to disclose the source of their funds, but also be scrutinised for large monetary transactions.
- The change has been done by an amendment to the Prevention of Money Laundering Act (PMLA) 2002, notified in the Official Gazette to bring NPOs under the purview of the law. Earlier, the entities that fell under the ambit of the law included only chit fund companies, banking companies, financial institutions and housing finance companies.
- The amendment now says any company registered under section 25 of the Indian Companies Act, 1956, and/or as a trust or society under the Societies Act, 1860, or any similar state legislation, will be brought under the purview of PMLA.

# Know Your Client (KYC)

- Quality is Important
- Beneficial Owner - KYC
- No alternative & to be fully complied with
- Program to refresh KYC on an ongoing basis
- Rule & Risk based approach
- Concurrent KYC
- Country specific rules are to be adopted



# Summons, Searches and Seizures

- Sec.16 :- Power of Survey
- Sec.17:- Search & Seizure
- Sec.18:- Search of Persons
- Sec.19:- Power to Arrest
- Sec.20:- Retention of Property
- Sec.21:- Retention of Records
- Sec.22:-Presumption as to Records or Property in certain cases
- Sec.23:-Presumption in Inter-Connected Transactions
- Sec.24:-Burden of Proof

## **POWERS AVAILABLE TO THE INVESTIGATING OFFICERS UNDER THE ACT**

- (a) to provisionally attach any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [**Section 5**];
- (b) to conduct survey of a place [**Section 16**];
- (c) to conduct search of building, place, vessel, vehicle or aircraft & seize/freeze records & property [**Section 17**];
- (d) to conduct personal search [**Section 18**];
- (e) to arrest persons accused of committing the offence of Money Laundering [**Section 19**];
- (f) to summon and record the statements of persons concerned [**Section 50**].

**Sec.16 “Power  
of Survey”, if  
an Authority**

The Authority after  
completion of survey  
forward a copy of the  
reasons so recorded  
along with material in  
his possession to the  
Adjudicating Authority.

on the basis  
of material  
which is in  
his  
possession,  
and

Has a  
reason to  
Believe  
which is in  
writing

An offence u/s 3 has  
been committed  
/commission of such  
offence is carried on

Then he may  
conduct a survey  
on that person  
and may enter  
any place which  
are:-

Within the  
limit of area  
assigned to  
him

Authorize for  
the purpose  
of this  
section

Any  
Proprietor or  
any other  
person

# PUNISHMENT

Any person found guilty of  
Money Laundering

Rigorous  
Imprisonment from 3  
Years to 7 Years

AND

Fine upto Rs. 5 Lakh

If proceeds of Crime involve  
any offence under paragraph 2  
of Part A of Schedule Offences  
(i.e. under the Narcotic Drugs  
and Psychotropic Substance  
Act, 1985

Rigorous Imprisonment  
from 3 years to 10 years

AND

Fine Upto Rs 5 Lakh

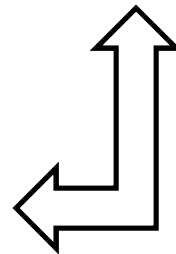


In addition, the trained property shall be confiscated by the  
Central Government U/S 8(5)

## **Attachment of Property involved in Money Laundering**

Director or any other officer not below the rank of Deputy Director -

- Has reason to believe (recorded in writing ), on the basis of material in his possession



Provisionally attached the property for a period not exceeding 180 days from the date of order

## **Action after Attachment**

- After attachment of property information to be furnished along with order of attachment to Adjudicating Authority
- File a complaint stating the facts of such attachments with in a period of 30 days from the date of attachment before the Adjudicating Authority

## **Remedy available to a aggrieved person, where the property is provisionally attached**

**It has been provided in the Act that before recording the finding that all or any of the properties are involved in money laundering, the Adjudicating Authority has to issue a show cause notice of not less than thirty days to the aggrieved person. The aggrieved person at this stage can submit his reply and attend the hearing before the Adjudicating Authority to present his defence [Section 8(1)].**

# **TRADE BASED MONEY LAUNDERING**

# **Trade Based Money Laundering**

- ❖ The process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimize their illicit origins.
- ❖ Trade includes Domestic as well as international Trade



# TBML- FATF VIEW

❖ Trade Based Money Laundering (TBML) has been recognized by the Financial Action Task Force (FATF) as one of the main methods by which criminal organizations and terrorist financiers move money for the purpose of disguising its origins and integrating it back into the formal economy.

# TRADE BASED MONEY LAUNDERING /FINANCING OF TERRORISM

❖ The FATF Paper on Best Practices (2008) broadened the definition by stating,

*“TBML and terrorist financing (TBML/FT) refer to the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimise their illegal origin or finance their activities.”*

Thus illegal activities such as terrorist financing are also covered within the scope of TBML.

# WHAT IS TRADE?

- ❖ Engine of growth
- ❖ Ensures optimal use of resources.
- ❖ Countries need to have a 'free and fair' trade regime.

❖ Dilemma faced by policy makers

“ The requirement to balance the needs of a free, *fair and predictable trade regime* with the needs for regulation of trade so as to prevent its abuse.”

# TECHNIQUES OF TBML

Techniques of TBML adopted by criminals/ money launderers vary from jurisdiction to jurisdiction.

- Simple techniques:
  - (i) 'over invoicing'
  - (ii) 'under invoicing'
  - (iii) multiple invoicing
  - (iv) 'over/under shipments' or no shipment and
  - (v) Manipulation of description of goods.
- Complex: Combinations of several simple techniques
- Money moves out of the Country
  - Under-valued Exports
  - Over-valued Imports
  - Variation in quality & quantity of exports / imports
- Money moves into the Country
  - Over-valued Exports
  - Under-valued Imports
  - Variation in quality & quantity of exports / imports

# IMPACT OF TRADE PRICE MANIPULATION- EXPORTS

- **Under-invoiced Exports**
  - Money laundering from illegal activities
  - Terrorist financing
  - Income tax avoidance/evasion
  - Capital flight
  - Avoid export surcharge
  - Transfer of corruption money outside the country
- **Over-invoiced Exports**
  - Increase export subsidies
  - Conversion of unaccounted money into white money in cases where exports are made from tax free zones such as SEZs

# **ROLE OF ENFORCEMENT DIRECTORATE IN TBML CASES**

- ❖ Role under Foreign Exchange Management Act, 1999
- ❖ Role under Prevention of Money Laundering Act, 2002

# Role under Foreign Exchange Management Act, 1999

## Typical case scenarios

❖ Non realization or part realization of export proceeds within the time frame prescribed by RBI- involves contravention of Section 7 (1) (a) read with Foreign Exchange Management (Export of Goods and Services) Regulations and Foreign Exchange Management (Realisation, Repatriation, and Surrender of Foreign Exchange) Regulations, 2000 and RBI Master Circular on the subject.

❖ No import or non submission of import documents or submission of fake documents in cases where advance remittances for imports have been made -

Involves contravention of Section 3(b) and 10 (6) read with RBI instructions on Import of Goods and Services issued vide Master Circular on the subject.

❖ Over invoicing/under invoicing of exports - involves contravention of Section 7 (1) (a) read with Foreign Exchange Management (Export of Goods and Services) Regulations and Foreign Exchange Management (Realisation, Repatriation, and Surrender of Foreign Exchange) Regulations, 2000 and RBI Master Circular on the subject.

❖ Over invoicing / under invoicing of imports - Section 3(b) and 10 (6) read with RBI instructions on Import of Goods and Services issued vide Master Circular on the subject.

❖ No services rendered - involves contravention of Section 7 (1) (a) read with Foreign Exchange Management (Export of Goods and Services)



Regulations and Foreign Exchange Management (Realisation, Repatriation, and Surrender of Foreign Exchange) Regulations, 2000 and RBI Master Circular on the subject.

# **CASE STUDY**

**1. COMPANY X LOCATED IN INDIA RECEIVED ADVANCE REMITTANCE FROM COMPANY Y LOCATED IN FOREIGN JURISDICTION FOR A PROMISE TO EXPORT CONSIGNMENTS OF DIAMONDS.**

**2. COMPANY X FILED FALSELY DECLARED AND FORGED DOCUMENTS WITH THE BANK TO SHOW THE OVERVALUED EXPORTS OF DIAMOND WITHOUT HAVING MADE ANY SHIPMENT.**

**3. TO GIVE A COLOUR OF AUTHENTICITY, COMPANY X ALSO FABRICATED PURCHASE INVOICES TO SHOW LOCAL PURCHASES OF DIAMONDS, WHEREAS NO PURCHASES OF DIAMONDS HAD ACTUALLY EVER TAKEN PLACE.**

**4. COMPANY X RECEIVED EXPORT PAYMENTS THROUGH TRADE FINANCE ARRANGEMENTS VIA AN OPEN ACCOUNTING SYSTEM FROM COMPANY Y.**

**5. COMPANY X HAD RECEIVED SUBSTANTIAL CASH DEPOSITS IN INDIA FROM THE PUBLIC ON THE PROMISE OF HIGH RETURNS VIA A FRAUDULENT PONZI SCHEME.**

**6. COMPANY X TRANSFERRED LARGE AMOUNTS OF PUBLIC DEPOSITS TO COMPANY Y THROUGH HAWALA (ALTERNATIVE REMITTANCE SYSTEM).**

**7. COMPANY X INDULGED IN ROUND TRIPPING BY RECEIVING BACK AS EXPORT EARNINGS THE FINANCIAL VALUE WHICH IT HAD TRANSFERRED ABROAD AS HAWALA.**

**8. PREDICATE OFFENCES OF CHEATING, CRIMINAL CONSPIRACY AND FORGERY OF DOCUMENTS OCCURRED.**

# RED FLAGS

Export of goods without any corresponding purchase of raw materials or finished goods.

X Sudden increase in volume of exports by a new exporter.

X Advance inward remittance against exports without justifiable reasons.

X Export documents which are not duly authenticated by export regulating agency were accepted by the bank.

## WHY CRIMINALS WANT TO “LAUNDER” PROCEEDS?

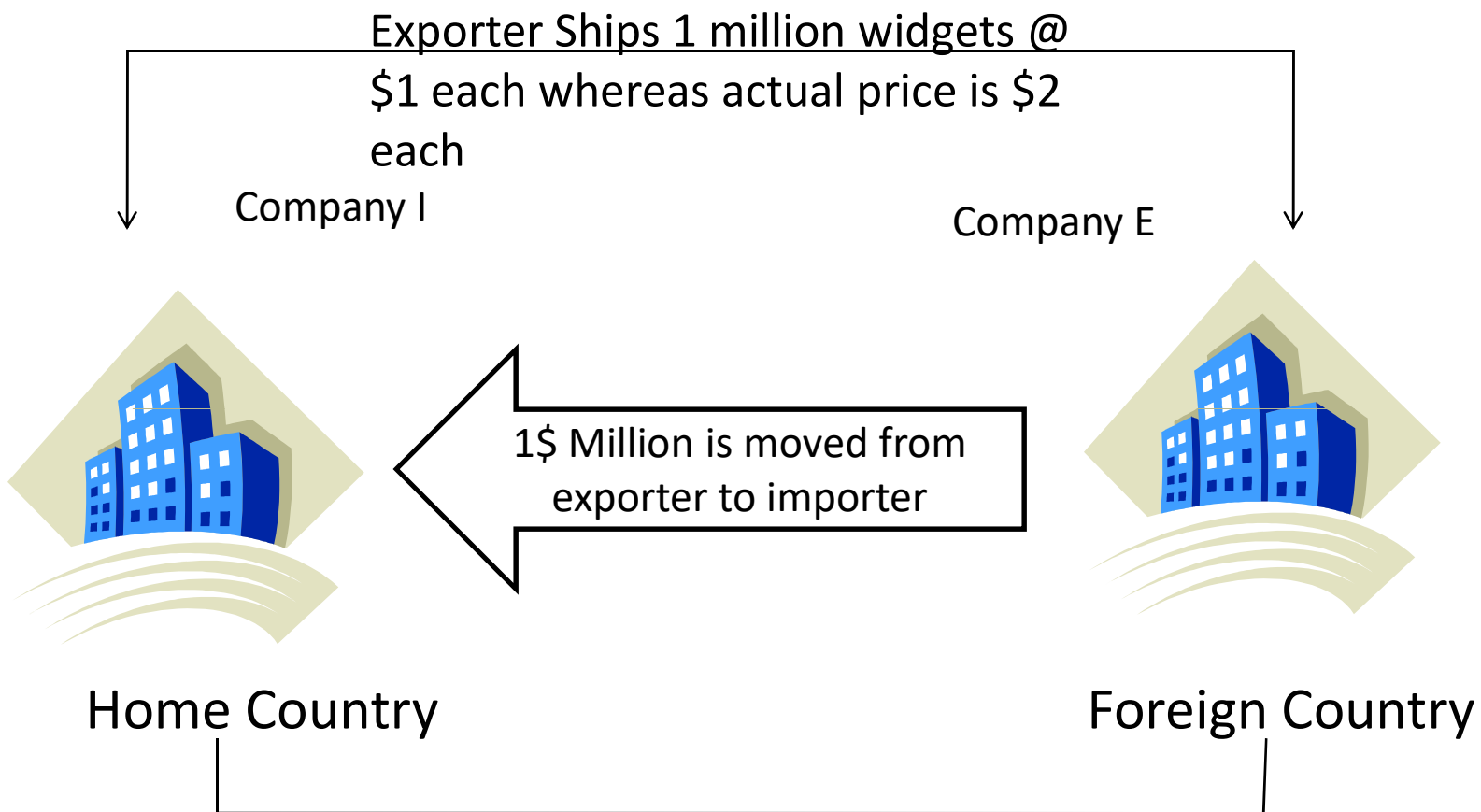
- a) To increase profits
- b) To appear legitimate
- c) To evade taxes
- d) To avoid prosecution
- e) To avoid seizure of accumulate wealth

## **THE ECONOMIC EFFECT OF MONEY LAUNDERING**

- a) Undermining the Legislative private Sector
- b) Undermining the integrity of financial markets
- c) Loss of control of Economic Policy
- d) Economic Distortion and Instability
- e) Loss of Revenue
- f) Risks to Privatisation Efforts
- g) Reputation Risk
- h) Social Costs

# CASE STUDY

## Under invoicing of Goods



Importer remits payment for 1 million widgets @ \$1 each

Company I can sell extra widgets and can distribute 1 million as per direction of company E



THANKS