

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

UNION OF INDIA

India

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

Rule

THE-PREVENTION-OF-MONEY-LAUNDERING-FORMS-SEARCH-AND-SEIZURE-AND-RETENTION-RULES-2005

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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 Published vide Notification G.S.R. 445(E), dated 1.7.2005, published in the Gazette of India, Extraordinary, Part 2, Section 3(i), dated 1.7.2005.

20.

/899In exercise of the powers conferred by sub-section (1) read with clause (a), clause (m), clause (n), clause (o), [clause (pp)] [Inserted by Notification No. G.S.R. 559(E) dated 19.8.2013 (w.e.f. 1.7.2005)] and clause (w) of sub-section (2), of section 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-section (1) of section 6 of the Act;(c)["authority" for the purposes of sub-section (2) of section 17 or sub section (1A) of section 17 or sub-section (1) of section 18 of the Act means an officer subordinate to the Director and authorized by the Director under sub-section (1) of section 17 or the Central Government under sub-section (1) of section 18 of the Act.](d)"authority" for the purposes of sub-section (1) of Section 18 of the Act means an authority from among the classes of authorities specified in Section 48 of the Act, authorised 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-section (1) of section 17 of the Act means the Director appointed under sub-section (1) of section 49 of the Act;(g)"Director" or "Additional Director" or "Joint Director" or "Deputy Director" or "Assistant Director" for the purpose of sub-section (5) of section 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-section (1) of section 49 of the Act;(h)"Form" means forms appended to these rules;(i)"impounding authority" for the purpose of sub-section (5) of section 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-section (1) of section 49 of the Act;(j)["material for the purpose of sub-section (1A) and sub-section (2) of section 17 of the Act" means the material in possession of the authority, referred to in clause (c) of sub-rule (1) of rule 2, after search, seizure or freezing under subsection (1) of section 17 respectively of the Act, including a report forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973 (2 of 1974) or a complaint filed before a Magistrate or a court by a person authorized. to investigate the scheduled offence for taking cognizance of such scheduled offence; as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise submitted by an officer authorized to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being Head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorized by the Central Government, by notification, for this purpose.](k)["material for the purposes of sub-section (2) of section 18 of the Act" means the material in possession of the authority referred to in clause (c) of sub-rule (1) of rule 2, after search and seizure under sub-section (1) of section 18 of the Act including a report forwarded to the Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974) or a complaint filed before the Magistrate or court by a person authorized to investigate the scheduled offence for taking cognizance of such scheduled offence; as the case may be, or in cases where such report is not required to be forwarded, a similar

report of information received or otherwise has been submitted by an officer authorized to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being Head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorized by the Central Government, by notification, for this purpose.](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-section (2) of section 50 of the Act.(2)All other words and expressions used and not defined in these rules but defined in the Act shall have the meaning respectively assigned to them in the Act.

3. Procedure relating to search

.- [(1) The Director or any other officer authorised by him may, for the purposes of the sub-section (1) of section 17 of the Act, further authorize any officer subordinate to him and such authorization shall be In the Form 1.] [Substituted by Notification No. G.S.R. 19 (E) dated 7.1.2010 (w.e.f. 1.7.2005)](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, locker, 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-section (1) of section 17 of the Act shall be conducted unless a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure 1973 (2 of 1974) of a complaint has been filed before a Magistrate or a court by a person authorized to investigate the scheduled offence for taking cognizance of such scheduled offence.] [Substituted by Notification No. G.S.R. 19 (E) dated 7.1.2010 (w.e.f. 1.7.2005)](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 section 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 authorised 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 section 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 at 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 or freezing - (1) The officer or the authority, as the case may be, freeze or seize any record or property found as a result of search of any building, place, vessel or vehicle or aircraft.] [Substituted by Notification No. G.S.R. 559(E) dated 19.8.2013 (w.e.f. 1.7.2005)] 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. (IA) [Where it is not practicable to seize any record or property, the officer or the authority, as the case may be, may pass an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer or the authority making such order, and a copy of such order shall be served on the person concerned.] [Inserted by Notification No. G.S.R. 559(E) dated 19.8.2013 (w.e.f. 1.7.2005)] (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 in charge 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 section 54 of the Act while impounding any records under sub-section (5) of section 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-section (5) of section 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, seizure and freezing under

sub-section (2) of section 17 and sub-section (1A) of section 17 of the Act and search of persons under sub-section (2) of section 18 and sub-section (2) of section 20 of the Act to the Adjudicating Authority] [Substituted by Notification No. G.S.R. 559(E) dated 19.8.2013 (w.e.f. 1.7.2005)] - (1) The authority, as the case may be, shall prepare an index of a copy of the reasons recorded alongwith 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 a copy of the reasons alongwith the material are forwarded to the Adjudicating Authority.

9. Acknowledgement of receipt of a copy of the reasons and the material relating to [search, seizure or freezing] [Substituted for the words "search and seizure" by Notification No. G.S.R. 559(E) dated 19.8.2013 (w.e.f. 1.7.2005)] and search of person by the Adjudicating Authority

.- (1) On receipt of the outer sealed envelope alongwith 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 alongwith 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, seizure or freezing] [Substituted for the words "search and seizure" by Notification No. G.S.R. 559(E) dated 19.8.2013 (w.e.f. 1.7.2005)] 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 section 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 section 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 section 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-sections (2) and (3) of section 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. FORM -I [See sub-rule (1) of rule 3] Authorisation For Search, Seizure And Freezing Under Sub-Section (1) And Sub-Section (1a) Of Section 17 Of The Act Dated..... Authorization Number

..... of [year] WHEREAS I..... [Director/Additional Director/Joint Director/Deputy Director] [Substituted by Notification No. G.S.R. 19 (E) dated 7.1.2010 (w.e.f. 1.7.2005)], have reason to believe that

..... [name and complete address of the person] (i) has committed an act which constitutes money-laundering, or (ii) is in possession of proceeds of crime involved in money-laundering, or (iii) is in possession of records relating to money-laundering, and certain documents including proceeds of crime and/ or records relating to money laundering, which in my opinion, will be useful for or relevant to the investigation and other proceedings under the Prevention of Money-laundering Act, 2002 (15 of 2003) are secreted in the premises specified in the Schedule below. I hereby authorize..... [name and designation of the Authority] to conduct the search of the premises specified in Schedule below, under sub-section (1) of section 17 of the Prevention of Money-laundering Act, 2002 (15 of 2003) and rule 3 of these Rules. The officer so authorized to conduct search shall seize or freeze any record or property, as the case may be, which is considered relevant for the purposes of proceedings under Act as per procedure specified in rule 4 of these rules. Given under my hand and seal on this day of Two thousand Schedule of Premises Director / Additional Deputy Director [Signature with seal] FORM II [See sub-rule (2) of rule 4] Seizure Memo [or freezing memo] [Inserted by Notification No. G.S.R. 559(E) dated 19.8.2013 (w.e.f. 1.7.2005)] (Inventory Of Items) Dated..... From..... [time] to..... [time] Panch Witnesses:

1. [name with complete address]

2.[name with complete address]

We, the above named panchas having been called upon by Shri[name, designation and complete address of Officer] have presented ourselves at[complete address of the premises] Here we were shown an authorisation dated issued by Shri [name, designation and complete address of the Director] under section 17 of the Prevention of Money-laundering Act, 2002 (15 of 2003) authorising Shri[name, designation and complete address of the officer authorized by the Director] to conduct [search, seizure or freeze] [Substituted for the words "search and seizure" by Notification No. G.S.R. 559(E) dated 19.8.2013 (w.e.f. 1.7.2005)] of the above mentioned premises. We as well as Shri[name of the occupier of the premises] put our dated signatures on the authorisation in token of having seen the same. Before the actual start of search and after the conclusion of search by Shri.....[name, designation and complete address of the authority] and the accompanying officers viz. Sarvashri/Shri/Shrimati.....offered their personal search which was declined/taken by Sarvashri/Shri/Shrimati.....[the occupier of the premises] on both the occasions in our presence. The search started athours onand concluded athours on.....As a result of search.....[specify proceeds of crime or records] were checked and verified and inventory prepared or recovered and seized [or frozen] [Inserted by Notification No. G.S.R. 559(E) dated 19.8.2013 (w.e.f. 1.7.2005)] as per details given in the Schedule below. The search was conducted in a peaceful and orderly manner and no damage to the person or property was caused during the course of search.[Signature]Authority[Seal]

Schedule

[Inventory of items recovered and seized [or frozen] [Inserted by Notification No. G.S.R. 559(E) dated 19.8.2013 (w.e.f. 1.7.2005)]]Panch Witnesses:

1. [Signature with date]

2. [Signature with date]

.....[Signature of the person searched](Authority)Signature with Seal(Received copy)[Signature of the person searched]Note : Each page of the seizure memo [or freezing memo] [Inserted by Notification No. G.S.R. 559(E) dated 19.8.2013 (w.e.f. 1.7.2005)] is to be signed and dated by the Panch Witnesses, the person searched and the Authority.FORM III[See sub-rule (2) of rule 8]Acknowledgement SlipSerial Number.....Received a copy of the letter bearing Number.....dated..... along with the reasons and the material containing pages.....from.....[designation of the authority] on.....[date] at.....[time][Signature of the Adjudicating Authority]Date:.....[Name of the Adjudicating Authority][Office seal]To.....(Name and designation of the authority)Address.....

IV(See sub-rule (5) of rule 8)Acknowledgement SlipSerial Number.....Received a sealed envelope bearing number..... dated..... from.....[designation of the authority] on.....[date] at..... [time]Signature of the Adjudicating Authority/designated officer of the office of Adjudicating Authority.....Name of the Adjudicating Authority/designated officer of the office of Adjudicating Authority[Office seal]To.....[Name and designation of the authority]Address.....

V(See rule 11)Form for

Summons.....
of the Summoning Officer]No.Whereas I.....Director or Additional Director or Joint Director or Deputy Director or Assistant Director, am making investigation under the provisions of the Prevention of Money-laundering Act, 2002 (15 of 2003).And Whereas, I consider the attendance of.....[name of the person summoned and his address] necessary in connection with the said investigations.Now, Therefore, in exercise of the powers conferred upon me under sub-section (2) and sub-section (3) of section 50 of the said Act, I require the said[name of the person summoned and his address] to appear before me at my office on.....at.....alongwith the documents as per Schedule below :-

Schedule 2

Given under my hand and seal this.....day of.....two thousandSummoning Officer[Name and complete address][Seal]To.....[Name of the person summoned and his address]Notes :- 1. Every proceeding under sub-section (2) and sub-section (3) of section 50 of the Prevention of Money-laundering Act, 2002 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

2. Without prejudice to the provisions of any other law for the time being in force, if you fail to give evidence as mentioned in the Schedule, you shall be liable to penal proceedings under the Prevention of Money-laundering Act, 2002 (15 of 2003).

[Substituted by Notification No. G.S.R. 559(E) dated 19.8.2013 (w.e.f. 1.7.2005)][Substituted by clause (c) and (d) Notification No. G.S.R. 559(E) dated 19.8.2013 (w.e.f. 1.7.2005)]