

Intricacies of Amendments to PMLA on the CS profession Theme – Company Secretary – Stepping Beyond Boundaries

Somesh K Beniwal
FCS, LL.B., MBL, CIE-III, AML-IIBF

Head - CS, Legal & Operations
Cars24 Financial Services

Co-Founder
Veda and Smriti Advisors Private limited



In exercise of power conferred under Section 2(1)(sa)(vi) of the PMLA

Notification S.O. 2036(E), dated May 3, 2023

- The Ministry of Finance has **notified** the scope of activities carried out by a relevant person **on behalf of his/ her client, in the course of his/ her profession.**

Notification S.O. 2135(E), dated May 9, 2023

- The Ministry of Finance has **notified** the scope of activities carried **in the course of business on behalf of or for another person.** Certain exceptions are also carved out.

Scope of activities w.r.t. certain financial transactions carried by persons carrying on designated business or profession



Notification S.O.
2036(E), dated
May 3, 2023

The Notification has created a lot of discontentment amongst professionals, as it brings **CA, CS, CMA** within the ambit of PMLA, with regard to certain **“financial transactions”** carried by such professional on behalf of his client, in the course of his/ her profession.

- Section 2(1)(sa)(vi) of the PMLA states that **“person carrying on designated business or profession”** means person carrying on **such other activities** as the Central Government may, by notification, so designate, from time to time.
- Section 2(1)(wa) of the PMLA states that **“reporting entity”** means a banking company, financial institution, intermediary or **a person carrying on a designated business or profession.**

Notification S.O. 2036(E), dated May 3, 2023

As per the Notification dated May 3, 2023, the following financial transactions carried out by a **relevant person** on behalf of his/ her client, in the course of his/ her profession, in relation to :

- buying and selling of any immovable property;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of companies;
- creation, operation or management of companies, LLPs or trusts, and buying and selling of business entities

shall be regarded as 'activity' for the purpose of Section 2(1)(sa)(vi) of PMLA.

Effect of PMLA Notification



"Relevant

Notification
S.O. 2036(E),
dated
May 3, 2023

- ❑ **Explanation 1** states that for the purpose of the Notification, the **"Relevant Person"** includes:
 - ❑ an **individual** who obtained a certificate of practice under section 6 of the **Chartered Accountants Act, 1949** (38 of 1949) and practicing individually or through a firm, in whatever manner it has been constituted;
 - ❑ an **individual** who obtained a certificate of practice under section 6 of the **Company Secretaries Act, 1980** (56 of 1980) and practicing individually or through a firm, in whatever manner it has been constituted;
 - ❑ an **individual** who has obtained a certificate of practice under section 6 of the **Cost and Works Accountants Act, 1959** (23 of 1959) and practicing individually or through a firm, in whatever manner it has been constituted.

Notification S.O. 2135(E), dated May 9, 2023

As per the Notification dated May 9, 2023, the following **activities** when carried in the course of business on behalf of or for another person, as the case may be, shall be regarded as 'activity' for the purpose of Section 2(1)(sa)(vi) of PMLA:

- acting as a formation **agent** of companies and limited liability partnerships;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and LLPs;
- providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust;
- acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust; and
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

shall be regarded as 'activity' for the purpose of Section 2(1)(sa)(vi) of PMLA.

As per Section 2(1)(wa) of the PMLA, “**reporting entity**” means a banking company, financial institution, intermediary or **a person carrying on a designated business or profession.**

Further, Section 2(1)(sa) of the PMLA, defines “**person carrying on designated business or profession**” means:

- a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;
- Inspector-General of Registration appointed under section 3 of the Registration Act, 1908 as may be notified by the Central Government;
- real estate agent, as may be notified by the Central Government;
- dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;
- person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government;
- person carrying on such other activities** as the Central Government may, by notification, so designate, from time to time.

Once identified as the Reporting Entity, the PMLA read with the PMLA (Maintenance of Records) Rules, 2005 imposes a certain obligations viz.,:

- Verification of the identity of its clients and the beneficial owner before entering into a financial transaction;
- Maintenance of records for a period of five years of the transactions executed on behalf of the clients and their identity;
- Certain other obligations vis a vis furnishing information to the Financial Intelligence Unit(FIU).

The first two obligations are not new.

As per Rule 7 of PMLA (Maintenance of Records) Rules 2005, the specified practicing professionals would have to consider and undertake the following actions:

- Appoint a Designate Director and Principal Officer
- Communicate the name of such Designated Director and Principal Officer to the Director of FIU IND

Post appointing the Principal Officer and Designated Director, it will have to further continuously *i.e.*, 15th day of the succeeding month; Evolve an Internal mechanism for detecting; and furnishing information on the transactions specified in Rule 3(1) of the PMLA (Maintenance of Records) Rules 2005.

- ❑ **USA Watergate scandal** -1972 to U.S. President [Richard Nixon](#) resigned
- ❑ **FATF** is an international organisation founded in 1989 (200 Countries)
- ❑ FATF membership granted to **India** in 2010 & 109 recommendations followed by India

- ❑ **Financial Intelligence Unit (“FIU-IND”)** established in 2004 at **6th Floor, Samrat Hotel, Delhi**
- ❑ **PML Act 2002** enacted on January 17, 2003 (effective July 01, 2005)
- ❑ **PMLA Rules 2005** came into force for maintenance of records (11 Rules)

- ❑ PMLA covers **offences, punishment, records, reporting's & confiscation of properties.**
- ❑ PMLA applicable on **Reporting Entities (“REs”)** namely **financial institutions and designated business professionals** which also includes practicing CAs, CSs & CMAs.

- ❑ **2(wa): Reporting Entity** – bank, FI, FI Intermediaries & designated business and profession
- ❑ **2(sa):** Defined profession includes i) Casino, ii) IG – Registration (Property), iii) Real estate agents, iv) Jewelers, v) Vault operations and vi) **Practicing Professionals - CAs, CS & CMAs**
- ❑ **2(w):** Records - books or **stored** in a computer (**Client Onboarding, KYCs, MOU & payments**)

- ❑ **3:** Any person **connected** with proceeds of crime shall be guilty of offence of ML. *(Any person include entity, individuals, professionals including lawyers, intermediaries).*
- ❑ **2(u):** Proceeds – any property (India or abroad) **derived or obtained** from criminal activity. *U.S. Awasthi - MD, IFFCO statement April 22, 2022: “he did not have any knowledge his sons “Amol & Anupam” properties as they have been residing out of India for a very long time.”*
- ❑ **2(v):** Property – any asset including asset **used** in the commission of an offence. *(Van used in Pulwama attack was financed by which banker and how that van was used by terrorist?)*
- ❑ **2(zb)** Value – **fair market value** of property on the date of acquisition or possession

PMLA – Important Provisions(2)

- ❑ 4: Punishment - **Rigorous** imprisonment **3 to 7 years** with fine.
- ❑ 4(1st proviso) - **10 years** for offences under Narcotic Drugs And Psychotropic Substances Act, 1985.
- ❑ 11A – Professional being a Regulated Entity shall **verify** the identity of its **clients** and Beneficial owners.



Challenge: 1) Professionals do F2F meetings with clients.? 2) Assignments are taken on referral basis from professionals or business houses? 3) Assignments taken of several companies under a single group? 4) Offline Aadhaar require integration with UIDAI. 5) Professionals can't store Aadhaar number or biometric information. 6) How to verify KYCs of the foreign client if the assignment is not related to the incorporation?

- ❑ 11A (first proviso) – Professional can take Aadhaar authentication services if they have complied with IT Security standards i.e. ISO 27001 but approval of **respective Institute, UIDAI & Ministry of Finance. X**

Challenge: 1) How ICAI, ICSI & ICMAI will ensure that ISO standards have been followed? Peer review of committee of said Institutes will again assess the quality checks of the practicing organizations/firms?

PMLA – Important Provisions (3)



- ❑ **12:** **Confidential** records for 5 years of **transactions** (attempted/executed), identity of clients & beneficial owners and clients **account file** & **correspondences**.
- ❑ **12AA:** Professional require to file **suspicious** transactions (Single or series) with FIU-IND and its director can further inquire about the said records.
- ❑ **12AA:** to **examine** source of fund, ownership & financial position. **Challenge:** how Professionals will verify? They don't have CIBIL or Account Aggregator license?
- ❑ **13:** FIU inquiry with help of **CAs** & can impose fine from **10k to 1 lakh** for **each** failure with respect to RE Obligations explained above.
- ❑ **14:** No civil or criminal liability in case of failure of reporting's to FIU-IND
- ❑ **16 to 24:** search, seize, arrest & record by Enforcement Directorate (“**ED**”) & burden of proof
- ❑ **26:** Appeal can be filed against ED and FIU-IND orders within **45 days** to Appellate Tribunal for Forfeited Property (“**ATFP**”) which dealt with SAFEMA, NDPSA and PMLA. Appeal will be closed 6 months.
- ❑ **39:** Appellant can take AR assistance (“**CA, CS, CMA, Advocates**”)
- ❑ **41, 42 & 43:** Special courts is court of session for trial of offence. Appeal within 60 days to High Court.

PML(Maintenance of Records) Rules, 2005



- ❑ 2 - Designated Director(“DD”), Principal Officer (“PO”), **CKYCR & CKY Identifier for clients**
- ❑ 3 - MOR of Transactions – Cash above Rs 10 lakhs, NPOs dealing & Suspicious
- ❑ 4 - Record of Information – Nature, Amount, Currency, Parties and Date
- ❑ 5 - Internal Mechanism for MOR and duty casted on DD for review
- ❑ 7 - Registration with FIU and PO to report transactions mentioned in R3
- ❑ 7 - Internal Mechanism for verification of R3 transactions
- ❑ 8 - Cash, NPO, Property Transactions by **15 day of the following month** and Suspicious within **7 days**
- ❑ 9 - **Due Diligence** - KYC & Financial Status of Clients for commencing relationship
- ❑ 10 - Reporting of KYCs to CKYCR and registration with CKYCR
- ❑ 10a - Actions taken reports against FIU enquiry – by 10th of the succeeding month
- ❑ Annex- Digital KYC Process due to COVID Disruptions

Expectations from Professionals via Institutes



- Written KYC and AML Policy & Procedures
- Internal Risk Assessment of PMLA – Yearly basis
- Customer Due Diligence and Legal Agreements
- Risk categorization of the clients
- Record Keeping – 5 years
- Suspicious Transaction Monitoring & Risk Management at RE level
- AML Compliance Committee – for actions / reporting's
- Reporting of Designated Director / Principal officer to FIU-IND
- Employee Training and confirmation to the Investors

Current Regulators Guidelines:

RBI for Bank/NBFCs Link: <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11566&fn=2&Mode=0>

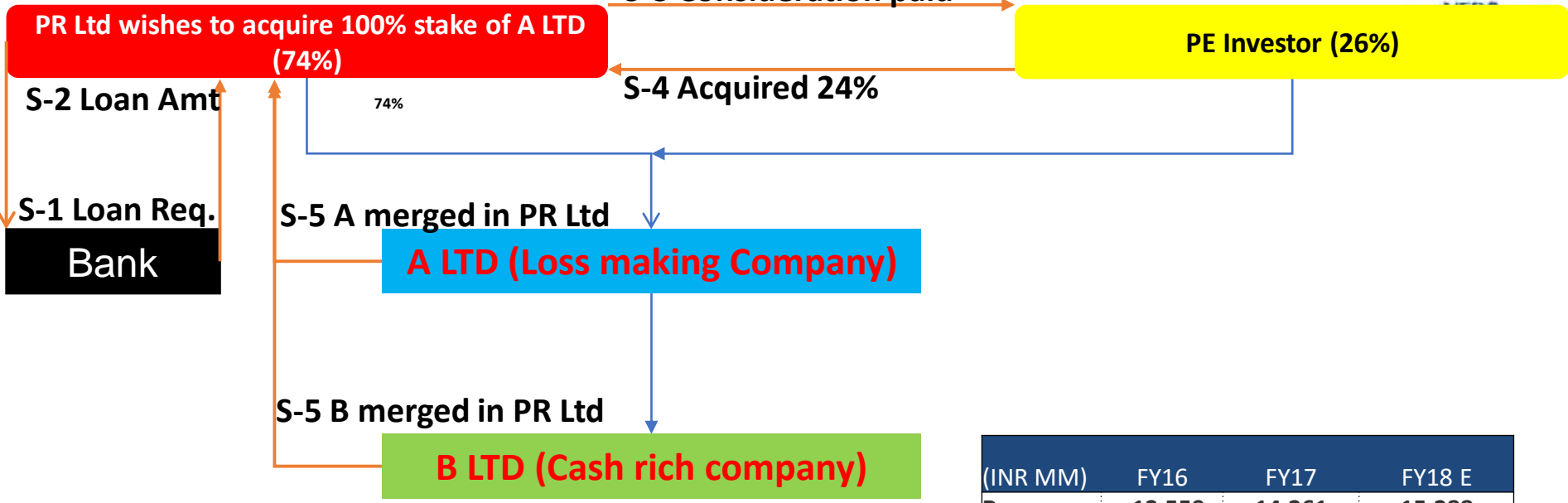
SEBI for Intermediaries Link: https://www.sebi.gov.in/sebi_data/fmcfiles/aug-2016/1470813161948.pdf

Red Flags for Professionals – Samples



- Multiple cheques from different sources / bank accounts to the **same account**
- Unrelated third-party payments**
- Overpayment followed by a refund request
- Early foreclosure of a loans with no concern over fees and charges**
- Any customer for whom you cannot determine the true Ultimate beneficial owner
- Payment from countries considered high risk for money laundering or terrorist financing
- Frequent Changes in – Name of Company, Directors, Guarantors**
- WatchList & Adverse Media hits
- Law Enforcement Agency enquiries
- Large and complex transactions and those with unusual patterns, inconsistent with the normal and expected activity of the customer, which have **no apparent economic rationale or legitimate purpose**
- Company (or Industry in which Company operates) facing significant downturn, which may
- Result in payment delays, or Require restructuring, or Result in some potential losses

Structured Finance Transaction - Red Flag



A & B LTD merged so that PR Ltd can repay the loan which was utilized for PE exit and post that PR Ltd enjoyed the reserves & surplus of B Ltd. End use of the loan not followed and this is a complex structure to be its legality from taxation & finance point of view.

(INR MM)	FY16	FY17	FY18 E
Revenue	13,559	14,261	15,288
EBITDA	400	1,051	1,088
Margin	2.9%	7.4%	7.1%
PAT	81	576	522
Debt	1,931	1,722	1,634
Net Worth	2,140	2,715	3,237

“**Transaction**” means a **purchase, sale, loan, pledge, gift, transfer, delivery or the arrangement thereof** and includes:

- opening of an account;**
- deposit, withdrawal**, exchange or transfer of funds in whatever currency, whether in cash or by cheque, payment order or other instruments or by electronic or other non-physical means;
- the **use of a safety deposit box** or any other form of safe deposit;
- entering into any **fiduciary relationship**;
- any payment made or received**, in whole or in part, for any contractual or legal obligation; or
- establishing or creating a legal person or legal arrangement**

- ❑ The Prevention of Money Laundering Act, 2002 (“**PMLA**”) brought into force with effect from July 1, 2005 is applicable to all Reporting Entities (“**REs**”) which can be a banking company, financial institution, intermediary or a **person carrying on a designated business or profession** as defined in section 2(1)(wa) read with section 2 (1)(sa) of the PMLA.
- ❑ The Ministry of Finance vide notification dated May 03, 2023 (“[MOF Notification No 1](#)”) has enhanced the term REs. MOF Notification No 1 has already created a lot of buzz and now it seems that practicing CAs, CSs, CMAs (“**Professionals**”) shall be treated as “*Person carrying on designated business or profession*” and accordingly shall be covered under the definition of REs, if such Professionals carry out certain “**financial transactions**” on the behalf of their clients (“**Client Transactions**”).
- ❑ Client Transactions notified in the [MOF Notification No. 1](#) and the Ministry of Finance notification dated May 09, 2023 (“[MOF Notification No. 2](#)”) are in next slides:

Compliance Reporting's Methods with FIU-IND



Reports	Content	Time limit
Cash Transaction ("CT")	<ul style="list-style-type: none"> ✓ Single cash transaction > Rs. 10 Lacs ✓ Series of cash transaction monthly aggregate > Rs. 10 Lacs ✓ all cross-border wire transfers > Rs. 5 Lacs ✓ all transactions involving receipts by NPO > Rs. 10 Lac 	15th of the succeeding month "SM")
Suspicious Transaction ("ST")	<p>"reasonable ground of suspicion"</p> <ul style="list-style-type: none"> ✓ involve the "proceeds of crime" ✓ Appear unusual/unjustified or no economic / bonafide purpose ✓ Doubt of involving financing of the activities relating to terrorism 	Within 7 working days on being satisfied that the transaction ST
Counterfeit Currency ("CC")	<ul style="list-style-type: none"> ✓ Cash transactions where forged or counterfeit currency notes or bank notes have been used. 	By 15th of SM
Other reports	<ul style="list-style-type: none"> ✓ Purchase/ sale of immovable property >= Rs. 50 Lakh 	By 15th of SM

3.3 Mapping of report type to reporting format

The applicable reporting format will depend on the type of transactions that are being reported. The mapping of prescribed reports to the reporting formats is as under:

<i>Report Type</i>	<i>Applicable Reporting Format</i>
<ul style="list-style-type: none">• Cash transaction Report (CTR)• Suspicious transaction Report (STR)• Non Profit Organisation Transaction Report (NTR)	<ul style="list-style-type: none">• Account based reporting format (ARF) for Account based transactions• Transaction based reporting format (TRF) for other Transactions (Transactions without account based relationship with the customer. E.g. money transfer service, money exchange)
<ul style="list-style-type: none">• Counterfeit Currency Report (CCR)	<ul style="list-style-type: none">• CCR reporting format (CRF)

4.2.1 ARF (Account based) text files

The version 2.0 of the data structure comprises of the following seven data files:

S. No	Filename	Description
1	ARFBAT.txt	Batch File
2	ARFRPT.txt	Report File
3	ARFBRC.txt	Branch File
4	ARFACC.txt	Account File
5	ARFTRN.txt	Transaction File
6	ARFINP.txt	Individual Person File
7	ARFLPE.txt	Legal Person/Entity File

Crux:

- 1) Multiple / Single Transactions needs to be filed under “Bulk date upload and Batch creation process” from Fingate Portal.)*
- 2) No physical filings and Nil filings are required*

❑ Charter:

- ✓ Review customers behavior & transactions during the relationship
- ✓ Monitor & Test screening process for regulatory compliance
- ✓ Support with inputs to resolve escalated screening red flags
- ✓ Support decision-making for reporting suspicious activity to the regulator

❑ **Composition:** Chaired by DD, PO, Fraud Controller and Finops/Account Manager.

❑ **Major task:** to highlight unusual transactions based on Red flags

❑ Scope, Roles & Responsibilities of SAR Committee:

- **Monthly Meeting:** On or Before 10th of every month
- Review in detail all reported unusual transactions and decision on reportings
- decision of AML risk categorization of the accounts
- Review of Record Keeping
- **Monitoring & Testing (Audit)** of the Process

MOF Notification dated May 3 & May 9, 2023



S.	Client Transactions	Views
a)	Buying and selling of any immovable property	Professionals having power of attorney from a client for execution of documents should be not be covered as the government highlighted the word “ financial transactions ”.
b)	Managing of client money, securities or other assets	Professionals execute trade and transfer money either from their account or a client account as an authorized signatory or otherwise like deposit of cash. MOF exempted Professionals who are considered as an intermediary as defined in 2(1)(n) of PMLA which means “ <u>a stock-broker, share transfer agent, or any other intermediary associated with securities market and pension fund</u> ”
c)	Management of bank, savings or securities accounts	Professionals engaged in making strategies for managing funds and securities will also be covered. Professionals normally execute fundraisers and fund management mandates with clients.
d)	Organization of contributions for the creation, operation or management of companies; creation, operation or management of companies, limited liability partnerships or trusts	<p><u>Creation</u> means involved in Incorporation.</p> <p><u>Operation</u> means having bank authority or day to day affairs like corporate governance, litigations, taxation and treasury matters.</p> <p><u>Management</u>: mean participating in AOP, QOP, LRS & review meetings thereof and corporate restructuring.</p> <p><u>MOF exempted any activity that is carried out by an employee in the course of or in relation to his employment & having a letter of authority or authorisation from the governing body.</u></p>

MOF Notification dated May 9, 2023



S.	<i>Client Transactions</i>	Views
e)	<i>Buying and selling of business entities#</i>	Professional involved in Due Diligence and Change in control transaction documents.
f)	<i>Acting as a formation agent of companies and limited liability partnerships;#</i>	Act on behalf of the client for managing incorporation activities. <u>MOF exempted any activity that is carried out by Professionals who declare and confirm legitimacy of the incorporation activities.</u> This exemption is not for LLPs incorporation.
g)	<i>Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and limited liability partnerships#</i>	Act as director or secretary or CFO services.
h)	<i>Providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust#</i>	It also includes corporate suites in the hotels. <u>MOF exempted agreement of lease, tenancy, or any other space usage arrangement for which TDS is deducted under Section 194-I.</u>

MOF Notification dated May 9, 2023



S.No	Client Transactions	Views
i)	<i>Acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust#</i>	Professionals having stake in NGOs will also be covered. Professionals involved with NGOs for CSR activities should review their arrangement terms
j)	<i>Acting as (or arranging for another person to act as) a nominee shareholder for another person#</i>	Shares/stake acquired on behalf of clients shall be covered. This stake can be acquired in any entity including LLP. Normally, a side letter or loan for investment agreements are executed between Professionals & Clients.

denotes that Client Transactions mentioned in the above table from e) to j) are applicable on the practicing professionals and also on the “other persons carrying on designated business/profession” which are classified as a RE under PMLA like casino owners, real estate agents, jewelers, locker providers for highly liquid assets in form of the gold / securities / cash etc.

Professionals carrying above financial transactions on behalf of their clients shall be considered as REs and consequently they are required to ensure the necessary PMLA compliances accordingly.

- 1) The Adjudicating Authority shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 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 shall be bound to attend in person or through authorised agents, as the Adjudicating Authority may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.
- 3) Every proceeding under this section 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)

(Section 11)

Verification of Identity by Reporting Entity (Section 11A)



- 1) Every reporting entity shall verify the identity of its clients and the beneficial owner, by—
 - (a) authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016) if the reporting entity is a banking company; or
 - (b) offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016); or
 - (c) use of passport issued under Section 4 of the Passports Act, 1967 (15 of 1967); or
 - (d) use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf:

Provided that the Central Government may, if satisfied that a reporting entity other than banking company, complies with such standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016), and it is necessary and expedient to do so, by notification, permit such entity to perform authentication under clause (a):

Provided further that no notification under the first proviso shall be issued without consultation with the Unique Identification Authority of India established under sub-section (1) of Section 11 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016) and the appropriate regulator.

- 1) If any reporting entity performs authentication under clause (a) of sub-section (1), to verify the identity of its client or the beneficial owner it shall make the other modes of identification under clauses (b), (c) and (d) of sub-section (1) also available to such client or the beneficial owner.
- 2) The use of modes of identification under sub-section (1) shall be a voluntary choice of every client or beneficial owner who is sought to be identified and no client or beneficial owner shall be denied services for not having an Aadhaar number.
- 3) If, for identification of a client or beneficial owner, authentication or offline verification under clause (a) or clause (b) of sub-section (1) is used, neither his core biometric information nor his Aadhaar number shall be stored.
- 4) Nothing in this section shall prevent the Central Government from notifying additional safeguards on any reporting entity in respect of verification of the identity of its client or beneficial owner.

Explanation.—The expressions “Aadhaar number” and “core biometric information” shall have the same meanings as are respectively assigned to them in clauses (a) and (j) of Section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016).]

Reporting Entity to maintain records (Section 12)



- Every reporting entity shall—
 - maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;
 - furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed
 - [* * *]
 - [* * *]
 - maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.
- Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.
- The records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.
- The records referred to in clause (e) of sub-section (1) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.
- Government may, by notification, exempt any reporting entity(s) from any obligation under this Chapter.

Enhanced Due Diligence (Section 12AA)



- ❑ Every reporting entity shall, prior to the commencement of each specified transaction,—
 - ❑ verify the identity of the clients undertaking such specified transaction by authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016) in such manner and subject to such conditions, as may be prescribed: Provided that where verification requires authentication of a person who is not entitled to obtain an Aadhaar number under the provisions of the said Act, verification to authenticate the identity of the client undertaking such specified transaction shall be carried out by such other process or mode, as may be prescribed;
 - ❑ take additional steps to examine the ownership and financial position, including sources of funds of the client, in such manner as may be prescribed;
 - ❑ take additional steps as may be prescribed to record the purpose behind conducting the specified transaction and the intended nature of the relationship between the transaction parties.
- ❑ Where the client fails to fulfil the conditions laid down under sub-section (1), the reporting entity shall not allow the specified transaction to be carried out.
- ❑ Where any specified transaction or series of specified transactions undertaken by a client is considered suspicious or likely to involve proceeds of crime, the reporting entity shall increase the future monitoring of the business relationship with the client, including greater scrutiny or transactions in such manner as may be prescribed.
- ❑ The information obtained while applying the enhanced due diligence measures under sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.
- ❑ Explanation.—For the purposes of this section, “specified transaction” means—
 - ❑ any withdrawal or deposit in cash, exceeding such amount;
 - ❑ any transaction in foreign exchange, exceeding such amount;
 - ❑ any transaction in any high value imports or remittances;
 - ❑ such other transaction or class of transactions, in the interest of revenue or where there is a high risk or money-laundering or terrorist financing, as may be prescribed.]

Power of Director to Impose Fine (Section 13)

(1) The Director may, either of his own motion or on an application made by any authority, officer or person, [make such inquiry or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting entity, under this Chapter].

[(1-A) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.

(1-B) The expenses of, and incidental to, any audit under subsection (1-A) shall be borne by the Central Government.]

(2) If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may—

- (a) issue a warning in writing; or
- (b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or
- (c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or
- (d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.]

(3) The Director shall forward a copy of the order passed under subsection (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.

[Explanation.—For the purpose of this section, “accountant” shall mean a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949).]

No Civil of Criminal Proceedings (Section 14)



No civil or criminal proceedings against reporting entity, its directors and employees in certain cases

Save as otherwise provided in Section 13, the reporting entity, its directors and employees shall not be liable to any civil or criminal proceedings against them for furnishing information under clause (b) of sub-section (1) of Section 12.]

Procedure and Manner of furnishing information (Section 15)

Procedure and manner of furnishing information by reporting entities

The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information by a reporting entity under [Section 11-A, sub-section (1) of Section 12 and sub-section (1) of Section 12-AA] for the purpose of implementing the provisions of this Act.]

Yet to release / notify -

- Directives on AML and KYCs

- FAQs on the recent notifications

- Guidance note on AML/KYC Standards for its members

