

PMLA Legislations - An Insight into Compliances

The Finance Ministry's decision to include specific transactions conducted by Accountants and Company Secretaries on behalf of their clients is expected to heighten their accountability and liability under the PMLA. The move will alter the way they do due diligence of transactions, source of funds examination and reporting of irregularities.



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INTRODUCTION

The Prevention of Money Laundering Act (PMLA), 2002 is known to have been legislated basically to sub-serve twin purpose. Firstly, to prevent money laundering and secondly to provide for confiscation of property derived from, or involved in money laundering and to ensure curbing of the tendency of committing scheduled offences.

The object behind the enactment of this Act is:

- To prevent money laundering and
- To provide for the confiscation of property derived from or involved in money laundering and
- For matters connected therewith or incidental thereto.

The Preamble to the Act further provides that the Political Declaration and Global Programme of Action was adopted by the General Assembly of the United Nations at its seventeenth special session on the 23rd day of February 1990. The Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June 1998 called upon the Member States to adopt national money laundering legislation and programme and whereas it is considered necessary to implement the aforesaid resolution and the Declaration.

Political Declaration and Global Programme of Action devoted to the question of international co-operation against:

- Illicit production, supply, demand trafficking; and
- Distribution of narcotic drugs; and
- Psychotropic substances

METHODS THROUGH WHICH BLACK MONEY IS MADE AND LAUNDERED

There are multiple methods through which black money is made, laundered and huge profit is made. Some of them are:

- Cash Smuggling: Moving cash from one location to another or depositing the cash in Swiss bank account.
- Structuring: Cash is broken down into formal receipts to buy money orders etc. Smaller amounts are hard to detect.
- Laundering via Real Estate: Buying a land for money and then selling it making the profits legal.
- Stock Market scams.
- Creating bogus companies and booking false incomes.
- Hawala
- Drug trafficking
- Bribery and corruption.
- Kidnapping and extortion.

UNDERSTANDING MONEY LAUNDERING

Let us understand Money Laundering with the example of Hawala.

Hawala system works with a network of operators called Hawaladars or Hawala agent. For a Hawala transaction, customer contacts a Hawala agent at the source location. The Hawala agent at that end collects money from the person who wishes to make a transfer. The agent then calls up his counterpart in the country where the transfer has to be made.

The counterpart then hands over the cash to the recipient after deducting a commission. The source agent promises to settle the debt to the destination agent through an informal settlement.

For example, a person in country 'X' wants to transfer some money to someone in country 'Y' gives the money to the Hawala broker in country 'Y'. The agent accepts it and calls up his colleague in country 'Y'. His colleague gives the money in country 'Y's' currency to the person in country 'Y' to whom it has to be transferred. An identification code is requested, ensuring the authenticity of the receiver. The same modus operandi is followed within the country as well.

In a Hawala transfer, the money enters the hawala system in local currency and leaves as local or foreign currency. The currency exchange happens at a rate set by agents and not the official rate.

CYCLE OF MONEY LAUNDERING

The cycle of money laundering can be broken down into three distinct stages:

- **Placement:** First and initial stage where black money is injected into the formal financial system.
- **Layering:** Second stage, money injected into the system is layered and moved or spread over various transactions in different accounts and different countries. Thus, it becomes difficult to detect the origin of the money.
- **Integration:** Third and final stage, money enters the financial system in such a way that original association with the crime is sought to be obliterated so that the money can then be used by the offender or person receiving it as clean money.

OFFENCE OF MONEY-LAUNDERING [SECTION 3]

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:

- Concealment; or
- Possession; or
- Acquisition; or use; or
- Projecting as untainted property; or
- Claiming as untainted property,

In any manner whatsoever.

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.

PUNISHMENT FOR MONEY-LAUNDERING [SECTION 4]

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.



Provided that where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the schedule i.e., Offences under the Narcotic Drugs and Psychotropic Substances Act (NDPS), 1985, the maximum punishment may extend to ten years and shall also be liable to fine.

Whoever commits the offence of money-laundering shall be punishable	Where the proceeds of crime involved in money-laundering relate to any offences pertaining to the NDPS Act, 1985
With rigorous imprisonment from 3 to 7 years, and fine	The maximum punishment may extend to ten years and fine.

ATTACHMENT OF PROPERTY INVOLVED IN MONEY-LAUNDERING (SECTION 5)

Order for provisional attachment: where the Director or any other officer not below the rank of Deputy Director authorized by the Director, for the purposes of this section has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that-

- Any person is in possession of any proceeds of crime; and
- 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 under this chapter.

He may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days (180 days) from the date of the order.

CS AS REPORTING ENTITIES: ROLES AND RESPONSIBILITIES

Every Reporting Entity shall verify the identity of its clients and the beneficial owner, by-

- Authentication under the Aadhaar.
- Offline verification under the Aadhaar.

- Use of passport issued.
- Use of any other officially valid document or modes of identification.

MAINTENANCE OF RECORDS OF TRANSACTIONS (MAINTENANCE OF RECORDS) RULES, 2005- RULE 3

Every reporting entity shall maintain the record of all transactions including the record of:

- All cash transactions of the value of more than ten lakh rupees or its equivalent in foreign currency;
- All series of cash transactions integrally connected to each other which have been individually valued below rupees ten lakh or its equivalent in foreign currency where such series of transactions have taken place within a month and the monthly aggregate exceeds an amount of ten lakh rupees or its equivalent in foreign currency;
- All transactions involving receipts by non-profit organizations of value more than rupees ten lakh, or its equivalent in foreign currency;
- All suspicious transactions whether or not made in cash and by way of-
 - i) Deposits and credits, withdrawals into or from any account by way of cheques, pay orders, demand draft, travellers cheque or any other mode.
 - ii) Money transfer or remittances in favour of own clients or non- clients from India or abroad and to third party beneficiaries in India or abroad including transactions on its own account in any currency by pay order or cashier cheque or demand draft or wire transfer or electronic remittance or internet transfer etc.
- All cross-border wire transfers of the value of more than five lakh rupees or its equivalent in foreign currency
- All purchase and sale by any person of immovable property valued at fifty lakh rupees or more that is registered by the reporting entity.

CLIENT DUE DILIGENCE-RULE 9

Subject to the provisions of sub-rule (1), every reporting entity shall within ten days after the commencement of an account-based relationship with a client, file the electronic copy of the client's KYC records with the Central, KYC Records Registry.

Where the client is an individual, he shall for the purpose of sub-rule (1) submit to the reporting entity-

The Preamble to The Prevention of Money Laundering Act (PMLA), 2002, further provides that the Political Declaration and Global Programme of Action was adopted by the General Assembly of the United Nations at its seventeenth special session on the 23rd day of February 1990. The Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June 1998 called upon the Member States to adopt national money laundering legislation and programme and whereas it is considered necessary to implement the aforesaid resolution and the Declaration.

- The Aadhaar number;
- The Permanent Account Number or Form no. 60 as defined in Income -tax Rules, 1962;
- Such other document including in respect of the nature of business and financial status of the client, or the equivalent e-documents thereof as may be required by the reporting entity.

Where the client is a company, it shall submit to the reporting entity the certified copies of the following documents, or the equivalent e-documents thereof namely: -

- Certificate of incorporation;
- Memorandum and Articles of Association;
- Permanent Account Number (PAN) of the Company;
- A resolution from the Board of Directors and power of attorney granted to its managers, officers or employees, as the case may be, to transact on its behalf; and.
- Such documents as are required for an individual relating to beneficial owner, managers, officers or employees, as the case may be, holding an attorney to transact on the Company's behalf.

Where the client is a partnership firm, it shall submit to the reporting entity, the certified copies of the following documents, or the equivalent e-documents thereof namely:

- Registration certificate;
- Partnership deed;
- PAN of the partnership firm;



- Such documents as are required for an individual relating to beneficial owner, managers, officers or employees, as the case may be, holding an attorney to transact on the firm's behalf.

Where the client is a trust, it shall submit to the reporting entity, the certified copies of the following documents, or the equivalent e-documents thereof namely:

- Registration certificate;
- Trust deed;
- PAN or Form no. 60 of the trust.
- Such documents as are required for an individual relating to beneficial owner, managers, officers or employees, as the case may be, holding an attorney to transact on the trust's behalf.

Where the client is an unincorporated association or a body of individuals, it shall submit to the reporting entity, the certified copies of the following documents, or the equivalent e-documents thereof namely:

- Resolution of the managing body of such association or body of individuals;
- PAN or Form no. 60 of the unincorporated association or a body of individuals;
- Power of attorney granted to him to transact on its behalf;

- Such documents as are required for an individual relating to beneficial owner, managers, officers or employees, as the case may be, holding an attorney to transact on the trust's behalf.

- Such information as may be required by the reporting entity to collectively establish the existence of such association or body of individuals.

In case of officially valid document furnished by the client does not contain updated address, the following documents or their equivalent e-documents thereof shall be deemed to be officially valid documents for the limited purpose of proof of address: -

- Utility bill which is not more than two months old of any service provider (electricity, telephone, post-paid mobile phone, piped gas, water bill);
- Municipal tax receipt;
- Pension or family pension payment orders (PPOs) issued to retired employees by Government Departments or Public Sector Undertakings, if they contain the address;
- Letter of allotment of accommodation from employer issued by State Government or Central Government Departments, statutory or regulatory bodies, public sector undertakings, scheduled

commercial banks, financial institutions and listed companies and leave and licence agreements with such employers allotting official accommodation.

Where a client has provided his Aadhaar number for identification and wants to provide a current address, different from the address as per the identity information available in the Central Identities Data Repository, he may give a self-declaration to that effect to the reporting entity.

SUSPICIONS OF MONEY LAUNDERING OR FINANCING OF THE ACTIVITIES RELATING TO TERRORISM

When there are suspicions of money laundering or financing of the activities relating to terrorism or where there are doubts about the adequacy or veracity of previously obtained client identification data, the reporting entity shall review the due diligence measures including verifying again the identity of the client and obtaining information on the purpose and intended nature of the business relationship, as the case may be.

RISK ASSESSMENT

Every reporting entity shall carry out risk assessment to identify, assess and take effective measures to mitigate its money laundering and terrorist financing risk for clients, countries or geographic areas and products, services, transactions or a body or authority duly notified by the Central Government.

The risk assessment mentioned above shall:

- Be documented;
- Consider all the relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied;
- Be kept up to date; and
- Be available to competent authorities and self-regulating bodies.

ENHANCED DUE DILIGENCE (EDD)- VERIFICATION OF IDENTITY OF CLIENT- SECTION 12AA(1)

Every reporting entity shall, prior to the commencement of each specified transaction: -

- Verify the identity of the clients;
- Take additional steps to examine the ownership and financial position including sources of funds of the clients;
- Take additional steps to record the purpose behind conducting the specified transaction and the

intended nature of the relationship between the transacting parties;

- Transaction not allowed, if the client does not furnish the identity;
- Where the client fails to fulfill the conditions laid down under the Act, the reporting entity shall not allow the specified transaction to be carried out.

‘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 terror financing.

MONITORING OF TRANSACTIONS- SECTION 12AA(3)

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.

RETENTION OF RECORDS-SECTION 12AA(4)

The information obtained while applying the enhanced due diligence measures shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

CONCLUSION

The Act and Rules notified thereunder impose obligation on banking companies, financial institutions and intermediaries to verify identity of clients, maintain records and furnish information in prescribed form to Financial Intelligence Unit-India (FIU-IND).

The Finance Ministry’s decision to include specific transactions conducted by Accountants and Company Secretaries on behalf of their clients is expected to heighten their accountability and liability under the PMLA. The move will alter the way they do due diligence of transactions, source of funds examination and reporting of irregularities.

