

Recent Amendments in Compliances: Combating Money Laundering In India

The righteousness of the financial system is seriously threatened by the money laundering acts and terrorism financing. The Financial Action Task Force (FATF) established in 1989 has been instrumental in setting up global standards and executing solutions to stop these illegal activities. In accordance with the recommendations of FATF, The Prevention of Money Laundering Act, 2002 (“PMLA”) was passed in India and the Prevention of Money Laundering Rules were issued thereunder (“PML Rules”) to accommodate the key juridical shell for prosecuting money laundering offences in India. PMLA puts in place a broad structure for Anti Money Laundering (“AML”) compliance requirements befitting financial institutions, banking companies, intermediaries and persons dealing with a designated business or profession (collectively called as “Reporting Entities”).



CS (Dr.) Pallavi Baghel, ACS

Assistant Professor – Lloyd Law College,
Greater Noida, UP

cpallavibaghel@gmail.com

INTRODUCTION

The righteousness of the financial system is seriously threatened by the money laundering acts and terrorism financing. The Financial Action Task Force (“FATF”) established in 1989 has been instrumental in setting up global standards and executing solutions to stop these illegal activities. In accordance with the recommendations of FATE, The Prevention of Money Laundering Act, 2002 (“PMLA”) was passed in India and the Prevention of Money Laundering Rules were issued thereunder (“PML Rules”) to accommodate the key juridical shell for prosecuting money laundering offences in India. PMLA puts in place a broad structure for Anti Money Laundering (“AML”) compliance requirements befitting financial institutions, banking companies, intermediaries and persons dealing with a designated business or profession (collectively called as “Reporting Entities”). AML refers to extant web of legislations, regulations and procedures aiming at unearthing disguised illicit funds and assets transformed as legal income and assets. The AML regulations in India are applied to numerous entities – companies, banks, crypto exchanges, foreign portfolio investors, Non-Governmental Organizations and trusts, etc. and narrow down the ease of transformation of such funds. The reporting entities have to ensure proper implementation of provisions of PMLA and PML rules and are necessitated to undertake specific AML measures

namely, customer identification, enhanced client due diligence, maintenance of records, customer acceptance, reporting and tracking certain transactions.

Recently India had made amendments to its AML laws by expanding the scope of reporting entities to include the representatives of the company named as Director or proxy Nominee Director banking intermediaries and financial companies to aid the investigation agencies in revealing dubious transactions of shell companies. The Ministry of Finance, Government of India, vide its notification dated 03 May, 2023¹ made significant revisions to PMLA and widened its ambit. The key changes also include the expansion of the definition of proceeds of crime, which includes any property involved in money laundering or is connected to any offence under PMLA. Additionally certain amendments have added the Company Secretaries (CS), Chartered Accountants (CA) and Cost and Works Accountants (CWA) who are accountancy professionals. Nonetheless the lawyers and legal professionals are not brought within the amended definition of covered entities under the PMLA.

The three statutory bodies (“SRBs”) which are, ICSI- Institute of Company Secretaries of India, ICAI- The Institute of Chartered Accountants of India and ICMAI- The Institute of Cost Accountants of India have role and duty in regulating the relevant persons who are qualified and entering in the said profession. Additionally they have to perform the roles of supervision, advising and monitoring (such as, enforcing the rules for ensuring high ethical and moral standards are sustained by the professionals practicing such professions) for ensuring the aspirations laid down in the PMLA and its rules are achieved in letter and in spirit. The following legal obligations cast on SRBs in relation to AML, Countering the Financing of Terrorism (“CFT”) and Combating Proliferation Financing (“CPF”):

- I. **To Understand, Mitigate and Manage Money Laundering/Terrorism Financing/ Proliferation Financing Risk** - SRBs ought to take crucial steps to

¹. Ministry of Finance, Department of Revenue, Notification No. S.O. 2036(E) issued on 03 May, 2023, Available at: <https://egazette.gov.in/WriteReadData/2023/245631.pdf>.

spread awareness about and encourage compliance relating to legal provisions on AML, CFT and CPF by their members. SRBs must ensure that the norms and system are in apt place for taking action against the member who fails to comply with AML or CFT or CPF provisions.

- II. **To Monitor and Supervise** – For effectively monitoring relevant persons the SRBs must take measures via, on-site and off-site supervision in accordance with the notifications/guidelines/ethical standards of SRBs.
- III. **To frequently supervise AML/CFT compliances** – SRBs must dynamically set the AML/CFT supervision frequency in line with the identified risks and combine periodic and ad hoc reviews of AML/CFT supervision.
- IV. The SRBs must communicate their regulatory expectations to the regulated members, which includes issuing guidance on suspicious transaction report filing with Financial Intelligence Unit– India ('FIU-IND') to relevant persons and issuing guidance on the procedures for Know your Customer, Client Due Diligence, sanctions screening, transaction monitoring, record keeping and review.

These notifications came in aftermath of allegations levelled against certain known companies and one of the pivotal catalyst is the well-known loan apps scam², wherein certain accounting professionals facilitated the institution of shell companies for these loan platform via, apps. These professionals used their office addresses, became directors and gained access of the bank accounts of these shell companies. Unfortunately the personal data of recipients of loan was compromised and this lead to grave concerns of the data security and privacy. The Indian Government in response took quick legal action and appropriate disciplinary actions against these involved professionals. For the prevention of recurrence of such scams and enhancing accountability. Further vide a notification issued by the Ministry of Finance on 09 May, 2023³, noticeably broadened PMLA by bringing within the ambit of PMLA certain activities which are carried out in the normal course of business on behalf of or for a different person. These notifications unambiguously ensure that the practicing professionals abide in conformation with the PMLA provisions while carrying out critical financial transactions on behalf of their clients.

THE REVAMPED PROVISIONS

- A. **Reporting Entities** – Certain obligations are imposed upon the 'Reporting Entities', which includes financial institutions, banking companies, intermediaries, virtual wallets and 'persons carrying on designated

² Devesh K Pandey, "Enforcement Directorate chargesheet recounts misery of victims in Chinese Loan App Case", *The Hindu*, 18 March, 2023, Available at: <https://www.thehindu.com/news/national/chinese-loan-app-case-enforcement-directorate-chargesheet-recounts-misery-of-victims/article66635357.ece>.

³ Ministry of Finance, Department of Revenue, Notification No. S.O. 2135(E) issued on 09 May, 2023, Available at: <https://egazette.gov.in/WriteReadData/2023/245764.pdf>.

business or profession'. Further the concept of 'persons carrying on designated business or profession' is elaborated by including the individuals who are engaged in specific activities related to playing games of chance in cash or kind enveloping those related with casinos. Furthermore, the coverage extends to include Inspector-General of Registration appointed under the Registration Act, dealers in precious metals or stones, real estate agents, persons engaged in safekeeping and administering cash and liquid securities on behalf of others, and other activities which are designated by the Central Government via, notifications⁴. This implies that Central Government is the authority empowered to notify additional persons and activities to be covered under the ambit of PMLA. So, the Central Government has to play a proactive role and is empowered to adapt the legislations to changing state of affairs and addressing emerging risks in financial sector.

- B. **Accounting Professionals and Financial Activities**– PMLA after the amendment, is applied to 'relevant persons' who are, practicing professionals who have obtained a certificate of practice as Chartered Accountants⁵, Company Secretaries⁶ and Cost and Works Accountants⁷ when they carry out any financial transaction on behalf of their clients.⁸ It is pertinent to note that the financial transactions⁹ or the activities should be done in the course of their profession and mere felicitation is excluded. Financial transactions includes only the transactions involving money, hence, every transaction is not included. The exact scope of these financial activities is not defined, as a result there is lack of precision on these activities therefore, further clarifications in the interpretation are necessary for avoiding any ambiguity.

It is germane here to note that these issued notifications are not applicable to advocates and lawyers who in the course of their profession are undertaking such financial transactions on behalf of their clients. This is due to the client-attorney privileged confidential communication between lawyers and their clients as is granted to them as a fundamental principle of the legal profession.

- C. **Certain Specific Activities Included Under The Purview of PMLA** – On 09 May, 2023 the Government of India issued another notification for including additional specific activities within

⁴ Section 2(1)(sa)(vi) of the Prevention of Money-laundering Act, 2002 (15 of 2003).

⁵ Chartered Accountant who obtains Certificate of Practice under Section 6 of the Chartered Accountants Act, 1949 (38 of 1949).

⁶ Company Secretary who obtains Certificate of Practice under Section 6 of the Company Secretaries Act, 1980 (56 of 1980).

⁷ Cost and Works Accountant who obtains Certificate of Practice under Section 6 of the Cost and Works Accountants Act, 1959 (23 of 1959).

⁸ Ministry of Finance, Department of Revenue, vide, May 03, 2023 Notification- S.O. 2036(E).

⁹ List of certain financial transactions carried on behalf of the client are enumerated in the Notification No. S.O. 2036(E).

the sphere of PMLA and notified that the reporting entities carrying on these specific activities on behalf of or for another are collectively called as 'Trust and Company Service providers'. These certain activities are listed below:

- a. **Formation Agents** - The amendment has widened PMLA by including individuals acting as formation agents for the companies and limited liability partnerships. Nevertheless this provision is not applicable to activities undertaken by Advocates, Chartered Accountants, Company Secretaries and Cost Accountants in practice for the formation of these business entities to the extent of filing the declaration requisite under the Companies Act, 2013. Hence, this amendment ensures the enhancement of the regulation and oversight of the individuals engaged in the formation of these legal entities and also appropriately exempts the qualified professionals engaged in such activities in their professional capacity.
- b. **Directors, Secretaries or Partners**- The PMLA now encompasses individuals acting as Directors, Secretaries or partners in companies, limited liability partnerships or firms who either directly or indirectly. However, the activities carried out by employees within the course of or in relation to their employment on behalf of their employers are explicitly excluded. This is to ensure that the employees performing their designated duties in the course of employment are not subject to PMLA provisions.
- c. **Providers of Registered offices, Business Addresses, Correspondence Address, Accommodation or Administrative offices**- Individuals who provide registered offices, business address, correspondence address, accommodation or administrative office for companies, trusts or limited liability partnerships are now included under PMLA provisions. The exemption to this amendment exists for the activities associated with agreements of lease, sub-lease, tenancy or any other arrangement for the use of land or building or space and also such agreements should be subject to income tax deduction. It is ensured by this provision that individuals engaged in the activities of legitimate leasing on which income tax deductions are applicable are kept out of the purview of PMLA.
- d. **Trustees and Nominee Shareholder**- The amendment now covers trustees for express trusts or other types of trusts and nominee shareholder acting on behalf of others. Nonetheless any activities carried out by the intermediaries like, share transfer agents, stock brokers, portfolio managers, merchant bankers, etc., are definitely excluded.

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COMPLIANCES FOR ACCOUNTING PROFESSIONALS UNDER THESE AMENDMENTS

The contemporary developments in the PMLA have delivered a new spur of duties and commitments for the reporting entities within its expanded ambit to fight money laundering and terrorist financing. The compliances to be made include stricter due diligence mechanisms, improvised reporting requisites and additional monitoring and record keeping compliances. Reporting entities have to strictly comply and monitor client identity maintain records. For enhancing transparency of clients of reporting entities, Rule 10 was amended, according to which the reporting entities must determine if a client is acting on behalf of the beneficial owner and must also ensure by checking the beneficial owner's identity at the initial stage of an account-based relationship with such client.¹⁰

The revised regulations now require the accounting professionals, such as CA, CS and CWA for undergoing a Know Your Customer ("KYC") prior to initiating any work on behalf of their clients. This shows that if the accountants manage their clients' finances then they are now considered as reporting entities. As per these new regulations the accountants must carry out client due diligence (CDD) on the clients' ownership and their financial status.¹¹ The source of their funds and documents relating with the purpose of transaction must also be seen and recorded by the accountants.

The financial transactions notified by the Central Government and which are covered by May 03, 2023 notification comprise acquisitions and selling of immovable properties, management of clients' finances, securities and other assets, management of savings or securities account, organization of contributions for crating, operating or managing companies, limited liability partnerships or trusts and acquisition and selling of business entities.

¹⁰ Rule 10 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 was amended by the Ministry of Finance via, notification issued on 04 September, 2023, Available at: https://fjuindia.gov.in/pdfs/AML_legislation/AMLCTguidelines10032023.pdf.

¹¹ Rule 9 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 provides for 'Client Due Diligence'.

COMPLIANCES FOR REPORTING ENTITIES UNDER THESE AMENDMENTS

The reporting entities have to implement a comprehensive structure and strategies for identifying their clients and the beneficial owners, which includes collection of requisite documents and adopting advanced identity verification apparatus. Rule 7(3) of the PML Regulations cast obligations on reporting entities for evolving internal mechanisms to fulfill the purpose of detecting transactions as are specified under Rule 3(1) and to furnish information about these transactions to FIU-IND.¹² Identity verification can be ensured via, offline Aadhaar and Passport verification or validation of other official documents as are notified by the Central Government.

The reporting entities are required to maintain a record of all activities and transactions in such a manner that allows for reorganization of all individual transactions. Records of clients and beneficial owner identity, accounting documents and business correspondence are also the requisites to be maintained the reporting entities. Except as otherwise authorized by any other applicable laws, the information and records that are retained, confirmed or provided must be kept private and confidential. These records should be maintained for five years from the date of transaction or five years after the business relationship or account is closed, whichever is later.

IMPLICATIONS OF THE AMENDMENTS

Practicing CA, CS and CWA have been brought under the purview of money laundering law by the Finance Ministry though lawyers and legal professionals are explicitly excluded. By excluding advocates and lawyers, the PMLA Amendments have acknowledged the importance of preserving privilege of client-attorney communication and upholding legal confidentiality principle, thereby fosters trust and facilitates open communication. The amendment positively addresses the inclusion of formation agents but it does not provide a clear clarification of the term 'formation agents'. The PMLA strengthens the measures against money laundering by focusing on those individuals who have authority or influence within business organizations and demarcates between individuals who are employees and those having key decision are making roles. The PMLA targets illicit activities while allowing unhindered proceedings legitimate business operations. The amendment makes a distinction between trustees, nominee shareholders and intermediaries while distinguishing between various roles and responsibilities in the financial set-up.


Besides verifying clients' identity before each transaction, the reporting entities are also required to examine the financial position, ownership and source of the funds their clients as well as recording the purpose of transaction and proposed relationship between the parties. The reporting entity cannot proceed further if their client fails fulfilling verification stipulation. This supplemented due diligence is not required for all transactions, rather it is for specified transactions, namely, cash withdrawals or deposits, transactions involving foreign exchange, etc.

Upon the satisfaction of reporting entities that the transaction is suspicious, then they have to report about it to the FIU-IND not later than seven working days from



the date of suspecting such transaction.¹³ The reporting entities have to register themselves on the FIU-IND Portal: FINNET 2.0 and the appointment of a Designated Director and Principal Officer have to made in this behalf. FIU-IND is the national central agency vested with the responsibility of receiving, processing and analysing information associated with suspected financial transactions.¹⁴ Then this information is disseminated to Enforcement Agencies and Foreign FIUs. This has been highlighted by the recent FIU-IND notification released. In order to execute and perform the said obligation the relevant persons must carry out financial transactions and they must necessarily have a robust AML/CFT/CPF. Intelligence sharing and information sharing agreements between public authorities such as, law enforcement agencies and FIU-IND is pivotal for combating money-laundering/terrorism financing/proliferation financing. This relationship should be secure, robust and subject to legal compliances. The information to be shared could be risks of money-laundering/terrorism financing/proliferation financing, case studies of money-launderers and terrorist financiers, feedback on suspicious transaction reporting and sharing targeted confidential information, etc.

CONCLUSION

The Government of India took a significant step forward in bolstering financial security of India and waging a war against money-laundering and related financial crimes. Aligning with the propositions of the FATF, India has demonstrated its commitment to international regulations and combating illicit activities which undermine the integrity of the global financial structure. A paradigm has shifted with these developments to AML in India which requires the reporting entities to adopt profuse all-encompassing compliances and procedures. Nonetheless, it is indispensable for the Government to provide intelligible definitions and guidelines which leave no room for ambiguity. Ample amount of resources and training should be provided to accounting professionals, reporting entities and law enforcement agencies for implementing these provisions of the amendments effectively. Continuous and frequent monitoring and evaluations must be in place for ensuring compliances and identifying areas of refinement. Though the recent amendments to PMLA are a positive initiative, it is at the same time crucial to recognize the prevalent gaps and to work towards their resolution. 

¹² Rules 7(3) and 3(1) of the Prevention of Money-laundering (Maintenance of Records) Rules 2005.

¹³ Detailed under Rule 3(1) the Prevention of Money-laundering (Maintenance of Records) Rules 2005.

¹⁴ Rule 8(2) read with Rule 3(1)(D) of the Prevention of Money-laundering (Maintenance of Records) Rules 2005.