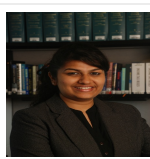


Broadening PMLA Reach: Inclusion of Professionals as Reporting Entities

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India, as a member of the Financial Action Task Force (“**FATF**”), is actively participating in developing and promoting policies against money laundering, terrorist financing, and the financing of weapons of mass destruction. In line with FATF’s objectives, member countries review each other’s anti-money laundering legislations. India is actively prioritizing compliance with FATF Recommendations as its upcoming mutual evaluation is tentatively scheduled for the end of this year. Particularly, Recommendation 22 urges member countries to include lawyers, notaries, independent legal professionals, and accountants involved in the activities mentioned below in [Notification dated May](#)

[3, 2023](#) as “*Reporting Entities*”. Recommendation 22^[1] also addresses the treatment of trusts and company service providers as reporting entities.

The Prevention of Money-Laundering Act, 2002 (**PMLA**) aims to prevent money laundering and enable the confiscation of property associated with such activities. Under PMLA “*Reporting Entities*” are required to verify client and beneficial owner identities, maintain transaction records, and implement enhanced due diligence for specific transactions.

First Notification:

The Ministry of Finance (“**MoF**”) issued a notification vide no. S.O. 2036(E) dated **May 3, 2023** that made changes to the relevant sections of the PMLA. As a result, practicing Chartered Accountants (**CA**), Company Secretaries (**CS**), and Cost and Work Accountants (**CWA**), who carry out *financial transactions* on behalf of their clients, are now required to undergo the Know Your Client (**KYC**) process before commencing any work on behalf of their clients. They are now considered as “*reporting entities*” under PMLA and, *inter alia*, are obligated to report the specified financial transactions undertaken during the course of their professional activities carried out on behalf of their clients, to the Financial Intelligence Unit - India (**FIU-IND**). The intention behind these measures is to hold these professionals accountable for any dubious transactions conducted on behalf of their client

Below financial activities carried out by practicing professionals such as CA, CS and CWA in India are covered by the PMLA:

- i. Buying and selling any immovable property.
- ii. Managing client money, securities, or other assets.
- iii. Management of bank, savings, or securities accounts.
- iv. Organization of contributions for the creation, operation, or management of companies.
- v. Creation, operation, or management of companies, limited liability partnerships or trusts, and buying and selling of business entities.

However, the Ministry has not yet issued any further notification, guidelines etc in this regard. The Government, in collaboration with the Indian institutes for Chartered Accountants, Company Secretaries and Cost Accountants should undertake training sessions for professionals and should refer to practices in other jurisdictions to provide guidance for these practicing professionals on the way forward

Second Notification:

Within a week of issuing the first notification, MoF issued another [Notification dated May 9, 2023](#) and further broadened the scope of the PMLA wherein directors, nominee shareholders, formation agent of Companies/ LLPs are brought under the purview of PMLA.

Below activities when carried out in the course of business on behalf of or for another person are covered by the PMLA:

- i. acting as a formation agent of companies and limited liability partnerships;
- ii. 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;
- iii. providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust;
- iv. 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
- v. acting as (or arranging for another person to act as) a nominee shareholder for another person.

The said notification also excludes from its ambit certain activities carried out by i) CA, CS or CWA, who is engaged in formation of a company to the extent of certifying forms as required under the Companies, Act 2013; ii) any activity that is carried out by an employee on behalf of its employer in the course of his employment or any activity; iii) any activity carried out under a lease

or tenancy agreement where the consideration is subject to a deduction of income tax; and iv) any activity of a person which falls within the meaning of intermediary under the PMLA.

As a result, a wide range of consultants has now been brought under the purview of the PMLA and are now subject to the stringent compliance requirements. The requirements include, *inter alia*, require enhanced client due diligence, transaction reporting, and maintenance of detailed records, which needs to be reported to FIU.

However, the Ministry should clarify the meaning of certain contentious terms such as “formation agent” or “arranging for another person to act as”. Additionally, it is important to establish some threshold value of the financial transactions for reporting to FIU to ensure that small consultants are not burdened with disproportionate compliance requirements.

Third Notification (Latest Notification):

The MoF has now issued third notification vide no. F.NO.9-41/2022-23/Intermediaries/TCSP/FIU-IND. dated **July 17, 2023** to all professionals offering services related to the incorporation of entities and trusts, as well as providing services such as registered office facilities, resident directors, or nominee shareholders. These professionals are collectively referred to as “**Trust and Company Service Providers**” or “**TCSP**”.

TCSP have been covered within the definition of **Reporting Entity**’ under PMLA framework by the virtue of notification issued earlier on May 9, 2023. The current notification clarifies that TCSPs have to strictly comply with the obligations under the PMLA and rules framed thereunder including registration with FIU-IND in Finnet 2.0 portal <https://fiuindia.gov.in/files/misc/finnet2.html>.

It further mandates such Reporting Entities to appoint Principal Officer and Designated Director, formulate risk management policies, perform customer due diligence, record keeping, training of employees and implementation of internal mechanism to detect and report suspicious transactions to FIU-IND.

All reporting entities are subject to various compliance obligations under the PMLA and the Prevention of Money Laundering (Maintenance of Records) Rules, 2005. **The key roles and responsibility of a “reporting entity” is summarized below:**

i. **Registration with FIU-IND** - It is to be noted that registration with FIU-IND is a pre-requisite for a reporting entity to become compliant with the reporting obligations under PMLA. The same must be complied with immediately.

ii. **Verification of Identity** - Every reporting entity shall implement a know-your-client/customer (**KYC**) procedure to verify the identity of its ‘clients’ and the ‘beneficial owner’. The reporting entity is required to file an electronic copy of the KYC records with a Central KYC Records Registry (established under the PMLA) within 10 days of the commencement of the account-based relationship.

iii. **Enhanced Due Diligence** - In case of certain specified transactions i.e., where the cash deposit or withdrawal, transaction in foreign exchange, high value import or remittance, exceeds the specified limit or where there is a high risk of money laundering or terrorist financing, the reporting entity is required to carry out enhanced due diligence prior to the commencement of each such specified transaction, without which such transaction must not be permitted to be carried out.

iv. **Maintenance of Record** - A reporting entity is required to maintain a record of certain transactions for at least 5 years from the date of each such transaction, along with all necessary related information to permit the reconstruction of individual transactions. It is also required to maintain a record of documents evidencing the identity of its clients and beneficial owners as well as account files and business correspondence relating to the clients for a period of 5 years after the business relationship between a client and the reporting entity has ended.

v. **Access to information** - Every reporting entity is responsible for communicating the name, designation, and address of a designated director from its board and the Principal Officer (an officer appointed by the reporting entity) to the authorized officer of the government (“**Authorised Officer**”). The Principal Officer has the obligation to provide specific information to the Authorised Officer.

Additionally, each reporting entity must establish an internal mechanism to detect the transactions mentioned above and to provide information regarding such transactions.

vi. **Submission of monthly reports** - The Principal Officer is required to provide the necessary information to the Authorized Officer within specific timelines as follows:

i) For suspicious transactions, the information should be furnished within 7 days once it has been determined that the transaction is suspicious. Any other relevant information should be provided on a monthly basis, specifically before the 15th day of the following month.

ii) maintain a record of documents that establish the identity of their clients and beneficial owners. They should also retain account files and business correspondence related to their clients.

Our Observations:

The purpose of these notifications is to prevent professionals from unintentionally or knowingly facilitating suspicious financial transactions. It is noteworthy that the actions associated with establishing shell companies using proxies have also been included within the scope of the PMLA. The third notification offers some clarification regarding TCSPs and emphasizes the necessity for them to fully adhere to the obligations outlined in the PMLA and the rules established under it. This includes the requirement for TCSPs to register with FIU-IND.

In our perspective, it is essential for all practicing professionals, to exercise heightened caution when performing client KYC and due diligence. In line with global initiatives aimed at mitigating the risks associated with money laundering and terrorist financing activities, several jurisdictions now mandate that these professionals take reasonable steps to identify and authenticate a client's identity before commencing work on a matter. They are also required to gather evidence regarding the nature and purpose of business relationships involved in specific types of cases.

Furthermore, it is anticipated that the Ministry will issue additional notifications, FAQs, guidelines, and other relevant materials including FAQs and guidance notes on AML/KYC Standards for its members to ensure the effective implementation of the reporting and compliance requirements under the PMLA. However, it is also expected of the Ministry that it does work alongwith other professional bodies to frame the relevant guidelines, who have reporting obligations pursuant to these regulations and nature of business to ensure that the larger purpose behind this regulation doesn't gets lost in the professional outcry on account of any ambiguity on professional liability while carrying out any such activities.

[1] See: <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf> , last visited on July 19, 2023