

## PMLA Amendments - Casting Onus on Practicing Professionals

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Money laundering is a global menace that undermines the integrity of financial systems and perpetuates criminal activities. In response and India's commitment to combat this illicit practice, the Prevention of Money Laundering Act, 2002 (**PMLA**) was enacted. This comprehensive legislation aims to address the offense of legitimizing income or profits derived from illegal sources.

The PMLA was enacted in alignment with India's global commitment under the Vienna Convention to combat money laundering. It came into effect on July 1, 2005, as a robust legal framework to tackle the ever-evolving techniques employed by criminals to launder illicit proceeds. By criminalizing the act of money laundering, the PMLA serves as a deterrent and empowers authorities to take proactive measures to disrupt financial crimes.

The primary objective of the PMLA is to prevent and control money laundering activities in India. It provides a comprehensive definition of money laundering and lays down the legal framework to investigate, prosecute, and confiscate the proceeds of crime.

Under the PMLA, the government and public authorities are granted the authority to confiscate properties and assets derived from illegally obtained proceeds. This provision not only aims to disrupt the financial infrastructure supporting criminal activities but also acts as a strong deterrent to potential money launderers.

PMLA broadly imposes obligation on banks, financial institutions, designated non-financial businesses and professions, financial intermediaries, reporting entities and certain individuals.

For the effective implementation of the PMLA, the Financial Intelligence Unit - India (**FIU-IND**) was established in 2004. Serving as the central agency for collecting, analyzing, and disseminating financial intelligence, FIU-IND plays a crucial role in India's anti-money laundering efforts. It centralizes and coordinates most of India's Anti-Money Laundering and Combating the Financing of Terrorism (**AML/CFT**) strategies, ensuring a holistic approach to tackling financial crimes.

The Enforcement Directorate (**ED**) has been appointed as the enforcement body under the PMLA. Endowed with extensive powers, the ED acts as the primary investigating agency for money laundering offenses. It has the authority to conduct searches, seize assets, and initiate legal proceedings against individuals or entities involved in money laundering activities.

In addition to its enforcement role, the ED also serves as the adjudicating authority under the PMLA. This dual responsibility ensures a streamlined process for investigating, prosecuting, and adjudicating money laundering cases, thereby strengthening the efficacy of the Act.

### Recent Notifications to include certain other practicing professionals:

With the above background, the government has recently issued two notifications dated [May 3, 2023](#) and [May 9, 2023](#).

On **May 3, 2023**, the Department of Revenue, Ministry of Finance, Government of India issued a notification making changes to the relevant sections of PMLA whereby practicing Chartered accountants (**CA**), company secretaries (**CS**), and cost and work accountants (**CWA**), that carry out financial transactions on behalf of their clients, have now been brought under the purview of PMLA are required to undergo the Know Your Client (**KYC**) process before starting any work on behalf of their clients and report the specified financial transactions undertaken during the course of their profession on behalf of their clients to FIU. The intention seems to make these professionals responsible for any dubious transactions handled on behalf of their clients.

The below financial activities, if 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.

On **May 9, 2023**, the Department of Revenue, Ministry of Finance, Government of India issued another notification wherein directors, nominee shareholders, formation agent of Companies/LLPs are brought under the purview of PMLA.

The said notification is not clear whether it seeks to cover non-executive directors or independent directors (who are not involved in day to day business activities) or whole-time directors as well.

The 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 clarifies that certain activities shall not be covered under PMLA such as activities carried out by a 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.

**Similar requirements under other Jurisdictions:**

Professionals operating across multiple jurisdictions, such as lawyers, accountants, auditors, and consultants, are already comprehensively covered under the AML and counter financing of terrorism CFT guidelines in their respective regions. These guidelines, established by regulatory bodies and authorities, require professionals to adhere to stringent compliance measures aimed at combating money laundering, terrorist financing, and other illicit activities. By ensuring compliance with AML/CFT guidelines specific to their jurisdictions, these professionals play a crucial role in upholding the integrity of the financial system and promoting global efforts to combat financial crimes. Below are details of few such jurisdictions:

Jurisdiction	AML / CFT requirements for professionals
<p><b>Singapore</b></p>	<p>Singapore has established a strict and rigorous AML / CFT regime through its comprehensive and sound legal, institutional, policy and supervisory frameworks to ensure that Singapore is not a safe haven for money launderers and terrorist financiers.</p> <p>From November 1, 2014, professional accountants, including public accountants needed to abide by enhanced mandatory requirements on implementing controls and procedures for AML / CFT issued by the Institute of Singapore Chartered Accountants[1].</p> <p>Singapore has also notified AML / CFT Guidelines for Corporate Service Providers i.e. Registered Filing Agents[2]. Filing Agents means a person who or which, in the course of his or its business, carries out on behalf of any other person any transaction with Accounting and Corporate Regulatory Authority ('ACRA') using the electronic transaction system or any other means permitted or directed by ACRA if the electronic transaction system is unavailable.</p>
<p><b>United Kingdom</b></p>	<p>The UK has an extensive AML/CFT regime[3], drawn in part from international standards, which works to protect against these risks. The AML guideline of UK is applicable to organizations that provide accounting, auditing, tax advisory services and a trust or company service provider in the UK. Further, UK also has an AML Guidance for the legal fraternity, namely Legal Sector Affinity Group Anti-Money Laundering Guidance for the Legal Sector 2023[4]</p>
<p><b>Hong Kong</b></p>	<p>Hong Kong's anti-money laundering regulations are principally based on the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) and on the Banking Ordinance (BO)[5]. Hong Kong has also issued Guidelines on AML / CFT for Professional Accountants as well as for Chartered Secretaries.</p>
<p><b>USA</b></p>	<p>In the United States, the primary anti-money laundering laws are enacted at the federal level. The Bank Secrecy Act (<b>BSA</b>) is the foundation of AML laws in the US[6]. Under the BSA, financial institutions, including banks, credit unions, money services businesses, securities firms and law firms, are required to establish comprehensive AML programs. These programs encompass customer due diligence, ongoing monitoring, suspicious activity reporting, and the appointment of a designated AML compliance officer.</p>

**Our Observations:**

In our perspective, it is essential for all practicing professionals, including CAs, CSs, or CWAs, 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 particular matter. They are also required to gather evidence regarding the nature and purpose of business relationships involved in specific types of cases.

To prevent these professionals from inadvertently or unknowingly engaging in money laundering and terrorist financing activities, thorough client due diligence measures are mandated.

Additionally, the Government, in collaboration with institutions such as the Institute of Chartered Accountants of India or the Institute of Company Secretaries of India, may refer to practices in other jurisdictions and establish AML/CFT guidelines and trainings to provide guidance for these practicing professionals on the way forward in these evolving times.

[1] See: <https://isca.org.sg/media/780574/ep-200-mar-2017.pdf> , last visited on June 19, 2023

[2] See: [https://www.acra.gov.sg/docs/default-source/default-document-library/corporate-service-providers/rfa-guidelines\\_v2-4\\_13-jan-2023.pdf](https://www.acra.gov.sg/docs/default-source/default-document-library/corporate-service-providers/rfa-guidelines_v2-4_13-jan-2023.pdf) , last visited on June 15, 2023

[3] See: [https://www.ccab.org.uk/wp-content/uploads/2022/05/1\\_AMLGAS-Final-May-2022.pdf](https://www.ccab.org.uk/wp-content/uploads/2022/05/1_AMLGAS-Final-May-2022.pdf) , last visited on June 15, 2023

[4] See: <https://www.lawsociety.org.uk/topics/anti-money-laundering/anti-money-laundering-guidance> , last visited on June 15, 2023

[5] See: <https://www.hkma.gov.hk/eng/key-functions/banking/anti-money-laundering-and-counter-financing-of-terrorism/ordinances-statutory-guidelines/>

[6] See: <https://www.fincen.gov/resources/statutes-and-regulations/bank-secrecy-act#:~:text=The%20Currency%20and%20Foreign%20Transactions,detect%20and%20prevent%20money%20laundering.> , last visited on June 15, 2023