

Obligations of Reporting Entities under PMLA

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CHAPTER IV
OBLIGATIONS OF BANKING
COMPANIES, FINANCIAL
INSTITUTION AND
INTERMEDIARIES
AND REPORTING ENTITIES

Section 11A- Verification of Identity by Reporting Entity:

- ◆ Authentication under the Aadhaar (offline/online) / passport
- ◆ Verify the identity of its Clients and the Beneficial Owner

Section 12. Reporting Entity to Maintain & Furnish Records

- ◆ Maintain a record of all transactions, whether (attempted or executed) the nature and the value of which may be prescribed
- ◆ Furnish information to the Director
- ◆ Maintain a record of documents evidencing identity of its clients and beneficial owners
- ◆ Maintain a record of documents evidencing account files
- ◆ Maintain a record of documents evidencing business correspondence
- ◆ The records to be maintained for a period of five years from the date of transaction or date of ending of business relationship, whichever is later.

Section 12 A- Providing information to the Director

- ◆ Director may call for the information under Section 11A, 12 or 12AA.
- ◆ Reporting Entity to furnish information as may be specified

◆Section 12AA Enhanced Due Diligence

Every Reporting Entity to do following before commencement of each specified transaction:

- ◆Verification of identity of the clients by authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016)
- ◆Take additional steps to examine the ownership and financial position, including sources of funds of the client

Contd.....

- ❖ Take additional steps 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 above conditions, the reporting entity to not allow the specified transaction to be carried out.
- ❖ Reporting Entity to increase the monitoring of the business relationship with the client and to make greater scrutiny of transactions if these are considered suspicious or likely to involve proceeds of crime
- ❖ Above-said information to be maintained for a period of five years from the date of transaction between a client and the reporting entity.

◆ “Specified Transaction” means--

- (a) any withdrawal or deposit in cash, exceeding such amount;
- (b) any transaction in foreign exchange, exceeding such amount;
- (c) any transaction in any high value imports or remittances;
- (d) 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

“Suspicious Transaction” as per Rule 2(g) of PML(Maintenance of Records) Rules, 2005

- ◆ It includes ‘transaction’ and “attempted transaction” whether or not made in cash, which to a person acting in good faith-
 - (a) gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act, regardless of the value involved; or
 - (b) appears to be made in circumstances of unusual or unjustified complexity; or
 - (c) appears to have no economic rationale or bona fide purpose; or
- ◆ gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism;

“Transaction” as per Rule 2(h) of PML(Maintenance of Records) Rules, 2005

◆ means a purchase, sale, loan, pledge, gift, transfer, delivery or the arrangement thereof and includes -

- (i) opening of an account;
- (ii) deposits, 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;
- (iii) the use of a safety deposit box or any other form of safe deposit;
- (iv) entering into any fiduciary relationship;
- (v) any payment made or received in whole or in part of any contractual or other legal obligation;
- (vi) any payment made in respect of playing games of chance for cash or kind including such activities associated with casino; and
- (vii) establishing or creating a legal person or legal arrangement.

Section 13- Powers of Director to Make Inquiries & Impose Fine

- ◆ Make inquiry as he thinks fit to fulfil obligations of Reporting Entity
- ◆ Order an audit by an Accountant from panel of the accountants maintained by the Central Government
- ◆ In case of failure by Reporting Entity, the Director may:
 - (a) Issue warning in writing
 - (b) Direct for compliance
 - (c) Direct for sending report in prescribed manner
 - (d) Impose monetary penalty from Rs. 10,000 to Rs. 1 Lac for each failure upon Reporting Entity, or its designated director on the Board or an employee

Section 15- Procedure and manner of furnishing information by reporting entity

- ◆ Central Government may in consultation with the RBI, prescribe the procedure and manner of maintaining and furnishing information by a reporting entity under Section 11A, Section 12(1) and Section 12 AA (1)

◆ What is Reporting Entity?

SECTION 2 (1) (wa) defines reporting entity

Reporting Entity means

- (a) A banking company,
- (b) Financial institution,
- (c) Intermediary, or
- (d) A person carrying on a designated business or profession

◆ What is Designated Business or Profession?

Section 2(1)(sa) defines Person carrying on designated business or Profession means:

- (i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;
- (ii) Inspector-General of Registration appointed under section 3 of the Registration Act, 1908, as may be notified by the Central Government;

Contd.....

- (iii) Real estate agent, as may be notified by the Central Government;
- (iv) Dealers in precious metals, precious stones and other high value goods, as may be notified by the Central Government;
- (v) Person engaged in safekeeping and administration of cash and liquid securities on behalf of other person, as may be notified by the Central Government,
- (vi) Person carrying on such other activities as the Central Government may by notification, so designate, from time to time

The Ministry of Finance on 07.03.2023, issued the notification for amendment in Section 2(1)(sa) by virtue of power under Section 2(1)(sa)(vi).

The following activities when carried out for or on behalf of another natural or legal person in the course of business as an activity for the purposes of said sub sub- clause, namely:-

(i) exchange between virtual digital assets and fiat currencies;

(ii) exchange between one or more forms of virtual digital assets;

Contd.... 

- (iii) transfer of virtual digital assets;
- (iv) safekeeping or administration of virtual digital assets or instruments enabling control over virtual digital assets; and
- (v) participation in and provision of financial services related to an issuer's offer and sale of a virtual digital asset.

Explanation:- For the purposes of this notification “virtual digital asset” shall have the same meaning assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961 (43 of 1961).

The Ministry of Finance on 03.05.2023, issued the notification, notifying financial transactions carried out by a relevant person on behalf of his client, in the course of his or her profession, in relation to the following activities:

- (i) Buying and selling of any immoveable property;**
- (ii) Managing of client money, securities or other assets;**
- (iii) Management of bank, savings or securities accounts;**
- (iv) Organisation 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,**

Shall be an activity for the purposes of the said sub-section.

Explanation 1.- For the purposes of this notification 'relevant person' includes

- (i)** 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;
- (ii)** 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;
- (iii)** 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.

Explanation 2.- For the purposes of this notification 'firm' shall have the same meaning assigned to it in sub-clause (i) of clause (23) of section 2 of the Income-tax Act, 1961 (43 of 1961).

The Notification specifies that individual CA, CS and CWA working independently or through a Firm doing on behalf of a client activities in particular mentioned at (i) – (v) will fall under definition of 2(1)(sa) and thus will be further covered under Section 2(1)(wa).

The Ministry of Finance on 09.05.2023 issued another notification including activities carried on by a person on behalf of client, such person will fall under definition of Section 2(1)(sa):

- (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**

Exceptions are:

- (a)** any activity that is carried out as part of any agreement of lease, sub-lease, tenancy or any other agreement or arrangement for the use of land or building or any space and the consideration is subjected to deduction of income-tax as defined under section 194-I of Income-tax Act, 1961 (43 of 1961); or
- (b)** any activity that is carried out by an employee on behalf of his employer in the course of or in relation to his employment; or
- (c)** any activity that is carried out by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of a company to the extent of filing a declaration as required under clause (b) of sub-section (1) of section 7 of Companies Act, 2013 (18 of 2013); or
- (d)** any activity of a person which falls within the meaning of an intermediary as defined in clause (n) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003).

◆ Who is Client?

Section 2(1)(ha) defines client as: person who is engaged in a financial transaction or activity with reporting entity and included a person on whose behalf the person who engaged in the transaction or activity, is acting

◆ What is a Beneficial Owner?

Section 2(1)(fa) defines beneficial owner as an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person.

RULES

IN SUPPORT OF THE PROVISIONS
CONTAINED IN THE ACT

The Prevention of Money-Laundering (PMLA) (Maintenance of Records) Rules, 2015

Rule 3- Maintenance of records of transaction (nature and value)

(1) Every reporting entity shall maintain the record of all transaction including, the record of-

(A) All cash transactions of the value of more than 10 Lakhs rupees or its equivalent in foreign currency. Contd.....

(B) 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;

(BA) All transactions involving receipts by non-profit organisations of value more than rupees ten lakh, or its equivalent in foreign currency; Contd....

- (C) All cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions;
- (D) All suspicious transactions whether or not made in cash and by way of from list (i) to (v)
- (E) All cross border wire transfers of the value of more than five lakh rupees or its equivalent in foreign currency where either the origin or destination of fund is in India;
- (F) All purchase and sale by any person of immovable property valued at fifty lakh rupees or more that is registered by the reporting entity, as the case may be

Rule 8. Furnishing of information to the Director.-

- (1)** Information in respect of transactions referred to in clauses (A), (B), (BA), (C), and (E) of sub-rule (1) of Rule 3 every month by the 15th of the succeeding month.
- (2)** Information promptly in writing or by fax or by electronic mail in respect of transaction referred to in clause (D) of sub-rule (1) of Rule 3 not later than seven working days on being satisfied that the transaction is suspicious.

Contd.....

- (3) Information in respect of transaction referred to in clause (F) of sub-rule (1) of Rule 3 every quarter to the Director by the 15th day of the month succeeding the quarter.
- (4) For the purpose of this rule, delay of each day in not reporting a transaction or delay of each day in rectifying a mis-reported transaction beyond the time limit as specified in this rule shall constitute a separate violation.

Rule 9. Due Diligence

Rule 9(1)(a) at the time of commencement of an account-based relationship-

- (i) Identify its clients, verify their identity, obtain information on the purpose and intended nature of the business relationship; and
- (ii) Determine whether a client is acting on behalf of a beneficial owner, and then identify the beneficial owner and take all steps to verify the identity of the beneficial owner

Rule 9(1)(b): In any other cases, verify identity while carrying out transaction of an amount equal to or exceeding Rs. 50 Thousand, whether as single transaction or several transaction which appears as to be connected

1A- Every reporting entity shall within 10 days after the commencement of account-based relationship with a client, file the electronic copy of the client's KYC records with Central KYC Records Registry

1B- The Central KYC Records Registry shall process the KYC records received from a reporting entity for de-duplicating and issue a KYC Identifier for each client to the reporting entity, which shall communicate the KYC Identifier in writing to their client

1C- Where a client, for the purposes of clause (a) and clause (b), submits a KYC Identifier to a reporting entity, then such reporting entity shall retrieve the KYC records online from the Central KYC Records Registry by using the KYC Identifier and shall not require a client to submit the same KYC records or information or any other additional identification documents or details (except in some given circumstances)

1D- A reporting entity after obtaining additional or updated information from a client under sub-rule (1C), shall as soon as possible furnish the updated information to the Central KYC Records Registry which shall update the existing KYC records of the client and the Central KYC Records Registry shall thereafter inform electronically all reporting entities who have dealt with the concerned client regarding updation of KYC record of the said client

1E- The reporting entity which performed the last KYC verification or sent updated information in respect of a client shall be responsible for verifying the authenticity of the identity or address of the client.

1F- A reporting entity shall not use the KYC records of a client obtained from the Central KYC Records Registry for purposes other than verifying the identity or address of the client and shall not transfer KYC records or any information contained therein to any third party unless authorised to do so by the client or by the Regulator or by the Director

1G- The regulator shall issue guidelines to ensure that the Central KYC records are accessible to the reporting entities in real time.

Rule 10A. Furnishing of Report to Director.-

- ◆(1) The persons referred to in clause (c) of sub-section (2) of section 13 of the Act shall furnish reports on the measures taken to the Director every month by the 10th day of the succeeding month.
- ◆(2) The Director may relax the time interval in sub-rule (1) above to every three months on specific request made by the reporting entity based on reasonable cause.

OTHER COUNTRIES IN CONSONANCE OF FATF RECOMMENDATION

CANADA

Within the private sector, there are over 24,000 Canadian financial institutions and designated non-financial businesses and professions with reporting obligations under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA). This includes accountants and accounting firms; agents of the Crown; British Columbia notaries; casinos; dealers in precious metals and stones; financial entities; life insurance companies, brokers, and agents; money services businesses,

including, for example, virtual currency dealers, crowd-funding platforms, payment service providers, and armoured car companies; real estate brokers, sales representatives, and developers; and securities dealers. These entities, known as reporting entities, play a critical frontline role in efforts to prevent and detect money laundering and terrorist financing.

EUROPE

◆ EU “Single Rulebook”- regulation - with provisions on conducting due diligence on customers, transparency of beneficial owners and the use of anonymous instruments, such as crypto-assets, and new entities, such as crowd-funding platforms. It also includes provisions on so-called “golden” passports and visas.

- ◆ The 6th Anti-Money Laundering- directive- containing national provisions on supervision and Financial Intelligence Units, as well as on access for competent authorities to necessary and reliable information, e.g., beneficial ownership registers and assets stored in free zones.
- ◆ The regulation establishing the European Anti-Money Laundering Authority (AMLA) with supervisory and investigative powers to ensure compliance with AML/CFT requirements.

UNITED STATES

Firms must comply with the Bank Secrecy Act and its implementing regulations ("AML rules"). The purpose of the AML rules is to help detect and report suspicious activity including the predicate offenses to money laundering and terrorist financing, such as securities fraud and market manipulation.

FINRA (The Financial Industry Regulatory Authority) reviews a firm's compliance with AML rules under FINRA

Rule 3310, which sets forth minimum standards for a firm's written AML compliance program. The basic tenets of an AML compliance program under FINRA 3310 include the following.

1. The program has to be approved in writing by a senior manager.
2. It must be reasonably designed to ensure the firm detects and reports suspicious activity.
3. It must be reasonably designed to achieve compliance with the AML Rules, including, among others, having a risk-based customer identification program (CIP) that enables the firm to form a reasonable belief that it knows the true identity of its customers.
4. It must be independently tested to ensure proper implementation of the program.

5. Each FINRA member firm must submit contact information for its AML Compliance Officer through the FINRA Contact System (FCS).
6. Ongoing training must be provided to appropriate personnel.
7. The program must include appropriate risk-based procedures for conducting ongoing customer due diligence, including (i) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and, (ii) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, including information regarding the beneficial owners of legal entity customers.

Thank You

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