

## Necessary Compliances under PMLA

Date : October 20,2022



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The Prevention of Money Laundering Act, 2002 (hereinafter referred as 'PMLA') is a significant measure undertaken in order to curb monies laundered using the financial system. In this regard, the PMLA levy liabilities upon the individuals as well as the institutions involved in a transaction to maintain record and furnish such record to the governmental agency when demanded. The Government has framed Prevention of Money Laundering (Maintenance of Records) Rules, 2015 (hereinafter referred as 'Rules 2015') which further elaborates on the obligations and requirements to be complied by the institutions.

Chapter IV (Obligations of Banking Companies, Financial Institutions and Intermediaries) of the PMLA deals with the law pertaining to compliances to be undertaken by the reporting entities. The "reporting entity" is defined u/s 2(1)(wa) which includes "banking company" (defined u/s 2(1)(e) of PMLA), "financial institution" (defined u/s 2(1)(l) of PMLA), intermediaries (defined u/s 2(1)(n) of PMLA) and "person carrying on designated business or profession" (defined u/s 2(1)(sa) of PMLA). Therefore, the scope of "reporting entity" is wide to include banks, non-banking finance companies (NBFCs), stock-broker, entities registered under Forward Contract (Regulation) Act (FCRA) or Pension Fund Regulatory & Development Authority or Securities Contract (Regulation) Act (SCRA), real estate agents, officers under Registration Act, insurance companies etc. Also, the Master Direction - Know Your Customer (KYC) Direction 2016<sup>[1]</sup> issued by the Reserve Bank of India (RBI) includes the "regulated entities" in "reporting entity".

The Rules 2015 under Rule 3 provides that the "regulated entity" shall maintain records with respect to the following transactions:-

*"(1) Every reporting entity shall maintain the record of all transactions including, the record of*

*(A) all cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency;*

*(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;*

*(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<sup>[2]</sup> whether or not made in cash and by way of-*

*(i) deposits and credits, withdrawals into or from any accounts in whatsoever name they are referred to in any currency maintained by way of:*

*(a) cheques including third party cheques, pay orders, demand drafts, cashiers cheques or any other instrument of payment of money including electronic receipts or credits and electronic payments or debits, or*

*(b) travellers cheques, or*

*(c) transfer from one account within the same banking company, financial institution and intermediary, as the case may be, including from or to Nostro and Vostro accounts, or*

*(d) any other mode in whatsoever name it is referred to;*

*(ii) credits or debits into or from any non-monetary accounts such as d-mat account, security account in any currency maintained by the banking company, financial institution and intermediary, as the case may be;*

*(iii) 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 any of the following:-*

*(a) payment orders, or*

*(b) cashiers cheques, or*

*(c) demand drafts, or*

*(d) telegraphic or wire transfers or electronic remittances or transfers, or*

*(e) internet transfers, or*

*(f) Automated Clearing House remittances, or*

- (g) lock box driven transfers or remittances, or
- (h) remittances for credit or loading to electronic cards, or
- (i) any other mode of money transfer by whatsoever name it is called;
- (iv) loans and advances including credit or loan substitutes, investments and contingent liability by way of:
  - (a) subscription to debt instruments such as commercial paper, certificate of deposits, preferential shares, debentures, securitized participation, inter bank participation or any other investments in securities or the like in whatever form and name it is referred to, or
  - (b) purchase and negotiation of bills, cheques and other instruments, or
  - (c) foreign exchange contracts, currency, interest rate and commodity and any other derivative instrument in whatsoever name it is called, or
  - (d) letters of credit, standby letters of credit, guarantees, comfort letters, solvency certificates and any other instrument for settlement and/or credit support;
  - (v) collection services in any currency by way of collection of bills, cheques, instruments or any other mode of collection in whatsoever name it is referred to.

**(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"**

The PMLA u/s 12 prescribes that the reporting entity shall maintain record of all the transactions (as per Rule 3) for a period of 5 years after the cessation of the relationship between the client and the reporting entity.

#### **KNOW YOUR CUSTOMER (KYC) REQUIREMENTS**

The Rules 2015 under Rule 9 provides detailed compliance requirement under the PMLA. The person (individual or juristic person) shall be required to provide information to the reporting entity at the time of commencement of account-based relationship or at the time of carrying out the transaction for an amount equal to or exceeding Rs. 50,000/- or any international money transfer operations. The importance of KYC is to identify the beneficial owner and to maintain the records of transactions as required under Rule 3. The term "beneficial owner" has been elaborated under Rule 9(3) which shall include:

"(a) where the **client is a company**, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means. Explanation.—For the purpose of this sub-clause

1. Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company;

2. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

(b) where the **client is a partnership firm**, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen per cent. of capital or profits of the partnership;

(c) where the **client is an unincorporated association or body of individuals**, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen per cent. of the property or capital or profits of such association or body of individuals;

(d) where no natural person is identified under (a) or (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

(e) where the **client is a trust**, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen per cent. or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership; and

(f) where the client or the owner of the controlling interest is an entity listed on a stock exchange in India, or it is an entity resident in jurisdictions notified by the Central Government and listed on stock exchanges in such jurisdictions notified by the Central Government, or it is a subsidiary of such listed entities, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such entities."

#### **DOCUMENTS TO BE SUBMITTED FOR KYC**

A.FOR INDIVIDUAL (Rule 9(4))

- (i) Aadhar number

(ii) Permanent Account Number (PAN) (if not available then certified copy of "officially valid document"<sup>[3]</sup> having his identity and address, one recent photograph and other document required by reporting entity)

(iii) Any other documents required by reporting entity in regard of nature of business and financial status of the client.

**B. FOR COMPANIES (Rule 9(6))**

(i) Certificate of incorporation.

(ii) Memorandum and Articles of Association

(iii) Permanent Account Number of the company

(iv) a resolution from the Board of Directors and power of attorney granted to its managers, officers or employees to transact on its behalf

(v) 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;

(vi) Documents of beneficial owner, managers, officers or employees as required under Rule 9(4).

**C. FOR PARTNERSHIP FIRM (Rule 9(7))**

(i) registration certificate

(ii) partnership deed

(iii) an officially valid document in respect of the person holding an attorney to transact on its behalf.

**D. FOR TRUST (Rule 9(8))**

(i) registration certificate

(ii) trust deed

(iii) Permanent Account Number or Form No.60 of the trust

(iv) Documents of beneficial owner, managers, officers or employees as required under Rule 9(4).

**E. FOR UNINCORPORATED ASSOCIATION OR BODY OF INDIVIDUAL (Rule 9(9))**

(i) resolution of the managing body of such association or body of individuals

(ii) Permanent account number or Form No.60 of the unincorporated association or a body of individuals

(iii) power of attorney granted to him to transact on its behalf

(iv) Documents of beneficial owner, managers, officers or employees as required under Rule 9(4).

As per Rule 9(18), if the official valid documents does not contain updated address, the following documents may be deemed to be officially valid documents solely for the purpose of proof of address:-

*"(a) utility bill which is not more than two months old of any service provider (electricity, telephone, post-paid mobile phone, piped gas, water bill);*

*(b) property or Municipal tax receipt;*

*(c) pension or family pension payment orders (PPOs) issued to retired employees by Government Departments or Public Sector Undertakings, if they contain the address;*

*(d) 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:"*

The Client thereafter shall be required to furnish the updated official valid documents with the current address within 3 months.

**REPORTING ENTITY'S POWER TO DENY SPECIFIED TRANSACTIONS**

Section 12AA of PMLA prescribes that prior to commencement of specified transaction, the reporting entity shall undertake necessary steps to identify the clients using Aadhar, ownership and financial position including the source of funds of the clients and any other additional steps. If the clients fail to satisfy the reporting entity, the entity has power to not allow the specified transaction.

**PENALTY FOR NON-COMPLIANCE OF CHAPTER-IV BY REPORTING ENTITY**

The Central Government vide Notification dated July 1, 2005 has appointed Director of Financial Intelligence Unit, India (hereinafter referred as 'FIU') to exercise powers u/s 13 of the PMLA.

The FIU u/s 13 has power to issue show cause notice to the reporting entity on account of failure to duly comply with the requirement of Chapter-IV and also adjudicate upon such show cause notice. If non-compliance is found, after adjudication, the Director of FIU shall pass order with the following direction including levy penalty of not less than Rs. 10,000/- but not more than Rs. 1,00,000/- for each failure:-

*"(a) issue a warning in writing; or*

*(b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or*

*(c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or"*

## **CONCLUSION**

The PMLA and rules framed thereunder provides compliance requirements to be undertaken by the assessee as well as the reporting entity in order to identify the suspicious transactions which shall resultantly highlight the commission of offence of money laundering. Such central reporting system ensures that the financial institutions are not used to support the laundering activities and resultantly affect the terrorism, counterfeit and other grave offences. In order to support the financial ecosystem, it is vital for the assessee and reporting agencies to ensure that the rules and directions issued by the government through FIU or RBI or any other agency is duly complied in letter and spirit.

However, central repository of such sensitive data having financial information, identity, address and other information is always exposed to be hacked or utilised by third-party for their own purposes. The Hon'ble Supreme Court in **Justice K. S. Puttaswamy & Anr. vs Union Of India & Ors.** [\[LSI-350-SC-2018\(NDEL\)\]](#) has recognized the right to privacy under Article 21 of Constitution of India but due to absence of any legislation with regard to the data protection, reporting entities are often using sensitive information of clients either by themselves or by third-party. Hence, the need for a statute is quintessential to regulate and protect the data and its usage by such reporting entities.

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[\[1\]](#) Master Direction DBR.AML.BC.No.81/14.01.001/2015-16 issued by the Reserve Bank of India (RBI) [https://www.rbi.org.in/Scripts/BS\\_ViewMasDirections.aspx?id=11566](https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=11566) (last accessed on 14.10.2022)

[\[2\]](#) Defined under Rule 2(1)(g), Rules 2015

[\[3\]](#) Defined under Rule 2(1)(d).