

## Evaluating the New Obligations of CA, CS and CWA as Reporting Entity under PMLA

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The Prevention of Money Laundering Act, 2002 (hereinafter referred as “PMLA” or “Act”) has gone through many amendments in the past few years that has vastly increased the scope of the Act. The Act serves a dual purpose in the country, one of which is to be preventive in nature and other is regulatory or penal. Further, the object of PMLA is to protect the sovereignty and integrity of the financial system of the nation from the acts of money laundering and other offences. The recent addition to the Act is through Notification<sup>[1]</sup> dated 03.05.2023 wherein the definition of Regulating Entity is extended to the practising Corporate Professionals such as CA, CS and CWA.

The offence of money laundering is defined under Section 3 of PMLA wherein any person directly or indirectly involved in proceeds of crime is said to have committed the offence of money laundering. The term “proceeds of crime” is defined under section 2(u) of PMLA which pertains to

any property derived, obtained directly or indirectly, as a result of criminal activity by any person relating to a scheduled offence or “the value of such property”.

In lieu of the above, the Government of India has recently issued a notification under section 2(1)(sa) of PMLA wherein the ambit of “Reporting Entity” has been widened to include practising Corporate Professionals such as CA, CS, and CWA in order to prevent money laundering in the country. The said notification has broadened the scope of the Act for practising corporate professionals who are carrying out financial transactions for their clients.

### Features of the Notification

The said notification entails that the financial transactions carried out by relevant person i.e. CA<sup>[2]</sup>, CS<sup>[3]</sup> or CWA<sup>[4]</sup>, or their firms<sup>[5]</sup> on behalf of their client, in the course of their profession shall be activities in relation to the following:-

- (i) buying and selling of any immovable property;
- (ii) managing of client money, securities or other assets;
- (iii) management of bank, savings or securities accounts; organization of contributions for the creation, operation or management of companies;
- (iv) creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities;

Further, the Finance Ministry clarified vide **Notification No. S.O. 2135(E) Dated 9th May, 2023** that the following activities shall not be regarded as an activity for the purposes of sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Act, namely:-

- (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).

### Reporting Entity -CA, CS and CWA

The gamut of the matter is that by introducing this new amendment to the Act the Government has brought practising corporate professionals (CA,CS, and CWA) under the scope of regulating entity as defined under section 2(1)(wa) of PMLA, meaning that CA, CS and CWA are now liable to carry out compliance activities under PMLA. It is prima facie from the definition under Section of the Act as mentioned herein:-

Section 2(1):-

(s) “person” includes—

an individual,

a Hindu undivided family

a company,

- a firm,  
an association of persons or a body of individuals, whether incorporated or not,  
every artificial juridical person not falling within any of the preceding sub-clauses, and  
any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;
- (sa) "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) (ii) Inspector-General of Registration appointed under section 3 of the Registration Act, 1908 (16 of 1908) as may be notified by the Central Government;]
  - (iii) real estate agent, as may be notified by the Central Government;
  - (iv) dealer 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 persons, as may be notified by the Central Government; or
  - (vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time to time;
- (wa) "reporting entity" means a banking company, financial institution, intermediary or a person carrying on a designated business or profession

Thus, they have an obligation to practice due diligence and compliance under the Act. The main motive behind this step is to curb the illicit activities relating to money laundering. The onus will now also fall on the practicing corporate professionals for any irregular or suspicious transaction relating to money laundering. This is a positive step since many professionals engaged in many activities which are not permissible under the respective Acts, will now come under the ambit of the Act.

#### **NEW OBLIGATION OF CA, CS AND CWA AS A REPORTING ENTITY UNDER PMLA**

PMLA, 2005 and PMLA (Maintenance of Records) Rules, 2005 impose various obligations on a Regulating Entity. Section 12 of the Act enumerates that it is incumbent on the regulating entity to maintain records of all transactions in such a manner as to enable it to reconstruct individual transactions and maintain records of documents and identity of its clients for a period of five years. The same has been enumerated in the Chartered Accountants Act, 1949 and other Rules and Regulations to a certain extent. However, additional responsibility is imposed by this amendment which will require the professionals to report to the financial intelligence unit (FIU). Further, the regulating entity will be liable to practise enhanced due diligence under section 12AA of the Act. Professionals will also have to comply with the KYC norms and guidelines.

Moreover, the professionals will now have to set-up an internal mechanism for maintenance and furnishing of information to the director as mentioned under the PMLA(Maintenance of Records) Rules, 2005.

Thus, it is now obligatory for the professionals to report their clients who are involved in any proceeds of crimes under law. The notification imposes a serious obligation on the professionals and is an added burden to perform due diligence.

#### **CONCLUSION**

It is observed that bringing financial transactions carried out by CA, CS and CWA on behalf of their clients, under the ambit of PMLA, is a novel step to strengthen the financial system, but adding extra burden on company professionals will cause hardships and difficulties in terms of cost, efficiency and time.

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[1] [Notification no. S.O. 2036\(E\)](#). DTD. 3<sup>rd</sup> May 2023

[2] 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

[3] 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

[4] 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.

[5] Defined under Section 2(23)(1) of Income tax Act 1961