

Recent amendment under PMLA



www.mgbadvisors.com



On 03rd May, 2023 and 09th May, 2023, the Central Government issued notifications vide its powers under Prevention of Money Laundering Act, 2002 (“PMLA”) widening the scope of sec 2 (1) (sa) (vi) making certain additional persons liable to comply with the obligations of Reporting Entity for certain activities. We have tried to summarize both the notifications and the course of action that needs to be adopted by persons falling under this widened scope of PMLA -

- By notification dated **03rd May, 2023 issued by Ministry of Finance (“First Notification”)**, the Central Government widens **section 2 (1) (sa) (vi)** of PMLA to include **Relevant Persons** who on behalf of his client, in the course of his or her profession, carry out the following activities:
- (i) Buying and selling of any immovable property;
 - (ii) Managing of client money, securities or other assets;
 - (iii) Management of banks, 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 of partnership or trusts, and buying and selling of business entities.



- **“Relevant Person”** for this amendment means:
- an individual who is either a **Chartered Accountant (CA), Company Secretary (CS) or a Cost and Works Accountant (CWA) and** who obtained a **certificate of practice** under section 6 of the Chartered Accountants Act, 1949, Company Secretaries Act, 1980 and Cost and Works Accountants Act, 1959 respectively and is either practicing individually or through a firm, in whatever manner it has been constituted.
 - Relevant Persons shall be considered Reporting Entities.



- Further, by notification issued by Ministry of Finance dated **09th May, 2023** ("**Second Notification**"), the Central government notifies the following activities when carried out in the course of business on behalf of or for another person, as the case may be, as an activity for the purpose of said sub-clause, namely:
- acting as a **formation agent** of companies and LLPs.
 - acting as (or arranging for another person to act as) a **director or secretary of the Company**, a partner of a firm or a similar position in relation to other companies and LLPs.
 - providing a **registered, business, accommodation, correspondence, administrative address** for a company or LLP or a trust.
 - 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.
 - acting as (or arranging for another person to act as) a **nominee shareholder** for another person.

It Excludes:

- Any activity that is a 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 u/s 194-I of Income Tax Act.
- Any activity that is carried out by an employee on behalf of his employer in the course of or in relation to his employment.
- Any activity that is carried out by an advocate, a CA, CS or CWA in practice, who is engaged in the formation of a company to the extent of filing of declaration as required u/s 7 (1) (b) of Companies Act, 2013.
- Any activity of the person which falls within the meaning of an intermediary as defined u/s 2 (1) (n) of PMLA.



“

Obligations of Reporting Entities:

- PMLA, 2002 read with PMLA (Maintenance of Records) 2005 imposes certain set of obligations which are follows:
 - Verification of the identity of its clients and beneficial owner before entering into a financial transaction;
 - Maintenance of records for a period of five years of the transaction executed on behalf of the clients and their identity;
 - Certain other obligations vis-à-vis furnishing information to the Financial Intelligence Unit (FIU).

➤ According to Section 12 of PMLA

1. Every Reporting Entity shall –
 - (a) Maintain a record of all transactions, including information relating to transactions covered under clause (b), in such a manner as to enable it to reconstruct individual transaction;
 - (b) Furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;

- c) Maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients;
2. Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.
3. The records referred to in sub-section (1) (a) shall be maintained for a period of Five years from the date of transaction between a client and the Reporting Entity.
4. The records referred to in sub-section (1) (c) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.
5. The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this Chapter.

According to Section 12AA of PMLA, *every reporting entity shall carry out enhanced due diligence* to identify clients ownership, financial position, sources of funds, purpose behind conducting a specified transaction. Specified transaction means to include any withdrawal or deposit in cash, any transaction in foreign exchange, any transaction of high value of imports, such other transaction in the interest of revenue or where there is high risk or money laundering or terrorist financing.

“

Apart from above Reporting Entity shall comply with PMLA Rules and appoint Designated Director or Individual who will be responsible for maintenance of records. In case of CA, CS, CWA and any person enabling any activities as given in 9th May notification will be a Designated Director and responsible to comply with PMLA Rules.



Consequences:

- If the Reporting Entity fails to comply with their obligations, then the directors appointed by central government (as per section 49 (1)) of PMLA may take following actions:
 - Issue a warning in writing; or
 - direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or
 - 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
 - by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than INR 10,000 but may extend to INR 1,00,000 for each failure.



Our Comments:

- (i) By above notifications, the scope has been tremendously widened to include Corporate Professionals and other individuals who carry out these financial transactions and activities in course of their business.
- (ii) These Corporate Professionals and other individuals will now be obliged to maintain all data of the transactions carried out on behalf of the Client and also present the same to authorities when called for. PMLA does not prohibit the individuals from not carrying out the services but regulate them to maintain all client specific data, enhance due diligence and provide information whenever called for by regulatory authorities.
- (iii) How the various other provisions of PMLA and PMLA Rules like Section 11A for Aadhar authentication, appointment of principal officer, reporting to FIU for suspicious transactions etc., will be complied by these professionals and individuals will have to be monitored and may require more clarity from Ministry of Finance.
- (iv) Getting appointed as Director, becoming nominee shareholder, providing office premises for registered office, becoming trustee will now require thorough due diligence and maintenance of records and measures have to be kept in places to ensure that these activities can be carried out for genuine reasons only.
- (v) Professionals giving certifications for varied purposes shall need to ensure additional safeguards that any certification which enables a financial transaction is given after thorough verification and due diligence.



Our Achievements



“values
that
add
value”



Contact us

Mumbai :

Peninsula Business Park,
19th Floor, Tower B, Lower
Parel, Mumbai - 400013

Tel: +91 22 6124 6124

Chennai :

1 Valliamal Road,
Vepery Chennai - 600007

Tel: +044 4260 1133

Delhi :

MGB House, D-208,
Divya Marg, Defence
Colony, New Delhi - 110024

Tel: +91 0124 3600 241

GIFT City (Ahmedabad):

GIFT Aspire 3, Zonal Facility
Centre Annexe Block -12,
Road 1-D, Zone - 1, GIFT SEZ,
GIFT City, Gandhinagar - 382355

Bengaluru :

117-118-119, DBS House
No. 26, Cunningham Road,
Bangalore - 560052

Tel: +91 80 4040 7148

Dubai :

The Prism, Business Bay,
Dubai - 500018

Jaipur :

J-16, Lalkothi J-Scheme,
Sahakar Marg, Behind IOC Petrol
Pump, Jaipur - 302015

Tel: +91141 274 1674