

PMLA WRITE UP FOR INVESTOR'S EDUCATION

The Prevention of Money Laundering Act (PMLA) came into effect from 1st July 2005. Necessary Notifications / Rules under the said Act were published in the Gazette of India on 1st July, 2005 by the Department of Revenue, Ministry of Finance, Government of India. The PMLA has been further amended vide notification dated March 6, 2009 and inter alia provides that violating the prohibitions on manipulative and deceptive devices, insider trading and substantial acquisition of securities or control as prescribed in Section 12 A read with Section 24 of the Securities and Exchange Board of India Act, 1992 (SEBI Act) will now be treated as a scheduled offence under schedule B of the PMLA.

As per the provisions of the PMLA, every banking company, financial institution (which includes chit fund company, a co-operative bank, a housing finance institution and a non-banking financial company) and intermediary (which includes a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and registered under Section 12 of the SEBI Act), shall have to maintain a record of all the transactions; the nature and value of which has been prescribed in the Rules under the PMLA.

These guidelines were issued in the context of the recommendations made by the Financial Action Task Force (FATF) on anti-money laundering standards. Compliance with these standards by all intermediaries and the country has become imperative for international financial relations. As per the provision of PMLA every Member shall have to

1. Maintain a record of prescribed transactions,
2. Furnish information of prescribed transactions to the specified authority,
3. Verify and maintain records of identity of clients,
4. Preserve the records for a period of five years from the date of cessation of transactions with clients.

Such transactions include:

1. All cash transactions of the value of more than Rs 10 lakh or its equivalent in foreign currency.
2. All series of cash transactions integrally connected to each other which have been valued below Rs 10 lakh or its equivalent in foreign currency where such series of transactions take place within one calendar month.
3. All suspicious transactions whether or not made in cash and including, inter-alia, credits or debits into from any non monetary account such as demat account, security account maintained by the registered intermediary.
4. It may, however, be clarified that for the purpose of suspicious transactions reporting, apart from 'transactions integrally connected', 'transactions remotely connected or related' shall also be considered.

In case there is a variance in CDD/AML standards prescribed by SEBI and the regulators of the host country, branches/overseas subsidiaries of intermediaries are

required to adopt the more stringent requirements of the two.

It is an obligation of the entities to whom this Act is applicable, to report certain kind of transactions routed through them to FINANCIAL INTELLIGENCE UNIT, a department specially set up to administer this Act under the Ministry of Finance.

The transactions which are supposed to be reported are cash transactions above rupees ten lakhs or series of cash transactions below ten lakhs but aggregating to above ten lakhs in a month or its equivalent in any foreign currency and the transactions which may not be in cash but suspicious in nature.

Any such above types of transaction, though not executed but attempted and failed are also required to be reported.

The suspicious transaction can be related to the transaction under the circumstances such as;

- a. Clients whose identity verification seems difficult or clients that appear not to cooperate
- b. Asset management services for clients where the source of the funds is not clear or not in keeping with clients apparent standing /business activity;
- c. clients apparent standing /business activity;
- d. Substantial increases in business without apparent cause;
- e. Clients transferring large sums of money to or from overseas locations with instructions for payment in cash;
- f. Attempted transfer of investment proceeds to apparently unrelated third parties;
- g. Unusual transactions by CSCs and businesses undertaken by offshore banks/financial services, businesses reported to be in the nature of export-import of small items.
- h. Unexplained transfers between multiple accounts.
- i. Unusual activity compared to past transactions
- j. Purchases made on own account transferred to a third party through an off market transactions through DP account.
- k. Identification of beneficial ownership and control not feasible.

Clients of Special Categories may include:

- a. NRI/HNI/Trust/Charities/NGO/Organizations receiving donations.
- b. Companies having close family shareholdings or beneficial ownership.
- c. Politically Exposed Persons.
- d. Companies offering foreign exchange offerings.
- e. Clients in high risk countries.
- f. Non face to face clients.
- g. Clients with dubious reputation as per public information available.
- h. clients belonging to countries where corruption / fraud level is high.

No trading or demat account can be opened in the name of entity whose name is listed on the banned entity list being maintained at United Nation's website at <http://www.un.org/sc/committees/1267/consolist.shtml>.

Further, detailed search can be carried out to find that the Client is not in defaulters / negative list of regulators. (Search should invariably be carried out on SEBI website www.sebi.gov.in, CIBIL website www.cibil.com and Ministry of Company Affairs sponsored website www.watchoutinvestors.com.)

While opening the new accounts all the prescribed procedures of KYC and Client Identifications should strictly be followed in the context of ensuring the compliance under this act.

All the records of transactions and client identifications must

be preserved in a manner which can be promptly retrieved and reported to the authorities in the specified format.

These are the highlights of the requirements under the Act. Clients / Sub-brokers / Authorised Persons / Remisiers are advised to go through the SEBI's master circular at <http://www.sebi.gov.in/circulars/2010/cirisdaml2010.pdf> for detailed information and understanding and also to visit the website of FIU - IND at <http://fiuindia.gov.in>

The clients are advised to co-operate with us by providing the additional information / documents, if asked for during the course of your dealings with us to ensure the compliance requirements under this Act.

For any further clarifications or information on the subject, you can contact us on our e-mail samir.kamdar@nirmalbang.com.