

FAQ (PMLA)

Money Laundering

What is money laundering?

The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardizing their source.

Illegal arms sales, smuggling, and the activities of organized crime, including for example drug trafficking and prostitution rings, can generate huge amounts of proceeds. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to “legitimize” the ill-gotten gains through money laundering.

When a criminal activity generates substantial profits, the individual or group involved must find a way to control the funds without attracting attention to the underlying activity or the persons involved. Criminals do this by disguising the sources, changing the form, or moving the funds to a place where they are less likely to attract attention.

What is a Money Laundering offence?

A person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:— (a) concealment; or (b) possession; or (c) acquisition; or (d) use; or (e) projecting as untainted property; or (f) claiming as untainted property, in any manner whatsoever;

The process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

What are proceeds of crime?

Proceeds of crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

Proceeds of crime include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

What is a Scheduled Offence?

Scheduled offence means

- The offences specified under Part A of the Schedule; or
- The offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more: or

- The offences specified under Part C of the Schedule

Who is a reporting entity?

Reporting entity means a banking company, financial institution, intermediary or a person carrying on a designated business or profession.

PMLA 2002

What is PMLA?

PMLA is an abbreviation for Prevention of Money Laundering Act, 2002 which is in force since 1st July 2005.

What are the actions for not complying with the obligations under PMLA?

If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under Chapter IV of the Prevention of Money Laundering Act, 2002, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may-

- (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
- (d) 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 ten thousand rupees but may extend to one lakh rupees for each failure.

Can fine imposed under section 13 be recovered in the event of default?

Yes. Section 69 of the Prevention of Money Laundering Act, 2002, provides that where any fine or penalty imposed on any person is not paid within six months from the day of imposition of fine or penalty, the Director or any other officer-authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose

Whether any civil or criminal proceedings can be initiated for furnishing information?

No. It is provided for in section 14 of the Prevention of Money Laundering Act, 2002, that the reporting entity, its directors and employees shall not be liable to any civil or criminal proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12

Can appeal be filed against the order of Director, FIU-IND imposing fine?

Any reporting entity aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal

Can civil court grant injunction against any action taken by the Director, FIU-IND?

No civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any

Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Can Director, FIU-IND issue summons for discovery and production?

The Director shall, for the purposes of section 13, have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a reporting entity, and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

What are the roles and responsibilities of various regulators & authorities in the enforcement of PMLA?

Section 54 of the Prevention of Money Laundering Act, 2002 empowers and requires various regulators & authorities to assist in the enforcement of the Act.

What is the legal framework for sharing of information with other authorities?

Section 66 of the Prevention of Money Laundering Act, 2002 provides for disclosure of information to other officers, authority or body.

What is the legal framework for exchanging information with foreign countries?

Section 56 of the Prevention of Money Laundering Act, 2002 provides for entering into agreements with foreign countries to enforce provision of PMLA, 2002 and for exchange of information.

Reporting Entities

What is a Banking Company?

Banking company under PMLA means a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act

What is a financial institution?

Financial institution means a financial institution as defined in clause (c) of section 45- I of the Reserve Bank of India Act, 1934 (2 of 1934) and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India

What is an Intermediary?

Intermediary means,-

- (i) a stock-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992; or
- (ii) an association recognised or registered under the Forward Contracts (Regulation)

Act, 1952 or any member of such association;
(iii) intermediary registered by the Pension Fund Regulatory and Development Authority;
or
(iv) a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956

What is a Chit Fund Company?

Chit fund company means a company managing, conducting or supervising, as foreman, agent or in any other capacity, chits as defined in Section 2 of the Chit Funds Act, 1982.

What is a Co-operative Bank?

Co-operative bank shall have the same meaning as assigned to it in clause(dd) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act 1961.

What is a Housing Finance Institution?

Housing Finance Institution shall have the same meaning as assigned to it in clause (d) of section 2 of the National Housing Bank Act, 1987.

What is a Non-banking Financial Company?

Non-banking financial company shall have the same meaning as assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934.

Maintenance of Records

What are the obligations for maintenance of records under PMLA?

In terms of section 12 of the Prevention of Money Laundering Act, 2002, every reporting entity shall maintain a record of all transactions, including the information furnished to FIU-IND, in such a manner as to enable it to reconstruct individual transactions. The Reporting Entities shall also maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

The record has to be maintained of the prescribed transactions and information for a minimum period of five years.

Which records need to be maintained as per PMLA?

As per Rule 3 of the Rules Prevention of Money-Laundering (Maintenance of Records) Rules 2005, every reporting entity shall maintain a record of all transactions including, the record of -

- all cash transactions of the value of more than ten lakh rupees or its equivalent in foreign currency
- 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
- all transactions involving receipts by non-profit organizations of value more than rupees ten lakh, or its equivalent in foreign currency
- 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

- all suspicious transactions whether or not made in cash
- 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
- 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

What constitutes a suspicious transaction under PMLA?

Suspicious transaction means a transaction referred to in clause (h) of sub-rule(1) of Rule 2 of Prevention of Money-Laundering (Maintenance of Records) Rules 2005, including an 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
- (d) gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism;

Transaction involving financing of the activities relating to terrorism includes transaction involving funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by a terrorist, terrorist organisation or those who finance or are attempting to finance terrorism.

Whether a transaction can be reported both under CTR and STR

Yes, in case it is a cash transaction falling within the prescribed rules and has also an element of suspicious transaction.

How does PMLA, 2002 define records?

Records include the records maintained in the form of books or stored in a computer or such other form as may be prescribed.

For how long should the record of transactions be retained?

The records referred to in clause (a) of sub-section (1) of Section 12 shall be maintained for a period of five years from the date of transaction between a client and the reporting entity. The records referred to in clause (e) of sub-section (1) of Section 12 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.

Can a reporting entity be penalized for not complying with the obligations of maintenance of records under PMLA, 2002?

Yes, under section 13 of the Prevention of Money Laundering Act, 2002. If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under Chapter IV of the Prevention of Money Laundering Act, 2002 , then, without prejudice to any other action that may be taken under any other provisions of this Act, he may-

- (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
(d) 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 ten thousand rupees but may extend to one lakh rupees for each failure.

Furnishing Information

What type of information is required to be furnished under PMLA?

Every reporting entity is required to furnish information about -

- all cash transactions of the value of more than ten lakh rupees or its equivalent in foreign currency
- 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
- all transactions involving receipts by non-profit organizations of value more than rupees ten lakh, or its equivalent in foreign currency
- 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
- all suspicious transactions whether or not made in cash
- 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.
- 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

Is there any standard format required to be used by reporting entity for furnishing information to the Director, FIU-IND?

Yes. Every reporting entity is necessarily required to furnish information to Director, FIU-IND online in a standard format prescribed for the purpose . For this purpose, the reporting entity has to register itself with FIU-IND using the portal <https://finnet.gov.in>.

Who has the responsibility to furnish information to Director, FIU-IND?

Every reporting is required to communicate to the Director the name, designation and address of the Designated Director and the Principal Officer. The Principal Officer shall furnish the information referred to in Rule 3 of Prevention of Money-Laundering (Maintenance of Records) Rules 2005, to the Director, FIU-IND on the basis of information available with the reporting entity. A copy of such information shall be retained by the Principal Officer for the purposes of official record.

The Principal Officer of a reporting entity shall furnish the information promptly to the Director in respect of all suspicious transactions not later than seven working days on being satisfied that the transaction is suspicious.

It shall be the duty of every reporting entity, its designated director, officers and employees to observe the procedure and the manner of furnishing information as specified by the Director in consultation with its Regulator.

Are there any time limits prescribed for furnishing information to Director, FIU-IND?

Yes. Rule 8 of the Prevention of Money-Laundering (Maintenance of Records) Rules 2005 prescribes time limit for furnishing information to the Director, FIU-IND

The time limit for furnishing information about cash transactions and integrally connected cash transactions , transactions involving receipts by non-profit organisations, cash transactions where forged or counterfeit currency notes or bank notes have been used and cross border wire transfers, every month, as referred to in clauses (A), (B), (BA), (C) and (E) of sub-rule (1) of rule 3 of Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 Shall be by the 15th day of the succeeding month.

In respect of all suspicious transactions referred to in clause (D) of sub-rule (1) of rule 3 , the same shall be reported promptly and not later than seven working days on being satisfied that the transaction is suspicious.

Identity of Clients

What are the obligations for verifying identity of clients under PMLA?

Section 11A together with Section 12 of the Prevention of Money Laundering Act, 2002, requires every reporting entity to verify and maintain the records of the identity of all its clients, as prescribed by rule 9 of the PML Rules.

Does PMLA, 2002 or the rules thereunder prescribe any procedures and manner verifying for identity of clients?

Yes. Rules 9 and 10 of the PML Rules prescribe the procedures & manner for verification and maintenance of the records of the identity of clients.

What is a Transaction ?

Transaction 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.

Is it mandatory to implement a Client Due Diligence programme?

Yes. Every reporting entity is required to formulate and implement a client due diligence programme approved by the senior management.

What is an Officially Valid Document?

Officially valid document means the passport, the driving licence proof of possession of Aadhaar number, the Voter's Identity Card issued by Election Commission of India, job card issued by NREGA duly signed by an officer of the State Government, the letter issued by the National Population Register containing details of name, address or any other document as notified by the Central Government in consultation with the Regulator, the Permanent Account Number (PAN) Card, the Voter's Identity Card issued by Election Commission of India, job card issued by NREGA duly signed by an officer of the State Government, the letter issued by the Unique Identification Authority of India or the National Population Register containing details of name, address and Aadhaar number or any other document as notified by the Central Government in consultation with the regulatory.

Provided that where simplified measures are applied for verifying the identity of the clients the following documents shall also be deemed to be 'officially valid documents':

- (a) identity card with applicant's Photograph issued by Central/State Government Departments, Statutory/Regulatory Authorities, Public Sector Undertakings, Scheduled Commercial Banks, and Public Financial Institutions;
- (b) letter issued by a gazetted officer, with a duly attested photograph of the person;

Provided further that where simplified measures are applied for verifying the limited purpose of proof of address of the clients, where a prospective customer is unable to produce any proof of address, the following documents shall also be deemed to be 'officially valid document':

- (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) bank account or Post Office savings bank account statement;
- (d) pension or family pension payment orders (PPOs) issued to retired employees by Government Departments or Public Sector Undertakings, if they contain the address;
- (e) letter of allotment of accommodation from employer issued by State or Central Government Departments or Public Sector Undertakings, scheduled commercial banks, financial institutions and listed companies. Similarly, leave and licence agreements with such employers allotting official accommodation; and

Provided also that in case the officially valid document presented by a foreign national does not contain the details of address, in such case the documents issued by the Government departments of foreign jurisdictions and letter issued by the

Foreign Embassy or Mission in India shall be accepted as proof of address.

Provided also that where the client submits his proof of possession of Aadhaar number as an officially valid document, he may submit it in such form as are issued by the Unique Identification Authority of India;

A document shall be deemed to an "officially valid document" even if there is a change in the name subsequent to its issuance provided it is supported by a marriage certificate issued by the State Government or Gazette notification, indicating such a change of name, for the purpose of clause (d) of Rule (2) of Prevention of Money-Laundering (Maintenance of Records) Rules, 2005

Which documents need to be submitted to the RE for Client Due Diligence, verified and maintained when the client is an individual?

Where the client is an individual, he shall submit to the reporting entity, -

- (a) the Aadhaar number where, he is desirous of receiving any benefit or subsidy or where he decides to submit his Aadhaar number voluntarily; or
- (b) the proof of possession of Aadhaar number where offline verification can be carried out; or
- (c) the proof of possession of Aadhaar number where offline verification cannot be carried out or any officially valid document or the equivalent e-document thereof containing the details of his identity and address; and
- (d) the Permanent Account Number or the equivalent e-document thereof or Form No. 60 as defined in Income-tax Rules, 1962; and
- (e) such other documents including in respect of the nature of business and financial status of the client, or the equivalent e-documents thereof as may be required by the reporting entity:

Which documents need to be submitted to the RE for Client Due Diligence, when the client is a company?

Where the client is a company, it shall submit to the reporting entity the certified copies of the following documents or the equivalent e-documents thereof, namely:-

- (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, as the case may be, to transact on its behalf; and
- (v) such documents as are required for an individual under sub-rule (4) relating to beneficial owner, managers, officers or employees, as the

case may be, holding an attorney to transact on the company's behalf;

Which documents needs to be submitted to the RE for Client Due Diligence, client is a partnership firm?

Where the client is a partnership firm, it shall submit to the reporting entity the certified copies of the following documents or the equivalent e-documents thereof, namely: -

- (i) registration certificate;
- (ii) partnership deed;
- (iii) Permanent Account Number of the partnership firm; and
- (iv) such documents as are required for an individual under sub-rule (4) relating to beneficial owner, managers, officers or employees, as the case may be, holding an attorney to transact on its behalf;

What documents needs to be submitted to the RE for Client Due Diligence, client is a trust

Where the client is a trust, it shall submit to the reporting entity the certified copies of the following documents or the equivalent e-documents thereof, namely:-

- (i) registration certificate;
- (ii) trust deed;
- (iii) Permanent Account Number or Form No.60 of the trust; and
- (iv) such documents as are required for an individual under sub-rule (4) relating to beneficial owner, managers, officers or employees, as the case may be, holding an attorney to transact on its behalf;

What documents needs to be submitted to the RE for Client Due Diligence,if the client is an unincorporated association or a body of individuals ?

Following document need to be verified and maintained when the client is an body of individuals : Where the client is an unincorporated association or a body of individuals, it shall submit to the reporting entity the certified copies of the following documents or the equivalent e-documents thereof, namely:-

- (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; and
- (iv) such documents as are required for an individual under sub-rule (4) relating to beneficial owner, managers, officers or employees, as the case may be, holding an attorney to transact on its behalf;
- (v) such information as may be required by the reporting entity to collectively establish the existence of such association or body of individuals.

When should the verification of identity of clients be undertaken?

Every reporting entity shall identify its clients, verify their identity, obtain information on the purpose and intended nature of the business relationship; and determine

whether a client is acting on behalf of a beneficial owner, and identify the beneficial owner and take all steps to verify the identity of the beneficial owner, at the time of commencement of an account-based relationship and also verify identity while carrying out transaction of an amount equal to or exceeding rupees fifty thousand, whether conducted as a single transaction or several transactions that appear to be connected, or any international money transfer operations.

In what form is the information on identity of clients required to be maintained

Rule 10 of the PML Rules specifies that the reporting entity shall maintain information on identity of clients in the manner as may be specified by the sector Regulators.

Who is a beneficial owner?

Beneficial owner is 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.

What are a reporting entity's obligations with regard to the beneficial ownership verification?

All reporting entities should, at the time of commencement of an account-based relationship with a client, determine whether the client is acting on behalf of a beneficial owner, and identify the beneficial owner and take all steps to verify the identity of the beneficial owner.

What are a reporting entity's obligations with regard to risk mitigation?

Every reporting entity is required to exercise ongoing due diligence with respect to the business relationship with every client and closely examine the transactions in order to ensure that they are consistent with their knowledge of the client, his business and risk profile and where necessary, the source of funds.

Every reporting entity should carry out risk assessment to identify, assess and take effective measures to mitigate its money laundering and terrorist financing risk for clients, countries or geographic areas, and products, services, transactions or delivery channels

The risk assessment should be documented, should consider all the relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied, should be kept up to date and should be available to competent authorities and self-regulating bodies.