

## Call for Reporting Entities to comply with PMLA!

In May 2023, the Ministry of Finance (“**MOF**”) had released two notifications for widening the ambit of reporting entities under the Prevention of Money-Laundering Act, 2002 (“**PMLA**”), which led to huge uproar among the practising professionals. (Refer 288<sup>th</sup> issue of our newsletter <https://sharadasc.com/samhita-may-2023/> to know more about the said notifications.)

In furtherance of the aforesaid notifications, the Financial Intelligence Unit -India (“**FIU-India**”) under the MOF has released a notification on July 17, 2023. Following are the key points covered in the notification:

1. Entities that carry activities specified in the May 09, 2023 notification have been referred to as “Trust and Company Service Providers’ (“**TCSPs**”).
2. TCSPs to strictly comply with obligations under PMLA including registration of Reporting Entity on FINNET 2.0 portal (FIU-India), appointment of Principal Officer and Designated Director, customer due diligence, internal mechanism to detect and report suspicious transactions etc
3. Principal Officer and Designated Director of the Reporting Entities to register on FINNET 2.0 portal immediately.

The series of notifications have compelled the professionals to gear up with their internal mechanism for complying with the provisions of PMLA.

The FIU-India has issued Anti Money Laundering (“**AML**”) & Countering Financing of Terrorism (“**CFT**”) Guidelines w.e.f June 19, 2023 in order to guide practising professionals. Under the guidelines, statutory bodies (“**SRBs**”) i.e. ICSI/ICAI/ICWAI have been assigned with the supervisory responsibility of encouraging compliance with PMLA for its members who deal in transactions specified in May 2023 notifications, monitoring through on-site and off-site supervision, communicating guidelines for KYC, Customer Due Diligence (“**CDD**”) etc.

In light of the above, ICSI has communicated to its members about the AML/CFT guidelines via email dated July 19, 2023 along with a google form for collecting information from practising members who deal with transactions specified in the May 2023 notifications.

The guidelines on AML/CFT provide for the following:

### 1. Internal Policy

- i. Every relevant person carrying out transactions prescribed in the May 2023 notifications must adopt a robust AML/CFT/CPF policy. The policy shall consist of procedures to prevent Money Laundering (“**ML**”), Terrorism Finance (“**TF**”) and Proliferation Financing (“**PF**”) activities and also procedures to deal with risks.
- ii. The policies shall be periodically reviewed to ensure they are aligned with regulatory requirements and guidelines issued by competent authorities and SRBs.

- iii. Client acceptance and KYC policies to be adopted.
- iv. CDD measures to be undertaken for transactions prescribed in May 2023 notifications.

## **2. Registration**

The SRBs are required to identify Reporting Entities within their practising members. Once identified, the SRBs shall obtain information about the Principal Officer and/or Designated Directors.

The list shall be maintained by SRBs and communicated to FIU-India periodically as well as in case of changes.

## **3. Appointment of Designated Director and Principal Officer-**

Where the relevant persons are firms, they shall appoint a Designated Director and Principal Officer. In case of individual practising professionals, the professional himself would be the Principal Officer.

Their responsibilities include furnishing of information under Rule 8 of PMLA Rules to the Director-FIU through SRBs, evolving internal mechanisms for compliance of directions, communicating the policies to management and staff that handle account information, implementation of internal policies w.r.t maintenance of records, compliance of statutory requirements, cooperation with enforcement authorities etc. and periodic review of compliance function.

## **4. Training of Employees**

Screening procedures while hiring employees and sharing training material with instruction manual for KYC, CDD, record keeping, transaction monitoring and review.

## **5. KYC Norms**

Complying with KYC requirements for onboarding clients or re-KYC for existing customers as per guidelines from SRBs.

## **6. CDD Norms**

Written procedures to be adopted for CDD in line with Rule 9 of PMLA rules.

## **7. Enhanced DD Norms**

Examine to the extent possible, the background and purpose of all complex, unusually large transactions, and all unusual patterns of transactions carried out on behalf of their clients, which have no apparent economic or lawful purpose. Where the risks are higher, enhanced DD shall be conducted.

## **8. Reporting to FIU-Ind**

Mechanism for reporting to FIU-Ind would be released shortly. In case of suspicious transactions, the Reporting Entities are prohibited from tipping off that any such information has been furnished to FIU-India.

## 9. Maintenance of Records

Retain records as defined in Sections 12(1)(a) and 12(1)(e) of PMLA for a period of five years after the business relationship between a client and the Reporting Entity has ended or the engagement has been closed, whichever is later.

Compliance of these guidelines requires a reading of PMLA and the relevant rules thereunder. While we are engaged in helping corporates to comply with various aspects of law, this comes as a heightened responsibility towards keeping the economy free from financial fraud and financial terrorism.

*Important links to refer:*

- July 17 FIU-India notification- <https://fiuindia.gov.in/pdfs/downloads/TCSP17072023.pdf>
- July 19 ICSI notification- [https://www.icsi.edu/media/webmodules/PMLA\\_RE\\_Final.pdf](https://www.icsi.edu/media/webmodules/PMLA_RE_Final.pdf)
- FIU-India AML&CFT Guidelines- [https://fiuindia.gov.in/pdfs/AML\\_legislation/AMLCFTguidelines04072023.pdf](https://fiuindia.gov.in/pdfs/AML_legislation/AMLCFTguidelines04072023.pdf)

**CS Rajeswari J Pai, Associate**

**Date: July 19, 2023**

\*\*\*\*\*

# 405, 7th Cross, IV Block, Koramangala, Bangalore – 560 034

☎: 080-25534374 / 25536618

✉: info@sharadasc.com

**www.sharadasc.com**