

FAQS ON ANTI-MONEY LAUNDERING LAWS IN INDIA



The Financial Action Task Force (“**FATF**”) is the global money laundering and terrorist financing watchdog. FATF recommendations are recognised as the global anti-money laundering and counter-terrorist financing standard. India is a member of the FATF since 2010. The Government of India has enacted specific legislations, rules and regulations with the object of preventing money laundering issues and maintaining integrity & governance standards largely based on the standards prescribed by FATF. Although other anti-corruption laws include Prevention of Corruption Act, 1988 and Foreign Contribution Regulation Act, 2010, this primer provides an overview of the anti-money laundering laws in India.

1. What are the key laws governing the anti-money laundering activities in India?

The Prevention of Money Laundering Act, 2002 (“**PMLA**”) along with the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (“**Rules**”) are the principal laws enacted to prevent money laundering activities in India. There are specialised authorities dealing with money laundering issues such as the Reserve Bank of India / Securities and Exchange Board of India (“**SEBI**”) / Insurance Regulatory and Development Authority of India which also prescribe guidelines on anti-money laundering standards based on PMLA and Rules.

2. What do the SEBI / IRDAI guidelines cover?

SEBI has introduced ‘Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) / Obligations of Securities Market Intermediaries’ and IRDAI has introduced ‘Guidelines on Anti Money Laundering programme for Insurers’. They are sector specific based on the principles of PMLA and Rules.

3. What is the extent of applicability of PMLA and the Rules?

The PMLA and Rules are applicable on all persons which includes individuals, a company, firm, an association of persons or a body of individuals (incorporated or otherwise), and any agency, office or branch owned or controlled by any of the above persons.

4. What is money laundering?

Money laundering is the processing of criminal proceeds i.e., profits generated from criminal acts, to disguise their illegal origin. For example, embezzlement, insider trading, bribery, computer fraud schemes, illegal arms sales, smuggling, and the activities of organized crime can produce large profits and create the incentive to legitimize the ill-gotten gains through money laundering.

5. What constitutes an offence of money laundering under the PMLA?

Any person who directly or indirectly attempts to indulge or knowingly assists or is actually involved in any activity connected with the proceeds of crime is guilty of offence of money-laundering. Further, concealment, possession, acquisition or use and projecting or claiming it as untainted property, of such proceeds of crime, in any manner is also an offence under the provisions of PMLA.

6. What are proceeds of crime?

Any property obtained directly or indirectly through a criminal activity relating to a scheduled offence (*explained in question 7 below*) constitutes proceeds of crime. The value of such property or its equivalent value held within the country or abroad are also considered to be proceeds of crime.

**7. What does 'property' mean? Are intangible assets also included?**

Under PMLA, 'property' means any property / assets of every description, corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments

evidencing title / interest in the property / assets wherever located and includes any kind of property used in the commission of an offence under PMLA.

8. What is a 'scheduled offence'?

There is a list of offences provided under a schedule in the PMLA. These offences are called scheduled offences. The schedule consists of three parts specifying offences from thirty legislations. Some of the major legislations covered in the schedule include Indian Penal Code, 1860, Narcotic Drugs and Psychotropic Substances Act, 1985, Explosive Substances Act, 1908, Unlawful Activities (Prevention) Act, 1967, Arms Act, 1959, Wild Life (Protection) Act, 1972, Prevention of Corruption Act, 1988, the Companies Act, 2013 and the Customs Act, 1962.

9. What is the punishment for the offence of money laundering?

The PMLA prescribes rigorous imprisonment for at least 3 (three) years which may extend up to 7 (seven) years and also a fine. In the event that the offence of money laundering related to the Narcotic Drugs and Psychotropic Substances Act, 1985, the rigorous imprisonment may extend up to 10 (ten) years.

If an offence of money laundering is committed by a company, then every person in charge of and responsible for the conduct of the business of the company at the time of such contravention as well as the company, will be deemed to be guilty and will be liable to be proceeded against and punished accordingly.

10. Which Authorities Regulate the PMLA?

The Directorate of Enforcement in the Department of Revenue, Ministry of Finance is responsible for investigating offences of money laundering. The Financial Intelligence Unit - India ("FIU-IND") under the Department of Revenue, Ministry of Finance is the central national agency responsible for receiving, processing, analysing, and disseminating information relating to suspected financial transactions to enforcement agencies and foreign FIUs.

11. What are the compliances / obligations prescribed under PMLA and the Rules?

Every banking company, financial institution, intermediary or a person carrying on a designated business or profession (*explained in question 11 below*) ("**Reporting Entity**") is required to verify the identity of their clients and the beneficial owner, maintain records of all transactions and documents evidencing identity of its clients as well as beneficial owners and periodical furnishing of information related to certain transactions (*explained in the sections below*).

12. Who are covered under "persons carrying on a designated business or profession"?

This expression includes a) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino; b) inspector-general of registration appointed under the Registration Act, 1908; c) real estate agent engaged in providing services in relation to sale or purchase of real estate and having annual turnover of INR 2,000,000 or above; d) dealer in precious metals, precious stones and other high value goods if they engage in any cash transactions with a customer equal to or above INR 1,000,000 carried out in a single operation or in several operations that appear to be linked; e) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as notified by the central government; or f) person carrying on such other activities as notified by the central government from time to time.

IDENTIFICATION AND VERIFICATION



13. Is there a standard or a procedure required to be followed for verification of the client by the Reporting Entity?

Every Reporting Entity is required to conduct an enhanced client due diligence to take steps to examine the client's ownership and financial positions including the source of funds and the intended nature of the relationship between the transaction parties. The Reporting Entity is required to:

- (i) Identify and verify its clients and the beneficial owner (if applicable), obtain information on the purpose and intended nature of the business relationship in case of an account-based relationship. After the commencement of an account-based relationship, the Reporting Entity must file the electronic copy of the client's Know Your Client ("KYC") records with the central KYC records registry. The verification process may be done by relying on a third party as well.
- (ii) Verify identity while carrying out transaction of an amount of INR 50,000 or more or any international money transfer operations.

14. Who is considered a 'beneficial owner'?

The beneficial owner for the purpose of verification process is as mentioned below:

S. No.	Nature of Client	Description (Beneficial Owner)
(i)	Company	<p>Natural person, who acting alone or together has a controlling ownership interest or who exercises control through other means.</p> <p>'Controlling ownership interest' - ownership of or entitlement to more than 25% of shares or capital or profits of the company.</p> <p>'Control' – includes the right to appoint majority of the directors or to control the management or policy decisions such as by virtue of their shareholding or management rights or shareholders agreements or voting agreements.</p>
(ii)	Partnership Firm	Natural person, who acting alone or together has ownership of more than 15% of capital or profits of the partnership.
(iii)	Unincorporated association or body of individuals	Natural person, who acting alone or together has ownership of or entitlement to more than 15% of the property or capital or profits of such association or body of individuals.
(iv)	Trust	Includes identification of the author of the trust, the trustee, the beneficiaries with 15% or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.



MAINTENANCE OF RECORDS**15. What are the records that are required to be maintained by the Reporting Entity? How long do these records have to be maintained?**

The information mentioned in question 11 above is required to be maintained by the Reporting Entities. The records maintained must contain information including a) the nature of the transactions; b) the amount of the transaction and the currency in which it was denominated; c) the date on which the transaction was conducted and d) the parties to the transaction to enable the Reporting Entity to reconstruct individual transactions.

The information relating to the transaction must be maintained for a period of five years from the date of transaction between a client and the Reporting Entity. The records relating to the identity of clients and beneficial owners as well as account files and business correspondence must 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.

**REPORTING OBLIGATIONS****16. What type of information is required to be furnished by the Reporting Entities and to whom?**

The information required to be furnished by the Reporting Entities is provided in the table below. This information is required to furnish information to the Director of FIU-IND.

S. No.	Description	Due Date
(i)	All cash transactions of the value of more than INR 1,000,000 or its equivalent in foreign currency.	15th day of the succeeding month
	All series of cash transactions integrally connected to each other which have been valued below INR 1,000,000 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 INR 1,000,000 or its equivalent in foreign currency	15th day of the succeeding month
(ii)	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	15th day of the succeeding month
(iii)	All transactions involving receipts by non-profit organizations of value more than INR 1,000,000 or, its equivalent in foreign currency	15th day of the succeeding month
(iv)	All cross-border wire transfers of the value of more than INR 500,000 or its equivalent in foreign currency where either the origin or destination of fund is in India.	15th day of the succeeding month
(v)	All purchase and sale by any person of immovable property valued at INR 5,000,000 or more that is registered by the reporting entity, as the case may be.	15th day of the month succeeding the quarter
(vi)	All suspicious transactions whether or not made in cash	Not later than 7 (seven) working days on being satisfied that the transaction is suspicious

17. What is the format in which the information is required to be furnished by the Reporting Entity?

The reporting entity must register itself with FIU-IND using the portal <https://finnet.gov.in/>. Once the registration is complete, the Reporting Entity can furnish information to Director, FIU-IND online in a standard format prescribed for the purpose.

18. Who is responsible to furnish the information from the Reporting Entity?

Every Reporting Entity is required appoint two officers i.e., Designated Director and the Principal Officer. The Designated Director is required to ensure overall compliance with the obligations under PMLA and Rules. The Principal Officer is responsible for the overall compliance of the Reporting Entity. Accordingly, the Principal Officer is responsible to furnish the information promptly to the Director of FIU-IND.



19. What are the penalties for non-compliance with the client due diligence process, maintenance of records and reporting obligations of the Reporting Entities?

On failure to comply with the diligence, maintenance or reporting obligations by the Reporting Entities, the Director of FIU-IND may:

- (i) issue a warning in writing; or
- (ii) direct such Reporting Entity or its Designated Director on the board or any of its employees, to comply with specific instructions; or
- (iii) 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
- (iv) impose a monetary penalty of not less than INR 10,000 but may extend up to INR 100,000 on such Reporting Entity or its Designated Director on the board or any of its employees for each failure.

20. What is the forum for appeal against the order of the Director of FIU-IND for non-compliance of diligence, maintenance or reporting obligations?

Any reporting entity aggrieved by any order of the Director of FIU-IND may appeal before the appellate tribunal constituted under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. This appeal must be made within a period of 45 days from the date on which a copy of the order made by the Director of FIU-IND is received.

21. What is forum for appeal against the order of the appellate tribunal?

A person aggrieved by the decision of the appellate tribunal may file an appeal to the High Court within 60 days from the date of communication of the decision of the appellate tribunal to it on any question of law or fact arising out of such decision. The High Court may accept an appeal within a further period of 60 days if sufficient cause for the delay is shown.

22. What is the court of first instance to try and levy punishment for the offence of money laundering?

The central government has designated special courts, in consultation with the Chief Justice of the High Court, for trial and punishment of the offence of money laundering. The list of special courts designated by the central government can be accessed [here](#) (subsequent amendment can be accessed [here](#))

23. What is the court of appeal against the order of the special court?

An appeal or revision may be made to the High Court within the local limit of the jurisdiction of the special courts.



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