

The Institute of Chartered Accountants of India
Committee on Commercial Laws, Economic Advisory & NPO Cooperative

Frequently Asked Questions (FAQs)

on

**Notification dated 3rd May, 2023 under the Prevention of Money
Laundering Act, 2002**

ICAI

Glossary

PMLA	Prevention of Money Laundering Act 2002
POC	Proceeds of crime
PLI	Placement Layering and Integration
HUF	Hindu Undivided Family
U/S	Under Section
AOP	Association of persons
BOI	Body of Individuals
RE	Reporting Entities
GST	Goods and Services Tax
FATF	Financial Action Task Force
AML	Anti-Money Laundering
CFT	Countering the Financing of Terrorism
CPF	Combating Proliferation Financing
KYC	Know Your Customer
ED	Directorate of Enforcement
FIU-IND	Financial Intelligence Unit of India
CTR	Cash Transaction Report
STR	Suspicious Transaction Reports
NPO	Non-profit organizations
DD	Designated Director
ICSI	Institute of Company Secretaries of India
ICMAI	Institute of Cost Accountants of India
PO	Principal Officer
COP	Certificate of Practice
CA	Chartered Accountant
CS	Company Secretary
CWA	Cost and Works Accountant
WTR	Wireless transfer transaction report
SRB	Statutory Regulatory Body – ICAI, ICSI, ICMAI
RBA	Risk-Based Approach
ML/TF/PF	Money Laundering, Terrorism Financing and Proliferation Financing
CDD	Customer Due Diligence
EDD	Enhanced Due Diligence
PMLR	Prevention of Money-Laundering Rules

1. Which Act governs Money laundering offences?

Prevention of Money Laundering Act (PMLA), 2002 which came into force since 1st July 2005.

2. What is money laundering?

Money Laundering is the process of converting the tainted property (referred to as Proceeds of Crime - POC) acquired/obtained by carrying out specific offences (referred to as "scheduled offences" or "predicate offences") as described in the Schedules under the Prevention of Money Laundering Act 2002, into the untainted property.

All or Any acts, directly or indirectly related to such proceeds of crime such as concealment, possession, acquisition, use, projecting or claiming it as untainted property is treated as an act of Money Laundering Offences.

The crux of Money Laundering is "scheduled offences" (Prescribed under the PMLA law) and generating property out of these offences *i. e.* POC.

A large number of criminal acts is done to generate some Property by the individual or group that carries out that act. When a criminal activity generates properties (which is tainted property), the individual or group (criminals) involved in that offence, may find some ways to convert that tainted property into untainted property without attracting legal attention. 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. All this involves Placement, Layering & Integration (PLI).

This process (PLI) is of critical importance, as it enables the criminal to enjoy these POC properties without explaining their illegal source.

Money laundering is a serious crime that facilitates various illegal activities, such as drug trafficking, corruption, fraud, and terrorism financing.

3. What is a money laundering offence under the PMLA Act?

Section 3 of PMLA, 2002 defines it as "Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use or projecting or claiming it as untainted property shall be guilty of offence of money-laundering." This

definition also has two Explanations to it and has to be read in its entirety.

The offense of money laundering involves knowingly engaging in financial transactions that conceal, possess, acquire, use or disguise the origins of illicitly obtained funds. It typically involves three stages:

- ✓ Placement (introducing illicit funds into the financial system),
- ✓ Layering (conducting complex transactions to obscure the audit trail),
- ✓ Integration (legitimizing the illicit funds by integrating them back into the formal economy).

Hence what is important to note is that the **"Proceeds of crime"** (POC) arising from the violations of certain sections of about 30 different laws (referred to as **"Scheduled offence"**) results in "tainted property" and any activity/process of the type as stated above (including its use, acquisition, possession etc.) or projecting it as "untainted property" is the offence of Money Laundering.

4. Who is covered under PMLA?

Every Person - be it an Individual, HUF, firm, company, AOP/BOI, agency/branch etc. - whosoever directly or indirectly attempts to indulge or knowingly assists or is a party or is involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use or projecting or claiming it as untainted property shall be guilty of offence of money-laundering and can be covered u/s 3 of the PMLA.

5. Who is a reporting entity (RE)?

Reporting entity means an entity defined u/s 2(wa) of the PMLA Act 2002 and includes a banking company, financial institution, intermediary or a person carrying on a designated business or profession like Inspector General of Registration, Real estate agents, persons carrying on activities for playing games of chance/casinos or as notified by the Central Government, are all Reporting Entity.

6. Who is a beneficial owner?

Beneficial owner u/s 2(fa) means 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.

The beneficial owner is applicable only to legal entities such as companies, partnership firms, trusts etc. The criteria are based upon the percentage of shareholding or profit sharing.

7. Who is a person?

Every Person - be it an Individual, HUF, firm, company, AOP/BOI, artificial juridical person, agency/office/branch that is owned or controlled by any of the entities.

This definition is similar to the definition of "person" found in various laws, such as the Income Tax Act of 1961, the Companies Act of 2013, and the GST Act of 2017.

8. What is FATF and Mutual Evaluation? What is its relevance?

The Financial Action Task Force (FATF) is an intergovernmental organization formed by the G7 in 1989. It is the global money laundering and terrorist financing watchdog. FATF sets international standards to ensure national authorities can effectively go after illicit funds linked to drug trafficking, the illicit arms trade, cyber fraud and other serious crimes.

FATF develops and promotes global Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) standards, known as the FATF Recommendations. These standards provide a framework for countries to adopt and implement effective measures to combat financial crimes.

FATF conducts mutual evaluations of member countries to assess their compliance with the FATF Recommendations with regard to their financial system, their reporting on money laundering, and counter terrorist perspective. These evaluations help identify weaknesses in countries' AML/CFT systems and provide recommendations for improvement. FATF also classifies jurisdiction/countries like "Black" or "Grey" lists depending upon whether they are high-risk or they are actively working with the FATF to address strategic deficiencies in their regimes or they have strong financial risk systems in place.

Overall, the FATF plays a crucial role in promoting and strengthening the global AML/CFT regime by setting standards, evaluating countries compliance and fostering international cooperation to combat financial crimes.

India has been a member of FATF since the year 2010 and shall be assessed in the fourth round of mutual evaluations this year i.e. 2023.

9. What may be the perspective of or intention behind the issue of the relevant Notification dated 3rd May, 2023? And does this notification means covering CAs under Money Laundering Offences?

The intention behind this notification may be an effort to assimilate, adopt,

conform & effectively implement the FATF recommendations. This notification may be intended to strengthen and enhance reporting mechanisms to identify potential offenders.

This notification makes Chartered Accountants (carrying out specified activities as stated in the said notification on behalf of their client) a "reporting entity" as defined u/s 2(wa) of PMLA.

10. Who is the Enforcement Agency?

The Directorate of Enforcement (ED) acts as an Enforcement Agency. The Agency conducts the investigations of Money Laundering Offences.

11. Who shall be the central coordinating Agency to whom the information is submitted?

The Financial Intelligence Unit of India (FIU-IND) is the central coordinating agency with regard to this notification dated 3rd May, 2023. FIU collects information from various Reporting Entity (RE) in the form of Reports.

12. What are the General obligations of any RE under the PMLA?

Every RE must carry out its obligations as stated in Chapter IV (Sec. 11-A to 15) of the PMLA Act 2002 read with the PML (Maintenance of records) Rules 2005. This requires RE:

- To verify the identity of its clients along with the beneficial owner.
- To maintain such records and for such period as prescribed
- To carry out enhanced due diligence
- To report to the concerned authorities (FIU) – As per the prescribed Procedure and manner

Further as per the PML Rules, the RE must maintain records in terms of value and nature especially Cash Transaction Reports (CTR), Suspicious Transaction Reports (STR), Certain transactions by NPO, Cash Transactions where forged/counterfeit currency were used, Cross Border as well as Domestic wire Transfer of certain values & Purchase/sale of immovable property above certain values. This is the critical reporting to be done by the RE as on date. It is important to note that the word "Transaction" and "Suspicious Transaction" is defined under rule 2(h) and 2(g) of the PML Maintenance of Records Rules 2005. The Rules prescribe the procedure and manner of maintaining and furnishing such information to the FIU; of client due diligence and what documents are needed and other things.

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

As per the code of ethics of ICAI clause 320.3.A6, the members are required to

comply with ICAI KYC Norms that were issued in 2011. W.e.f 1.1.2017, the KYC Norms have been made mandatory for verifying the identity of assurance clients. Now, it will be mandatory for all clients engaged in specified activities in the Notification dated 3rd May, 2023. A Chartered Accountant will have to carry out the due diligence and document the information of their clients.

14. What are the obligations of Reporting Entities?

The obligation of the reporting entity is primarily contained in Section 12 of the PMLA, which requires every reporting entity to: -

- Section 11A of the PMLA places KYC obligations upon 'every' reporting entity while Section 12AA provides for "enhanced due diligence" by 'every' reporting entity prior to the commencement of each specified transaction.
- maintain a record of all transactions (five years from the date of the transaction), including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;
- 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;
- maintain a record of documents (five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later) evidencing the identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

15. What are the powers of Director FIU-IND?

Section 12A empowers the Director of the FIU-IND to access information by calling for records maintained under Chapter IV of the PMLA. This information needs to be furnished within the time and in the manner in which it is asked for. It is important to note that violations of Chapter IV of the PMLA (reporting requirements) can result in the imposition of a fine.

16. What are the Records required to be maintained by the Reporting Entity?

Rule 3 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (herein after referred to as PMLA Rules), deals with the Maintenance of records with respect to nature and value of 'all transactions' by 'every reporting' entity.

Be it noted that it does not mention 'specified transactions' but 'all transactions'. These records, therefore, need to be scrupulously maintained by the Reporting

Entities with regard to the client once the definition of 'designated profession or business' is triggered, and the professional becomes a reporting entity based on a transaction specified in the notification. These transactions, the records of which need to be maintained, are as follows:

(1) Every reporting entity shall maintain the record of all transactions including, the record of:

(A) all cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency;

(B) 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;

(BA) all transactions involving receipts by non-profit organizations of value more than rupees ten lakh, or its equivalent in foreign currency;

(C) 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;

(D) all suspicious transactions whether made in cash and by way of-

(i) deposits and credits, withdrawals into or from any accounts in whatsoever name they are referred to in any currency maintained by way of:

(a) cheques including third party cheques, pay orders, demand drafts, cashier's cheques or any other instrument of payment of money including electronic receipts or credits and electronic payments or debits, or

(b) traveler's cheques, or

(c) transfer from one account within the same banking company, financial institution and intermediary, as the case may be, including from or to Nostro and Vostro accounts, or

(d) any other mode in whatsoever name it is referred to;

(ii) credits or debits into or from any non-monetary accounts such as d-mat account, security account in any currency maintained by the banking company, financial institution and intermediary, as the case may be;

(iii) money transfer or remittances in favor of own clients or non-clients from India or abroad and to third-party beneficiaries in India or abroad including transactions on its own account in any currency by any of the following:-

(a) payment orders, or

(b) cashiers cheques, or

(c) demand drafts, or

(d) telegraphic or wire transfers or electronic remittances or transfers, or

(e) internet transfers, or

- (f) Automated Clearing House remittances, or
- (g) lock box driven transfers or remittances, or
- (h) remittances for credit or loading to electronic cards, or
- (i) any other mode of money transfer by whatsoever name it is called;
- (iv) loans and advances including credit or loan substitutes, investments and contingent liability by way of:
 - (a) subscription to debt instruments such as commercial paper, certificate of deposits, preferential shares, debentures, securitized participation, inter-bank participation or any other investments in securities or the like in whatever form and name it is referred to, or
 - (b) purchase and negotiation of bills, cheques and other instruments, or
 - (c) foreign exchange contracts, currency, interest rate and commodity and any other derivative instrument in whatsoever name it is called, or
 - (d) letters of credit, standby letters of credit, guarantees, comfort letters, solvency certificates and any other instrument for settlement and/or credit support;
 - (v) collection services in any currency by way of collection of bills, cheques, instruments or any other mode of collection in whatsoever name it is referred to.
- (E) 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;***
- (F) all purchases and sale by any person of immovable property valued at fifty lakh rupees or more that are registered by the reporting entity, as the case may be.

It is interesting to note that though Rule 3 provides a list of transaction for which records need to be maintained, the Rule itself mentions that records must be maintained for all transactions. The list provided seems to be largely indicative and inclusionary.

17. What is Transaction?

The term transaction is defined in Rule 2(1)(h) as *"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.

18. What is Suspicious Transaction?

Suspicious Transactions are separately defined: "*Suspicious transaction*" means a transaction referred to in clause (h) of Rule 2 of PMLA (Maintenance of Records) Rules, 2005, including an **attempted transaction**, whether 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;

Explanation. - 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 organization or those who finance or are attempting to finance terrorism.

19. What information needs to be recorded and how is it to be maintained?

Rule 4 of the PMLA rules state that the records referred to in Rule 3 should contain all necessary information specified by the Regulator to permit the reconstruction of the individual transaction including the following information: -

- 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;
- d) and the parties to the transaction.

20. What is the Procedure and manner of furnishing information?

Rule 8 of the PMLA rules mandates that every reporting entity shall communicate to the FIU-IND:

The name, designation and address of the Designated Director and the Principal Officer of the RE. The furnishing of information shall be the responsibility of the Principal Officer who is defined by Rules 2(1)(f) as *"Principal Officer" means an officer designated by a reporting entity.*

The FIU-IND issued "AML/CFT Guidelines for Professionals with Certificate of Practice from ICAI, ICSI and ICMAI" on 19th June, 2023. The Chartered Accountants, who are the REs may refer to these guidelines.

21. Who is Designated Director (DD)?

Rule 2(1)(ba) of PML (Maintenance of Records) Rules, 2005, defines *"Designated Director" which means a person designated by the reporting entity to ensure overall compliance with the obligations imposed under Chapter IV of the Act and the Rules and includes -*

(i) the Managing Director or a whole-time Director duly authorized by the Board of Directors if the reporting entity is a company,
(ii) the managing partner if the reporting entity is a partnership firm,
(iii) the proprietor if the reporting entity is a proprietorship concern,
(iv) the managing trustee if the reporting entity is a trust
(v) a person or individual, as the case may be, who controls and manages the affairs of the reporting entity if the reporting entity is an unincorporated association or a body of individuals, and
(vi) such other person or class of persons as may be notified by the Government if the reporting entity does not fall in any of the categories above.

22. Who is the Principal Officer (PO)?

Principal Officer is an Officer designated by Reporting Entity for the purpose of section 12 of PMLA 2002. Rule 8 of the PMLA rules states that the Principal Officer of a reporting entity shall furnish the information in respect of transactions every month to the Director, FIU-IND by the **15th day of the succeeding month.**

However, the information regarding 'suspicious transactions' must be communicated promptly in writing or by fax or by electronic mail to the Director not later than seven working days after being satisfied that the transaction is suspicious. Similarly, the Principal Officer of a reporting entity shall furnish, the information in respect of transactions of 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, every quarter to the Director by the 15th day of the month succeeding the quarter.

It is to be taken note that for of Rule 8, the delay of each day in not reporting a transaction or delay of each day in rectifying a mis-reported transaction beyond the time limit as specified in this rule shall constitute a separate violation.

23. What are the provisions for furnishing of reports by defaulting Reporting Entities?

Section 13 of the PMLA empowers the Director either *suo moto* or on an application made to make inquiry and act against those Reporting Entities with regard to their obligations under Chapter IV of the PMLA. Section 13(2)(c) provides for the Director to seek reports from the Reporting Entity (through the Designated Director or any employee) with regard to measures that it is taking to make good the failure in compliance with provisions of Chapter IV of the Act. Rule 10A provides for the furnishing of the report on measures taken. The reporting entity or its Designated Director or any of the employees of the reporting entity must furnish reports on the *measures taken* to the Director every month by the 10th day of the succeeding month. However, the Director may relax the time interval as mentioned above to every three months on specific requests made by the reporting entity based on reasonable cause.

24. What action can be taken against defaulting Reporting Entities?

Section 13 of the PMLA deals with the powers of the Director to make inquiry or impose fines. The inquiry can be either *suo moto* or on an application made by any authority, officer or person. The Director may make such inquiry as he sees fit or 'cause such inquiry to be made as he thinks fit to be necessary with regard to the obligations of the reporting entity under this Chapter. A specific provision exists for enabling to direct audit of the records by an empaneled Chartered Accountant and the expenses for such audit shall be borne by the Central Government.

The Action to be taken against a defaulting Reporting Entity is to be recorded in an order and a copy of the order is to be furnished to every person who is a party to such proceedings. If the Director, during 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 this Chapter, then 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.]

25. Whether any civil or criminal proceedings may be initiated against REs, DDs and PO's for reporting to FIU -IND?

No prosecution is contemplated by Chapter IV of the PMLA for defaults in compliance. Section 14 of the PMLA contemplates that no civil or criminal proceeding shall lie against the Reporting Entities, its directors and employees for furnishing information.

26. How the Non-compliance shall be dealt with?

- i. **Identification of non-compliance:** The FIU-IND identifies instances where a reporting entity has failed to submit required information or documents.
- ii. **Show cause notice issuance:** The FIU-IND initiates the process by issuing a show cause notice to the reporting entity. This notice outlines the specific non-compliance issue, provides a deadline for responding, and states the potential consequences if the non-compliance is not rectified.
- iii. **Response submission:** The reporting entity is given a specified time frame to respond to the show cause notice. The response should address the reasons for non-compliance, provide any supporting documents or evidence, and present a plan to rectify the situation.
- iv. **Assessment and decision-making:** The FIU-IND reviews the response submitted by the reporting entity and evaluates the reasons provided for non-compliance.
The assessment of the validity of the reasons, the seriousness of the non-compliance, and any mitigating factors shall be made by the FIU-IND. Based on this assessment, a decision is made regarding the appropriate action.
- v. **Consequences:** If the FIU-IND determines that the non-compliance was willful or significant, the FIU-IND may impose penalties and fines. The specific consequences will depend on the severity of the non-compliance.

It's important to note that the above process is a general guideline, and the actual procedures may vary depending on the specific jurisdiction and local regulations governing financial intelligence unit regulation.

27. What is the meaning of the words used in the notification "Financial Transactions carried out by a relevant person on behalf of his client in the course of his profession"?

It is important to note that the word "Transaction" and "Suspicious Transaction" is defined under rule 2(h) and 2(g) of the PML(Maintenance of Records) Rules 2005.

In the context of the reporting required from Chartered Accountants as RE under the PMLA Act, the stated terminology refers to any "transaction" being "financial" in nature i.e which involves any activity or movement of funds/money whether in the form of transfer, conversion, or use of money or other assets and can take various other forms, such as deposits, withdrawals, transfers, purchases, sales, or exchanges of goods and services etc. It is important that such "financial transactions" are carried out by a CA on behalf of his client during his/her professional work.

Here in the notification "**Financial Transactions carried out by a relevant person on behalf of his client during the course of his/her profession**" means actually carrying a financial transaction by a Chartered Accountant in Practice, on behalf of his/her client, in relation to the notified activities. It means funds resulting from the notified activities related to financial transactions or required for execution of those transactions, are routed through or managed by a Chartered Accountant. However, this does not include payment of the following by CA on behalf of his/her client:

- Taxes
- Statutory Fee/Levy
- Registration Charges
- and fee for other professionals such as Senior counsels

28. Whether all the activities of CAs are covered by the Notification? Whether all Practicing CAs required complying and submitting the information?

All the activities of a CA are not covered by this Notification. For example - Auditing and filing of tax (Income-tax/GST etc. returns) are not covered by this Notification.

Only the five activities carried out by any CAs as stated in the notification are covered.

Any practicing CA who holds a COP and carries out any of the five activities as per the Notification is treated as a RE and once the CA becomes RE, he/she shall have to comply with the Guidelines (as issued by the FIU-IND).

29. Whether CAs can enter into financial transactions on behalf of clients? What is the provision in the Code of Ethics issued by ICAI?

Clause 350 of the Code of Ethics mandates that a professional accountant in public practice should not assume custody of client monies or other assets unless permitted to do so by law & if so, in compliance with any other additional legal duties imposed on a professional accountant in public practice holding such assets. It further stipulates that the holding of clients' assets creates threats to compliance with the fundamental principles; for example,

there is a self-interest threat to professional behavior & may be a self-interest threat to the objectivity arising out from holding client's assets. To safeguard against such threats, a professional accountant in public practice entrusted with the money (or from other assets) belonging to others should:

- a) Keep such assets separately from personal & firm's assets;
- b) Use such assets only for the purpose for which they are intended;
- c) At all times, be ready to account for those assets, & any income, dividends or gains generated, to any person entitled to such accounting; and
- d) Comply with all relevant laws & regulations relevant to the holding of & accounting for such assets.

In addition, professional accountants in public practice should be aware of threats to compliance with the fundamental principles through association with such assets, for example, if assets are derived from illegal activities, such as money laundering. As part of client & engagement acceptance procedures for such services, professional accountants in public practice should make appropriate enquiries about the source of such assets & should consider their legal & regulatory obligations. They may also consider seeking legal advice.

30. For how many years are records to be preserved? After the submission of reports whether CA would be called for further inquiry?

Under section 12 of the Prevention of Money Laundering Act (PMLA), records of transactions and related documents are required to be preserved for a ***minimum period of five years from the date of completion of the transaction or the end of the business relationship, whichever is later.***

This includes records of transactions, account files, identification data, and other documents used for customer due diligence, monitoring, and reporting of suspicious transactions. The purpose of preserving these records is to enable regulatory authorities to access and analyze them for investigations and audits related to money laundering and related offenses.

The Director FIU can call from any CA-RE such further information or the CA-RE can face such inquiry u/s 13 as under the RE reporting under Chapter IV of the PMLA Act 2002.

31. Whether provisions of PMLA by virtue of this Notification would apply to the following types of services provided by CA/CS/CWA or other professionals:

- Accounts and Books Writing Services
- Auditing, Attestation and Certification Services

- Special Purpose Audit Reports Due Diligence Reports
- Furnishing of Returns or information related to direct tax and indirect taxes
- Tax Audit and other Review Services
- Services under FEMA, MCA, RERA etc.
- Paying Taxes on behalf of the Clients viz. IT, TDS, GST, MCA Fees, or any type of Govt. Fees etc.
- Application of PAN, TAN, GST, PF, ESIC, PT, Trademark Number etc. Incorporation services
- Project Financing
- Incorporation of Companies LLP and Trust
- Incorporation of Companies LLP and Trust not for buying and selling purposes

It should be noted that by virtue of the Notification dated 3rd May 23, only those practicing CA holding COP, who carry out financial transaction **on behalf of their client** in the course of their profession in relation to the 5 specific activities as below are covered as RE:

- buying and selling of any immovable property
- managing of client monies securities or other assets
- management of bank, savings, or securities accounts
- organization of contributions for the creation, operation, or management of companies
- creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities.

As such subject to the above, and in the facts of each case, a possible set of subjective answers can be:

- Accounts and Books Writing Services – **not covered if not managing any funds or bank accounts of the clients**
- Auditing, Attestation and Certification Services – **not covered**
- Special Purpose Audit Reports Due Diligence Reports - **not covered**
- Furnishing of Returns or information related to direct tax and indirect taxes - **not covered**
- Tax Audit and other Review Services- **not covered**
- Services under FEMA, MCA, RERA etc. - **not covered if not managing any funds or bank accounts of the clients**
- Paying Taxes on behalf of the Clients viz. IT, TDS, GST, MCA Fees, or any types of Govt. Fees etc. - **not covered unless client bank account or client money/assets managed by the CA and that also if in relation to the above 5 activities.**
- Application of PAN, TAN, GST, PF, ESIC, PT, Trademark Number etc. - **not covered**

- Project Financing- **covered since it involves organisation of contributions for creation, operation or management of the companies.**
- Incorporation of Companies LLP and Trust – **covered if it involves buying and selling of such entities on its own**
- Incorporation of Companies LLP and Trust not for buying and selling purpose- **not covered if not managing any funds or bank accounts of the clients**

32. Whether CAs providing services in corporate form also expected to report?

No. Chartered Accountants in corporate form are not covered as per the definition of relevant person in the notification dated 3rd May, 2023 which includes individual and firms. However, these corporate firms shall consider the other notification issued for compliance of provisions of PMLA.

33. Do Professionals need to worry about post coverage as per notification issued on 03.05.2023?

No. All Chartered Accountants or even any CA-RE need not be worried. It is just another reporting requirement and that also only if the CA-RE does any of the 5 activities as stated in the said notification -

Chartered Accountants are made Reporting Entity **only when:**

- There is a financial transaction carried out by;
 - A Chartered Accountant in Practice;
 - On behalf of his/her client;
 - In relation to notified activities.

34. Whether a CA acting as an "Official Liquidator" covered under the notification issued on 03.05.2023?

No, since he/she is appointed by the Court and it is mandated upon him/her by the Court.

35. Whether a CA acting as an "Insolvency Professional" covered under the notification issued on 03.05.2023?

No, since he/she is appointed by the Court and it is mandated upon him/her by the Court.

36. Whether a CA acting as a "Trustee" covered under the notification issued on 03.05.2023?

In case of the "Public Trust" having objects of a charitable nature, a CA acting as a "Trustee" is not covered under the notification issued on 03.05.2023 since such appointment as a Trustee is basically intended for altruistic purposes & not in the course of professional assignment and also because no professional fees may be received from the trust. However, such Trustees shall consider the other notifications issued for compliance with provisions of PMLA.

In case of "Private Discretionary Trust" wherein the settlor has given discretionary powers to the trustee to apply the funds of the Trust for the benefit of the beneficiary, a CA in practice acting as a "Trustee" can be in the course of his professional obligations and as such can be covered under the notification issued on 03.05.2023. This is applicable only when a client relationship is established.

37. Whether a CA acting as an "Executor of the Will" covered under the notification issued on 03.05.2023?

Yes, this is applicable only when a client relationship is established.

38. Whether a CA acting as an "Independent Director" of the Company is covered under the Notification?

No

39. Whether a CA acting as a "Nominee Director" of the Company is covered under the Notification?

No

40. Whether a CA acting as a "Recovery Consultant" of Banking Company is covered under the Notification dated 03.05.2023?

Yes

41. Whether a CA acting as an "Insurance Broker" of Insurance Company is covered under the Notification dated 03.05.2023?

Since handling of premium amount by the CA in practice as an "Insurance Broker" amounts to managing of client's money (specifically in the case of advance premium for small risk & short tenure multiple risk policies for a single client), the CA acting in such capacity shall be covered under the Notification dated 03.05.2023.

42. Whether a CA acting as a "Power of Attorney" holder on behalf of his clients for undertaking transactions specified covered under the Notification dated 03.05.2023?

Yes, since the member in practice executing the specified financial transactions under the "Power of Attorney" is acting on behalf of his client. However, the actions of the member in practice should always be "in the course of his profession" for getting covered under the Notification dated 03.05.2023.

43. Who are considered Relevant Persons?

Relevant Persons, as defined in the guidelines, include individuals who have obtained a Certificate of Practice under the Chartered Accountants Act, 1949, the Company Secretaries Act, 1980, and the Cost and Works Accountants Act, 1959. This includes both individual practitioners and those practicing through a firm.

44. What are the general obligations of Relevant persons i.e. CAs as RE?

The general obligations includes-

1. Registration with SRB(ICAI)
2. Framing the policies and procedure within a firm related to client KYC, client acceptance, client risk profiling, monitoring of transaction, maintenance of records and furnishing information to FIU- IND through SRB in the form of various report such as –
 - i. Cash transaction report(CTR)
 - ii. Suspicious transaction report(STR)
 - iii. Wireless transfer transaction report(WTR)
 - iv. Not-for-profit organization transaction report(NTR)

To comply with these obligations FIU-IND has issued guidelines which are available at this link

https://fiuindia.gov.in/pdfs/AML_legislation/AMLCFTguidelines04072023.pdf

Sharing of information with the authorities does not result in any breach of confidentiality under the ICAI code of ethics. However, the CAs as RE shall not provide tipping of such information in any manner to the client.

45. Why is it important for relevant persons to have a robust AML/CFT/CPF policy in place?

Having a robust AML/CFT/CPF policy is essential for relevant persons to fulfill their obligations under the PML Rules. It helps them to monitor and detect suspicious financial transactions and furnish information about such transactions

to FIU-IND through SRB. By implementing effective policies and procedures, relevant persons can actively combat money laundering, counter-terrorist financing, and combat proliferation financing activities. These policies ensure compliance with legal and regulatory requirements, promote due diligence measures, and contribute to a safer financial system.

46. What is the role of the Designated Director and Principal Officer?

In the case of CAs as RE, REs should appoint a Designated Director and Principal Officer in case of a firm. For individual practicing professionals, the professionals themselves serve as the Principal Officers. The Designated Director and Principal Officer are responsible for various obligations, including reporting transactions to FIU-IND through SRB, implementing internal mechanisms, communicating firm-wide policies, and ensuring compliance with statutory requirements.

47. What is the role of SRBs?

Statutory Bodies (SRBs), such as ICAI, ICSI, and ICMAI, have a role in regulating and supervising the relevant persons in their respective professions. They are responsible for understanding, mitigating, and managing ML/TF/PF risks, monitoring and supervising relevant persons, providing guidance, and facilitating information exchange with relevant authorities.

48. Can CAs as RE disclose to their client or anyone that an STR or information has been filed?

No, CAs as RE and their employees are prohibited from disclosing or "tipping off" that an STR or any related information has been furnished to FIU-IND. This prohibition applies before, during, and after the submission of an STR.

49. How long should CAs as REs retain records?

CAs as RE should retain records as defined in the Prevention of Money Laundering Act (PMLA), for a period of five years after the business relationship with a client has ended or the engagement has been closed, whichever is later. This is to ensure that relevant documents are not destroyed.

50. Why are risk assessment and a risk-based approach important?

CAs as RE should conduct risk assessments to understand their risk exposure. A risk-based approach (RBA) helps prioritize resources and implement appropriate AML/CFT/CPF safeguards. Regular reviews of risk assessments are necessary to address identified deficiencies.

51. What are the internal policies, procedures, and controls that relevant persons should implement?

CAs as RE shall develop internal policies and procedures related to –

1. Customer identification
2. Customer acceptance
3. Customer risk profile
4. Customer transaction monitoring
5. Identification of the red flags indicators in the financial transactions
6. Reporting mechanism to FIU-IND through SRB which includes the appointment of designated director, principal officer and branch-level compliance officer.
7. Maintenance of records, etc.

These policies should comply with legal and regulatory requirements and guidance issued by competent authorities and Statutory Regulatory Bodies (SRBs).

52. How often should the policies and procedures be reviewed?

The policies and procedures on the prevention of ML, TF, and PF should be periodically reviewed to ensure alignment with current statutory provisions, rules, guidelines, and guidance issued by competent authorities and SRBs.

53. What is the process for the registration of reporting entities and the appointment of a Designated Director and Principal Officer?

CAs as REs shall communicate and register with ICAI in the prescribed manner including information related to Principal Officers and/or Designated Directors. . The RE should furnish the necessary information and relevant reports to ICAI. ICAI shall verify the practicing status of the RE and forward the same information & report to FIU-IND.

54. What is the role of the Nodal Officer and the Permanent Technical Committee of SRB?

SRBs appoint a Nodal Officer for interaction and information sharing with FIU-India. They should also establish a Permanent Technical Committee responsible for verifying the certificate of practice of relevant persons filing prescribed reports before forwarding them to FIU-India.

55. What training should be provided to employees of reporting entities?

Relevant persons should provide appropriate training to its employees, particularly those involved in compliance. The training should cover procedures for KYC, Customer Due Diligence (CDD), sanctions screening, record-keeping, and transaction monitoring as specified in the risk policy of the RE. Screening procedures should be in place during the hiring process.

56. How should the extent of ongoing CDD measures be determined?

The extent of ongoing CDD measures should be determined on a risk-based approach, taking into consideration the evolving nature of the business relationship and associated ML/TF/PF risks.

57. What is enhanced due diligence (EDD) and when should it be conducted?

Enhanced due diligence (EDD) refers to more rigorous and robust measures undertaken by relevant persons when dealing with complex, unusually large transactions, or unusual patterns of transactions with no apparent economic or lawful rationale. EDD should be conducted when the risks of money laundering, terrorist financing, or proliferation financing are higher.

58. What are some measures included in enhanced due diligence?

Please refer to clause 4.10 of AML & AML/CFT Guidelines for Professionals with Certificates of Practice from ICAI, ICSI and ICMAI - issued by FIU-IND, which is reproduced as under:

4.10. Enhanced Due Diligence (EDD) Norms

4.10.1 *Relevant persons as notified under 'the notification', should examine, as far as reasonably 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 of money laundering, terrorist financing or proliferation financing are higher, they must conduct enhanced due diligence, consistent with the risks identified. In particular, they should increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear unusual or suspicious.*

4.10.2 *Conducting enhanced due diligence should not be limited to merely documenting income proofs. It includes measures and procedures which are more rigorous and robust than normal KYC. These measures should be commensurate with the risk. While not intended to be exhaustive, the*

following are some of the reasonable measures in carrying out enhanced due diligence:

- a. More frequent review of the customers' profile/transactions*
- b. Application of additional measures like gathering information from publicly available sources or otherwise*
- c. Reasonable measures to know the customer's that the source of funds is commensurate with the assessed risk of customer and product profile which may include:*
 - i. Conducting independent enquiries on the details collected on /provided by the customer where required,*
 - ii. Consulting a credible database, public or otherwise, etc.*

59. Are there specific requirements for Enhanced Due Diligence (EDD) in relation to high-risk jurisdictions or persons?

Please refer answer in Question No.59.

60. What is the requirement for sanctions screening?

Relevant persons must conduct sanctions screening both during the onboarding process and when any of the notified activities as per the notification are carried out. They should promptly apply directives issued by competent authorities for implementing UN Security Council Resolutions, national sanctions, and directives related to combating terrorism, terrorist financing, proliferation of weapons of mass destruction and other applicable laws and regulations.

61. Should counterparty screening be conducted?

Yes, relevant persons should conduct counterparty screening when acting on behalf of their clients. However, they should prima facie ascertain any emergent risk stemming from any suspicious transaction history, adverse media, or published information about regulatory or criminal penalties related to their client's counterparties. For this they may use the UN List of Criminals.

62. What is the timeframe for reporting suspicious transactions?

Suspicious transactions should be reported to FIU-IND within seven working days from the date of forming suspicion on such transactions, as per the rules provided under the Prevention of Money Laundering Rules (PMLR).

63. What is the role of Statutory Bodies (SRBs) in supervision and monitoring?

SRBs, such as ICAI, ICSI, and ICMAI, have a regulatory role to relevant persons as per 'the notification'. They should create awareness about AML/CFT/CPF

provisions among their members, ensure compliance, and act against non-compliant members. SRBs should monitor and supervise relevant persons through on-site and off-site supervision, adjust the frequency of AML/CFT supervision based on risks, and provide guidance on compliance expectations. SRBs must check the COP of the relevant persons.

64. What type of information can be shared between SRBs and public authorities?

SRB shall forward the information and reports as and when received from REs to FIU-IND as prescribed in the guidelines, being issued from time to time.

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