

Anti Money Laundering

Introduction

•The Prevention of Money Laundering Act, 2002 (PMLA) has been brought into force with effect from 1st July, 2005. Necessary Notifications /Rules under the said Act have been published in the Gazette of India on 1st July 2005 by the Department of Revenue, Ministry of Finance, Government of India.

•As per PMLA, every banking company, financial institution (which includes Chit Fund company, a co-operative bank, a housing finance institution and non-banking financial company) and Intermediary (which includes stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, Portfolio Manager, Investment adviser and any other intermediary Associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992) shall have to maintain a record of all the transactions, the nature and value of which has been prescribed in the Rules notified under the PMLA. For the purpose of PMLA, transactions include:

•All cash transactions of the value of more than Rs.10 lakhs or its equivalent in foreign currency.

•All series of cash transactions integrally connected to each other, which have been valued below Rs.10 lakhs or its equivalent in foreign currency, such series of transactions within one calendar month.

•All suspicious transactions whether or not made in cash and including inter-alia, credits or debits into from any non-monetary account such as Demat account, security account maintained by the registered intermediary.

For the purpose of suspicious transactions reporting apart from 'transactions integrally Connected', 'transactions remotely connected or related need to be considered.

“Suspicious Transactions” means a transaction whether or not made in cash which to a person acting in good faith –

•Gives rise to a reasonable ground of suspicion that it may involve the Proceeds of crime; or

•Appears to be made in circumstances of unusual or unjustified complexity; or

•Appears to have no economic rationale or bonafide purpose

•The Anti-Money Laundering Guidelines provides a general background on the subjects of money laundering and terrorist financing in India and provides guidance on the practical implications of the PMLA. The PMLA Guidelines sets out the steps that a registered intermediary and any of its representatives need to implement to discourage and identify any money laundering or terrorist financing activities.

Objective

The main objectives of the PMLA are as follows:

- To have a proper Customer Due Diligence (CDD) process before registering clients.
- To monitor / maintain records of all cash transactions of the value of more than Rs.10 lacs.
- To maintain records of all series of integrally connected cash transactions within one calendar month.
- To monitor and report suspicious transactions.
- To discourage and identify money laundering or terrorist financing activities.
- To take adequate and appropriate measures to follow the spirit of the PMLA.

Guidelines

Brokers being SEBI registered intermediaries have to comply with the spirit of anti money laundering provisions. To comply with PMLA, the following three specific parameters should be observed, which are related to the overall 'Client Due Diligence Process':

- Policy for acceptance of clients;
- Procedure for identifying the clients;
- Transaction monitoring and reporting especially Suspicious Transactions Reporting (STR).

Client / Customer Due Diligence (CDD):

For the purpose of CDD, Broker is dealing with institutional clients. According to SEBI regulation / rules Institutional clients includes:

- Banks
- Mutual Funds
- Foreign Institutional Investors (FII)
- Financial Institutions
- Insurance Companies

According to SEBI, all trades done by institutional clients should be settled through Clearing House. In clearing house trade, trades are settled by the Broker and custodian of the respective client.

In view of above, following steps to be taken to comply with 'Customer Due Diligence' process before registering as client:

- Obtain basic details for the purpose of complying with KYC norms prescribed by SEBI.
- List of Directors and authorized person to trade on behalf of client and copy of Board resolution to that effect.
- Obtain SEBI registration number.
- Custodian details with whom clients trade to be settled.

- Obtain contact details of client front / back office and contact person.
- Obtain PAN NO. (Income Tax number).
- Obtain risk Disclosure Document duly executed by prospective client as prescribed by SEBI.

The client / customer due diligence (CDD) measures comprise the following:

- Client Information & Identity:

Before registering a client, obtain antecedent information. Verify independently information submitted by client but not limited to his identity, registered office address, correspondence address, contact details, occupation, Promoters /Directors, source of income, experience in securities market, PAN no. SEBI Registration No. etc. Obtain as many as information. Generally Institutional clients are recognized at global level. We need to verify clients identity and origin using services of Bloomberg, Reuters, internet services or any other reliable, independent source documents, data or information. After verifying information, registration form along with other supporting documents should be approved by the Compliance Officer designated for verification.

- Beneficial Ownership and control:

After completing the registration process, the client account should be verified by an independent employee to check the actual beneficial ownership and control of the particular account. We need to obtain the details with respect to Shareholders, Promoters from the client and it has to be verified independently. In this process we should find out who is authorized to operate the client's account and who is ultimately controlling the account. Also verify the sources of funds for funding the transaction. We also have to take care at the time of settlement regarding the nature of transaction, movement / source of transaction, etc. Periodically ask for client's financial details to determine the genuineness of transaction

The “Beneficial Owner” is the natural person or persons who ultimately own, control or influence a client and / or persons on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.

- Ongoing due diligence and scrutiny:

Periodically we need to conduct due diligence and scrutiny of client's transactions and accounts to ensure that transactions are being conducted in knowledge, to find out the risk profile, source of funds, etc. At regular interval, ongoing due diligence and scrutiny need to be conduct i.e. perform ongoing scrutiny of the transactions and account throughout the course of the business relationship to ensure that the transactions being conducted are consistent with the Organization's knowledge of the client, its business and risk profile, taking into account, where necessary, the customer's source of funds.

Policy for acceptance of clients:

Before registering client, we need to identify the following details of the prospective client:

- Ascertain the category of clients before registration as Client. (i.e. Individual or Corporate, FII, Mutual Fund, PMS or other).
- Obtain all necessary documents for registration. (Photograph, Photo Identity, Proof of Address, copy of PAN, etc.). Documents should be verified with original and same to be counter signed by Authorized representative of the organization.
- Obtain a copy of Bank Statement for ascertaining the mode of payment of transaction.
- Registration of clients to be made on the physical presence of the prospective client.
- Obtain antecedent details of the prospective client.
- Ensure that new registration is to be made in clients name only.
- Ensure that the account should not open in a fictitious or benami name.
- Client's occupation, sources of income.
- Determine the parameter to categories of client as per risk.
- Obtain financial statements for at least for the last 2 years duly certified by Chartered Accountants.
- Ensure that all details of KYC form should be complete in all respect Incomplete KYC should not accept by organization.
- Organization should not register clients in case any kind of doubt has been raised by the client (i.e. unable to submit required form/proof, any suspicious behavior noticed at the time of registration, etc.)
- Account should not open where the organization cannot apply Customer Due Diligence / KYC policies.
- The client's account should be scrutinized regularly for determining the nature of the transaction taking place. In case of any suspicious transaction, the account should be freezer or securities / money should not be delivered to client.

The following safeguards are to be followed while accepting the clients:

- The client account should not be opened in a fictitious / benami name or on an Anonymous basis.
- Risk perception of the client need to defined having regard to :
- Client's' location (registered office address, correspondence addresses and Other addresses if applicable);
- Nature of business activity, tracing turnover etc. and
- Manner of making payment for transactions undertaken.

The parameters of clients into low, medium and high risk should be classified. Clients of special category (as given below) may be classified as higher risk and higher degree of due diligence and regular update of KYC profile should be performed.

- Documentation like KYC, Broker-client agreement and Risk Disclosure Document and other information from different category of client prescribed by SEBI and any other regulatory authority to be collected depending on perceived risk and having regard to the requirement to the Prevention of Money Laundering Act, 2002, guidelines issued by RBI and SEBI from time to time.
- Ensure that a client account is not opened where the organization is unable to apply appropriate client's due diligence measures / KYC policies. This may be applicable in cases where it is not possible to ascertain the identity of the client, information provided to the organization is suspected to be non-genuine, perceived non-co-operation of the client in providing full and complete information. Discontinue to do business with such a person and file a suspicious activity report.

We can also evaluate whether there is suspicious trading in determining whether to freeze or close the account. Should be cautious to ensure that it does not return securities or money that may be from suspicious trades. However, we can consult the relevant authorities in determining what action should be taken when it suspects suspicious trading.

- We need to comply with adequate formalities when a client is permitted to act on behalf of another person / entity. It should be clearly specified the manner in which the account should be operated, transaction limits for the operation, additional authority required for transactions exceeding a specified quantity /value and other appropriate details. The rights and responsibilities of both the persons (i.e. the agent-client registered with Broker, as well as the person on whose behalf the agent is acting) should be clearly laid down. Adequate verification of a person's authority to act on behalf of the customer should be carried out.

- Necessary checks and balances to be put in place before opening an account so as to ensure that the identity of the client does not match with any person having known criminal background or is not banned in any other manner, whether in terms of criminal or civil proceedings by any enforcement agency worldwide.

Acceptance of clients through Risk-Based Approach:

The clients may be of a higher or lower risk category depending on circumstances such as the customer's background, type of business relationship or transaction etc. We should apply each of the clients due diligence measures on a risk sensitive basis. We should adopt an enhanced customer due diligence process for higher risk categories of customers. Conversely, a simplified customer due diligence process may be adopted for lower risk categories of customers. In line with the risk-based approach, we should obtain the type and amount of identification information and documents necessarily dependent on the risk category of a particular customer.

Clients of special category (CSC):

CSC clients include the following:

- Non-resident clients (NRI);
- High Net worth clients (HNI)
- Trust, Charities, NGOs and organizations receiving donations.
- Companies having close family shareholdings or beneficial ownership.
- Politically exposed persons (PEP) of foreign origin
- Current /Former Head of State, Current or Former Senior High profile politicians and connected persons (immediate family, close advisors and companies in which such individuals have interest or significant influence);
- Companies offering foreign exchange offerings;
- Clients in high risk countries (where existence / effectiveness of money laundering controls is suspect, where there is unusual banking secrecy. Countries active in narcotics production, Countries where corruption (as per Transparency International Corruption Perception Index) is highly prevalent, Countries against which government sanctions are applied, Countries reputed to be any of the following -- Havens / sponsors of international terrorism, offshore financial centers, tax havens, countries where fraud is highly prevalent;
- Non-face to face clients;
- Clients with dubious reputation as per public information available etc.

The above mentioned list is only illustrative and we should exercise independent judgment to ascertain whether new clients should be classified as CSC or not.

Client identification procedure:

To follow the Client Identification procedure we need to follow the following

Factors:

- The 'Know Your Client' (KYC) policy should be strictly observed with respect to the client identification procedures which need to be carried out at different states i.e. while establishing the Broker – client relationship, while carrying out transactions for the client or when have any doubts regarding the veracity or the adequacy of previously obtained client identification data.
- The client should be identified by using reliable sources including documents / information. Obtain adequate information to satisfactorily establish the identity of each new client and the purpose of the intended nature of the relationship.
- The information should be adequate enough to satisfy competent authorities (regulatory / enforcement authorities) in future that due diligence was observed in compliance with the Guidelines. Each original document should be seen prior to acceptance of a copy and it is verified and duly attested.
- Failure by prospective clients to provide satisfactory evidence of identity should be noted and reported to the higher authority within the organization.

•SEBI has prescribed the minimum requirements relating to KYC for certain classes of the registered intermediaries from time to time. Taking into account the basic principles enshrined in the KYC norms, internal guidelines should be followed in dealing with clients and legal requirements as per the established practices. Also maintain continuous familiarity and follow-up where it notices inconsistencies in the information provided by the client. The principles enshrined in the PML Act, 2002 as well as the SEBI Act, 1992 should be followed, so that Company is aware of the clients on whose behalf it is dealing

Record Keeping:

For the purpose of the record keeping provision, we should ensure compliance with the record keeping requirements contained in the SEBI Act, 1992, Rules and Regulations made there-under, PLM act, 2002 as well as other relevant legislation, Rules, Regulations, Exchange Bye-laws and Circulars.

Records to be maintained should be sufficient to permit reconstruction of individual transactions (including the amounts and type of currencies involved, if any) so as to provide, if necessary, evidence for prosecution of criminal behaviour.

Should there be any suspected drug related or other laundered money or terrorist property, the competent investigating authorities would need to trace through the audit trail for reconstructing the financial profile of the suspect's account. To enable this reconstruction, organizations should retain the following information for the accounts of their customers in order to maintain a satisfactory audit trail.

- The beneficial owner of the account;
- The volume of the funds flowing through the account; and
- For selected transactions:
 - The origin of the funds;
 - The form in which the funds were offered or withdrawn, e.g cash, cheques, etc;
 - The identity of the person undertaking the transaction;
 - the destination of the funds;
 - The form of instruction and authority.

Organization should ensure that all client and transaction records and information are made available on a timely basis to the competent investigating authorities.

Retention of Records:

The following document retention terms should be observed:

- All necessary records on transactions, both domestic and international, should be Maintained at least for the minimum period of ten years (10) from the date of Cessation of the transaction.
- Records on customer identification (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence should also be kept for the ten years from the date of cessation of the transaction.
- Records shall be maintained in hard and soft copies.

In situations where the records relate to on-going investigation or transactions, which Have been the subject of a suspicious transaction reporting, they should be retained until it is confirmed that the case has been closed.

Monitoring of transactions:

Regular monitoring of transactions is required for ensuring effectiveness of the Anti Money laundering procedures.

Special attention required to all complex, unusually large transactions / patterns which Appear to have no economic purpose. Internal threshold limits to specify for each class of client's accounts and pay special attention to the transaction, which exceeds these limits.

Should ensure that the records of the transaction are preserved and maintained in terms of the PMLA 2002 and that transactions of suspicious nature or any other transaction notified under section 12 of the act are reported to the appropriate authority. Suspicious transactions should also be regularly reported to the higher authorities / head of the department.

Further the Compliance Department should randomly examine select transaction undertaken by clients to comment on their nature i.e. whether they are in the suspicious Transactions or no.

Suspicious Transaction Monitoring & Reporting:

Whether a particular transaction is suspicious or not will depend upon the background, details of the transactions and other facts and circumstances. Followings are the circumstances, which may be in the nature of suspicious

Transactions:-

- Clients whose identity verification seems difficult or clients appear to be not cooperating.
- Asset management services for clients where the source of the funds is not clear Or not in keeping with client's apparent standing / business activity;
- Clients in high -risk jurisdictions or clients introduced by banks or affiliates or other Clients based in high risk jurisdictions;
- Substantial increases in business without apparent cause.
- Unusually large cash deposits made by an individual or business;
- Clients transferring large sums of money to or from overseas locations with Instructions for payment in cash;
- Transfer of investment proceeds to apparently unrelated third parties;
- Unusual transactions by “Client of special category (CSCs)” and businesses Undertaken by shall corporations, offshore banks / financial services, business Reported to be in the nature of export-import of small items.

Any suspicion transaction needs to be notified immediately to the designated Principal Officer. The notification may be done in the form of a detailed report with Specific reference to the client's transactions and the nature / reason of suspicion. However, it should be ensured that there is continuity in dealing with the client as Normal until told otherwise and the client should not be told of the report /suspicion. In exceptional circumstances, consent may not be given to continue to operate the Account and transactions may be suspended, in one or more jurisdictions concerned in the transaction, or other action taken.

Principal Officer Designation and duties:

ORIM Advisors Private Limited has designated **Mr Vedant Sanjive Kumar Pathella**, as the Principal Officer for due compliance of anti money laundering policies. He will be responsible for implementation of internal controls & procedures for identifying and reporting any suspicious transaction or activity to the FIU – IND.

For ORIM ADVISORS PVT LTD.

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Director



(Principal Officer)