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PREVENTION OF MONEY LAUNDERING ACT AND ITS INTERACTION WITH OTHER LAWS



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Role of Enforcement Agencies: Coordinating Actions under PMLA and Other Relevant Laws



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Overview

In this article, we attempt to highlight the battle against money laundering in India, with a specific focus on the legislative framework embodied under the provisions of the Prevention of Money Laundering Act (PMLA). Money laundering, an enduring financial menace, has persisted throughout history, posing a persistent challenge on a global scale and India, as a nation, has been no stranger to this issue. The PMLA, enacted in 2002 and fully operationalized in 2005, stands as India's robust response to the intricate web of money laundering.

Our exploration begins with an extensive historical and socio-economic investigation, tracing the evolution of anti-money laundering regulations in India. We then delve into the core provisions enshrined within the PMLA, dissecting its essential elements, and the ripple effects of recent amendments. The article meticulously examines the interplay between the PMLA and other legal regimes within India, most notably those under the purview of the Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI), and corporate law. This comprehensive analysis unravels the complex dynamics between these legal frameworks, shedding light on the challenges and opportunities inherent in harmonizing them. Our exploration includes a detailed breakdown of specific transgressions under the PMLA, augmented by real-world case studies. Additionally, we scrutinize the regulatory roles assumed by the RBI and SEBI, deciphering their linkages to the PMLA and corporate law. This meticulous analysis offers a holistic view of the relentless battle against money laundering.

We have also examined as to how the PMLA intersects with other pertinent laws in India, such as the Indian Bankruptcy Code, 2016, and the Prevention of Corruption Act, 1988. We identify areas of synergy and discord between these legal systems, underscoring the imperative of their harmonious coexistence in India's pursuit of financial integrity and the eradication of corruption.

Lastly, our attention is directed towards the profound ramifications of the 2023 PMLA amendments, heralding a transformative phase in the Indian legal landscape. These amendments represent a monumental stride in India's endeavor to combat money laundering effectively. The revised PMLA casts a broader net, placing onerous obligations on 'Reporting Entities,' an encompassing term that includes various entities and professionals

engaged in designated businesses. These obligations necessitate rigorous due diligence, intensified reporting requirements, and heightened monitoring and record-keeping. Advanced verification methods are mandated to ascertain the identities of clients and beneficial owners. Moreover, the imperative of reporting suspicious transactions to the Financial Intelligence Unit – India (FIU-IND) stands as a central pillar of these amendments. Reporting entities must not only report but also enlist on the FIU-IND's FINNET 2.0 portal, designating personnel responsible for compliance.

In conclusion, these PMLA amendments epitomize India's unwavering commitment to fortify its financial security, aligning with international standards and best practices. Realizing the effective implementation of these substantial changes necessitates the provision of explicit guidelines, comprehensive training, and requisite resources. Vigilant monitoring and ongoing evaluations are pivotal to ensure compliance and to identify areas necessitating further refinement. While these amendments represent a significant stride forward, the ongoing imperative in the fight against money laundering in India's dynamic financial landscape lies in addressing extant gaps.

Abstract

Money laundering, an age-old practice with historical roots, has remained a persistent issue throughout human history. Within India, the Hawala system has traditionally served as a prevalent technique for money transfer. This system enables intermediaries to facilitate cross-border fund transfers without the necessity of physically relocating currency. Money laundering has posed a considerable challenge worldwide, and India has not been immune to this issue. In response, the Indian government took action by introducing the Prevention of Money Laundering Act (“PMLA”) in 2002, which subsequently came into force on July 1, 2005. The central aim of this legislation is to combat and regulate money laundering, a practice characterized by the concealment or obfuscation of the proceeds of illegal activities, including their acquisition, possession, or utilization, with the intent of portraying them as legitimate assets.

This article provides a thorough analysis of enforcement agencies’ role in India regarding the PMLA and related laws. It covers the

historical and socio-economic evolution of anti-money laundering regulations, the PMLA’s key provisions, and the impact of recent amendments. The article explores the intricate interplay between the PMLA and other Indian laws, including those governed by the Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI), and company law, shedding light on the challenges and opportunities in harmonizing these legal frameworks. Specific offenses under the PMLA are dissected, accompanied by an analysis of real-world case studies. The regulatory functions of RBI and SEBI are examined in conjunction with their connections to the PMLA, while also exploring the linkages between company law and anti-money laundering efforts. In conclusion, this article offers a comprehensive understanding of the evolving role of enforcement agencies in coordinating actions under the PMLA and related laws. It emphasizes the importance of effective coordination to combat financial crimes, uphold regulatory integrity, and safeguard India’s financial system.

Keywords

Amendments, Enforcement Agencies, Financial Crimes, Jurisprudence, RBI, Regulatory Framework, and SEBI

Introduction

In the realm of global finance, where secrecy and deception often entwine, money laundering has persisted as a craft that transcends time. In the Indian subcontinent, the struggle to combat this intricate challenge has undergone an evolutionary journey inscribed with the annals of history. In India, a considerable portion of the nation's industrial and business entities operated under the shadow of corrupt marketplace practices. These organizations, in their interactions with shareholders, employees, and other stakeholders, exhibited scant regard for enduring human and organizational values. With only a few exceptions, private sector entities were found to engage in various unethical maneuvers, seeking to exploit their customers on one hand while evading their obligations to the state on the other¹.

In the Indian context, numerous privately owned business enterprises were entangled in what can be termed as corporate misgovernance². The distinction lies in the fact that, unlike state-owned organizations where employees at all levels were observed participating in or contributing to corporate misgovernance, privately held businesses primarily saw top-level employees engaging in such practices.

Money laundering facially appears to comprise one or more clear and simple financial transactions, however on the contrary, it involves and comprises a complex web of financial and other transactions. It has been held that the money laundering transaction must essentially involve the following three stages:

- (i) The Placement Stage: the malfeasant introduces the crime money into the normal financial system;
- (ii) The Layering Stage: the money introduced into the financial system is layered/spread out into several transactions within the financial system with an objective of concealing the fountain source of the money and to make the origin/identity virtually disappear.
- (iii) The Integration Stage: the money is thereafter integrated into the financial system in such a way that its original association with crime is totally obliterated and the money could be used by the malfeasant and/or the accomplices to convert it as untainted/clean money.

In order to understand the pivotal role of agencies involved in enforcing PMLA and related laws, we will explore the historical evolution of anti-money laundering regulations in Indian law context.

1. Nirajan Man Singh and P. Sandhya, "Hawala Financing: An Aid to Terrorism", (2008) 4 NSLR 108.

2. Corporate Frauds Vis-À-Vis Criminal Liability : A Critical Analysis Concerning India, US, and UK, 3.1 JCLJ (2022) 1188 at page 1190.

History and Development

In India, there exist several governmental agencies actively engaged in the monitoring and prevention of corporate fraud. One such agency is the Special Police Establishment (S.P.E.), which established by the Government of India in 1941, it serves as the precursor to the Central Bureau of Investigation (C.B.I.). Initially, during World War II, the S.P.E. played a crucial role in investigating cases of bribery and corruption related to transactions involving India's War and Supply Department³.

Further, in 1946, the Delhi Special Police Establishment Act came into force, reshaping the S.P.E.'s role. It was shifted to the Home Department, and its authority was expanded to encompass all departments under the Indian government.

Initially, the Central Government's mandate for reporting offenses was primarily confined to instances of corruption involving Central Government employees. However, as the landscape evolved and a multitude of public-sector undertakings emerged, personnel within these organizations eventually fell under the purview of the C.B.I. Similarly, when commercial banks underwent nationalization in 1969, public-sector banks and their employees were also brought within the ambit of the C.B.I.'s jurisdiction.

Introduction of PMLA in the Indian Legal Framework

The legislative journey that led to the creation of PMLA began in 1998 when the initial Prevention of Money Laundering Bill was

presented in Parliament. Subsequently, the PMLA Bill underwent a comprehensive review by the Standing Committee on Finance. In 1999, this committee furnished its report to the Lok Sabha, encapsulating crucial recommendations. Building upon the committee's suggestions, the Government introduced the Prevention of Money Laundering Bill, 1999, in Parliament. Following the due legislative process, the Bill garnered the approval of the President, ultimately culminating in its transformation into PMLA. This pivotal legislation officially came into effect on July 1, 2005.

In the context of Prevention of Money Laundering Act, 2002, predicate offences are the foundation for building the offences involving money laundering. The Hon'ble Courts in India in plethora of judgements have emphasized on the significance of the predicate offences. In substance, proceeds generated, with an aid of any criminal activity, when laundered, squarely attracts the offence of money laundering.

This legislation serves as a means to prevent economic offenses and establish provisions for the seizure of assets acquired through or associated with money laundering activities. It also outlines penalties for individuals involved in such unlawful practices. The Directorate of Enforcement, housed within the Department of Revenue under the Ministry of Finance, is tasked with the investigation of money laundering cases.

Moreover, the Financial Intelligence Unit-India (FIU-IND), operating within the Department

3. Supra note 2; Aditya Balasubramanian, Anticorruption and the CBI: A History of Development and (Incomplete) Decolonization, CENTER FOR THE ADVANCED STUDY OF INDIA(2022).

of Revenue under the Ministry of Finance, assumes the role of the primary national agency⁴. It is responsible for the receipt, processing, analysis, and dissemination of information related to individuals suspected of engaging in questionable financial transactions. Additionally, FIU-IND plays a pivotal role in sharing its findings with both enforcement agencies and international Financial Intelligence Units.

Interplay between Pmla and Other Laws in India

Amidst the intricate landscape of India's legal framework, the PMLA emerges as a formidable tool against the pervasive threat of money laundering. Yet, its true effectiveness extends beyond its standalone capabilities; it hinges upon its adeptness in seamlessly intertwining with and augmenting other pivotal legal frameworks governing India's financial and corporate realms. This part deals with meticulous examination of the interplay between PMLA and several other significant legal paradigms. These include the regulatory directives issued by the RBI, the mandates of SEBI, and the comprehensive body of company laws that govern India's corporate landscape.

The Convergence and Coordinated Operation of SEBI Regulatory Framework and PMLA Provisions

SEBI with its overarching legal framework, SEBI plays a central role in ensuring the integrity of India's securities market.

Importantly, the Circular dated June 16, 2023⁵, assumes significance within this context as it introduced substantial amendments to SEBI's Master Circular—a foundational document that delineates regulatory compliance requirements for registered intermediaries. The primary impetus behind these amendments is to harmonize SEBI's regulations with the revised Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 (PML Rules). These changes are aimed at bolstering the efficacy of anti-money laundering (AML) and counter-financing of terrorism (CFT) measures within the Indian financial system.

One of the key changes in the Circular is how a 'group' is defined. It is brought in line with the definition in the PML Rules. Now, the term 'group' not only includes a parent entity but also all the entities for which a consolidated financial statement is required due to ownership or control for financial reporting purposes. This change means that

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4. The Prevention of Money Laundering Act' (Enforcement Directorate, 2013) <https://www.enforcementdirectorate.gov.in/FAQs_on_PMLA.pdf>.
 5. SEBI Master Circular, Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 and Rules framed there under (03 February, 2023), available at- https://nsdl.co.in/downloadables/pdf/2023-0021-Policy-SEBI_Master_Circular_on_Guidelines_on_Anti-Money_Laundering_Standards_and_Combating_the%20_Financing_of_Terrorism.pdf

registered intermediaries are now responsible for implementing policies and procedures to counter money laundering and terrorist financing on a broader, group-wide scale. In terms of verifying the clients, an extra responsibility for registered intermediaries. Therefore, registered intermediaries must verify the identity of anyone representing a juridical entity, individual, or trust and ensure that they have the proper authorization. Additionally, the circular lowered the threshold for identifying beneficial ownership and control to 10%, not just for clients who are trusts but also for clients who aren't individuals or trusts.

Furthermore, the Circular requires all registered intermediaries to register details of non-profit organization clients on the DARPAN portal and maintain these records for five years. It also extended the rules related to 'politically exposed persons' to include the accounts of their family members and close relatives. Lastly, the Circular emphasizes the importance of stock exchanges and registered intermediaries using the latest technology and tools to effectively screen names to comply with sanction requirements. They're also required to identify and assess AML/CFT risks that might arise from new products or delivery methods before launching them.

These amendments represent a significant stride towards aligning SEBI's regulatory framework with the updated PML Rules, and in turn increasing the effectiveness of measures against money laundering (AML)

and the financing of terrorism (CFT) in India's financial sector. The revisions, including redefined terms, heightened compliance responsibilities, and the integration of advanced technological tools, underscore the evolving landscape of financial regulations and compliance in our country. As the financial regulations witness continuous evolution, it is incumbent upon all stakeholders to remain vigilant and adaptable in navigating this dynamic terrain, where adherence to regulatory standards and financial integrity remain paramount.

PMLA and RBI- Striking the Regulatory Symphony for Financial Integrity

RBI has been at the forefront of implementing measures to combat money laundering activities. In response to the dynamic nature of financial crime, the RBI has introduced a series of directives and circulars over time, thereby expanding the scope of the PMLA. This strategic approach has been especially crucial, given the susceptibility of money changers engaged in the routine exchange of foreign currency to inadvertently facilitate money laundering. To address this vulnerability, the RBI has formulated a robust set of guidelines, the AML guidelines⁶, with the primary aim of stalling the illicit use of foreign currency transactions.

The primary objective of these AML guidelines is to curb the potential exploitation of Authorized Money Changers involved in the purchase and sale of foreign currency notes for

6. RBI Master Circular, KYC Guidelines – Anti Money Laundering Standards - PMLA, 2002 - Obligations of NBFCs (1 July 2011) available at- <https://www.rbi.org.in/commonperson/English/Scripts/Notification.aspx?Id=866>

illicit money laundering purposes⁷. Within the context of AML, the RBI issues circulars and notifications that serve as instructive tools for the numerous banks operating within India. By virtue of Notification G.S.R. 444(E), issued on July 1, 2005⁸, by the Central Government of India, the regulatory framework known as PML Rules, 2005, was instituted.

Under Rule 7(4) of these PML Rules, it becomes mandatory for each banking company, financial institution, and intermediary to adhere to the procedural framework for information submission specified by not only the RBI but also SEBI including the Insurance Regulatory and Development Authority (IRDA). In the year 2015, the Central Government of India established the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) entrusted upon with the responsibility of operating and maintaining a KYC Registry, governed under PML Rules 2005 (Maintenance of Records). This pivotal move was undertaken to enhance the regulatory framework in response to the PMLA⁹. Under the purview of the PMLA, entities classified as ‘reporting entities,’ which encompass banking companies, financial institutions, intermediaries, and individuals engaged in designated businesses or professions, were mandated to share comprehensive client information with CERSAI.

These reporting entities play a pivotal role in maintaining the integrity of the financial system and ensuring compliance with anti-money laundering measures. Additionally, the Central KYC Registry application, hosted by CERSAI, is accessible not only to entities regulated under the PMLA, 2002 but also to various regulatory bodies, including the RBI, SEBI, IRDA, and the Pension Fund Regulatory and Development Authority (PFRDA). Furthermore, on September 4, 2023, the Ministry of Finance issued a significant notification, presenting a comprehensive set of revisions to the existing Prevention of Money-laundering (Maintenance of Records) Rules, 2005, titled ‘Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2023’¹⁰.

The recent amendment rules bring about several changes in anti-money laundering regulations. Reporting entities can now designate only management-level officers as Principal Officers. In the case of partnership firms, the beneficial owner for due diligence is the natural person owning over 10% of capital or profits or exercising control over management and policy decisions, reducing the threshold from the previous 15%. Trusts require trustees to disclose their status when establishing an account-based relationship or during transactions exceeding INR 50,000 or involving international money transfers. Additionally, reporting entities must maintain

7. Kumar Askand Pandey, *Fight Against Terror & Financial Privacy: Striking the Right Balance*, 8 RMLNLJ (2016) 31.

8. RBI Notification, G.S.R. 444(E), (1 July 2005), available at- <https://dea.gov.in/sites/default/files/moneylaunderingrule.pdf>

9. Section 2(w), Prevention of Money Laundering Act, 2002.

10. RBI Notification, G.S.R. 652(E)- Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2023, (4 September 2023) available at- <https://egazette.gov.in/WriteReadData/2023/248537.pdf>

records of client identities and include the "result of any analysis undertaken" during client due diligence or transaction record maintenance. These amendments provides clarity in the realm of money-laundering prevention, heightening the government's unwavering commitment towards the anti-money laundering efforts.

In summary, the interplay between PMLA and the RBI resembles a balanced working together to preserve the financial integrity of India. The RBI, acting as the central conductor of this symphony, has continuously adapted its directives and circulars to harmonize with the ever-evolving nature of financial crimes. These measures have expanded the reach of the PMLA, recognizing the pivotal role of money changers who routinely exchange foreign currencies and their potential vulnerability to unwittingly facilitate money laundering.

To address this vulnerability, the RBI has created robust Anti Money Laundering (AML) guidelines to combat the illegal use of foreign currency transactions. These guidelines, along with the PMLA Rules of 2005 and subsequent updates, serve as the foundation for financial institutions, intermediaries, and designated businesses to follow strict anti-money laundering requirements. Additionally, the establishment of the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) in 2015 enhances these efforts by compelling reporting entities to share crucial client information. This information is not only accessible to entities regulated under the PMLA but also to

important regulatory bodies such as the RBI, SEBI, IRDA, and PFRDA, working together to promote transparency and combat money laundering¹¹.

It resulted in comprehensive revisions on September 4, 2023, through the 'Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2023.' These revisions, like a stellar musical performance, offer greater clarity and enforce stricter anti-money laundering measures, strengthening the nation's dedication to maintaining financial stability.

Interplay of PMLA and other relevant laws

i. Conflict between IBC and PMLA

The Insolvency and Bankruptcy Code of 2016 (IBC) and the PMLA are two specialized laws. The IBC aims at making the bankruptcy process smoother. On the other hand, the PMLA ensures that who gain from illegal activities can't enjoy the money or assets they got from illegal proceeds.

Even though these two laws have their own clear roles, sometimes, during a company's financial trouble and bankruptcy resolution (CIRP), the company or its management can get involved in actions covered by the PMLA. To put a quietus to discordance between the two laws, the Hon'ble Delhi High Court in ***Rajiv Chakraborty vs. The Directorate of Enforcement***¹², clarified the position. In this case, the Resolution Professional of Era Infra Engineering Limited (EEIL) initiated the case, which was admitted to insolvency proceedings

11. Anuroop Omkar and Aditi Jha, The Road that Needs to be Paved for Central - KYC in India (Part-I), 2020 SCC OnLine Blog OpEd 9.

12. *Rajiv Chakraborty v. The Directorate of Enforcement*, 2022 SCC OnLine Del 3703.

as per the IBC, the challenge was against the attachment orders issued by the Directorate of Enforcement (ED). The central issue at hand was the impact of a moratorium, as stipulated in Section 14 of the Insolvency and Bankruptcy Code of 2016 (IBC), on the Enforcement Directorate's authority to execute an attachment under the provisions of PMLA. The verdict in this case established that the PMLA provisions should not be interpreted as subordinate to the moratorium provision outlined in Section 14 of the IBC. Thus, the Court held that the power to attach under the PMLA would not fall within the ken of Section 14(1)(a) of the IBC¹³.

This approach ensures that both the statutes are construed in a manner that maximizes the effectiveness of all their provisions. The interpretation of these provisions should be such that they do not directly conflict with each other, and the implementation of one should not undermine the purpose of the other¹⁴.

ii. Tussle between PMLA and Prevention of Corruption Act, 1988

Another intricate intersection of PMLA and Prevention of Corruption Act, 1988 (POCA) is also an important issue that requires deliberation. This part exemplifies the discussion on the subtle tensions and resonances that surface when countering money laundering and simultaneously combating corruption.

Recently, the Apex court discussed the issue between the PMLA and POCA in the case of **Directorate of Enforcement vs. Padmanabhan Kishore**¹⁵. The accusation against the accused respondent revolved around his alleged involvement in a conspiracy with other co-accused individuals in the act of offering a bribe to a public servant. The court's verdict established a critical distinction: as long as the money intended to be offered as a bribe remains in the possession of the bribe giver and lacks the necessary corrupt intent, it retains its status as untainted funds. Only when this money, intended as a bribe, is transferred with the requisite corrupt intent does it transform into a bribe. Should it subsequently be misappropriated by the public servant, the offense shifts from bribery to misappropriation.

In such circumstances, when the funds designated as a bribe are to be transferred, the individuals in possession of this money can be legally pursued regarding their possession and acquisition of these funds as "bribe money, considered proceeds of a crime." By giving or transferring this money, the person effectively contributes to and knowingly partakes in an activity associated with the "proceeds of a crime." In the absence of such intent and active participation in the act of offering a bribe, the money does not regain its character as "proceeds of a crime." Consequently, the respondent was found to be *prima facie* involved in activities linked

13. SCC OnLine Blog, "Delhi High Court | PMLA seeks to subserve a larger public policy imperative; Moratorium under S.14 IBC does not affect ED's attachment power under PMLA", (14 November 2022) available at- <https://www.scconline.com/blog/post/2022/11/14/delhi-high-court-pmla-seeks-to-subserve-a-larger-public-policy-imperative-moratorium-under-s-14-ibc-does-not-affect-eds-attachment-power-under-pmla/>

14. *Deputy Director Directorate of Enforcement Delhi v. Axis Bank and Others*, 2019 SCC OnLine Del 7854.

15. *Directorate of Enforcement v. Padmanabhan Kishore*, 2022 SCC OnLine SC 1490.

to the “proceeds of a crime” as a bribe giver, regarding the possession and acquisition of the funds intended for the bribe.

As a result, the High Court’s judgment was overturned, and the proceedings under the PMLA were deemed valid in relation to the accused respondent. The respondent was directed to remain a party to the proceedings connected to the Enforcement Case Information Report (ECIR) registered by the Enforcement Directorate. This underscores the complexity of reconciling the PMLA with the POCA and the significance of maintaining a delicate legal equilibrium in the pursuit of both financial integrity and the eradication of corruption. The evolving legal landscape in India necessitates an ever-vigilant commitment to coherence in addressing these pressing issues.

iii. Regulatory Breaches: RBI, SEBI, and Their Synchrony with PMLA

In addition to the above, regulators such as the RBI, SEBI and the Insurance Regulatory and Development Authority of India (IRDAI) are empowered to deal with issues relating to money laundering activities and lay down guidelines on AML standards. These guidelines, read with the PMLA and PML Rules, form the core of the legal framework for AML laws and enforcement in India.

In the context of money laundering jurisdiction and penalties in India, the PMLA grants authorities extraterritorial reach for crimes with cross-border implications. This extends to cases where proceeds from scheduled offenses committed in India are remitted abroad or when offenses committed abroad would qualify as scheduled offenses in India. The Enforcement Directorate (ED) takes the lead in investigating and prosecuting money laundering, while the Financial Intelligence Unit – India (FIU) serves as the central agency for processing information on suspicious financial transactions. Additionally, regulatory bodies like the SEBI, RBI, and IRDAI enforces AML guidelines within their purviews¹⁶.

Reporting Entities may face fines ranging from INR 10,000 to 100,000 for failures to maintain records or provide information as prescribed under the PMLA. Regulatory bodies like RBI¹⁷ and SEBI¹⁸ can take actions based on their circulars concerning Know Your Customer (KYC) and AML requirements.

To strengthen AML measures, supervisory regulators have issued detailed guidelines covering various aspects, including customer identification, risk management, recordkeeping, and transaction monitoring. India’s membership in the Financial Action Task Force (FATF) reinforces the need for comprehensive

16. Upendra Nath Sharma, Kartik Jain, Debottam Chattopadhyay and Ksanjana Chana, Financial Crime in India: Overview, THOMSON REUTERS (1 August 2022), available at- [https://uk.practicallaw.thomsonreuters.com/w-009-8768?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-009-8768?transitionType=Default&contextData=(sc.Default)&firstPage=true)

17. RBI, Master Direction - Know Your Customer (KYC) Direction, 2016, (Updated on 17 October 2023), available at- https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=11566

18. SEBI, Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 and Rules framed there under (3 February 2023), available at- https://www.sebi.gov.in/legal/master-circulars/feb-2023/guidelines-on-anti-money-laundering-aml-standards-and-combating-the-financing-of-terrorism-cft-obligations-of-securities-market-intermediaries-under-the-prevention-of-money-laundering-act-2002-a-_67833.html

legislative and regulatory reforms to combat money laundering and terrorist financing. The PMLA, coupled with supplementary rules and guidelines, provides a robust framework for addressing financial crimes.

Impacts of The 2023 PMLA Amendments on Indian Legal Landscape

The recent amendments to the PMLA in India mark a transformative phase in the fight against money laundering. The revised PMLA casts its net wider, imposing obligations on 'Reporting Entities,' a term encompassing banking companies, financial institutions, intermediaries, and individuals engaged in designated business or professions, ranging from gambling and real estate to managing cash and liquid securities on behalf of others. The flexibility to designate additional persons or activities empowers the government to adapt the legislation to evolving financial risks. In a proactive move, the Central Government issued two notifications on May 3, 2023¹⁹, and May 9, 2023²⁰, underscoring their commitment to expanding the PMLA's coverage to meet emerging challenges effectively.

The PMLA's recent expansion also incorporates professionals like Chartered Accountants, Company Secretaries, and Cost and Management Accountants when they partake in certain financial transactions on behalf of clients. These transactions span property transactions, asset management, and business operations, but their exact definitions need

further clarification to eliminate ambiguity. It's important to note that advocates and lawyers, who handle financial transactions within their legal practice, are exempt from these amendments, acknowledging the sanctity of client-attorney privileged communication.

Furthermore, a subsequent notification extends the PMLA to 'Trust and Company Service Providers' (TCSPs), encompassing formation agents, individuals holding positions within companies, and those offering registered office addresses. This expansion, however, maintains exemptions for qualified professionals like advocates and chartered accountants involved in formation activities. The amendments bring with them stringent due diligence methods, intensified reporting requirements, and heightened monitoring and record-keeping responsibilities for reporting entities. They must employ advanced verification technologies to confirm client and beneficial owner identities, maintain transaction records, and ensure data confidentiality. Enhanced due diligence is mandatory for specific transactions, such as substantial cash deposits or withdrawals.

In the event of suspicious transactions, reporting entities are obliged to report them to the Financial Intelligence Unit – India (FIU-IND), which serves as the central agency for receiving, processing, and disseminating information on suspect financial transactions. It's also mandatory for all reporting entities to register on the FIU-IND's FINNET 2.0 portal and designate responsible personnel

19. Notification No. S.O. 2036(E) released by the Department of Revenue, Ministry of Finance, Government of India dated 03rd May, 2023.

20. Notification No. S.O. 2135(E) released by the Department of Revenue, Ministry of Finance, Government of India dated 09th May, 2023.

for compliance²¹. In conclusion, these PMLA amendments underscore India's commitment to fortifying its financial security and combating money laundering, aligning with international standards and best practices. To ensure the effective implementation of these significant changes, clear and precise guidelines, comprehensive training, and adequate resources must be provided to reporting entities, professionals, and law enforcement agencies. Continuous monitoring and evaluation mechanisms are vital to guarantee compliance and to identify areas that require further refinement. While these amendments represent a substantial stride forward, addressing existing gaps is an ongoing imperative.

Conclusion

- The core of the discussion revolves around the intricate interaction between the PMLA and various other Indian laws, including those overseen by the RBI, the SEBI, and corporate laws. This detailed exploration sheds light on the complexities of aligning these legal frameworks and provides practical insights through real-world case studies.
- These recent amendments of 2023 represent a significant shift in the realm of anti-money laundering regulations,

broadening their scope to include a wider range of reporting entities and professionals. These regulatory changes introduce more rigorous due diligence requirements, stricter reporting obligations, and heightened monitoring criteria, underscoring the critical need for effective implementation and continuous assessment. It highlights the vital importance of offering clear regulatory guidance, comprehensive training, and the necessary resources to reporting entities, all in the pursuit of maintaining financial stability and upholding the highest standards of integrity within India's financial system.

- In conclusion, the text emphasizes that the Indian government and enforcement agencies are instrumental in coordinating actions under the PMLA and related laws, with a particular focus on harmonizing diverse legal frameworks. These efforts reflect the commitment to combat financial crimes, uphold regulatory integrity, and safeguard India's financial system, demonstrating the nation's dedication to fortifying its financial security in the ongoing battle against money laundering.

21. K. Anupriya, "Compliance v. Chaos: Recent Amendment in the Prevention of Money Laundering Act Lead to Unexpected Compliance Woes", 31 July 2023, available at- <https://suranaandsurana.com/2023/07/31/compliance-vs-chaos-recent-amendments-in-the-prevention-of-money-laundering-act-lead-to-unexpected-compliance-woes/>

