

NOTE ON AMENDMENTS TO THE PREVENTION OF MONEY LAUNDERING ACT (PMLA):

Recently, Government of India amended the PMLA Act with a view to bring certain intermediaries also within the definition of Reporting entity and made them accountable for the transactions carried on by them. This note is prepared to highlight the salient features of such amendments, the list of intermediaries covered, and their obligations:

MEANING OF MONEY LAUNDERING

As per The Prevention of Money Laundering Act, any person knowingly involved in projecting/claiming a property connected to the proceeds of crime as untainted property is guilty of money laundering.

DEFINITION OF REPORTING ENTITY

Reporting entity means a banking company, financial institution, intermediary, or a person carrying on a designated business or profession.

DEFINITION OF CLIENT

Client is a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who is engaged in the transaction or activity is acting.

DEFINITION OF BENEFICIAL OWNER

Beneficial owner 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.

AMENDMENT TO THE PREVENTION OF MONEY LAUNDERING ACT

The Ministry of Finance vide notification dated 09th May 2023 has amended the definition of the person carrying on a designated business or profession [as defined under Section 2(1)(sa)]. The amendment has broadened the scope and the entities which will become reporting entities for the Prevention of Money Laundering Act are increased.

ADDITIONAL ACTIVITIES CONSIDERED AS A PERSON CARRYING ON A DESIGNATED BUSINESS OR PROFESSION

The below-mentioned activities are added to the definition of the person carrying on a designated business or profession and such persons shall be considered as reporting entities:

1. Formation of companies and limited liability partnerships:

Any person who is acting as an agent and is engaged in the formation of companies and limited liability partnerships shall be considered as reporting entity. However, a specific exemption is provided to practicing advocate, chartered accountant, cost accountant, and company secretary who is engaged in the incorporation of a company. The exemption is however, limited to the extent of providing a declaration as required by Section 7(1)(b) of the Companies Act, 2013.

From the above, based on the preliminary reading of the amendment, it can be concluded that any person who is in the business of incorporation of companies and limited liability partnerships shall be regarded as the person carrying on a designated business or profession and hence shall be considered as a reporting entity.

Even if the practicing professionals as mentioned above, carries on any company incorporation or incorporation of limited liability partnership, they will be regarded as a person carrying on a designated business or profession unless they limit themselves to providing declaration as required by Section 7(1)(b) of the Companies Act, 2013.

2. Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and limited liability partnerships- Name lending as Directors or Secretary or as a Designated Partner

Any person who is acting or arranging another person to act as a director of the Company or a Secretary of the company or a partner of a firm or a similar position in companies and limited liability partnerships shall be considered as a person carrying on a designated business or profession. However, if the activity is carried out by an employee on behalf of his employer in the course of or in relation to his employment shall not be regarded as a person carrying on a designated business or profession.

From the above, based on the preliminary reading of the amendment, it can be concluded that any third-party entities/persons providing the directorship services or company secretary services or partner services, shall be covered by the amendment and will be considered as a person carrying on a designated business or profession and hence shall be considered as a reporting entity.

3. Providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust:

Any person providing a place to treat as registered office or business address or accommodation or correspondence or administrative address for a company or limited liability partnership or a trust shall be considered as a person carrying on a designated business or profession. However, if such place is provided based on an agreement and the consideration received on providing such place is subject to deduction of tax at source under the provisions of Section 194-I of the Income-tax Act, 1961 shall not be considered as a person carrying on a designated business or profession.

From the above, based on the preliminary reading of the amendment, it can be concluded that any party providing premises for use for the above-mentioned purposes to a company or a limited liability partnership or a trust shall be considered as a person carrying on a designated business or profession unless, rent is paid and tax is deducted at source under section 194-I of the Income-tax Act, 1961. However, it is not clear as to whether the entity will be considered as a person carrying on a designated business or profession if the consideration received is less than the limit specified under section 194-I of the Income-tax Act, 1961 due to which there will be no deduction of tax at source.

4. Acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust:

Any person acting or arranging for another person to act as a trust shall be considered as a person carrying on a designated business or profession.

The term “express trust” is not defined in the Act. But in normal parlance, express trust is a trust created for the purposes of managing assets. From the above, based on the preliminary reading of the amendment, it can be concluded that any person acting as a trustee of the trust will be considered as a person carrying on a designated business or profession.

5. Acting as (or arranging for another person to act as) a nominee shareholder for another person:

Any person acting as a nominee shareholder shall be considered as a person carrying on a designated business or profession.

From the above, based on the preliminary reading of the amendment, it can be concluded that any person who holds shares on behalf of some other persons as a nominee shareholder is regarded

as a person carrying on a designated business or profession and will be considered as a reporting entity.

REQUIREMENTS TO BE MET BY THE REPORTING ENTITY

1. Verification of identity by reporting entity [Section 11A]:

Every reporting entity shall verify its clients and owners by doing offline verification of Aadhar or Passport.

2. Reporting entity to maintain records [Section 12]:

- a. The reporting entity should maintain information relating to transactions in such a manner as to enable it to reconstruct individual transactions.
- b. Furnish to the Director within the specified time, information relating to such transactions whether attempted or executed, the nature and value of such transactions.
- c. Maintain records of documents evidencing identity of the clients and beneficial owners and account files and business correspondence relating to its clients.

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