

● BENEFICIAL OWNERSHIP TO BEGIN AT 10%

Reporting norms under PMLA tightened

Definition of non-profit entities expanded

SURABHI
New Delhi, March 9

THE FINANCE MINISTRY has widened the scope of the Prevention of Money Laundering Act by tightening reporting norms of "non-profit organisations" as well as the rules relating to beneficial ownership. The changes have been brought through a notification amending the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, which prescribes that reporting entities such as banks, financial institutions and intermediaries have

to maintain records of all transactions of its clients, verify its clients and furnish information. "Non-profit organisation means any entity or organisation, constituted for religious or charitable purposes referred to in clause (15) of section 2 of the Income-tax Act, 1961 (43 of 1961), that is registered as a trust or a society under the Societies Registration Act, 1860 (21 of 1860) or any similar State legislation or a Company registered under the section 8 of the Companies Act, 2013 (18 of 2013)," the notification said. Further, reporting entities are also now required to register clients being non-profit organisations on the DARPAN portal of NITI Aayog and are mandated to maintain the registration records for a period of five years from closure of the busi-

WIDENED SCOPE

■ Now, banks, financial institutions and intermediaries have to maintain records of all transactions of non-profit organisations

■ Reporting entities need to register clients being non-profit organisations on the DARPAN portal of NITI Aayog

■ Banks mandated to maintain the registration records for a period of five years from closure of account



ness relationship or closure of account, whichever is later. The DARPAN portal gives a system generated Unique ID to voluntary and non-governmental organisations on signing up on it.

The Unique ID is mandatory to apply for grants under various schemes of ministries, departments and governments bodies. The new amendment also defines politically exposed persons as "individuals who have been entrusted with prominent public functions by a foreign country, including the heads of States or Governments, senior politicians, senior government or judicial or military officers, senior executives of state-owned corporations and important political party officials". Experts point out that the amendments have also tightened the norms on beneficial ownership by lowering the threshold to 10% of the shares from the earlier 25%. Under the rules, reporting entities such as banks and financial institutions, are on commencement of an

account-based relationship, mandated to identify the beneficial owners where the client is acting on behalf of its beneficial owner. "The term 'beneficial owner' was inter alia defined to mean ownership of or entitlement to more than 25% of shares or capital or profit of the company. The threshold of 25% is now reduced to 10% thereby bringing more indirect participants within the reporting net," said Sandeep Jhunjhunwala, M&A Tax Partner, Nangia Andersen LLP, while adding that the definition of non-profit organisation has been amended. Sandeep Sengal, Partner-Tax, AKM Global, a tax and consulting firm said the amendment in the rules seeks to expand the onus of reporting by banks and financial institutions for transactions with Non-Profit Organisations as well.



FROM PAGE 1

PMLA...

PEPs are individuals entrusted with public functions by a foreign country through heads of state or government, senior politicians, government or judicial or military officers, executives of state-owned corporations, and party functionaries. These entities are mandated to furnish information on registered office addresses and principal places of business.

The ministry in the notification said reporting entities were required to register clients such as non-profit organisations on the DARPAN portal of the NITI Aayog and mandated to maintain registration records for five years from the closure of the business relationship or closure of accounts, whichever is later.

"The newly extended record-keeping requirements would go a long way in discovering money laundering activities, which taint the social and economic fabric of the country," said Sandeep

Jhunjhunwala, M&A tax partner, Nangia Andersen LLP. The move is in line with the Central government's efforts to combat money laundering. In another notification, it had brought trading in cryptocurrencies and digital assets within the ambit of the PMLA. The new rules mandate crypto exchanges and intermediaries dealing in virtual assets to maintain KYCs of their clients and report suspicious transactions to financial intelligence units.

Market...

Market experts said there was a shift towards a regime of lower liquidity and higher rates, which did not augur well for equities. Investors will now be tracking the US payroll data, to be released on Friday, for further cues. "Domestic equities finally succumbed to global pressure after three days of the positive move. Renewed concerns over higher interest rates have dented global sentiment. Weak global cues are likely to keep the market volatile in a broader range," said Siddhartha Khemka, head of

Finance Min Tightens Definition of Beneficial Ownership Under PMLA

Makes records of all financial transactions by non-profits mandatory

Our Bureau

New Delhi: The government has tightened the definition of beneficial ownership under the anti-money laundering law and made it compulsory for non-profit organisations to maintain the records of all their financial transactions.

The finance ministry notified changes to rules related to maintenance of records under the Prevention of Money Laundering Act this week.

As per the changes, "reporting entities" — such as banks, other financial institutions and companies engaged in real estate and jewellery sectors — must collect information about any individual or group that has a 10% ownership in their clients.

Earlier, the threshold to be considered as a beneficial owner was 25%. Under the anti-money laundering law, the reporting entities also include intermediaries in casinos and crypto or virtual digital assets.

"The newly extended record-keeping requirements would go a long way in discovering money-laundering activities, which taint the social and economic fabric of the country," said Sandeep Jhunjhunwala, M&A tax partner, Nangia Andersen LLP.

He said the reduction in the ownership threshold to 10% will bring more indirect participants within the reporting net.

The latest amendment has also expanded the due diligence requirement that was earlier limited to obta-



NEW RULE

Any individual or group having 10% ownership in the client of a 'reporting entity' will now be considered a beneficial owner

ing the basic KYC details of clients, such as registration certificates, PAN card copies and documents of officers holding an attorney to transact on behalf of the client.

Under the amended rule on beneficial ownership, intermediaries will have to submit details such as the names of people holding senior management positions, names of partners, names of beneficiaries, trustees, settlors and authors, depending upon the legal form of organisations. The reporting entities will also have to give details of the registered office address and the principal place of business submitted by clients. They must maintain a record of all transac-

tions, including the record of cash transactions of more than Rs 10 lakh.

The amendment widened the definition of "non-profit organisation", which will now include any entity or organisation constituted for religious or charitable purposes referred to in Section 2(15) of the Income-tax Act, 1961; or registered as a trust or a society under the Societies Registration Act, 1860 or any similar state legislation; or a company registered under Section 8 of the Companies Act, 2013.

A bank, financial institution or intermediary that has business relations with an NGO must register details of the NGO on the Darpan portal of Niti Aayog. They must also maintain the registration records for five years from closure of the business relationship or closure of account, whichever is later.

CRYPTOS UNDER PMLA

Crypto exchanges and intermediaries dealing with virtual digital assets will now be required to perform KYC of their clients and users of the platform.

As per the latest change, an entity dealing in virtual digital assets will now be considered a 'reporting entity' under the Prevention of money laundering Act (PMLA).

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'Politically exposed persons' under new PMLA rules, more norms for NGOs

HANSA
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WIDENING THE ambit of reporting entities under money laundering provisions, the government has amended rules to incorporate more disclosures for non-governmental organisations and defined "politically exposed persons" (PEPs) under the Prevention of Money Laundering Act (PMLA) in line with the recommendations of the Financial Action Task Force (FATF).

The move to define PEPs under PMLA is to bring uniformity with a 2008 circular of the

In line with FATF recommendations

Reserve Bank of India (RBI) for KYC norms/anti-money laundering standards for banks and financial institutions, which had defined PEPs in line with FATF norms, officials said.

The FATF is the global money laundering and terrorist financing watchdog.

"PEP has already been in the RBI's master circular, in line with FATF. The definition has now been given in the PMLA rules so that the same definition is applicable everywhere," a senior government official told *The Indian Express*.

The amendments assume significance ahead of the proposed FATF assessment of India, which is expected to be undertaken later this year. India's assessment is likely to come up for discussion in the plenary discussion in June, while the possible onsite assessment is slated for November.

Due to the pandemic and pause in the FATF's assessment process, the fourth round of mutual evaluation of India had been postponed to 2023. Before this,

CONTINUED ON PAGE 2

• PMLA rules amended, 'politically exposed persons' under its ambit

the FATF had undertaken an evaluation for India in June 2010.

In a notification dated March 7, the Department of Revenue under the Ministry of Finance brought in The Prevention of Money Laundering (Maintenance of Records) Amendment Rules, 2023, which prescribe disclosures of beneficial owners beyond the current requirement of KYC norms through documents such as registration certificates and PAN by reporting entities such as financial institutions, banking companies or intermediaries.

The new clause in the rules for PMLA compliance defines "Politically Exposed Persons" (PEPs) as individuals who have been "entrusted with prominent public functions by a foreign country, including the heads of States or Governments, senior politicians, senior government

or judicial or military officers, senior executives of state-owned corporations and important political party officials".

In line with existing provisions of The Income-Tax Act and The Companies Act, the amended rules have now lowered the threshold for identifying beneficial owners by reporting entities, where the client is acting on behalf of its beneficial owner.

"Lowering of threshold for beneficial ownership has been done to bring PMLA in line with Companies Act and Income-tax Act," the official said.

"The term 'beneficial owner' was inter alia defined to mean ownership of or entitlement to more than 25 percent of shares or capital or profit of the company. The threshold of 25 percent is now reduced to 10 percent, thereby bringing more in-

direct participants within the reporting net," Sandeep Jhunjhunwala, M&A Tax Partner, Nangia Andersen LLP, said.

reporting entities are also required to register details of the client if it's a non-profit organisation on the DARPAN portal of NITI Aayog.

"Every Banking Company or Financial Institution or intermediary, as the case may be, shall register the details of a client, in case of client being a non-profit organisation, on the DARPAN Portal of NITI Aayog, if not already registered, and maintain such registration records for a period of five years after the business relationship between a client and a reporting entity has ended or the account has been closed, whichever is later," the notification said.

"This has been in the works for some time. The purpose is to

have some repository of basic information on all NGOs in the Darpan portal of NITI Aayog," the official said. The due diligence documentation requirements which were until now limited to obtaining the basic KYCs of clients such as registration certificates, PAN copies and documents of officers holding an attorney to transact on behalf of the client, have now been extended.

It now includes submission of details such as names of persons holding senior management positions, names of partners, names of beneficiaries, trustees, settlors and authors, as the case may be, depending upon the legal form of organisation. Also, the details of registered office address and principal place of business are now required to be submitted by clients to financial institutions,

banking companies or intermediaries.

"The definition of non-profit organisation has been amended and linked to the definition of charitable purpose provided under Section 2(15) of the Income Tax Act, 1961. The newly extended record-keeping requirements would go a long way in discovering money laundering activities, which taints the social and economic fabric of the country," Jhunjhunwala said.

An official said the broader objective is to bring in legal uniformity and remove ambiguities before the FATF assessment. There are 40 FATF recommendations that cover seven areas and provide a framework of measures to help countries tackle illicit financial flows through laws, regulations and operational measures to ensure authorities can take action.