



JSA Prism Anti-Corruption, White Collar Crimes & Investigations Practice



May 2023

Notification under the Prevention of Money Laundering Act, 2002, expanding its ambit to include certain activities / individuals

On May 9, 2023, the Central Government (Ministry of Finance, Department of Revenue) issued a notification under Section 2 (1) (sa) (vi) of the Prevention of Money Laundering Act, 2002 (“PMLA”) bringing the following activities, carried out in the course of business on behalf of or for another person, within the ambit of ‘*person carrying on designated business or profession*’:

1. acting as formation agent of companies and limited liability partnerships (“LLP”);
2. acting as (or arranging for another person to act as) a director or secretary of a company, or partner of a firm or a similar position in relation to other companies and LLPs;
3. providing a registered office, business address or accommodation, correspondence or administrative address for a company or an LLP or a trust;
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; and
5. acting as (or arranging for another person to act as) a nominee shareholder for another person.

The notification also provides for an explanation, clarifying (for removal of doubts) that the following activities will not be regarded as an activity for the purpose of Section 2(1) (sa) (vi) of the PMLA:

1. Lease / Tenancy agreements: Any activity that is carried out as part of any agreement of lease, sub-lease, tenancy or any other agreement or arrangement for the use of land or building or any space (where the consideration is subjected to deduction under Section 194-1 of the Income Tax Act, 1961).
2. Activity in the course of employment: Any activity that is carried out by an employee in the course of or in relation to his employment.
3. Exclusion of certain professional services: Activities carried out by an advocate, a chartered accountant, cost accountant or company secretary in practice, engaged in the formation of a company to the extent of filing a declaration as required under Section 7(1)(b) of the Companies Act, 2013.

N.B.: Section 7(1)(b) states that during incorporation of company, a declaration by the above-mentioned professionals that all requirements of the Companies Act, 2013 and rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with, must be filed with the registrar of companies.

4. Activities by an intermediary: Any activity of a person which falls under the definition of an intermediary as per Section 2(1)(n) of the PMLA.¹

JSA Comment

Any person facilitating or undertaking the abovementioned activities will now be categorized as a “*person carrying on designated business or profession*” as defined under Section 2(1)(sa) of the PMLA. Section 2(wa) of PMLA defines ‘reporting entity’ to mean, amongst others, a ‘*person carrying on a designated business or profession*’.

This notification comes on the heels of the recent notification dated May 3, 2023 [No. S.O. 2036(E)] through which the Central Government had notified activities carried out by ‘*relevant persons*’ on behalf of their client, in the course of their profession. Practicing corporate professionals (chartered accountants, company secretaries, cost and works accountants) are considered as ‘*relevant persons*’ for the purposes of the notification.

The PMLA imposes various reporting and KYC obligations on reporting entities; and together, these recent notifications have widened the ambit and reach of PMLA.

The notification issued on May 9, 2023, clarifies that activities carried out by an advocate, a chartered accountant, cost accountant or company secretary in practice, engaged in the formation of a company (to the extent of filing a declaration as envisaged under the Companies Act, 2013) will not fall under the ambit of PMLA. While this does provide some limited relief to professionals, given the onerous compliance requirements that result from being considered a ‘reporting entity’ under the PMLA, it remains to be seen whether further clarity or directions on the manner in which such professionals must comply with the requirements of the PMLA will be set forth.

These changes to the PMLA appear to be enacted ahead of the upcoming Financial Action Task Force’s evaluation of India’s anti money laundering regime.

¹ An intermediary under the PMLA means a stock broker or share transfer agent or banker to an issue or trustee to a trust deed or registrar to an issue or merchant banker or underwriter or portfolio manager or investment adviser or any other intermediary associated with securities market and registered under Section 12 of the Securities and Exchange Board of India Act, 1992. It also includes an association recognized or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or an intermediary registered by the Pension Fund Regulatory and Development Authority; or a recognized stock exchange referred to in Section 2(f) of Securities Contracts (Regulation) Act, 1956.

Anti-Corruption, White Collar Crimes & Investigations Practice

To effectively and comprehensively augment its full-service legal offerings, JSA has a well-established and extensive White-Collar Crimes and Investigations practice. We assist domestic and multinational corporates with internal investigations and fact-finding exercise along with advice on white collar crimes such as corruption, bribery, misgovernance, fraud, misconduct, money laundering, cybercrime, embezzlement and all other economic offences. We also advise on ancillary matters such as employment issues and data privacy concerns. JSA's white-collar practice provides comprehensive and end-to-end assistance and advice, from internal governance concerns to litigation, for global and domestic corporations alike.

We also assist in compliance diligence as part of M&A and PE transactions and vet corporate entities for compliance with anti-corruption laws and best practices. We conduct internal investigations into claims of misconduct, fraud and other such matters. Having worked on diverse matters related to compliance investigations under the (Indian) Companies Act, 2013, India leg of FCPA and UKBA matters, whistle blower investigations and advisory solutions to implement a comprehensive ethics framework, we have both an in-depth understanding of the sector as well as the skills required to deliver effective and regulation specific legal counsel. JSA also conducts training programs and sessions on anti-corruption laws and whistle-blower policies, code of conduct and ethics, internal controls for the board of directors, key managerial personnel, executives, managers, employees, agents, and other appropriate third parties, in diverse formats such as one-on-one training, seminars, workshops, and off-sites.

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17 Practices and
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11 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



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