SHRI BRIJ SECURITIES PVT. LTD

RELEVANT RULES OF PMLA

Rule 3 of the Prevention of Money Laundering (Maintenance of records of the nature and value of transactions, the procedure and manner or maintaining of time for furnishing information and verification and maintenance of records of the identity of the clients of the banking companies, financial institutions and intermediaries) Rules, 2005, requires banking company, financial institution and intermediary as the case may be, shall maintain a record of

- all cash transactions of a value of more than Rs.10 lakh or its equivalent in foreign currency (Clause A)
- all series of cash transactions integrally connected to each other which have been valued below Rs.10 lakh or its equivalent in foreign currency where such series or transactions have taken place within a month (Clause B) (it may be noted that the words used are not the same month.)
- all cash transactions where forged or counterfeit currency or bank notes are used and where any forgery of a valuable security has taken place (Clause C)
- all suspicious transactions whether or not made in cash and by way of deposits and credits, withdrawals into or from any accounts in whatsoever name they are referred to in any currency.(Clause D)
- Credits or debits into or from any non-monetary accounts such as d-mat account, security account in any currency maintained by the banking company, financial institution or intermediary as the case may be.
- Money transfer or remittances in favour of own clients or non-clients from India or abroad and to third party beneficiaries in India or abroad including transactions on its own account in any currency by any of the following:

  Loans and advances including credit or loan substitutes, investments and contingent liability.

- Collection services in any currency by way of collection of bills, cheques, instruments or any other mode of collection in whatsoever name it is referred to.

Rule 6 requires the records to be maintained for a period of 10 years from the date of the cessation of the transactions between the client and the company.

Rule 7 requires appointment of Principal Officer (PO) who shall be responsible for furnishing of the information and for maintenance of records.

Rule 8 provides that the PO is required to furnish information to the Director, Enforcement Directorate in charge of FEMA in respect of transactions referred to in.

- Clause A and Clause B of Rule 3 by the 15th day of the succeeding month.
- Clause C and Clause D of Rule 3 promptly in writing or by fax or email not latter than 3 days from the occurrence of such transactions.

Rule 10 requires maintenance of records relating to the identity of the clients.

- Records to be maintained for a period of 10 years from the date of cessation of the transaction.
- Records shall be maintained in hard as well as soft copy.

In view of the above the company has formed certain policies which are explained as under:

Policy for acceptance of clients:

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

a. No account is opened in a fictitious/benami name or on an anonymous basis.

b. Factors of risk perception (in terms of monitoring suspicious transactions) of the client are clearly defined having regard to clients' location (registered office address, correspondence addresses and other addresses if applicable), nature of business activity, trading turnover, etc. and manner of making payment for transactions undertaken. The parameters should enable classification of clients into low, medium and high risk. Clients of special category (as given below) may, if necessary, be classified even higher. Such clients require higher degree of due diligence and regular update of KYC profile.

c. Ensure that an account is not opened where the intermediary is unable to apply appropriate clients 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 intermediary is suspected to be not genuine, perceived non co-operation of the client in providing full and complete information. The market intermediary should not continue to do business with such a person and file a suspicious activity report. It should also evaluate whether there is suspicious trading and determine whether to freeze or close the account. The market intermediary should be cautious to ensure that it does not return securities of money that may be from suspicious trades. However, the market intermediary should consult the relevant authorities in determining what action is to be taken when it suspects suspicious trading.

d. The circumstance under which the client is permitted to act on behalf of another person/entity should be clearly laid down. It should be specified in what manner the account should be operated, transaction limits for the operation, additional authority required for transactions exceeding a specified quantity/value and other appropriate details. Further the rights and responsibilities of both the persons (i.e. the agent-client registered with the intermediary, 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 also be carried out.

e. Necessary checks and balance to be put into 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 proceedings by any enforcement agency worldwide.

Clients of special category (CSC):

a. Non resident clients.
b. High networth clients.
c. Trusts, Charities, NGOs and organizations receiving donations.
d. Companies having close family shareholding or beneficial ownership.
e. Politically exposed persons (PEP) of foreign origin.
f. 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).
g. Companies engaged in foreign exchange.
h. Clients in high risk countries (where existence/effectiveness of money laundering controls is suspect, 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 centres, tax havens, countries where fraud is highly prevalent)
i. Non face to face clients.
j. Clients with dubious reputation as per public information available etc.

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

Client identification procedure:

Should strictly follow KYC norms as prescribed by SEBI/PAML Act, 2002.

Should ensure face to face meeting of client, verify the address personally to the extent possible.

Suspicious Transactions Monitoring & Reporting:

Indicators of suspicion:

a. Clients whose identity verification seems difficult or clients appear not to cooperate.
b. Asset Management Services for clients where the source of the funds is not clear or not in keeping with clients apparent standing/business activity.
c. Clients in high risk jurisdictions or clients introduced by banks or affiliates or other clients based in high risk jurisdictions.
d. Substantial increase in business without apparent cause.
e. Unusually large cash deposits made by an individual or business.
f. Clients transferring large sums of money to or from overseas locations with instructions for payment in cash.
g. Transfer of investment proceeds to apparently unrelated third parties.
h. Unusual transactions by CSCs and businesses undertaken by shell corporations, offshore banks/financial services, businesses reported to be in the nature of export-import of small items.

i. Is there a genuine reason for paying large sums of money in cash?
j. Is the customer trying to introduce intermediaries either to protect their identity or hide their involvement?
k. Is the customer paying in used notes and/or small denominations?
l. Is the source of the cash known and reasonable?
m. Are there any unusual requests for collection or delivery?

Regular and established customers:

a. Is the transaction reasonable in the context of the normal business of this customer?
b. Is the size and frequency of the transaction consistent with the normal activities of the customer?
c. Has the pattern of transactions changed since the business relationship was established?
d. Is the customer making efforts to avoid reporting or record keeping requirements?
e. Amongst common indicators are general areas of concern are such as frequent address changes, client is secretive and reluctant to meet in person, client frequently changes the name of the individuals or contact persons involved, large cash deposits, large cash withdrawals, etc.

Employees status and integrity:

a. ensure the identity verification and past records of the employee. Collect the documents and fill in the employee detail forms.
b. Keep a check on the time devoted by the employee on internet browsing of personal nature. Whether it is unnatural?

LITERATURE FOR AML REQUIRMENTS

As per the requirements of SEBI, implementation of Anti Money Laundering (AML)/ Combating Financing of Terrorism requires trading members as intermediaries to demand certain information from investors which may be of personal nature or has hitherto never been called for. Such information can include documents evidencing source of funds/income tax returns/bank records etc. This can sometimes lead to raising of questions with regard to the motive and purpose of collecting such information. To, sensitize about these requirements as the ones emanating from AML and CFT framework, General FAQs as published by The Financial Action Task Force (FATF), an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing is reproduced herewith. Kindly feel free to visit the websites of http://www.fatf-gafi.org/ and http://fiuindia.gov.in for more information on the subject

FAQ

What is Money Laundering?

The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardising their source.

Illegal arms sales, smuggling, and the activities of organised crime, including for example drug trafficking and prostitution rings, can generate huge amounts of proceeds. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to "legitimise" the ill-gotten gains through money laundering.

When a criminal activity generates substantial profits, the individual or group involved must find a way to control the funds without attracting attention to the underlying activity or the persons involved. Criminals do this by disguising the sources, changing the form, or moving the funds to a place where they are less likely to attract attention.

In response to mounting concern over money laundering, the Financial Action Task Force on money laundering (FATF) was established by the G-7 Summit in Paris in 1989 to develop a co-ordinated international response. One of the first tasks of the FATF was to develop Recommendations, 40 in all, which set out the measures national governments should take to implement effective anti-money laundering programmes.

How much money is laundered per year?

By its very nature, money laundering is an illegal activity carried out by criminals which occurs outside of the normal range of economic and financial statistics. Along with some other aspects of underground economic activity, rough estimates have been put forward to give some sense of the scale of the problem.

The International Monetary Fund, for example, has stated in 1996 that the aggregate size of money laundering in the world could be somewhere between two and five percent of the world's gross domestic product.

Using 1996 statistics, these percentages would indicate that money laundering ranged between US Dollar (USD) 590 billion and USD 1.5 trillion. The lower figure is roughly equivalent to the value of the total output of an economy the size of Spain.

However it must be said that overall it is absolutely impossible to produce a reliable estimate of the amount of money laundered and therefore the FATF does not publish any figures in this regard.

How is money laundered?

In the initial - or placement - stage of money laundering, the launderer introduces his illegal profits into the financial system. This might be done by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account, or by purchasing a series of monetary instruments (cheques, money orders, etc.) that are then collected and deposited into accounts at another location.

After the funds have entered the financial system, the second – or layering – stage takes place. In this phase, the launderer engages in a series of conversions or movements of the funds to distance them from their source. The funds might be channeled through the purchase and sales of investment instruments, or the launderer might simply wire the funds through a series of accounts at various banks across the globe. This use of widely scattered accounts for laundering is especially prevalent in those jurisdictions that do not co-operate in anti-money laundering investigations. In some instances, the launderer

might disguise the transfers as payments for goods or services, thus giving them a legitimate appearance.
Having successfully processed his criminal profits through the first two phases the launderer then moves them to the third stage – integration – in which the funds re-enter the legitimate economy. The launderer might choose to invest the funds into real estate, luxury assets, or business ventures.

Where does money laundering occur?
As money laundering is a consequence of almost all profit generating crime, it can occur practically anywhere in the world. Generally, money launderers tend to seek out countries or sectors in which there is a low risk of detection due to weak or ineffective anti-money laundering programmes. Because the objective of money laundering is to get the illegal funds back to the individual who generated them, launderers usually prefer to move funds through stable financial systems.
Money laundering activity may also be concentrated geographically according to the stage the laundered funds have reached. At the placement stage, for example, the funds are usually processed relatively close to the under-lying activity; often, but not in every case, in the country where the funds originate.
With the layering phase, the launderer might choose an offshore financial centre, a large regional business centre, or a world banking centre – any location that provides an adequate financial or business infrastructure. At this stage, the laundered funds may also only transit bank accounts at various locations where this can be done without leaving traces of their source or ultimate destination.
Finally, at the integration phase, launderers might choose to invest laundered funds in still other locations if they were generated in unstable economies or locations offering limited investment opportunities.

How does money laundering affect business?
The integrity of the banking and financial services marketplace depends heavily on the perception that it functions within a framework of high legal, professional and ethical standards. A reputation for integrity is the one of the most valuable assets of a financial institution.
If funds from criminal activity can be easily processed through a particular institution – either because its employees or directors have been bribed or because the institution turns a blind eye to the criminal nature of such funds – the institution could be drawn into active complicity with criminals and become part of the criminal network itself. Evidence of such complicity will have a damaging effect on the attitudes of other financial intermediaries and of regulatory authorities, as well as ordinary customers.

As for the potential negative macroeconomic consequences of unchecked money laundering, one can cite inexplicable changes in money demand, prudential risks to bank soundness, contamination effects on legal financial transactions, and increased volatility of international capital flows and exchange rates due to unanticipated cross-border asset transfers. Also, as it rewards corruption and crime, successful money laudering damages the integrity of the entire society and undermines democracy and the rule of the law.

What influence does money laundering have on economic development?

Launderers are continuously looking for new routes for laundering their funds. Economies with growing or developing financial centres, but inadequate controls are particularly vulnerable as established financial centre countries implement comprehensive anti-money laundering regimes.

Differences between national anti-money laundering systems will be exploited by launderers, who tend to move their networks to countries and financial systems with weak or ineffective countermeasures.

Some might argue that developing economies cannot afford to be too selective about the sources of capital they attract. But postponing action is dangerous. The more it is deferred, the more entrenched organised crime can become.

As with the damaged integrity of an individual financial institution, there is a damping effect on foreign direct investment when a country's commercial and financial sectors are perceived to be subject to the control and influence of organised crime. Fighting money laundering and terrorist financing is therefore a part of creating a business friendly environment which is a precondition for lasting economic development.

What is the connection with society at large?

The possible social and political costs of money laundering, if left unchecked or dealt with ineffectively, are serious. Organised crime can infiltrate financial institutions, acquire control of large sectors of the economy through investment, or offer bribes to public officials and indeed governments.

The economic and political influence of criminal organisations can weaken the social fabric, collective ethical standards, and ultimately the democratic institutions of society. In countries transitioning to democratic systems, this criminal influence can undermine the transition. Most fundamentally, money laundering is inextricably linked to the underlying criminal activity that generated it. Laundering enables criminal activity to continue.

How does fighting money laundering help fight crime?

Money laundering is a threat to the good functioning of a financial system; however, it can also be the Achilles heel of criminal activity.

In law enforcement investigations into organised criminal activity, it is often the connections made through financial transaction records that allow hidden assets to be located and that establish the identity of the criminals and the criminal organisation responsible.

When criminal funds are derived from robbery, extortion, embezzlement or fraud, a money laundering investigation is frequently the only way to locate the stolen funds and restore them to the victims.

Most importantly, however, targeting the money laundering aspect of criminal activity and depriving the criminal of his ill-gotten gains means hitting him where he is vulnerable. Without a usable profit, the criminal activity will not continue.

What should individual governments be doing about it?

A great deal can be done to fight money laundering, and, indeed, many governments have already established comprehensive anti-money laundering regimes. These regimes aim to increase awareness of the phenomenon – both within the government and the private business sector – and then to provide the necessary legal or regulatory tools to the authorities charged with combating the problem.

Some of these tools include making the act of money laundering a crime; giving investigative agencies the authority to trace, seize and ultimately confiscate criminally derived assets; and building the necessary framework for permitting the agencies involved to exchange information among themselves and with counterparts in other countries.

It is critically important that governments include all relevant voices in developing a national anti-money laundering program. They should, for example, bring law enforcement and financial regulatory authorities together with the private sector to enable financial institutions to play a role in dealing with the problem. This means, among other things, involving the relevant authorities in establishing financial transaction reporting systems, customer identification, record keeping standards and a means for verifying compliance.

Should governments with measures in place still be concerned?

Money launderers have shown themselves through time to be extremely imaginative in creating new schemes to circumvent a particular government's countermeasures. A national system must be flexible enough to be able to detect and respond to new money laundering schemes.

Anti-money laundering measures often force launderers to move to parts of the economy with weak or ineffective measures to deal with the problem. Again, a national system must be flexible enough to be able to extend countermeasures to new areas of its own economy. Finally, national governments need to work with other jurisdictions to ensure that launderers are not able to continue to operate merely by moving to another location in which money laundering is tolerated.

What about multilateral initiatives?

Large-scale money laundering schemes invariably contain cross-border elements. Since money laundering is an international problem, international co-operation is a critical necessity in the fight against it. A number of initiatives have been established for dealing with the problem at the international level. International organisations, such as the United Nations or the Bank for International Settlements, took some initial steps at the end of the 1980s to address the problem. Following the creation of the FATF in 1989, regional groupings – the European Union, Council of Europe, Organisation of American States, to name just a few – established anti-money laundering standards for their member countries. The Caribbean, Asia, Europe and southern Africa have created regional anti-money laundering task force-like organisations, and similar groupings are planned for western Africa and Latin America in the coming years.