

# THE POWER OF BEING UNDERSTOOD

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**Newsflash: Coverage of Gems and Jewellery sector under  
Prevention of Money Laundering Act, 2002**

## 1.0 Background



- 1.1 The Prevention of Money-laundering Act, 2002 ( 'PMLA' or 'the Act') aimed at combating money laundering in India with three main objectives – to prevent and control money laundering, to confiscate and seize the property obtained from laundered money, and to deal with any other issue connected with money laundering in India, came into force with effect from 1 July 2005.
- 1.2 The Act provides that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property, shall be guilty of offences of money-laundering.
- 1.3 Further, the term “property” includes property of any kind used in commission of an offence under this Act or any of the offence scheduled in the Act.
- 1.4 The Act deals with offence of money laundering, punishment for money laundering, attachment and confiscation of property involved in money laundering, summons, search and seizure, appeal provisions etc.
- 1.5 The Act lays down certain reporting obligations which need to be reported by the Reporting Entity to the concerned authority in the manner and within time limit prescribed under Act. Reporting obligations under Act are only applicable to the Reporting Entities. Reporting Entity means a banking company, financial institution, intermediary or person carrying on a designated business or profession.
- 1.6 Further, “Person carrying on designated business or profession” inter-alia means dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government.
- 1.7 Recently, the Central Government has made two important clarifications which assume a lot of significance for Gems and Jewellery Sector as far as applicability of the Act and compliance under the Act are concerned.

## 2.0 Recent Clarification through Notification – Significant for Gems and Jewellery Sector



- 2.1 The first clarification is with regard to scope of dealers of precious metals, precious stones, and other high-value good to be covered under the Act and the second clarification is relating to authority would be vested with the power to license, authorise, register, regulate or supervise the activity of Gems and Jewellery Sector.
  - 2.1.1 **Scope of dealers covered under the Act:** The Central Government has vide its Notification No. G.S.R. 1058(E) dated 23 August 2017 notified the dealer in precious metals, precious stones and other high value goods having a turnover of Rs. 2 crores in a previous financial year as a person carrying on designated business or profession.
  - 2.1.2 **Regulating authority for Gems and Jewellery Sector:** Through a separate notification dated 23 August 2017, it has been clarified that the Directorate General of Goods and Services Tax Intelligence would act as Regulator with respect to Gems and Jewellery Sector.

2.2 Important terminologies and their meaning have been tabulated as under:

Sr. No.	Term / Expression	Meaning
1	Person	<p>The term person includes:</p> <ul style="list-style-type: none"> <li>(i) an Individual;</li> <li>(ii) HUF;</li> <li>(iii) Company;</li> <li>(iv) Firm;</li> <li>(v) an Association of person or Body of Individuals whether registered or not, every artificial juridical person not falling within any of the above sub-clauses;</li> <li>(vi) any agency, office or branch owned and controlled by any of the above persons mentioned in the preceding sub-clauses.</li> </ul>
2	Dealer (As per Section 2(b) of Central Sales Tax Act, 1956)	<p>Dealer means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes-</p> <ul style="list-style-type: none"> <li>(i) a local authority, a body corporate, a company, any cooperative society or other society, club, firm, Hindu undivided family or other association of persons which carries on such business;</li> <li>(ii) a factor, broker, commission agent, del credere agent, or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying, selling, supplying or distributing, goods belonging to any principal whether disclosed or not; and</li> <li>(iii) an auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal.</li> </ul>
3	Precious metal	<p>"Precious metal" means gold, silver, platinum, palladium or rhodium or such other metal as may be notified by the Central Government;</p>
4	Precious stone	<p>"Precious stone" means diamond, emerald, ruby, sapphire or any such other stone as may be notified by the Central Government;</p>

## 3.0 PMLA Obligations of Reporting Entities



- 3.1 With the above clarifications regarding the scope of dealers of precious metals, precious stones and other high value goods covered under the Act, it would be mandatory for them to maintain a record of all transactions and submit to Director such reports at such intervals as prescribed under the Prevention of Money Laundering (Maintenance of Records) Rules, 2005('the Rules').
- 3.2 Rule 3 prescribes the kind of report which needs to be submitted by the Reporting Entities.

### An illustrative list of transactions are provided as under:

1	All cash transactions of value of more than Rs. 10 lakh rupees or equivalent in foreign currency
2	All series of cash transactions integrally connected to each other which have been individually valued below Rs. 10 lakhs where such series of transactions have taken place within a month and monthly aggregate exceeds an amount of Rs. 10 lakhs or its equivalent in foreign currency.
3	All transactions involving receipts by non-profit organizations of value more than Rs. 10 lakhs, or its equivalent in foreign currency
4	All suspicious transactions whether or not made by cash.
5	All cross-border wire transfers of value more than Rs. 5 lakhs or its equivalent where either the origin or the destination of funds is in India
6	All purchase and sale by any person of immovable property valued at Rs.50 lakhs or more that is registered by the reporting authority as the case may be.

### Note:

"Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery or the arrangement thereof and includes

- i) opening of an account;
- ii) deposits, withdrawal, exchange or transfer of funds in whatever currency, whether in cash or by cheque, payment order or other instruments or by electronic or other non-physical means;
- iii) the use of a safety deposit box or any other form of safe deposit;
- iv) entering into any fiduciary relationship;
- v) any payment made or received in whole or in part of any contractual or other legal obligation;
- vi) any payment made in respect of playing games of chance for cash or kind including such activities associated with casino; and
- vii) establishing or creating a legal person or legal arrangement.

- 3.3 Every reporting entity is required to evolve an internal mechanism for maintaining transactional details in such form and at such intervals as may be specified by its regulator, from time to time.

### 3.4 Client due diligence [Rule 9]

- 3.4.1 Every reporting entity shall at the time of commencement of an account-based relationship –  
a) identify its clients, verify their identity, and obtain information on the purpose and intended nature of the business relationship and determine whether a client is acting on behalf of a beneficial owner, and identify the beneficial owner and take all steps to verify the identity of the beneficial owner.
- 3.4.2 In all other cases, reporting entity verify identity while carrying out (i) transaction of an amount equal to or exceeding Rs. 50,000, whether conducted as a single transaction or several transactions that appear to be connected, or (ii) any international money transfer operations.

3.4.3 Every reporting entity shall within 3 days after the commencement of an account-based relationship with a client, file the electronic copy of the client's KYC records with the Central KYC Records Registry.

Requirement for Customer Identification under Rule 9	
Customer /Clients	Documents (Refer Note)
Individual – Proof of Identity and Address	<ul style="list-style-type: none"> <li>• Aadhaar number and PAN or Form No. 60</li> </ul>
Companies	<ul style="list-style-type: none"> <li>• Certificate of incorporation;</li> <li>• Memorandum and Articles of Association</li> <li>• A resolution from the Board of Directors and power of attorney granted to its managers, officers or employees to transact on its behalf;</li> <li>• Aadhaar numbers; and (b) PANs or Form 60, issued to managers, officers or employees holding an attorney to transact on the company's behalf</li> </ul>
Partnership firm	<ul style="list-style-type: none"> <li>• Registration certificate;</li> <li>• Partnership deed; and</li> <li>• Aadhaar number; and Permanent Account Number or Form 60, issued to the person holding an attorney to transact on its behalf</li> </ul>
Trust	<ul style="list-style-type: none"> <li>• Registration certificate;</li> <li>• Trust deed; and</li> <li>• Aadhaar number; and PAN or Form 60 Issued to the person holding an attorney to transact on its behalf</li> </ul>
Unincorporated association or a body of individuals	<ul style="list-style-type: none"> <li>• Resolution of the managing body of such association or body of individuals;</li> <li>• Power of attorney granted to him to transact on its behalf;</li> <li>• Aadhaar number; and PAN issued to the person holding, an attorney to transact on its behalf</li> </ul>
Juridical person	<ul style="list-style-type: none"> <li>• Reporting entity shall verify that any person purporting to act on behalf of such client is so authorized and verify the identity of that person.</li> </ul>

**Note:** Where an Aadhaar number has not been assigned, the client shall furnish proof of application of enrolment for Aadhaar and in case the Permanent Account Number is not submitted, one certified copy of an 'officially valid document' shall be submitted. OVDs include: Passport, driving licence, voters' ID card and Job Card issued by NREGA signed by a State Government official.

- 3.4.5 When there are suspicions of money laundering or financing of the activities relating to terrorism or where there are doubts about the adequacy or veracity of previously obtained client identification data, the reporting entity shall review the due diligence measures including verifying again the identity of the client and obtaining information on the purpose and intended nature of the business relationship, as the case may be.
- 3.4.6 The reporting entity shall apply client due diligence measures also to existing clients on the basis of materiality and risk, and conduct due diligence on such existing relationships at appropriate times or as may be specified by the regulator, taking into account whether and when client due diligence measures have previously been undertaken and the adequacy of data obtained.
- 3.4.7 Every reporting entity shall carry out risk assessment to identify, assess and take effective measures to mitigate its money laundering and terrorist financing risk for clients, countries or geographic areas, and products, services, transactions or delivery channels that is consistent with any national risk assessment conducted by a body or authority duly notified by the Central Government.
- 3.4.8 Every reporting entity shall maintain the physical copy of records of the identity of its clients obtained, after filing the electronic copy of such records with the Central KYC Records Registry. The records of the identity of clients shall be maintained by a reporting entity in the manner as may be specified by the Regulator from time to time.
- 3.4.9 The records should be maintained for 5 years from the date of transaction between Client and Reporting Entity. The records of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients, should be maintained for 5 years after the business relationship between Client and Reporting Entity has been ended or account has been closed whichever is later.

### 3.5 Due Dates for filing Reports [Rule 8 ]

Report	Description	Due Date
<b>CTR</b>	All cash transactions of the value of more than Rs.10 lakhs or its equivalent in foreign currency.	15th day of the succeeding month
	All series of cash transactions integrally connected to each other which have been valued below Rs.10 lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month	
<b>CCR</b>	All cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions	
<b>NTR</b>	All transactions involving receipts by non-profit organizations of value more than Rs. 10 lakhs or, its equivalent in foreign currency	
<b>CBWTR</b>	All cross border wire transfers of the value of more than Rs.5 lakhs or its equivalent in foreign currency where either the origin or destination of fund is in India.	
<b>IPR</b>	All purchase and sale by any person of immovable property valued at Rs. 50 lakhs or more that is registered by the reporting entity, as the case may be.	
<b>STR</b>	All suspicious transactions whether or not made in cash	Not later than 7 working days on being satisfied that the transaction is suspicious.

### 3.6 Penal consequences for non-compliance

The Act provides for attachment of property as well as prosecution (3 to 10 years) of the accused involved in money laundering.

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This newsflash is general in nature. In this newsflash, we have summarized the Central Government Notification No. G.S.R. 1058(E) dated 23 August 2017 and Notification No. G.S.R. 1057 (E) dated 23 August 2017. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said notification and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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