

# INDIA LEGAL UPDATE

May 31, 2023

## Practising CA, CS and CWAs brought under the ambit of PMLA in case certain financial transactions executed by them on behalf of a client

Notification Date	May 3, 2023, and May 9, 2023
Effective Date	May 3, 2023, and May 9, 2023
Legal Framework	Prevention of Money Laundering Act, 2002; Income-tax Act, 1961
Government Authority	Ministry of Finance
Source Weblink	<p><a href="#">Ministry of Finance Notification No. S.O. 2036(E) dated May 3, 2023</a></p> <p><a href="#">Ministry of Finance Notification No. S.O. 2135(E) dated May 9, 2023</a></p>

### LEGAL UPDATE

The Central Government on May 3, 2023 has notified following financial transactions carried out by a “relevant person” on behalf of his client, in relation to activities carried out shall come within the purview of the Prevention of Money Laundering Act, 2002 (PMLA):

- buying and selling of any immovable property;
- managing client money, securities or other assets;
- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of companies;
- creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities, shall be an activity for the purposes of said sub-section.

### KEY QUESTIONS

#### What is the meaning of the “relevant person”?

‘Relevant Person’ includes –

- Chartered Accountants, practising individually or through a firm;
- Company Secretary, practising individually or through a firm;
- Cost and Works Accountants, practising individually or through a firm.

‘Firm’ shall have the same meaning assigned to it in Section 2(23)(i) of the Income-tax Act, 1961.

## KEY QUESTIONS

### What is the prescribed list of activities?

The Ministry of Finance in a subsequent notification on May 9, 2023 issued a Notification under Section 2(1)(sa)(vi) of the PMLA and notifies the list of activities carried out in the course of business on behalf of or for another person, as an activity as prescribed by the central government:

- i. acting as a formation agent of companies and LLP;
- ii. 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 LLPs;
- iii. providing a registered office, business address or accommodation, correspondence or administrative address for a company or LLP or a trust;
- iv. 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
- v. acting as (or arranging for another person to act as) a nominee shareholder for another person.

### What all activities are covered within the scope of this notification?

In the notification, it is also clarified that the following activities shall not be considered "activity" as per section 2(1)(sa)(vi):

- 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 and the consideration is subjected to TDS under Section 194-I of the Income-tax Act, 1961; or
- any activity that is carried out by an employee on behalf of his employer during or in relation to his employment; or
- any activity that is carried out by an advocate, a CA, a CS or CWA in practice, who is 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.
- any activity of a person which falls within the meaning of an intermediary as defined under Section 2(1)(n) of the PMLA.

### Is there any Implication of the above notifications?

The Relevant Persons shall comply with the following requirements:

- As provided under section 11A, they are required to comply with the Aadhaar authentication, offline verification of the Aadhaar or Passport, or use any other officially valid document or modes of identification.
- They must maintain the records of all transactions carried out by them on behalf of their client or beneficial owners and these are to be furnished to the director.
- They must further maintain records of documents evidencing the identity of their clients and beneficial owners as well as their account files and business correspondence relating to the clients.
- The records and documents need to be preserved for five years from the date of the transaction.
- The requirement of enhanced due diligence and maintaining such records will also apply to the CA, CS and CWAs.

## PENALTY PROVISIONS

In case these professionals fail to comply with the requirements of the above notification, there could be a monetary penalty imposed upon them which could be Rs. 10,000 to Rs. 1,00,000 for each failure.

### Queries?

If you have any queries about this article, please reach out to our experts:



**Jyoti Kukreja (ジヨティ ククレージャ)**  
Partner / Director | Legal Practice

Mobile: +91-98-9159-2915  
Email: Jyoti@HLS-Global.in



**Manu Srivastava (マヌ スリバスタバ)**  
Managing Partner

Mobile: +91-99-7180-3336  
Email: Manu@HLS-Global.in



**Mayank Srivastava (マヤンク スリバスタバ)**  
Director | Tax Practice

Mobile: +91-93-3536-3533  
Email: Mayank@HLS-Global.in



**Ejima Naoto (江嶋直人)**  
General Manager | Japan Desk

Mobile: +91-91-0803-0825  
Email: nejima@HLS-Global.in



**Priyanka Bhutani (プリヤンカブータニ)**  
Senior Manager | Knowledge Management

Mobile: +91-85-8797-2798  
Email: Priyanka@HLS-Global.in

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# HLS Global in India

## New Delhi (Corporate Office)

Vegas Mall, Office Block-B, 8th Floor, Unit No.883, Sector-14, Dwarka, New Delhi 110075 | India  
Tel.: +91-11-6134-0450  
Email: Info@HLS-Global.in  
JapanDesk@HLS-Global.in

## Gurugram

Level 1, Building No. 10A, DLF Cyber City, Gurugram  
Tel.: +91-79-8266-6136  
Email: Info@HLS-Global.in

## Japanese Zone - Neemrana

Office No. 206, Regent Square Mall, CP-4, Japanese Zone, Neemrana, Rajasthan - 301705  
Tel.: +91-73-5732-0237  
Email: JapanDesk@HLS-Global.in

## Lucknow

Office No. 22/181, Indira Nagar, Lucknow, Uttar Pradesh - 226016  
Tel.: +91-93-3536-3533  
Email: Info@HLS-Global.in

## Mumbai

Plot C-20, G Block Near MCA, Bandra Kurla Complex, Bandra(East), Mumbai City MH 400051  
Tel.: +91-93-3536-3533  
Email: Info@HLS-Global.in

## Ahmedabad

A - 413, Titanium Business Park, Beside Railway underpass, Makarba, Ahmedabad-380051  
Tel.: +91-79-8266-6136  
Email: Info@HLS-Global.in

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## Noida

304, 3rd Floor, Tradex Tower-1, Alpha Commercial Belt, Alpha-1, Greater Noida, Uttar Pradesh-201310  
Tel.: +91-79-8266-6136  
Email: Info@HLS-Global.in

## Bangalore

Old Data Center, West Wing, North Tower, Level 6, ITC Green Centre, Dodda Banaswadi Main Rd, Bengaluru, Karnataka 560005  
Tel.: +91-79-8266-6136  
Email: Info@HLS-Global.in

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