

[अधिसूचना सं०. 12/2013/ फा. सं. पी-12011/1/2013-एसओ (ईएस (सेल))]

बिप्लब कुमार नसकर, अवर सचिव

टिप्पण : मूल नियम भारत के राजपत्र में असाधारण, भाग II, खंड 3, उपखंड (i) में सा.का.नि. सं. 444 (अ) तारीख 1 जुलाई, 2005 द्वारा प्रकाशित किए गए और तत्पश्चात संख्या सा.का.नि. 717(अ) तारीख 13 दिसंबर, 2005, सा.का.नि. सं. 389(अ) तारीख 24 मई, 2007, सा.का.नि. सं. 816 (अ) तारीख 12 नवंबर, 2009, सा.का.नि. सं. 76 (अ) तारीख 12 फरवरी, 2010, सा.का.नि. सं. 508(अ) तारीख 16 जून, 2010, सा.का.नि. सं. 980 (अ) तारीख 16 दिसंबर, 2010 और सा.का.नि. सं. 481(अ) तारीख 24 जून, 2011 द्वारा संशोधित किये गए।

MINISTRY OF FINANCE**(Department of Revenue)****NOTIFICATION**New Delhi, the 27th August, 2013

G.S.R. 576(E).— In exercise of the powers conferred by sub-section (1) read with clauses (i), (j) and (k) of sub-section (2) of section 73 of the Prevention of Money-laundering Act, 2002 (15 of 2003), the Central Government in consultation with the Reserve Bank of India hereby makes the following rules further to amend the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, namely:—

1. (1) These rules may be called the Prevention of Money-laundering (Maintenance of Records) Amendment Rules, 2013.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, —

(a) in rule 2, in sub-rule (1), —

(I) for clause (b), the following clause shall be substituted, namely : —

‘(b) “client due diligence” means due diligence carried out on a client referred to in clause (ha) of sub-section (1) of section 2 of the Act;’;

(II) after clause (b), the following clause shall be inserted, namely : —

‘(ba) “Designated Director” means a person designated by the reporting entity to ensure overall compliance with the obligations imposed under chapter IV of the Act and the Rules and includes —

- (i) the Managing Director or a whole-time Director duly authorized by the Board of Directors if the reporting entity is a company,
- (ii) the managing partner if the reporting entity is a partnership firm,
- (iii) the proprietor if the reporting entity is a proprietorship concern,
- (iv) the managing trustee if the reporting entity is a trust,
- (v) a person or individual, as the case may be, who controls and manages the affairs of the reporting entity if the reporting entity is an unincorporated association or a body of individuals, and
- (vi) such other person or class of persons as may be notified by the Government if the reporting entity does not fall in any of the categories above.

Explanation. — For the purpose of this clause, the terms “Managing Director” and “Whole-time Director” shall have the meaning assigned to them in the Companies Act, 1956 (1 of 1956);

(III) in clause (c), for the words and numbers “sections 12 and 13”, the words, numbers and letter “sections 12, 12A and 13” shall be substituted;

(IV) in clause (d), for the words “Reserve Bank of India or any other document as may be required by the banking companies, or financial institution or intermediary”, the word “Regulator” shall be substituted;

(V) after clause (d), the following proviso shall be inserted, namely : —

“Provided that where simplified measures are applied for verifying the identity of the clients the following documents shall be deemed to be ‘officially valid documents’:

(a) identity card with applicant’s Photograph issued by Central/State Government Departments, Statutory/Regulatory Authorities, Public Sector Undertakings, Scheduled Commercial Banks, and Public Financial Institutions;

(b) letter issued by a gazetted officer, with a duly attested photograph of the person;”;

(VI) in clause (f), for the words “banking company, financial institution or intermediary, as the case may be”, the words “reporting entity” shall be substituted;

- (VII) in clause (fa), for the words "banking companies, financial institutions or intermediaries, as the case may be", the words "reporting entities or the Director as may be notified by the Government for a specific reporting entity or a class of reporting entities or for a specific purpose" shall be substituted;
- (VIII) after clause (fa), the following clause (faa) shall be inserted, namely:—
'(faa) "Rules" means the Prevention of Money-laundering (Maintenance of Records) Rules, 2005;';
- (IX) For the clause (h), the following shall be substituted, namely: —
'(h) "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.' —
- (b) in rule 3, —
(I) for the portion beginning with "(1) Every banking Company" and ending with "taken place within a month", the following shall be substituted, namely: —
'Every reporting entity shall maintain the record of all transactions including, the record of—
(A) all cash transactions of the value of more than ten lakh rupees or its equivalent in foreign currency;
(B) all series of cash transactions integrally connected to each other which have been individually valued below rupees ten lakh or its equivalent in foreign currency where such series of transactions have taken place within a month and the monthly aggregate exceeds an amount of ten lakh rupees or its equivalent in foreign currency;';
(II) after clause (D), the following clauses (E) and (F) shall be inserted, namely: —
'(E) all cross border wire transfers of the value of more than five lakh rupees or its equivalent in foreign currency where either the origin or destination of fund is in India;
(F) all purchase and sale by any person of immovable property valued at fifty lakh rupees or more that is registered by the reporting entity, as the case may be.'.
- (c) for rule 5, the following rule shall be substituted, namely: —
"5. Procedure and manner of maintaining information. — (1) Every reporting entity shall maintain information in respect of transactions with its client referred to in rule 3 in accordance with the procedure and manner as may be specified by its regulator from time to time.
(2) Every reporting entity shall evolve an internal mechanism for maintaining such information in such form and manner and at such intervals as may be specified by its regulator from time to time.
(3) It shall be the duty of every reporting entity, its designated director, officers and employees to observe the procedure and the manner of maintaining information as specified by its regulator under sub-rule (1)."
- (d) rule 6 shall be omitted;
- (e) for rules 7, 8, 9, and 10, the following rules shall be substituted, namely: —
"7. Procedure and manner of furnishing information.— (1) Every reporting entity shall communicate to the Director the name, designation and address of the Designated Director and the Principal Officer.
(2) The Principal Officer shall furnish the information referred to in clauses (A), (B), (BA), (C), (D), (E) and (F) of sub-rule (1) of rule 3 to the Director on the basis of information available with the reporting entity. A copy of such information shall be retained by the Principal Officer for the purposes of official record.
(3) Every reporting entity shall evolve an internal mechanism having regard to any guidelines issued by regulator, for detecting the transactions referred to in clauses (A),(B),(BA),(C),(D), (E) and (F) of sub-rule (1) of rule 3 and for furnishing information about such transactions in such form as may be directed by its Regulator.
(4) It shall be the duty of every reporting entity, its designated director, officers and employees to observe the procedure and the manner of furnishing information as specified by its Regulator.

8. Furnishing of information to the Director. –

- (1) The Principal Officer of a reporting entity shall furnish the information in respect of transactions referred to in clauses (A), (B), (BA), (C) and (E) of sub-rule (1) of rule 3 every month to the Director by the 15th day of the succeeding month.
- (2) The Principal Officer of a reporting entity shall furnish the information promptly in writing or by fax or by electronic mail to the Director in respect of transactions referred to in clause (D) of sub-rule (1) of rule 3 not later than seven working days on being satisfied that the transaction is suspicious.
- (3) The Principal Officer of a reporting entity shall furnish, the information in respect of transactions referred to in clause (F) of sub-rule (1) of rule 3, every quarter to the Director by the 15th day of the month succeeding the quarter.
- (4) For the purpose of this rule, delay of each day in not reporting a transaction or delay of each day in rectifying a mis-reported transaction beyond the time limit as specified in this rule shall constitute a separate violation.

9. Client Due Diligence.-

(1) Every reporting entity shall-

(a) at the time of commencement of an account-based relationship -

- (i) identify its clients, verify their identity, obtain information on the purpose and intended nature of the business relationship; and
- (ii) 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:

Provided that where the Regulator is of the view that money laundering and terrorist financing risks are effectively managed and where this is essential not to interrupt the normal conduct of business, the Regulator may permit the reporting entity to complete the verification as soon as reasonably practicable following the establishment of the relationship; and

(b) in all other cases, verify identity while carrying out-

- (i) transaction of an amount equal to or exceeding rupees fifty thousand, whether conducted as a single transaction or several transactions that appear to be connected, or
- (ii) any international money transfer operations.

(2) For the purpose of clause (a) of sub-rule (1), a reporting entity may rely on a third party subject to the conditions that-

- (a) the reporting entity immediately obtains necessary information of such client due diligence carried out by the third party;
- (b) the reporting entity takes adequate steps to satisfy itself that copies of identification data and other relevant documentation relating to the client due diligence requirements will be made available from the third party upon request without delay;
- (c) the reporting entity is satisfied that such third party is regulated, supervised or monitored for, and has measures in place for compliance with client due diligence and record-keeping requirements in line with the requirements and obligations under the Act;
- (d) the third party is not based in a country or jurisdiction assessed as high risk;
- (e) the reporting entity is ultimately responsible for client due diligence and undertaking enhanced due diligence measures, as applicable; and
- (f) where a reporting entity relies on a third party that is part of the same financial group, the Regulator may issue guidelines to consider any relaxation in the conditions (a) to (d).

(3) The beneficial owner for the purpose of sub-rule (1) shall be determined as under –

- (a) where the client is a company, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation.- For the purpose of this sub-clause-

1. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five percent of shares or capital or profits of the company;
2. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

- (b) where the client is a partnership firm, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of/entitlement to more than fifteen percent of capital or profits of the partnership;
 - (c) where the client is an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
 - (d) where no natural person is identified under (a) or (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
 - (e) where the client is a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership; and
 - (f) where the client or the owner of the controlling interest is a company listed on a stock exchange, or is a subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies.
- (4) Where the client is an individual, he shall for the purpose of sub-rule (1), submit to the reporting entity, one certified copy of an 'officially valid document' containing details of his identity and address, one recent photograph and such other documents including in respect of the nature of business and financial status of the client as may be required by the reporting entity :
- Provided that photograph need not be submitted by a client falling under clause (b) of sub-rule (1).
- (5) Notwithstanding anything contained in sub-rule (4), an individual who desires to open a small account in a banking company may be allowed to open such an account on production of a self-attested photograph and affixation of signature or thumb print, as the case may be, on the form for opening the account:

Provided that-

- (i) the designated officer of the banking company, while opening the small account, certifies under his signature that the person opening the account has affixed his signature or thumb print, as the case may be, in his presence;
 - (ii) a small account shall be opened only at Core Banking Solution linked banking company branches or in a branch where it is possible to manually monitor and ensure that foreign remittances are not credited to a small account and that the stipulated limits on monthly and annual aggregate of transactions and balance in such accounts are not breached, before a transaction is allowed to take place;
 - (iii) a small account shall remain operational initially for a period of twelve months, and thereafter for a further period of twelve months if the holder of such an account provides evidence before the banking company of having applied for any of the officially valid documents within twelve months of the opening of the said account, with the entire relaxation provisions to be reviewed in respect of the said account after twenty four months;
 - (iv) a small account shall be monitored and when there is suspicion of money laundering or financing of terrorism or other high risk scenarios, the identity of client shall be established through the production of officially valid documents, as referred to in sub-rule (4) of rule 9; and
 - (v) foreign remittance shall not be allowed to be credited into a small account unless the identity of the client is fully established through the production of officially valid documents, as referred to in sub-rule (4) of rule 9.
- (6) Where the client is a company, it shall for the purposes of sub-rule (1) submit to the reporting entity one certified copy of the following documents:-
- (i) Certificate of incorporation;
 - (ii) Memorandum and Articles of Association;
 - (iii) A resolution from the Board of Directors and power of attorney granted to its managers, officers or employees to transact on its behalf; and
 - (iv) an officially valid document in respect of managers, officers or employees holding an attorney to transact on its behalf.
- (7) Where the client is a partnership firm, it shall for the purposes of sub-rule (1) submit to the reporting entity one certified copy of the following documents:-
- (i) registration certificate;

- (ii) partnership deed; and
- (iii) an officially valid document in respect of the person holding an attorney to transact on its behalf.
- (8) Where the client is a trust, it shall, for the purposes of sub-rule (1) submit to the reporting entity one certified copy of the following documents:-
- (i) registration certificate;
- (ii) trust deed; and
- (iii) an officially valid document in respect of the person holding an attorney to transact on its behalf.
- (9) Where the client is an unincorporated association or a body of individuals, it shall submit to the reporting entity one certified copy of the following documents:-
- (i) resolution of the managing body of such association or body of individuals;
- (ii) power of attorney granted to him to transact on its behalf;
- (iii) an officially valid document in respect of the person holding an attorney to transact on its behalf; and
- (iv) such information as may be required by the reporting entity to collectively establish the legal existence of such an association or body of individuals.
- (10) Where the client is a juridical person, the 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.
- (11) No reporting entity shall allow the opening of or keep any anonymous account or account in fictitious names or account on behalf of other persons whose identity has not been disclosed or cannot be verified.
- (12) (i) Every reporting entity shall exercise ongoing due diligence with respect to the business relationship with every client and closely examine the transactions in order to ensure that they are consistent with their knowledge of the client, his business and risk profile and where necessary, the source of funds.
- (ii) 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.
- (iii) 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.
- (13) (i) 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.
- (ii) The risk assessment mentioned in clause (i) shall -
- (a) be documented;
- (b) consider all the relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied;
- (c) be kept up to date; and
- (d) be available to competent authorities and self-regulating bodies.
- (14) (i) The regulator shall issue guidelines incorporating the requirements of sub-rules (1) to (13) above and may prescribe enhanced or simplified measures to verify the client's identity taking into consideration the type of client, business relationship, nature and value of transactions based on the overall money laundering and terrorist financing risks involved.
- Explanation.- For the purpose of this clause, simplified measures are not acceptable whenever there is a suspicion of money laundering or terrorist financing, or where specific higher-risk scenarios apply or where the risk identified is not consistent with the national risk assessment.
- (ii) Every reporting entity shall formulate and implement a Client Due Diligence Programme, incorporating the requirements of sub-rules (1) to (13) and guidelines issued under clause (i) above.

(iii) the Client Due Diligence Programme shall include policies, controls and procedures, approved by the senior management, to enable the reporting entity to manage and mitigate the risk that have been identified either by the reporting entity or through national risk assessment.

10. Maintenance of the records of the identity of clients.- (1) Every reporting entity shall maintain the records of the identity of its clients obtained in accordance with rule 9.

(2) The records of the identity of clients shall be maintained in a manner as may be specified by its regulators from time to time.

(3) Where the reporting entity does not have records of the identity of its existing clients, it shall obtain the records within the period specified by the regulator, failing which the reporting entity shall close the account of the clients after giving due notice to the client.

Explanation. - For the purpose of this rule, the expression "records of the identity of clients" shall include updated records of the identification data, account files and business correspondence.;

(f) After rule 10, the following rules shall be inserted, namely :

"10A. Furnishing of Report to Director.- (1) The persons referred to in clause (c) of sub-section (2) of section 13 of the Act shall furnish reports on the measures taken to the Director every month by the 10th day of the succeeding month.

(2) The Director may relax the time interval in sub-rule (1) above to every three months on specific request made by the reporting entity based on reasonable cause.

10B. Expenses for audit.- (1) The expenses of, and incidental to, audit referred to in sub-section (1A) of section 13 of the Act (including the remuneration of the accountant, qualified assistants, semi-qualified and other assistants who may be engaged by such accountant) shall be paid in accordance with the amount specified in sub-rule (2) of rule 14B of the Income-tax Rules, 1962 for every hour of the period as specified by the Director.

(2) The period referred to in sub-rule (1) shall be specified in terms of the number of hours required for completing the report.

(3) The accountant referred to in sub-section (1A) of section 13 of the Act shall maintain a time sheet and submit it to the Director, along with the bill.

(4) The Director shall ensure that the number of hours claimed for billing purposes is commensurate with the size and quality of the report submitted by the accountant.

[Notification No. 12/2013/F.No.P.12011/1/2013-SO(ES(Cell))]

BIPLAB KUMAR NASKAR, Under Secy.

Note :- The principal rules were published in Gazette of India, Extraordinary, Part-II, Section 3, Sub-Section (i) vide number G.S.R. 444 (E), dated the 1st July, 2005 and subsequently amended by number G.S.R. 717 (E), dated the 13th December, 2005, number G.S.R. 389 (E), dated the 24th May, 2007, number G.S.R. 816 (E), dated the 12th November, 2009, number G.S.R. 76 (E), dated the 12th February, 2010, number G.S.R. 508 (E), dated the 16th June, 2010, number G.S.R. 980 (E), dated the 16th December, 2010 and number G.S.R. 481 (E), dated the 24th June, 2011.