

## INDIA EXPANDS THE AMBIT OF ITS MONEY LAUNDERING LAW AND IMPOSES RESPONSIBILITIES ON PROFESSIONALS

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### Background

Through notifications issued in May 2023, the Ministry of Finance, Government of India, has widened the scope of the Prevention of Money Laundering Act, 2002 (the “**PMLA**”). The aim of these notifications appears to be to aid investigative agencies in unearthing dubious transactions involving shell companies and to prevent money laundering. This development comes close on the heels of a broader trend of imposing more regulations on companies, in the aftermath of the accusations levelled against the Adani group.

### Key changes

Through [notification S.O. 2036\(E\)](#) dated May 3, 2023 (the “**May 3 Notification**”), practicing chartered accountants, company secretaries, and cost and works accountants carrying out financial transactions (including managing bank, savings or securities accounts of clients; managing client money, securities or other assets; establishing, operating or managing companies, limited liability partnerships or trusts; or buying and selling of such business entities) on behalf of their clients have been brought within the ambit of the PMLA. They are now considered “reporting entities” for the purpose of the PMLA and have duties specified under the PMLA, such as maintaining records, conducting due diligence on their clients, etc. However, auditors and legal professionals had been left out of the scope of this notification.

[Notification S.O. 2135\(E\)](#) issued on May 9, 2023 (the “**May 9 Notification**”) has further broadened the scope of the PMLA and has brought within the ambit of the PMLA certain activities when carried out in the course of business on behalf of or for another person. These include:

- i. acting as a formation agent of companies and limited liability partnerships;
- 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 or limited liability partnerships;
- iii. providing a registered office, business address or accommodation, correspondence or administrative address for a company, limited liability partnership or 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.

That said, the May 9 Notification excludes from its ambit:

- i. advocates, chartered accountants, cost accountants or company secretaries in practice, who are engaged in the formation of a company to the extent of filing a declaration that all the requirements of the Companies Act, 2013 and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;
- ii. any activity that is carried out by an employee on behalf of his employer in the course of or in relation to his employment;
- iii. any activity carried out under a lease or tenancy agreement where the consideration is subject to a deduction of income tax; and
- iv. any activity of a person which falls within the meaning of an intermediary under the PMLA.

## Impact

Both these notifications (read together) serve to bring a range of consultants under the purview of the PMLA, both explicitly and implicitly. While the May 3 Notification specifies certain professionals, the May 9 Notification brings within the ambit of the PMLA a wide array of consultants (through activities that the consultants render) and even includes cases where the consultant's address is provided for the limited purpose of receiving client correspondence, which is a common market practice.

As reporting entities under the PMLA under the new notifications, the aforementioned professionals will have to maintain a record of all client transactions which will have to be disclosed on a monthly basis to the Financial Intelligence Unit (the "FIU"). In addition, they will have to conduct KYC of their clients and submit the KYC reports to the Central KYC Registry. This will entail examining the ownership and financial position, including the source of client funds, and recording the purpose of all transactions.

A point to note is the somewhat ambiguous and subjective wording of certain provisions in the notifications. For instance, the term "formation agent" is not defined. This will lead to confusion as consultants routinely advise or assist in the incorporation process of foreign companies. Further, the term "arranging for another person to act as" is also unclear and poses additional challenges when it comes to enforcement, as an arrangement may be informal.

While expanding the ambit of the PMLA to include consultants may serve to curb the practice of money laundering, further clarifications need to be issued to clarify the meaning of certain contentious terms. Moreover, a threshold value should be prescribed so that small-scale

consultants are not made subject to disproportionate compliance requirements.