

PMLA Compliance by the Dealers in precious metals and Gems - Frequently Asked Question.

1. How does India PMLA affect a Business dealing in Precious Metals and Stones?

FATF (Financial Action Task force, India review is scheduled to happen in November 2023. It is important for a growing economy like India to remain in the Green List of FATF to be able attract foreign investments and long-term growth capital for its economic growth.

FATF authorities want to see how Indian Business are putting in place policies and practices to counter Money Laundering and Terrorist Financing.

Dealers in Precious Metals and stones are classified as Designated Non-Financial Businesses and Professions (DNFBPs); meaning that these businesses and professions are considered at par with Financial Institutions for the sake of ML & TF compliances.

2. Whys are Jewellers or Business dealing in Precious Metals and Stones classified as DNFBP's?

The nature of the bullion, jewellery and stones business, the market structure and high transaction value makes our industry vulnerable to Money Laundering activities. Our industry products generally have high value and can be exchanged for money easily across the country. It is difficult to track movement of precious metals and stones.

These factors make jewellery industry an attractive means of money laundering activities. Hence FATF and Indian Government have introduced relevant regulations to combat such activities. These regulations run parallel to the global AML/CFT regulations.

3. Are these regulations applicable to all jewellers?

Yes, The India PMLA regulation are applicable to all categories of dealers in precious metals and Stones

The relevant businesses can be listed as follows:

- Precious Metals Refiners and processors
- Bullion traders
- Jewellery manufacturers
- Jewellery wholesalers
- Jewellery retailers (All formats: Online, Chain Stones, Franchises and single stores)
- Diamond manufacturers and trader
- Precious stones manufacturers and traders
- Others

4. Is turnover a criterion for applicability of PMLA regulations?

No. All dealers fall under the ambit of the PMLA, the turnover criteria are for dealers to choose their reporting mechanism for information sharing with FIU-India. Dealers having turnover over 500Cr are required to register directly with FIU-India and dealers having turnover below 500Cr have the option to register via Association/Council.

5. What are the obligations of dealers under the PMLA?

The Government has laid down steps to be undertaken by dealers to discourage and prevent the misuse of their business for money laundering, terrorist financing or proliferation financing activities.

Obligations:

- i. Mechanism for information sharing between Industry Councils and Associations and FIU-India
- ii. Policies and Procedures to Combat Money Laundering, Counter Terrorist Financing and Combat Proliferation Financing: (AML/CFT/CPF Program)
- iii. Internal policies, procedures, and controls signed off by the Board/ Top Management of the Dealer
- iv. Appointment of a Nodal Officer for the purpose of interaction and information sharing with FIU-India
- v. Training of Dealers
- vi. Client due Diligence (CDD) Norms/ Enhanced Due Diligence (EDD) Norms
- vii. Sanctions screening

6. How can dealers be compliant with PMLA Regulations?

Dealer need to follow few important steps to become PMLA compliant:

Step 1: Register with FIU-India as per turnover requirements explained above.

Step 2: Create a robust AML/CFT/CPF program in the form of a formal policy that has been accepted by the company board/managements/partners/owners this will enable dealers to Conduct EDD/CDD for transactions and activities.

Step 3: Training for top management and staff of dealers that is customised as per requirements to specific business types.

Step 4: Sanctions screening to be carried out against customers (current and prospective) as well as suppliers etc., both at the time of on boarding as well as when transactions are initiated.

7. Who is the regulatory agency for PMLA in India?

The Directorate General of Audit, Regulator under the aegis of The Department of Revenue, Ministry of Finance (MOF) Government of India. Under MOF, The ED is the primary authority responsible for investigating and prosecuting money laundering.

The Financial Intelligence Unit – India (“**FIU**”) under the Department of Revenue, Ministry of Finance is the central national agency responsible for receiving, processing, analysing, and disseminating information relating to suspect financial transactions to enforcement agencies and foreign FIUs.

Apart from the ED and FIU, other regulators are empowered to enforce AML guidelines, including:

- SEBI
- RBI
- IRDAI
- Economic Offences Wing, Central Bureau of Investigation (“**CBI**”)
- Income Tax Department
- Registrar of Companies (“**RoC**”)

8. PMLA is applicable ONLY to Dealers having Cash Transactions above 10Lacs only, Is this true?

False. The guidelines issued by The Directorate General of Audit, Regulator on behalf of CBIC for dealers in Precious Metal & Precious Stones 2023 on 25.01.2023, which were updated vide guidelines dated 17.02.2023 & 04.05.2023 clarifies that *“In order to combat the menace of money-laundering, terror financing, proliferation financing and help in detecting possible attempts of money laundering, financing of terrorism or proliferation financing, every dealer must have a robust AML/CFT/CPF program in place”*

PMLA regulation is applicable to every dealer in Precious Metals and Gems,

Cash Transaction above 10Lacs is only the reporting threshold for information sharing with FIU-India. Further dealers have to report any suspicious transaction or any other reportable transaction and/or activities.

9. What is a reporting Entity?

A **reporting entity** is a dealer in precious metals, precious stones as persons carrying on designated businesses or professions, that have registered with FIU-India for the purpose of reporting Transactions defined under the AML/CFT guidelines issued by Government of India, that include:

- All Cash Transaction above INR 10Lacs or equivalent foreign currency
- Sequential/Connected Cash transaction where monthly aggregate exceeds an amount of Rs. 10 lakh or its equivalent in foreign currency.
- All cash transactions where forged or counterfeit currency notes
- Suspicious Transaction including an attempted transaction, whether or not made in cash

10. What are regulations for Appointment of a Nodal Officer? What is the Role of the NODAL Officer?

- Every dealer having gross annual turnover more than Rs. 500 Crore in previous financial year (e.g. FY 2022-23) must appoint a ‘Nodal Officer’ for the purpose of interaction and information sharing with FIU-India.
- For the dealers having gross annual turnover less than Rs. 500 Crore in previous financial year (e.g. FY 2022-23), ‘Nodal Officer’ will be appointed by Industry Council and Association.
- The Nodal Officer would serve as a link between the dealers, Industry Councils and Associations, on one hand, and FIU-India, on the other hand for co-ordination and dissemination of information. The Nodal Officer would have access to FINGate mobile application

11. Appointment of Principal Officer and Designated Director

- **Principal Officer:** an officer designated by a reporting entity who would act as a central reference point in facilitating onward reporting of suspicious transactions
- **Designated Director:** a person designated by the reporting entity to ensure overall compliance with the obligations imposed under the Act and the Rules

12. Responsibilities of Principal Officer and Designated Director

The Designated Director and the Principal Officer shall be responsible for the following to combat money laundering/ countering the financing of terrorism:

- Evolving an internal mechanism with regard to any guidelines issued by the Regulator or the Director, FIU-IND
- Communication of group policies relating to prevention of ML and TF to all management and relevant staff that handle account information, money and client records, etc. within their organisation
- Client acceptance policy and client due diligence measures, including requirements for proper identification for maintenance of records, compliances, co-operation with authorities etc.

13. Maintenance of Records:

Every reporting entity shall have to maintain a record of all the transactions; information relating to such transactions, whether attempted or executed.

Requirement to maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

14. Cost of Non-Compliance?

We have heard many dealers say that compliance to PMLA regulation will increase cost, drive away customers and impact business, however when you consider the cost of non-compliance dealers will realise that it is prudent to PMLA Compliant.

Non-Compliance

Regulatory Risk:

- Investigation by the Regulatory Authorities and associated costs
- Regulatory penalties
- Termination of business licences and closure
- Personal liability and/or imprisonment

Reputational Risk:

- Adverse publicity
- Damage to reputation and brand Image

Operational Risk:

- Loss of business and companies would not like to deal with non-compliant businesses
- Withdrawal of banking lines and funds on ground of non-compliance