

## AMENDMENTS TO MASTER DIRECTION – KNOW YOUR CUSTOMER (KYC) DIRECTION, 2016

MAY 09, 2023

The Reserve Bank of India (the '**RBI**') vide notification no. RBI/2023-24/24 dated April 28, 2023 has amended the Master Direction - Know Your Customer (KYC) Direction, 2016 ('**KYC Directions**'), as applicable to Regulated Entities (the '**REs**').

### I. REASON FOR AMENDMENT:

As per the RBI, the amendment has been brought in with the following objective to:

- (a) align the instructions with the recent amendments carried out in the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 ('**PMLA Rules**');
- (b) incorporate instructions in terms of the Government Order dated January 30, 2023, titled "Procedure for Implementation of Section 12A of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 ('**WMD Act**');
- (c) update certain instructions in accordance with FATF Recommendations; and
- (d) refine certain extant instructions post review.

### II. KEY AMENDMENTS:

#### A. To align with the PMLA Rules

The key amendments to the KYC Directions have been done with a view to align it with the amended PMLA Rules. The following sets out brief of such amendments to the KYC Directions:

- ❑ The threshold for "Controlling ownership interest" for the purpose of determination of Beneficial Owner (BO) has been reduced to 10% for both companies and trusts from the earlier threshold of 25% and 15%, respectively.
- ❑ The definitions of "Non-profit organisations" ('**NPO**') and "Politically Exposed Persons" have been amended to align those with the definitions in the PMLA Rules.

### ABOUT THE FIRM

AKS Partners (formerly known as A.K. Singh & Co) is a law firm based in New Delhi (India) that provides a comprehensive range of legal services and solutions to domestic and international clients. The Firm offers a unique blend of the local knowledge to apply the regulatory, economic, political and cultural context to legal issues and develop case strategies.

We regularly handle technically challenging and complex multi-jurisdictional matters. Our team is spearheaded by one of the highly recognised lawyers with extensive experience in international dispute resolution and strong government and diplomatic backgrounds. This experience gives us the deepest understanding of the key decision points that are critical in navigating complex & complicated matters and managing government regulations.

- ❑ The concept of “group” has been added to KYC Directions, pursuant to which the REs will be required to ensure that a group-wide policy is implemented for the purpose of discharging their obligations under the PMLA Rules.
- ❑ For the purpose of Customer Due Diligence (**CDD**), the REs will now be required to procure additional documents from certain non-individual customers, beyond basic KYC documents, such as the names of relevant persons holding senior management positions, partners, trustees, beneficiaries, as may be applicable.
- ❑ The REs shall also be required to register the details of NPO on the DARPAN Portal of NITI Ayog if not already registered. Furthermore, REs shall also maintain such registration records for a period of 5 years after the business relationship between the customer and the RE has ended or the account has been closed, whichever is later.

## **B. Obligations under WMD Act**

REs shall ensure compliance with the ‘Procedure for implementation of Section 12A of the WMD Act’ as laid down by the Ministry of Finance vide order dated January 30, 2023 including restricting transaction of the individual/entity on the designated list under the WMD Act, intimating details of attempted transaction to the nodal officer and RBI, regularly verifying the designated list etc.

## **C. Enhanced Due Diligence for non-face-to-face customer onboarding**

RBI through the amendment has introduced additional due diligence measure for onboarding of customer with non-face-to-face mode through digital channels such as CKYCR, Digilocker, equivalent e-documents etc, other than through Aadhaar OTP based e-KYC mode. Following are such enhanced due diligence measures:

- ❑ If available, Video based Customer Identification Process (**V-CIP**) shall be provided as first option for remote onboarding;
- ❑ Post CDD, alternate phone number shall not be allowed to be linked with the account. In view to prevent frauds, transactions shall be permitted only from the mobile number used for account opening.
- ❑ REs shall verify the current address through positive confirmation before allowing operations in the account. Positive confirmation may be carried out by means such as address verification letter, contact point verification, deliverables, etc.
- ❑ Customers opening accounts through this mode shall be categorized as high-risk customers and shall be subjected to enhanced monitoring until the identity of the customer is verified in face-to-face manner or through V-CIP.
- ❑ First transaction in such accounts shall be a credit from existing KYC-complied bank account of the customer.

## D. Additional significant amendments

- ❑ It has been clarified that, REs shall be able to retrieve KYC data directly from the CKYCR, subject to receipt of explicit consent of the customer along with the KYC identifier.
- ❑ RBI has now allowed periodic updation of KYC information through Aadhaar OTP based e-KYC in non-face-to-face mode.
- ❑ REs shall be required to file STR with FIU-IND, where it has a suspicious of money laundering or terrorist financing, and it reasonably believes that performing the CDD process will tip-off the customer.
- ❑ REs shall adopt best international practices taking into account the FATF standards and FATF guidance notes, for managing risks better.
- ❑ The requirement to allot Unique Customer Identification Code to customers has now been extended to all REs which was earlier restricted to banks and non-banking financial companies.
- ❑ It has been clarified that secrecy obligations shall extend to all Res.
- ❑ For ongoing due diligence, REs may consider adopting appropriate innovations including artificial intelligence and machine learning (AI & ML) to support effective monitoring.
- ❑ The indicative list of parameters for risk categorization has been expanded to include geographical risk covering customers as well as transactions, type of products/services offered, delivery channel used for delivery of products/services, types of transaction undertaken, etc.
- ❑ Where Goods and Services Tax details are available, the same shall be verified from the search/verification facility of the issuing authority.

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## AWARDS & RECOGNITIONS



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