

November 07, 2023

SEBI's amendments to the Guidelines on Anti-Money Laundering Standards and Combating the Financing of Terrorism Obligations of Securities Market Intermediaries under the Prevention of Money - Laundering Act, 2022 and Rules framed there under

The Government of India has notified Prevention of Money-laundering (Maintenance of Records) (Second Amendment) Rules, 2023 which took effect upon its publication in the Official Gazette. In view of these amendments, the Securities Exchange Board of India ("SEBI") on October 13, 2023 issued a circular ("**Circular 2023**"). This Circular 2023 modifies certain provisions of the master circular dated February 03, 2023, which outlines Guidelines on Anti-Money Laundering (hereinafter referred to as "**AML**") Standards and Combating the Financing of Terrorism (hereinafter referred to as "**CFT**")/ Obligations of Securities Market Intermediaries under the Prevention of Money -Laundering Act, 2022 and Rules framed there under. These modifications serve to further strengthen the AML and CFT framework.

The key changes brought in by this Circular 2023 are as follows:

I. Enhanced AML/CFT measures:

The one significant change introduced by the Circular 2023 is that when the host country does not allow the effective enforcement of AML/CFT measures in line with the requirements of the home country, financial groups must implement supplementary measures to mitigate money laundering and terrorist financing risks. Furthermore, they are obligated to notify SEBI of these additional measures.

II. Implementation of Group wide programs by Financial Groups:

The Circular 2023 mandates the financial groups to establish comprehensive, group-wide programs for addressing Money Laundering and Terrorist Financing concerns. These programs must be applicable and adapted for all branches and predominantly owned subsidiaries within the financial group. Key components of these programs include:

- a) Formulating policies and procedures for facilitating information sharing essential for Customer Due Diligence (hereinafter referred to as "**CDD**") and money laundering/terrorism finance risk management;
- b) Ensuring that at the group-level compliance, audit, and AML/CFT functions provide customer, account, and transaction information from branches and subsidiaries when required for AML/CFT purposes, including transaction analysis for suspicious activities, if such analysis has been conducted.

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.

- c) Implementing stringent measures to safeguard the confidentiality and proper use of exchanged information, thereby preventing any disclosure that may constitute 'tipping off'.

III. Disclosures by Trust:

In the cases involving trust, reporting entities must ensure that trustees reveal their status at the onset of an account-based relationship.

IV. Guidelines for Identifying Beneficial Owners Across Entities:

The Circular 2023 provide clear guidelines on identifying beneficial owners of various entities. The criteria for determining the beneficial owner are outlined as follows:

- a) In the case of a company, the beneficial owner is the natural person(s) who, either individually or collectively or through one or more juridical person, holds a controlling ownership interest or exercises control through other means.
- b) For a partnership firm, the beneficial owner is the natural person(s) who, individually or collectively or through one or more juridical person, holds ownership or entitlement to more than ten percent of capital or profits or exercises control through other means.
- c) In the context of an unincorporated association or body of individuals, the beneficial owner is the natural person(s) who, individually or collectively or through one or more juridical person, owns or is entitled to more than fifteen percent of the property, capital, or profits of such association or body of individuals.
- d) When no natural person is identified under (a), (b), or (c) above, the beneficial owner is the relevant natural person in the position of a senior managing official.
- e) In the case of a trust, the identification of beneficial owners encompasses the author of the trust, the trustee, beneficiaries with ten 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.
- f) For clients or entities listed on an Indian stock exchange, entities resident in jurisdictions specified by the Central Government and listed on stock exchanges in those jurisdictions, or subsidiaries of such listed entities, there is no obligation to identify or verify the identity of shareholders or beneficial owners

V. Periodic updates by Intermediaries:

The Circular 2023 also provides the registered intermediaries to regularly update all documents, data, and information pertaining to clients and beneficial owners obtained during the CDD process. This update ensures that the information collected remains current and relevant, with a specific focus on high-risk clients.

VI. Mandatory CDD Requirement:

The Circular 2023 has made CDD a mandatory procedure before any transaction or account-based relationship can be initiated.

VII. Enhanced Due Diligence Measures:

The circular 2023 further provides that now intermediaries must implement Enhanced Due Diligence measures that are proportionate with the risks associated with business relationships and transactions involving both natural and legal persons from countries for which the Financial Action Task Force mandates the application of such measures.

VIII. Retrieval of Client Identification Records:

A notable change introduced by the Circular 2023 is that when a registered entity lacks records concerning the identity of its current clients, it must promptly acquire these records. Failure to do so will result in the registered intermediary closing the clients' accounts, provided that due notice is given to the client. The term "records of the identity of clients" encompasses updated records of the identification date, account files, business correspondence, and any analysis conducted in accordance with rules 3 and 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005.

IX. Appointment of a Principal Officer:

A key change introduced by the Circular 2023 relates to the appointment of a Principal Officer. This change aims to ensure that registered intermediaries fulfil their legal obligations in reporting suspicious transactions to the relevant authorities effectively. The Principal Officer serves as a central point of contact for facilitating the reporting of suspicious transactions and actively participating in the identification and evaluation of potentially suspicious transactions. Additionally, the Principal Officer has the authority to report to senior management at the next reporting level or the Board of Directors. Furthermore, the names, designations, and contact details, including email addresses, of the 'Principal Officer' must be communicated to the Office of the Director-FIU-IND.

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AWARDS & RECOGNITIONS



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