

The Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the .. of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005

UNION OF INDIA

India

The Prevention of Money-Laundering Act, 2002

The Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the .. of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005

Rule

THE-PREVENTION-OF-MONEY-LAUNDERING-MAINTENANCE of 2005

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Central Government Act the Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the .. of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 the Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005¹

1. Short title and commencement.—

(1) These rules may be called the Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005. (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definition. —

(1) In these rules, unless the context otherwise requires,—(a) “Act” means the Prevention of Money-laundering Act, 2002 (15 of 2003); (b) “client” means a person that engages in a financial transaction or activity with a banking company, or financial institution or intermediary and includes a person on whose behalf the person that engages in the transaction or activity, is acting; (c) “Director” means the Director appointed under sub-section (1) of section 49 of the Act for the purposes of sections 12 and 13 of the Act; (ca) “non profit organisation” means any entity or organisation that is registered as a trust or a society under the Societies Registration Act, 1860 (21 of 1860) or any similar State legislation or a company registered under section 25 of the Companies Act, 1956 (1 of 1956); (d) “officially valid document” means the passport, the driving licence, the Permanent Account Number (PAN) Card, the Voter's Identity Card issued by the Election Commission of India or any other document as may be required by the banking company, or financial institution or intermediary; (e) “prescribed value” means the value of transaction prescribed under these rules; (f) “Principal Officer” means an officer designated by a banking company, financial institution and intermediary, as the case may be; (fa) “Regulator” means a person or an authority or a Government which is vested with the power to license, authorise, register, regulate or supervise the activity of banking companies, financial institutions or intermediaries, as the case may be; (g) “suspicious transaction” means a transaction referred to in clause (h), including an attempted transaction, whether or not made in cash, which to a person acting in good faith—(a) gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act, regardless of the value involved; or (b) appears to be made in circumstances of unusual or unjustified complexity; or (c) appears to have no economic rationale or bona fide purpose; or (d) gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism; (h) Explanation.—Transaction involving financing of the activities relating to terrorism includes transaction involving funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by a terrorist, terrorist organisation or those who finance or are attempting to finance terrorism. “transaction” includes deposit, 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. (2) All other words and expressions used and not defined in these rules but defined in the Act shall have the meaning respectively assigned to them in the Act. (a) gives rise to a reasonable ground of suspicion that it may involve the proceeds of crime; or (b) appears to be made in circumstances of unusual or unjustified complexity; or (c) appears to have no economic rationale or bona fide purpose; or (d) gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism;”.

3. Maintenance of records of transactions (nature and value). —

(1) Every banking company or financial institution or intermediary, as the case may be, shall maintain a record of,—(A) all cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency; (B) all series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month; (C) all cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a

valuable security or a document has taken place facilitating the transactions;(D)all suspicious transactions whether or not made in cash and by way of—(i)deposits and credits, withdrawals into or from any accounts in whatsoever name they are referred to in any currency maintained by way of—(a)cheques including third party cheques, pay orders, demand drafts, cashiers cheques or any other instrument of payment of money including electronic receipts or credits and electronic payments or debits, or(b)travellers cheques, or(c)transfer from one account within the same banking company, financial institution and intermediary, as the case may be, including from or to Nostro and Vostro accounts, or(d)any other mode in whatsoever name it is referred to;(ii)credits or debits into or from any non-monetary accounts such as d-mat account, security account in any currency maintained by the banking company, financial institution and intermediary, as the case may be;(iii)money transfer or remittances in favour of own clients or non-clients from India or abroad and to third party beneficiaries in India or abroad including transactions on its own account in any currency by any of the following:—(a)payment orders, or(b)cashiers cheques, or(c)demand drafts, or(d)telegraphic or wire transfers or electronic remittances or transfers, or(e)internet transfers, or(f)Automated Clearing House remittances, or(g)lock box driven transfers or remittances, or(h)remittances for credit or loading to electronic cards, or(i)any other mode of money transfer by whatsoever name it is called;(iv)loans and advances including credit or loan substitutes, investments and contingent liability by way of—(a)subscription to debt instruments such as commercial paper, certificate of deposits, preferential shares, debentures, securitised participation, inter bank participation or any other investments in securities or the like in whatever form and name it is referred to, or(b)purchase and negotiation of bills, cheques and other instruments, or(c)foreign exchange contracts, currency, interest rate and commodity and any other derivative instrument in whatsoever name it is called, or(d)letters of credit, standby letters of credit, guarantees, comfort letters, solvency certificates and any other instrument for settlement and/or credit support;(v)collection services in any currency by way of collection of bills, cheques, instruments or any other mode of collection in whatsoever name it is referred to the Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005

4. Records containing information.—The records referred to in rule 3 shall contain the following information:—(a) the nature of the transactions;

(b)the amount of the transaction and the currency in which it was denominated;(c)the date on which the transaction was conducted; and(d)the parties to the transaction.the Prevention of Money-laundering(Maintenance of Records of the Nature and Value of Transactions, the Procedureand Manner of Maintaining and Time for Furnishing Information and Verificationand Maintenance of Records of the Identity of the Clients of the BankingCompanies, Financial Institutions and Intermediaries) Rules, 2005

5. Procedure and manner of maintaining information.—(1) Every banking company, financial institution and intermediary, as the case may be, shall maintain information in respect of transactions with its client referred to in rule 3 in hard and soft copies in accordance with the procedure and manner as may be specified by the Reserve Bank of India or the 1[Securities and Exchange Board of India or the Insurance Regulatory and Development Authority], as the case may be, from time to time.

(2) Every banking company, financial institution and intermediary, shall evolve an internal mechanism for maintaining such information in such form and at such intervals as may be specified by the Reserve Bank of India, or the 1[Securities and Exchange Board of India or the Insurance Regulatory and Development Authority], as the case may be, from time to time. (3) It shall be the duty of every banking company, financial institution and intermediary, as the case may be, to observe the procedure and the manner of maintaining information as specified by the Reserve Bank of India or the 1[Securities and Exchange Board of India or the Insurance Regulatory and Development Authority], as the case may be, under sub-rule (1). the Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005

6. Retention of records.—The records referred to in rule 3 shall be maintained for a period of ten years from the date of cessation of the transactions between the client and the banking company, financial institution or intermediary, as the case may be.

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7. Procedure and manner of furnishing information.—(1) Every banking company, financial institution and intermediary, as the case may be, shall communicate the name, designation and address of the Principal Officer to the Director.

(2) The Principal Officer shall furnish the information referred to in rule 3 to the Director on the basis of information available with the banking company, financial institution and intermediary, as the case may be. A copy of such information shall be retained by the Principal Officer for the purposes of official record. (3) Every banking company, financial institution and intermediary may evolve an internal mechanism for furnishing information referred to in rule 3 in such form and at

such intervals as may be directed by the Reserve Bank of India or the [Securities and Exchange Board of India or the Insurance Regulatory and Development Authority], as the case may be. (4) It shall be the duty of every banking company, financial institution and intermediary to observe the procedure and the manner of furnishing information referred to in rule 3 as specified by the [Reserve Bank of India, the Securities and Exchange Board of India and the Insurance Regulatory and Development Authority under sub-rule (3)], as the case may be.

8. [8 Furnishing of information to the Director. —(1) The Principal Officer of a banking company, a financial institution and an intermediary, as the case may be, shall furnish the information in respect of transactions referred to in clauses (A) and (B) of sub-in rule (1) of rule 3 every month to the Director by the 15th day of the succeeding month.

(2) The Principal Officer of a banking company, a financial institution and an intermediary, as the case may be, 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 (C) of sub-rule (1) of rule 3 not later than seven working days from the date of occurrence of such transaction. (3) The Principal Officer of a banking company, a financial institution and an intermediary, as the case may be, 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.]

9. Verification of the records of the identity of clients. — ¹⁰ [(1) Every banking company, financial institution and intermediary, as the case may be, shall,—(a) at the time of commencement of an account-based relationship, identify its clients, verify their identity and obtain information on the purpose and intended nature of the business 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. ¹¹ [(1A) Every banking company, financial institution and intermediary, as the case may be, shall determine whether a client is acting on behalf of a beneficial owner, identify the beneficial owner and take all reasonable steps to verify his identity.] ¹² [Explanation .—For the purposes of this sub-rule “beneficial owner” shall mean the natural person who ultimately owns or controls a client and or the person on whose behalf a transaction is being conducted, and includes a person who exercise ultimate effective control over a juridical person.] ¹³ [(1B) Every banking company, financial institution and intermediary, as the case may be, 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.] ¹⁴ [(1C) No banking company, financial institution or intermediary, as the case may be, 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.] ¹⁵ [(1D) 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 customer identification data, every banking company, financial institution and intermediary 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.](2)Where the client is an individual, he shall for the purpose of sub-rule (1), submit to the banking company, financial institution and intermediary, as the case may be, 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 banking company or the financial institution or the intermediary, as the case may be: Provided that photograph need not be submitted by a client falling under clause (b) of sub-rule (1).](3)Where the client is a company, it shall for the purposes of sub-rule (1) submit to the banking company or financial institution or intermediary, as the case may be, ¹⁶ [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.(4)Where the client is a partnership firm, it shall for the purposes of sub-rule (1) submit to the banking company, or the financial institution, or the intermediary ² [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.(5)Where the client is a trust, it shall, “for the purposes of sub-rule (1) submit to the banking company,” or the financial institution, or the intermediary ¹⁶ [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.(6)Where the client is an unincorporated association or a body of individuals, it shall submit to the banking company, or the financial institution or the intermediary ¹⁶ [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 banking company or the financial institution or the intermediary to collectively establish the legal existence of such an association or body of individuals. ¹⁷ [(6A) Where the client is a juridical person, the banking company, financial institution and intermediary, as the case may be, shall verify that any person purporting to act on behalf of such client is so authorised and verify the identity of that person.] ¹⁸ [(7) (i) The regulator shall issue guidelines incorporating the requirements of sub-rules (1) to (6A) above and may prescribe enhanced measures to verify the client's identity taking into consideration type of client, business relationship or nature and value of transactions.(ii) Every banking company, financial institution and intermediary as the case may be, shall formulate and implement a Client Identification Programme to determine the true identity of its clients, incorporating requirements of sub-rules (1) to (6A) and guidelines issued under clause (i) above.]

10. Maintenance of the records of the identity of clients. —(1) Every banking company or financial institution or intermediary, as the case may be, shall maintain the records of the identity of its clients.

(2) The records of the identity of clients shall be maintained in hard and soft copies in a manner as may be specified by ²⁰ [its Regulator,] from time to time. (3) The records of the identity of clients shall be maintained for a period of ten years from the date of cessation of the transactions between the client and the banking company or financial institution or intermediary, as the case may be. ²¹ [Explanation .—For the purposes of this rule,—(i) the expression ‘records of the identity of clients’ shall include records of the identification data, account files and business correspondence. (ii) the expression ‘cessation of the transactions’ means termination of an account or business relationship.] the Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005

11. Interpretation.—If any question arises relating to the interpretation of these rules, the matter shall be referred to the Central Government and the decision of the Central Government shall be final.

1. Ins. by G.S.R. 816(E), dated 12th November, 2009 (w.e.f. 12-11-2009).

2. Ins. by G.S.R. 816(E), dated 12th November, 2009 (w.e.f. 12-11-2009).

3. Subs. by G.S.R. 816(E), dated 12th November, 2009 for clause (g) (w.e.f. 12-11-2009). Earlier clause (g) was amended by G.S.R. 389(E), dated 24th May, 2007 (w.e.f. 24-5-2007). Clause (g), before substitution by G.S.R. 816(E), stood as under:

4. Ins. by G.S.R. 508(E), dated 16th June, 2010 (w.e.f. 16-6-2010).

5. Subs. by G.S.R. 389(E), dated 24th May, 2007, for clause (C) (w.e.f. 24-5-2007). Clause (C), before substitution, stood as under:

6. Subs. by G.S.R. 717(E), dated 13th December, 2005 (w.e.f. 13-12-2005).

7. Subs. by G.S.R. 717(E), dated 13th December, 2005 (w.e.f. 13-12-2005).

8. Subs. by G.S.R. 389(E), dated 24th May, 2007, for rule 8 (w.e.f. 24-5-2007).

Rule 8, before substitution, stood as under:

9. Vide G.S.R. 444(E), dated 1st July, 2005, published in the Gazette of India, Extra., Pt. II, Sec. 3(i), dated 1st July, 2005.

10. Subs. by G.S.R. 816(E), dated 12th November, 2009, for sub-rule (1) and (2) (w.e.f.

11. Subs. by G.S.R. 508(E), dated 16th June, 2010, for sub-rule (1A) (w.e.f. 16-6-2010). Sub-rule (1A), before substitution, stood as under:

12. Ins. by G.S.R. 76(E), dated 12th February, 2010 (w.e.f. 12-2-2010).

13. Subs. by G.S.R. 508(E), dated 16th June, 2010, for sub-rule (1B) (w.e.f. 16-6-2010). Sub-rule (1B), before substitution, stood as under:

14. Subs. by G.S.R. 508(E), dated 16th June, 2010, for sub-rule (1C) (w.e.f. 16-6-2010). Sub-rule (1C), before substitution, stood as under:

15. Ins. by G.S.R. 508(E), dated 16th June, 2010 (w.e.f. 16-6-2010).

16. Subs. by G.S.R. 389(E), dated 24th May, 2007, for “three certified copies” (w.e.f. 24-5-2007).

17. Ins. by G.S.R. 816(E), dated 12th November, 2009, (w.e.f. 12-11-2009).

18. Subs. by G.S.R. 816(E), dated 12th November, 2009, for sub-rule (7) (w.e.f. 12-11-2009). Sub-rule (7), before substitution, stood as under:

19. Vide G.S.R. 444(E), dated 1st July, 2005, published in the Gazette of India, Extra., Pt. II, Sec. 3(i), dated 1st July, 2005.

20. Subs. by G.S.R. 816(E), dated 12th November, 2009, for “the Reserve Bank of India or the Securities and Exchange Board of India or Insurance Regulatory and Development Authority as the case may be,” (w.e.f. 12-11-2009).

21. Ins. by G.S.R. 508(E), dated 16th June, 2010 (w.e.f. 16-6-2010).