सत्यमेव जयते
Government of India

आज़ादी का अमृत महोत्सव

लेखा परीक्षा महानिदेशालय
DIRECTORATE GENERAL OF AUDIT
INDIRECT TAXES & CUSTOMS
C.R. BUILDING, I.P. ESTATE,
NEW DELHI-110109
दूरभाष / TEL. :011-23370075
ई-मेल / Email: dg.audit-cbec@nic.in

17.02.2023

AML & CFT GUIDELINES FOR REAL ESTATE AGENTS, 2023

Subject: Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) - Obligations for Real Estate Agents under the Prevention of Money Laundering Act, 2002 and Rules made thereunder

1. The Prevention of Money Laundering Act, 2002 ("PMLA") was brought into force with effect from 1st July 2005. Necessary Notifications/Rules under the said Act were published in the Gazette of India on July 01, 2005 by the Department of Revenue, Ministry of Finance, Government of India.

2. As per the provisions of the PMLA, all Designated Non-Financial Businesses and Professions (DNFBPs), which includes the Real Estate Agents (REAs), shall have to adhere to client account opening procedures and maintain records of such transactions as prescribed by the PMLA and rules notified thereunder.

3. The DNFBPs shall also be required to report the specified transactions, including the suspicious transactions with a view to provide deterrence to the money-laundering and financing of terrorism.

4. In view of the Risk Based Approach (RBA) adopted by the Financial Action Task Force (FATF) for real estate agents and the recommendations made by it, these guidelines in the context of existing anti-money laundering law in the country, viz, the PMLA and the rules made thereunder have been issued for the REAs, who are referred to as the Reporting Entities for the purposes of

Verified RealEstate™

these guidelines. The guidelines provide an overview on the background and essential principles that concern combating Money Laundering (ML) and Terrorist Financing (TF) as well as a detailed account of the procedures and obligations to be followed by all reporting entities to ensure compliance with AML/CFT provisions.

5. These Guidelines have been issued in supersession of the earlier Guidelines issued on 30.12.2022.

Yours faithfully,

(Dr. Amandeep Singh)
Additional Director General

Verified RealEstate™

सत्यमेव जयते

लेखापरीक्षा महानिदेशालय
DIRECTORATE GENERAL OF AUDIT
INDIRECT TAXES & CUSTOMS

Guidelines for Reporting Entities (Real Estate Agents) under the Prevention of Money Laundering Act, 2002

Table of contents:

Section: A

1. Introduction
2. Purpose of the guidelines
3. Real Estate Agents
4. Policies and Procedures to Combat Money Laundering and Terrorist financing
5. Obligation to establish policies & procedures under PMLA

Section: B

6. Detailed Guidelines on Anti Money-Laundering and combating the financing of terrorism Procedures
7. Liability for failure to fulfil obligations
8. Illustrative list of documents required for KYC
9. Maintenance of records of transactions/ Information to be recorded/Preservation of records/ Cash and Suspicious transactions reporting to Financial Intelligence Unit-India (FIU-IND)
10. Implementation of Section 51A of the Unlawful Activities (Prevention) Act, 1967 (UAPA)
11. Recruitment and training of employees
12. Definitions

Verified RealEstate™

सत्यमेव जयते

लेखापरीक्षा महानिदेशालय
DIRECTORATE GENERAL OF AUDIT
INDIRECT TAXES & CUSTOMS

Section: A

1. Introduction:

1.1 These guidelines shall be called the **Guidelines for Reporting Entities (Real Estate Agents) under the Prevention of Money Laundering Act, 2002** (hereafter called **"The Guidelines")**.The Guidelines aim to provide a general background and summary of the provisions of the applicable anti-money laundering and anti-terrorism financing legislations in India, viz. the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the "**PMLA**") and the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereinafter referred to as the "**PMLR**") and their applicability to and implications for the real estate agents in applying certain Anti Money Laundering/ Countering the Financing of Terrorism (AML/CFT) obligations.

1.2 Rule 2(1)(fa)(iv) of the PMLR defines 'Regulator' as "the Central Board of Indirect Taxes and Customs, constituted under Central Boards of Revenue Act, 1963, with respect to the real estate agents" (inserted vide G.S.R. Notification 800(E) dated 28.12.2020 issued under F.No. P-12011/14/2020-ES Cell-DOR. The Guidelines are being issued by the Directorate General of Audit (DGA), Central Board of Indirect Taxes and Customs (CBIC) which has been appointed Regulator on behalf of Central Board of Indirect Taxes & Customs, Ministry of Finance, Govt. of India for this purpose vide O.M. dated 22.11.2021 of the Commissioner (GST-Inv), CBIC **(Annexure-I)**. The broader context for the Guidelines is provided by the Recommendations made by Financial Action Task force (FATF) on anti-money laundering standards and the Guidance on the Risk-Based Approach adopted in its June 2008 Plenary to Combating Money Laundering and Terrorist Financing, which includes guidance for public authorities and designated non-financial businesses and professions (DNFBPs) including Real Estate Agents (hereinafter also referred to as the "Reporting Entities"), amongst others.

Verified RealEstate ™

1.3 The PMLA and the rules made thereunder, viz. the PMLR, on implementing a risk-based approach for the Reporting Entities, lays down the principles to be followed by them and highlights risk factors specific to those DNFBPs, along with suggestions to minimize the risk of Money Laundering/ Terrorist Financing (ML/TF).

1.4 These guidelines also set out the steps that a Real Estate Agent shall implement to discourage and to identify any money laundering or terrorist financing activities. These guidelines prescribe procedures and obligations to be followed by the reporting entities to ensure compliance with Anti Money Laundering / Countering the Financing of Terrorism (AML/CFT) guidelines.

1.5 The strategies to manage and mitigate the identified money laundering and terrorist financing activities are typically aimed at preventing the activity from occurring through a mixture of deterrence [*e.g.,* appropriate Client Due Diligence ("**CDD**") measures], detection (*e.g.,* monitoring and suspicious transaction reporting), and record-keeping so as to facilitate investigations by the appropriate authorities, wherever required, which are discussed at length here under.

2. Purpose of the guidelines:

2.1 The purpose of these guidelines is to explain the risk-based approach, outline the core principles involved in applying the same, and indicate best practices in the design and implementation of an effective risk-based approach.

2.2 The purpose of these guidelines is also to establish a reporting mechanism with the real estate agents that will help in combating money laundering and terrorist financing.

Verified RealEstate ™

3. Real Estate Agents

For purposes of these guidelines, the term "real estate agents" has the same meaning as defined in Clause (zm) of Section 2 of The Real Estate (Regulation and Development) Act, 2016 ('**RERA**'). "Real estate agent" means 'any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as a commission or otherwise and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called and **having annual turnover of Rupees twenty lakhs and above**.'

4. Policies and Procedures to Combat Money Laundering and Terrorist financing: (AML/ CFT Program):

4.1. Every real estate agent is required to have an AML/ CFT program in place in order to discharge its statutory responsibility to detect possible attempts of money laundering and financing of terrorism.

4.2. In view of the requirements of the PMLA and the rules made thereunder, as applicable to the reporting entities in preventing ML and TF, each real estate agent shall consider carefully the specific nature of its business, organisational structure, type of client and transaction, etc to satisfy itself that the measures taken by it are adequate and appropriate and follow the spirit of the suggested measures as laid down in the PMLA. Each reporting entity shall also satisfy itself that such measures are effectively implemented.

4.3 Real Estate offers a convenient way to launder large amounts in a single transaction. Real Estate also offers secondary benefits for the criminals, such

as helping them to secure residence, ensuring social respectability, and providing an immediately available good of material benefit. As such, criminals may not make any tangible use of many financial assets, but such is not the case with real estate sector as it offers opportunity to individuals to transfer the value of funds into both commercial and residential property. Real estate is often an appreciating asset that can generate returns and become a good source of personal gains. A real estate agent must be able to form a reasonable belief that they know the true identity of each customer. Customer Due Diligence (CDD) measures must be conducted to form these beliefs with the identification and verification of the identity of customers and their beneficial owners.

5. Obligation to establish policies and procedures under PMLA:

5.1 In order to combat the menace of money-laundering, terror financing and other related serious crimes, Rule 7(3) of the PMLR casts an obligation on every reporting entity to evolve an internal mechanism in respect of these guidelines to detect transactions as specified under Rule 3(1) and furnishing information about such transactions to Financial Intelligence Unit (FIU-IND). The obligation of reporting entities to effectively serve to prevent and impede money laundering and terrorist financing and to observe such internal controls not only by them but also by their designated Director, officers and employees is a legal requirement under Rule 7(4) of the PMLR. It is without ambiguity that the success of internal policies and procedures will be dependent largely on how effectively these are outlined and implemented.

5.2 To comply with these obligations, every reporting entity shall establish appropriate policies and procedures for the prevention of ML and TF and ensure their effectiveness and compliance with all relevant legal and regulatory requirements. The reporting entities shall:

Verified RedEstate™

(i) issue a statement of policies and procedures for dealing with ML and TF reflecting the current statutory and regulatory requirements;

(ii) ensure that spirit of these guidelines and internal policies and procedures are understood by all staff members;

(iii) regularly review the policies and procedures on the prevention of ML and TF to ensure their effectiveness. To ensure the effectiveness of policies and procedures, the person doing such a review shall, as far as possible, be different from the one who has framed them;

(iv) adopt client acceptance policies and procedures and undertake Client Due Diligence (CDD) measures to the extent that is sensitive to the risk of ML and TF depending on the type of client, business relationship or transaction;

(v) have a system in place for identifying, monitoring and reporting suspected ML or TF transactions to the law enforcement authorities; and

(vi) develop mechanism/s through training/ workshops, etc to make their staff aware and vigilant to guard against ML and TF.

5.3 **Maintenance of records:** As per the provisions of Section 12 of the PMLA, every reporting entity shall have to maintain a record of all the transactions; information relating to such transactions, whether attempted or executed, the nature and value of which has been prescribed in Rule 3 of the PMLR and 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 as detailed in the foregoing part of these guidelines.

5.4 **Transactions defined for the purpose of reporting:** As prescribed

Verified RedEstate

under Rule 3 of the PMLR, such transactions include:

(i) All **cash** transactions of the value of more than Rs. 10 lakh or its equivalent in foreign currency.

(ii) All series of **cash** transactions integrally connected to each other which have been individually valued below Rs. 10 lakh or its equivalent in foreign currency where such series of transactions have taken place within a month and the monthly aggregate exceeds an amount of Rs. 10 lakh or its equivalent in foreign currency.

(iii) 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.

(iv) All suspicious transactions **whether or not made in cash** and by way of deposits or credits, as provided under sub rule 1(D) of Rule 3 of the said rules.

It is, however, clarified that for the purpose of suspicious transactions reporting, apart from 'transactions integrally connected', 'transactions remotely connected or related' shall also be considered.

5.5 **Know Your Client (KYC) and Client Due Diligence (CDD):** As provided under Section 11A of the PMLA read with Rule 9 of the PMLR, it is incumbent upon every Reporting Entity to follow certain client identification procedures in respect of the buyers and sellers of real estate and monitoring transactions of a suspicious nature for the purpose of reporting it to the appropriate authority. These 'Know Your Client' guidelines have been revisited in the context of the Recommendations made by the Financial Action Task Force (FATF) on Anti Money Laundering (AML) standards and on Combating Financing of Terrorism (CFT). The reporting entities are advised to ensure that an appropriate policy framework on 'Know Your

Verified RealEstate™

Client' and Anti Money-Laundering measures is formulated and put in place. Principally, these CDD measures are required to be followed when the Reporting Entities engage in any cash transaction with a client equal to or **exceeding rupees fifty thousand**, as prescribed under Rule 9(1)(b)(i) of the PMLR.

5.6 **Suspicious Transaction Reporting:** In line with FATF Recommendation 20, Rule 8(2) read with Rule 3(1)(D) of the PMLR provides for prompt reporting of a suspicious transaction, which includes an attempted suspicious transaction, to the FIU-IND, if a reporting entity suspects or has reasonable grounds to suspect that funds used by a client are the proceeds of a criminal activity, or are related to terrorist financing. A suspicious transaction shall be reported within **seven** working days of its occurrence.

Verified RedEstate™

सत्यमेव जयते

लेखापरीक्षा महानिदेशालय
DIRECTORATE GENERAL OF AUDIT
INDIRECT TAXES & CUSTOMS

Section: B

6. Detailed Guidelines on Anti Money-Laundering and combating the financing of terrorism Procedures

6.1 Appointment of a Designated Director and a Principal Officer:

In line with the provisions of Rule 7 of the PMLR, every reporting entity shall appoint:

(i) a Principal Officer and,
(ii) a Designated Director

As far as possible, the Principal Officer and the Designated Director should be separate individuals. Names, designation, telephone number and addresses (email addresses) of Principal Officer and the Designated Director including any changes therein shall be intimated to the Office of the Director, FIU-IND, Regulator and the Real Estate Regulatory Authority governing the reporting entity.

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

(a) Furnishing of the information under Rule 8 (1) of the PMLR, as prescribed under sub rule (1) of Rule 3 of the said rules on monthly basis, **by 15th day of the succeeding month,** in prescribed **Format** to the Director, FIU-IND. However, the information in respect of a suspicious transaction shall be furnished **within seven working days** of its occurrence as per Rule 8(2) of the PMLR, as mentioned at Para 8.6. Such information shall include any attempted transactions, whether or not made in cash;

(b) Evolving an internal mechanism with regard to any guidelines

Verified RealEstate ™

issued by the Regulator or the Director, FIU-IND and for furnishing information as prescribed under sub rule (1) of Rule 3 of the PMLR;

(c) 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;

(d) Client acceptance policy and client due diligence measures, including requirements for proper identification, such as:

(i) Maintenance of records;

(ii) Compliance with relevant statutory and regulatory requirements;

(iii) Cooperation with the relevant law enforcement authorities, including the timely disclosure of information; and

(iv) Role of internal audit or compliance function to ensure compliance with the policies, procedures and controls relating to the prevention of ML and TF, including detection of suspected money laundering transactions.

6.2 **Client Due Diligence (CDD) Measures and Know Your Client (KYC) norms:**

6.2.1. In consonance with the basic principles of the KYC norms as prescribed in the PMLA or the rules made there under, all reporting entities shall frame their own internal directives based on their experience in dealing with their clients and legal requirements as per the established practices.

6.2.2. In accordance with Rule 9 of the PMLR, each reporting entity shall adopt written procedures to implement the anti-money laundering provisions as envisaged under the PMLA, related to the **'Client Due Diligence Process'**. The requirement is stated hereunder:

Verified by RedEstate™

1. Every reporting entity shall-

(a) at the time of commencement of an account-based relationship-

(i) identify its clients, verify their identity, obtain information on the purpose and intended nature of the business relationship; and

(ii) determine whether a client is acting on behalf of a beneficial owner, and identify, the beneficial owner and take all steps to verify the identity of the beneficial owner:

(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, as mentioned at Para 8.5 above.

2. Every reporting entity shall be responsible for obtaining KYC records of its clients and file the same with the Central KYC Records Registry. The third-party KYC records may also be used for this purpose.

6.2.3. Considering the potential threat of transactions in real estate by a money launderer / terrorism financier, the reporting entities should make reasonable efforts to determine the true identity of all clients engaging in sale and purchase of such real estate, especially the person who funds/pays for a transaction, either as beneficial owner or otherwise. Where a client is a juridical person, verification of identity is

Verified RedEstate ™

required to be carried out on persons purporting to act and are authorised to act on behalf of a client. Effective procedures should be put in place to obtain requisite details for proper identification of new clients. Special care has to be exercised to ensure that the transactions are not under anonymous or fictitious names.

6.3. **Beneficial owners:** The reporting entities should also make reasonable efforts to obtain sufficient information in order to identify persons who are the beneficial owners. Whenever it is apparent that the transactions made through an account are beneficially owned by a party other than the client, that party shall be identified using client identification and verification procedures. The beneficial owner is the natural person or persons who ultimately own, control or influence a client and/or persons on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. The client's identity should be verified using reliable, independent source documents, data or information.

6.4. **Enhanced Due Diligence:**

6.4.1. In tune with the FATF Recommendation 19, Section 12AA of the PMLA prescribes for the reporting entities to perform enhanced due diligence for higher-risk clients, business relationships and transactions. Recommendation 12, which prescribes measures to be taken for Politically Exposed Persons (PEPs), provides for additional measures for specific clients and activities, which are considered to be a higher risk scenario requiring enhanced CDD. Politically exposed persons are individuals who are or have been entrusted with prominent public functions in a foreign country, e.g., Heads of States or of Governments, senior politicians, senior government/judicial/military officers, senior executives of state-owned corporations, important

Verified © RedEstate™

political party officials.

6.4.2. Reporting entities should examine, as far as reasonably possible, the background and purpose of all complex, unusually large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose. Where the risks of money laundering or terrorist financing are higher, reporting entities should be required to conduct enhanced due diligence measures, consistent with the risks identified. In particular, they should increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear unusual or suspicious.

6.4.3 Conducting enhanced due diligence should not be limited to merely documenting income proofs. They should be more rigorous and robust measures than normal KYC. These measures should be commensurate with the risk. While it is not intended to be exhaustive, the following are some of the reasonable measures in carrying out enhanced due diligence:

(i) More frequent review of the clients' profile/transactions,

(ii) Application of additional measures like gathering information from publicly available sources or otherwise,

(iii) Review of the clients' information at senior level of the reporting entity,

(iv) Reasonable measures to know the client's source of funds commensurate with the assessed risk of client and product profile which may include:

(a) conducting independent enquiries on the details collected on / provided by the client where required,

(b) consulting a credible database, public or other, etc.

Verified © RedEstate ™

6.5. **Policy for client acceptance and risk assessment (Risk Based Approach):**

6.5.1. Within the provisions of Rule 9 of the PMLR, the KYC policy shall clearly spell out the client identification procedure to be carried out at different stages, i.e., while establishing the relationship with client, while carrying out transactions with a client or when the reporting entity has doubts regarding the veracity or the adequacy of previously obtained client identification data.

6.5.2. It is generally recognized that certain clients may be of a higher or lower risk category depending on the circumstances such as the client's background, type of business relationship or transaction, etc. In order to identify the types of clients that are likely to pose a higher than average risk of ML or TF, the reporting entities shall develop client acceptance policies and procedures. It would help in applying client due diligence on a risk sensitive basis. The risk assessment shall be documented and shall be made available to the Director, FIU-IND/ Regulator, as and when required. The following safeguards are to be followed while accepting the clients:

a) No reporting entity shall allow the opening of or keep any anonymous account or account in fictitious names or accounts on behalf of other persons whose identity has not been disclosed or cannot be verified.
b) The clients should be categorised in two categories, viz. high risk and low risk.
c) Factors of risk perception for monitoring suspicious transactions of the clients are clearly defined having regard to clients' location, nature of business activity, trading turnover etc. and manner of making payment for transactions

Verified RealEstate™

undertaken.

d) Individuals (other than High Net Worth) and entities whose identities and sources of wealth can be easily identified and transactions in whose accounts by and large conform to the known profile may be categorised as low risk. The salaried employees whose salary structures are well defined, people belonging to lower economic strata of the society, government departments and government owned companies, regulators and statutory bodies may fall under the low-risk category. In such cases, the basic requirements of verifying the identity and location of the client need to be ensured and a simplified client due diligence process should be followed. However, in case a client's profile is found to be inconsistent with his transactions, an enhanced due diligence may be resorted to.

e) A risk assessment of clients who are non-residents, high net worth individuals, trusts, charities, NGOs and organisations receiving donations, companies having close family shareholding or beneficial ownership, firms with sleeping partners etc will determine their Money Laundering/ Terrorist Financing risk.

f) Individuals who are or have been entrusted with prominent public functions in a foreign country, e.g., Heads of States or of Governments, senior politicians, senior government/judicial/military officers, senior executives of state-owned corporations, important political party officials, are higher risk clients and reporting entities should conduct enhanced due diligence of such individuals and their close relatives. All reporting entities shall put in place appropriate risk management systems to obtain relevant information about such clients, such as referring to publicly available

Verified © RealEstate ™

information. Approval at senior management level must be required for establishing business relationships with such clients. Reporting entities shall also take reasonable measures to verify the sources of funds as well as the wealth of such clients.

g) The clients with dubious reputation as per available public information are considered as high risk, requiring EDD.

h) In cases where the appropriate CDD measures to identify the profile of a client cannot be applied or it is not possible to ascertain the identity of the client, or the information provided by the client is suspected to be false or non–genuine, the reporting entity shall not enter into a transaction with such client. In such cases, a suspicious activity report shall be filed.

i) In cases, where the identity of a client is ascertained as having a criminal background, a suspicious transaction report shall be filed.

6.6. Reliance on Third Party KYC:

The reporting entity is solely responsible for undertaking Client Due Diligence and Enhanced Due Diligence measures. However, subject to the provisions of Rule 9(2) of the PML (Maintenance of Records) Rules, 2005, a reporting entity may rely on a third party for obtaining the KYC information. It shall be ensured by the reporting entity that the third party is not based in a country or jurisdiction assessed as high risk.

6.7 Suspicious Transaction Monitoring and Reporting

6.7.1 Reporting entities shall ensure that appropriate steps are taken to enable suspicious transactions to be recognized and have

Verified RedEstate

appropriate procedures for reporting suspicious transactions.

6.7.2 A list of circumstances which may be in the nature of suspicious transactions is given below. This list is only illustrative and whether a particular transaction is suspicious or not will depend upon the background, details of the transactions and other facts and circumstances:

(i) Clients whose identity verification seems difficult or clients that appear not to cooperate;
(ii) Asset management services for clients where the source of the funds is not clear or not in keeping with clients' apparent standing/business activity;
(iii) Clients based in high-risk jurisdictions;
(iv) Substantial increases in business without apparent cause;
(v) Clients transferring large sums of money to or from overseas locations with instructions for payment in cash;

6.7.3 Any suspicious transaction shall be immediately notified to the Principal Officer or the Designated Director within the reporting entity. The notification may be done in the form of a detailed report with specific reference to the clients, transactions and the nature /reason of suspicion. However, it shall be ensured that there is continuity in dealing with the client as normal until told otherwise and the client shall not be told of the report/ suspicion.

6.7.4 It is likely that in some cases transactions are abandoned or aborted by clients on being asked to give some details or to provide documents. It is clarified that reporting entities shall report all such attempted transactions in STRs, even if not completed by clients,

Verified © RealEstate ™

irrespective of the amount of the transaction.

7. Liability for failure to fulfil obligations:

As prescribed under Section 13 of the PMLA, any reporting entity may be required to get its records audited by a Chartered Accountant appointed by the Central Government. A monetary penalty may also be imposed on the reporting entity, its director or the employees for failure to fulfil the obligations cast upon them by the PMLA or rules made there under. A delay in not reporting a transaction as prescribed under these rules shall also constitute violation of the PMLA and the rules made thereunder.

8. List of documents required for KYC:

As required under rule 9 of PMLR, the following is an illustrative list of documents, which may be obtained from the clients for ascertaining their identity under KYC requirement:

Features	Officially Valid Documents
Accounts of individuals	
- Legal name and any other names used	(i) Passport (ii) PAN card (iii) Voter's Identity Card (iv) Driving licence (v) Identity card issued by the employer (vi) Letter from a recognized public authority or public servant verifying the identity and residence of the client
- Correct permanent address	(i) Telephone bill (ii) Bank account statement (iii) Letter from any recognized public authority (iv) Electricity bill (v) Ration card (vi) Letter from employer (vii) any one document which provides client information to the satisfaction of the reporting entity

सत्यमेव जयते

लेखापरीक्षा महानिदेशालय
DIRECTORATE GENERAL OF AUDIT
INDIRECT TAXES & CUSTOMS

Accounts of companies - Name of the company - Principal place of business - Mailing address of the company - Telephone/Fax Number	(i) Certificate of incorporation and Memorandum & Articles of Association (ii) Resolution of the Board of Directors to open an account and identification of those who have authority to operate the account (iii) Power of Attorney granted to its managers, officers or employees to transact business on its behalf (iv) Copy of PAN allotment letter (v) Copy of the telephone bill
Accounts of partnership firms - Legal name - Address - Names of all partners and their addresses - Telephone numbers of the firm and partners	(i) Registration certificate, if registered (ii) Partnership deed (iii) Power of Attorney granted to a partner or an employee of the firm to transact business on its behalf (iv) Any officially valid document identifying the partners and the persons holding the Power of Attorney and their addresses (v) Telephone bill in the name of firm/ partners
Accounts of trusts & foundations - Names of trustees, settlers, beneficiaries and signatories - Names and addresses of the founder, the managers /directors and the beneficiaries - Telephone/fax numbers	(i) Certificate of registration, if registered (ii) Power of Attorney granted to transact business on its behalf (iii) Any officially valid document to identify the trustees, settlors, beneficiaries and those holding Power of Attorney, founders/managers/ directors and their addresses (iv) Resolution of the managing body of the foundation/association (v) Telephone bill

Verified RealEstate ™

9. Maintenance of records of transactions/ Information to be recorded/Preservation of records/ Cash and Suspicious transactions reporting to FIU-IND:

9.1. Section 12 of the PMLA casts the obligation upon every reporting entity to maintain records of all transactions in such a manner that all individual transactions are reconstructed and furnishing of information related to transactions to Director FIU-IND. It also provides for preservation of information and records for a period of five years. The procedure for maintenance of records of transactions, information required to be recorded, procedure and manner of maintaining information and procedure and manner of furnishing information is prescribed under Rule 3, 4, 5, 7 and 8 of the PMLR. All reporting entities are required to ensure compliance of the aforesaid provisions. These provisions are detailed in succeeding paragraphs.

9.2. **Maintenance of records of transactions (nature and value):** All reporting entities need to put in place a system of maintaining records of transactions, as prescribed under Rule 3, as below:

(i) All cash transactions of the value of more than Rs. 10 lakh or its equivalent in foreign currency.

(ii) All series of cash transactions integrally connected to each other which have been individually valued below Rs. 10 lakh or its equivalent in foreign currency where such series of transactions have taken place within a month and the monthly aggregate exceeds an amount of Rs. 10 lakh or its equivalent in foreign currency.

(iii) 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

Verified by PropEstate™

facilitating the transactions.

(iv) All suspicious transactions whether or not made in cash and by way of deposits or credits, as provided under sub rule 1(D) of Rule 3 of the said rules.

9.3 **Information required to be maintained:**

The records as referred to in Rule 3 of PMLR shall contain all necessary information to permit reconstruction of individual transaction, including 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 reporting entity shall maintain these records of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

9.4. **Retention of information and records:**

The information and records maintained for the purpose of these guidelines, as envisaged under Section 12 of the PMLA, shall be maintained by the reporting entity for a period of five years from the date of transaction between a client and the reporting entity. These records may be called for by the investigation authorities or the Director FIU-IND along with any other information as they may deem necessary as evidence for investigation, prosecution or judicial proceedings under the PMLA and the rules made thereunder. In cases where the records relate to on-going investigations or transactions which have been the subject of suspicious transaction reporting, they shall be retained until it is

Verified by RealEstate™

confirmed that the case has been closed.

9.5. **Reporting to Financial Intelligence Unit-India:**

In terms of the PMLR, reporting entities are required to report information relating to cash and suspicious transactions to the Director, Financial Intelligence Unit-India (FIU-IND) at the following address:

Director, FIU-IND,
Financial Intelligence Unit-India, 6th Floor, Hotel Samrat, Chanakyapuri, New Delhi-110021.
Website: http://fiuindia.gov.in

9.6 **Format for reporting Transactions:**

The format for reporting transactions, including suspicious transactions made or attempted, as required under Rule 7(2) of PMLR, would be as prescribed by the FIU.

9.7 **Prohibition on tipping off and maintaining confidentiality of information:**

9.7.1 Reporting entities and their directors, officers and employees (permanent and temporary) shall be prohibited from disclosing ("tipping off") that a STR or related information is being reported or provided to the FIU-IND. This prohibition on tipping off extends not only to the filing of the STR and/ or related information but even before, during and after the submission of an STR. Thus, it shall be ensured that there is no tipping off to the client at any level. It is clarified that the reporting entities, irrespective of the amount of transaction and/or the threshold limit envisaged for reporting under PMLA, 2002, shall file STR if they have reasonable grounds to believe that the transactions involve proceeds of

Verified RedEstate ™

crime.

9.7.2 Reporting entities shall ensure that Every information collected from the customer, maintained, verified and furnished to the FIU, including the Cash Transaction Report and Suspicious Transaction Report shall be kept strictly confidential and details thereof shall not be divulged to anyone.

9.7.3 Reporting entities, its directors and employees shall not be liable to any civil or criminal proceedings against them for furnishing information relating to cash transactions and suspicious transactions to the Director, FIU-IND.

10. Implementation of Section 51A of the Unlawful Activities (Prevention) Act, 1967 (UAPA):

10.1. The Ministry of Home Affairs (MHA) Order dated 2nd February, 2021 issued under F. No. 14014/01/2019/CFT under Section 51A of the UAPA provides that the reporting entity should not enter into a transaction with a client whose identity matches with any person in the sanction list or with banned entities and those reported to have links with terrorists or terrorist organizations. A list of individuals and entities subject to UN sanction measures under UNSC Resolutions (hereinafter referred to as 'designated individuals/entities') is compiled by the Ministry of Home Affairs (MHA). The reporting entities shall periodically check the MHA website for an updated list of banned entities. The reporting entities shall maintain an updated list of designated individuals/entities in electronic form and run a check on the given parameters on a regular basis to verify whether designated individuals/ entities have entered into a transaction with them.

10.2. An updated list of individuals and entities which are subject to various sanction measures as approved by the Security Council Committee

Verified RealEstate ™

established pursuant to UNSC 1267 can be accessed from the United Nations website at:
http://www.un.org/sc/committees/1267/consolist.shtml.

10.3. By virtue of Section 51A of the UAPA, the Central Government is empowered to freeze, seize or attach funds of and/or prevent entry into or transit through India any individual or entities that are suspected to be engaged in terrorism.

10.4. Reporting entities shall ensure that no transactions are ever made with any of the entities or individuals included in the list and if it has happened, details of all such clients shall immediately be intimated to the Regulator and FIU-IND

11. Recruitment and training of employees:

11.1 **Recruitment of Employees**:

The reporting entities shall have adequate screening procedures in place to ensure high standards when hiring employees. They shall identify the key positions within their own organization structures having regard to the risk of money laundering and terrorist financing and the size of their business and ensure the employees taking up such key positions are suitable and competent to perform their duties.

11.2 **Employees' Training:**

Reporting entities must have an ongoing employee training programme so that their staff is adequately trained in AML and CFT procedures. Training requirements shall have specific focuses for frontline staff, back-office staff, compliance staff, risk management staff and staff dealing with new clients. It is crucial that all those concerned fully understand the rationale behind these guidelines, obligations and requirements,

Verified RealEstate

implement them consistently and are sensitive to the risks of their systems being misused by unscrupulous elements.

These guidelines have been issued under the provisions of the Prevention of Money-Laundering Act, 2002 and the rule made thereunder, more specifically, the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005. For any clarifications on these guidelines or removal of doubts, the provisions of the said act and rules may be referred.

Verified RealEstate

12. DEFINITIONS:

For the purposes of these guidelines,

a) **Beneficial Owner** means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person.

As specified in Rule 9(3) of PMLR, the beneficial owner shall be determined as under:

I. where the client is a company, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical persons, has a controlling ownership interest or who exercises control through other means.

Explanation- 1. "Controlling ownership interest" means ownership of or entitlement to more than 25% of shares or capital or profits of the company;

2. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

II. where the client is a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of/ entitlement to more than 15% of capital or profits of the partnership;

III. where the client is an unincorporated association or body of

Verified RedEstate ™

individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than 15% of the property or capital or profits of such association or body of individuals;

IV. where no natural person is identified under (a) or (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

V. where the client is a trust, the identification of beneficial owner(s) shall include 'identification of the author of the trust, the trustee, the beneficiaries with 15% 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; and

VI. where the client or the owner of the controlling interest is a company listed on a stock exchange, or is a subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies.

b) **Central KYC Records Registry** means a reporting entity, substantially owned and controlled by the Central Government, and authorised by that Government through a notification in the Official Gazette to receive, store, safeguard and retrieve the KYC records in digital form of a client as referred to in clause (ha) of Section 2 of the PMLA in such manner and to perform such other functions as may be required under PMLR.

c) **Client** means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting.

Verified RealEstate

For the purpose of these Guidelines, a client includes a customer engaged or attempting to engage into a transaction with the Reporting Entity.

d) **Designated Director** means a person designated by the reporting entity to ensure overall compliance with the obligations imposed under chapter IV of the PMLA and the PMLR and includes –

a) The Managing Director or a Whole-Time Director duly authorised by the Board of Directors if the reporting entity is a company;
b) The managing partner, if the reporting entity is a partnership firm;
c) The proprietor, if the reporting entity is a proprietorship firm;
d) The managing trustee, if the reporting entity is a trust;
e) a person or individual, as the case may be, who controls and manages the affairs of the reporting entity if the reporting entity is an unincorporated association or a body of individuals; and
f) such other person or class of persons as may be notified by the Government if the reporting entity does not fall in any of the categories above."

e) **Person** includes an individual; a Hindu undivided family; a company; a firm; an association of persons or a body of individuals, whether incorporated or not; every artificial juridical person not falling within any of the preceding sub-clauses; and any agency, office or branch owned or controlled by any of the persons mentioned above.

f) **Principal Officer** is defined as an officer so designated by a reporting entity. The Principal Officer would act as a central reference point in facilitating onward reporting of suspicious transactions and for playing an active role in the identification and assessment of potentially suspicious transactions and shall have access to and be able to report to senior management at the next reporting level or the Board of Directors. It is desirable that the 'Principal

Verified RealEstate

Officer' is of a sufficiently senior position and is able to discharge the functions with independence and authority.

g) **Real Estate Agent** means a real estate agent as defined under clause (zm) of section 2 of the Real Estate (Regulation and Development) Act, 2016, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as a commission or otherwise and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called and **having annual turnover of Rupees twenty lakhs and above.**

h) **Regulator** means the Directorate General of Audit (DGA), Central Board of Indirect Taxes and Customs (CBIC)

i) **Suspicious transaction** is defined as a transaction, including an attempted transaction, **whether or not made in cash**, which, to a person acting in good faith-

(i) gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the PMLA, 2002, regardless of the value involved; or

(ii) appears to be made in circumstances of unusual or unjustified complexity; or

(iii) appears to have no economic rationale or bona fide purpose; or

(iv) gives rise to a reasonable ground of suspicion that it may involve financing

of the activities relating to terrorism.

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.

Verified RealEstate ™