

Foreign Exchange Developments

November 2009

i) Know Your Customer (KYC) norms/ Anti-Money Laundering (AML) standards/ Combating of Financing of Terrorism (CFT)/ Obligation of Authorised Persons under Prevention of Money-Laundering Act, (PMLA), 2002, as amended by Prevention of Money Laundering (Amendment) Act, 2009- Money changing activities–Suspicious Transaction Reporting Format

Government of India *vide* the Prevention of Money Laundering (Amendment) Act, 2009 (21 of 2009) has amended the PMLA, 2002 and the amendment has come into force with effect from June 1, 2009. The amendment, *inter alia*, has brought authorised persons within the definition of "Financial Institutions" under Section 2(l) of the Act. Accordingly, in terms of Section 12 of the Act and the rules made there under, authorised persons are required to furnish information to Financial Intelligence Unit-India (FIU-IND) in the prescribed format. Government of India *vide* its Notification No.13/2009/F.No.6/8/2009-ES dated November 12, 2009, has also amended 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.

Accordingly, all authorized persons have been advised to furnish Suspicious Transaction Report (STR) to FIU-IND in respect of their money changing activities

within 7 days of arriving at a conclusion that a transaction, including attempted transaction, whether or not made in cash, or a series of transactions integrally connected are of suspicious nature. The formats of STR, both manual and electronic, have been made available by FIU-IND in their website <http://fiuindia.gov.in>.

The STR formats prescribed would also be applicable to all franchisees of authorised persons and it will be the sole responsibility of the franchisers to ensure that their franchisees also adhere to the said reporting requirements.

[A. P. (DIR Series) Circular No. 15
A.P. (FL/RL Series) Circular No.02
dated November 19, 2009]

ii) Memorandum of Instructions for Opening and Maintenance of Rupee/Foreign Currency Vostro Accounts of Non-resident Exchange Houses

Certain instructions given in the Memorandum of Instructions for Opening and Maintenance of Rupee / Foreign Currency Vostro Accounts of Non-resident Exchange Houses, issued *vide* A.P.(DIR Series) Circular No. 28 [A.P. (FL/RL Series) Circular No. 02] dated February 6, 2008 and A.P.(DIR Series) Circular No. 11 [A.P. (FL/RL Series) Circular No. 01] dated August 22, 2008 have been revised as under:

Paragraph no. (A). 3. ii of the Memorandum - The requirement of registration of the Agreement between AD Category-I banks and Exchange Houses under Rupee Drawing Arrangement/ Foreign Currency Drawing Arrangement has been

made optional. However, such arrangements should be subject to comprehensive legal documentation and AD Category-I banks should take care of all necessary legal requirements in this regard.

Instructions on Collateral Cover after paragraph (C). 1. xvi.-The collateral requirement for Exchange Houses which have not completed three years of operation has been reduced from one month's projected drawings to 7 days' projected drawings. For Exchange Houses which have completed three years of successful operations, no collateral is prescribed. However, AD Category - I banks may secure their position by requiring adequate collateral cover. Cash deposit or a guarantee from a bank of international repute equivalent to 15 days' estimated drawings may be obtained as collateral cover where it is not possible to appoint auditors as mentioned at 1(vii).

Necessary changes in point 6 of Part C of Annex-II to the A.P.(DIR Series) Circular No. 28 [A.P. (FL/RL Series) Circular No. 02] dated February 6, 2008 may be made.

Instructions on Collateral Cover after paragraph (C). 3. vii. -The Exchange House shall keep with the AD Category - I bank a cash deposit in any convertible foreign currency equivalent to 1 day's estimated drawings on which market related interest rate may be paid. The Exchange House can also keep the said collateral in the form of guarantees from a bank of international repute. The adequacy of collateral should be reviewed by the AD Category - I bank at regular intervals.

[A. P. (DIR Series) Circular No. 16
A.P. (FL/RL Series) Circular No.03
dated November 27, 2009]

iii) Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT)/Obligation of Authorised Persons under Prevention of Money Laundering Act, (PMLA), 2002, as amended by Prevention of Money Laundering (Amendment) Act, 2009 - Money changing activities

In terms of PMLA, 2002, as amended by Prevention of Money Laundering (Amendment) Act, 2009, all Authorised Persons (APs), authorised under Section 10(1) of FEMA, 1999 have been brought under the purview of PMLA, 2002. Therefore, the existing KYC norms/ AML standards/ CFT for money changing activities have been revisited in the context of the Financial Action Task Force (FATF) Recommendations on Anti Money Laundering (AML) standards and on Combating the Financing of Terrorism (CFT). Detailed instructions on Know Your Customer (KYC) norms/ Anti-Money Launderings (AML) standards/ Combating the Financing of Terrorism (CFT) for money changing activities have been revised.

2. Accordingly, revised guidelines on obligation of APs under PMLA, 2002 as amended by Prevention of Money Laundering (Amendment) Act, 2009 in respect of money changing activities have been given in (F-Part-I), which is annexed to the A.P. DIR. Further, all APs should have in place a revised policy framework on 'Know Your Customer' and Anti-Money Laundering and Combating the Financing of Terrorism measures with the approval of their Board.

3. These guidelines are also applicable *mutatis mutandis* to all agents / franchisees of APs and it will be the sole responsibility of the franchisers to ensure that their agents / franchisees also adhere to these guidelines.

[A. P. (DIR Series) Circular No. 17
A.P. (FL/RL Series) Circular No.04
dated November 27, 2009]

iv) Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT)/Obligation of Authorised Persons under Prevention of Money Laundering Act, (PMLA), 2002, as amended by Prevention of Money Laundering (Amendment) Act, 2009- Cross Border Inward Remittance under Money Transfer Service Scheme

In terms of PMLA, 2002, as amended by Prevention of Money Laundering (Amendment) Act, 2009, all Authorised Persons (APs), authorised under Section 10(1) of FEMA, 1999 have been brought under the purview of PMLA, 2002. Therefore, detailed instructions on KYC norms/ AML standards/ CFT in respect of cross-border inward remittance activities, in the context of the Financial Action Task Force (FATF) Recommendations on AML standards and on CFT have been prescribed.

2. Accordingly, guidelines on obligation of Authorised Persons (Indian Agents), under PMLA, 2002 as amended by Prevention of Money Laundering (Amendment) Act, 2009 are given in the Annex-I of the circular. All

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Authorised Persons (Indian Agents) should have in place a proper policy framework on 'Know Your Customer', 'Anti-Money Laundering' and Combating the Financing of Terrorism measures with the approval of their Board.

3. These guidelines would also be applicable *mutatis mutandis* to all Sub-

agents of the Indian Agents under MTSS and it will be the sole responsibility of the APs (Indian Agents) to ensure that their Sub-agents also adhere to these guidelines.

[A. P. (DIR Series) Circular No. 18
A.P. (FL Series) Circular No.05
dated November 27, 2009]