

'High risk' NBFC's due to PMLA non-compliance

Introduction

On account of non-compliance of the Prevention of Money Laundering Act (PMLA), the Central Government's Financial Intelligence Unit (FIU) that works under the finance ministry has released a list placing approximately 9,491 non-banking financial companies (NBFC) under the 'high-risk' category.

Under the PMLA, NBFCs which include various cooperative banks are required to provide details regarding their financial operations to the FIU. According to the FIU, these 9,491 NBFCs did not comply with the conditions of appointing a **Principal Officer** and designated director who is responsible for checking and reporting any suspicious transactions and cash transactions of more than 10 Lakhs and reporting the same to the agency.

What is an NBFC?

"An NBFC is a company registered under Companies Act. It is engaged in business of loans and advances, acquisition of shares, bonds, stocks, debentures and securities issued by government or local authority or other marketable securities. NBFCs can make investments and lend and hence, their activities are akin to that of banks. However, they cannot accept demand deposits and do not form part of payment and settlement system i.e. they cannot issue cheques drawn on itself."

What are the roles of a Principal Officer?

A Principal Officer is responsible for:

- Reporting suspicious transactions to the Financial Intelligence Unit (FIU) on a Bi-monthly basis.
- Suspicious transactions will be informed to the Vigilance Committee. Once Vigilance Committee verifies the details, if found suspicious, will inform it to the Principal Officer.
- Once the Principal Officer is convinced of the nature of suspicion, he/she will inform the Financial Intelligence Unit in New Delhi.
- Principal Officer will monitor all activities explained in the policy.

Impact of such release on NBFCs

The primary motive of the FIU is to make the public aware that these NBFCs are not law compliant and they should refrain from indulging into transactions with them. Through the release of this list the NBFC's are being urged to meet the minimum requirement of appointing a Principal Officer who will oversee the compliances mentioned under the PMLA.

The FIU has come out with this list with the intent to warn the NBFCs in case of non-compliance, also, further failure to comply with the provisions mentioned under the PMLA Act, 2002 and the PMLA Rules, 2005 specifically related to non-registration of the Principal officer would result in stringent penal proceedings against the NBFC as specified in Section 13(2) of the PMLA Act, 2002 and/or cancellation of the NBFC's registration certificate.

Section 13(2) of the PMLA Act, 2005 prescribes certain standing instructions and monetary penalty for all applicable entities. These are as follows:

Standing instructions:

- Director may issue a warning in writing.
- Direct such reporting entity or its designated director on the board or any of its employees, to comply with the specific instructions
- Direct reporting entity to send reports at regular intervals as may be prescribed

Monetary Penalty

- Penalty shall not be less than ten thousand rupees but may exceed to one lakh rupees for each failure.

The intent of this circular is to ensure those NBFCs who have not appointed Principal Officer as on date appoint them in order to remove their name from this list.

Action to taken by the NBFC's:

- Appoint Principal Officer
- Ensure communication of name, designation and address of the Principal Officer to the director, FIU-IND
- Ensure that the Principal Officer reports all transactions under rule 3 of the PMLA (Maintenance of Records) Rules, 2005 to the director, FIU-IND.