

## **LK ANALYSIS: AMENDMENTS TO RBI'S KYC MASTER DIRECTION**

### **BACKDROP**

Recently certain changes have been carried out in the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (“**PMLA Rules**”) under the Prevention of Money Laundering Act, 2002 (“**PMLA**”), the Government Order and instructions titled “Procedure for Implementation of Section 12A of the Weapons of Mass Destruction (WMD) and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (**WMD Act, 2005**)” and the FATF Recommendations.

In light of these changes, on April 28, 2023, Reserve Bank of India (“**RBI**”) issued a notification introducing certain amendments to the Master Direction, RBI (Know Your Customer (KYC)) Directions, 2016 (“**KYC MD**”) (“**Amendments**”), which provide guidelines for Regulated Entities (“**RE**”) for undertaking Customer Due Diligence (“**CDD**”).

### **AMENDMENTS ANALYSED**

Some of the important aspects of the Amendments along with our analysis are as under:

1. Amendments in relation to Video based Customer Identification Process (“**V-CIP**”)
2. Compliance in case of Aadhaar OTP based e-KYC in non-face-to-face mode of verification
3. Use of innovations in on-going due diligence
4. Risk assessment before introduction of new technologies for products/ business
5. Determination of the beneficial owner for company and trust
6. Addition of definition of “group” and related provision
7. Amendments with respect to Customer Acceptance policy
8. Amendments with respect to CDD measures

### **AMENDMENTS**

1. **Amendments in relation to Video based Customer Identification Process (“V-CIP”)**
  - (a) RE using cloud deployment model have to ensure that the ownership of the CDD data is at all times with the RE and not with third party service provider assisting RE.
  - (b) Multiple videos of customer should not be created due to disruption in V-CIP.
  - (c) In case of offline Aadhaar verification, XML file or QR code generation date should not be older than three working days from the date of carrying out V-CIP.

<p><b>LawKNIT Analysis:</b> The privacy and security of the information of the customers will be ensured in case of verification by V-CIP. Now in case of disruption or internet pause if multiple copies are not created then RE do not need to start from beginning.</p>
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2. **Compliance in case of Aadhaar OTP based e-KYC in non-face-to-face mode of verification**
  - (a) Transaction alerts, OTP, etc., to be sent only to the mobile number of the customer registered with Aadhaar. There should be a board approved policy for dealing with requests for change of mobile number.
  - (b) Usage of this non-face-to-face mode allowed for periodic updation of information of customers who are ‘individual’. In such case mobile number for Aadhaar authentication should be same as that on customer’s profile.



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- (c) RE must advise customers to intimate within 30 days of any update in information.
- (d) Enhanced Due Diligence for certain non-face-to-face mode of verification until the identity of the customer is verified in face-to-face manner or through V-CIP.
  - (i) **Applicability of EDD:** (i) use of digital channels such as CKYCR, DigiLocker, equivalent e-document, etc., and (ii) non-digital modes such as obtaining copy of OVD certified by additional certifying authorities as allowed for NRIs and PIOs.
  - (ii) The EDD for such modes are as follows:
    - If RE has V-CIP process of onboarding it should be the first option for customers.
    - Transactions permitted only from the mobile number used for account opening.
    - RE to verify the current address through positive confirmation before allowing operations in the account.
    - PAN shall be verified from the verification facility of the issuing authority.
    - First transaction in such accounts to be a credit from existing KYC-complied bank account of the customer.

**LawKNIT Analysis:** These measures have been introduced to prevent the high risk associated with Aadhaar OTP based e-KYC in non-face-to-face mode of verification.

### 3. Use of innovations in on-going due diligence

REs have been allowed to adopt appropriate innovations like Artificial Intelligence and Machine Learning (AI & ML) for on-going due diligence.

**LawKNIT Analysis:** Use of AI & ML in due diligence of regular transitions would lead to increase in the effectiveness of monitoring of the transactions.

### 4. Risk assessment before introduction of new technologies for products/ business

RE using or planning to use new technologies have to make following compliance:

- (a) Identification and assessment of the Money Laundering (ML)/ Terrorism Financing(TF) risks  
Undertake the ML/TF risk assessments prior to the launch or use of such technologies; and
- (b) Adoption of a risk-based approach to manage and mitigate the risks through appropriate Enhanced Due Diligence measures and transaction monitoring, etc.

**LawKNIT Analysis:** While the Amendments have opened the doors for usage of AI & MI for CDD, it provides for stringent risk assessment measures by RE in case of usage of these means by RE.

### 5. Determination of the beneficial owner for company and trust

- (a) **For Company:** ownership of/entitlement to more than 10% of the shares/ capital/ profits of the company. (Previously it was 25%)
- (b) **For Trust:** beneficiaries with 10 percent or more interest in the trust. (Previously it was 15%)

**LawKNIT Analysis:** The reduced threshold will require a greater number of shareholders and beneficiaries falling into the beneficial owner category.



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**6. Addition of definition of “group” and related provision**

- (a) same meaning as under section 286(9)(e) of the Income-Tax Act, 1961- Group includes a parent entity and all the entities in respect of which a consolidated financial statement is required to be prepared under any law.
- (b) Amendments have mandated implementation of a group-wide policy for the purpose of Chapter IV of the PMLA which provides for obligations of banking companies, financial institutions and intermediaries.

**LawKNIT Analysis:** There will be group-level monitoring by RBI of the entities under KYC MD which may help in keeping check on frauds.

**7. Amendments with respect to Customer Acceptance policy**

- (a) RE has to verify that GST number of customers from the verification facility of the issuing authority.
- (b) **CDD in case of individuals:** RE can retrieve the KYC records from the Central KYC Records Registry (“**CKYCR**”) for the purpose of opening customer account, subject to explicit consent from the customer along with the KYC identifier.
- (c) **Risk Management:** RE’s are now required to lay down broad principles for risk-categorization of customers. The list of parameters for risk categorization has been expanded to include:
  - (i) geographical risk covering customers as well as transactions,
  - (ii) type of products/services offered,
  - (iii) delivery channel used for delivery of products/services,
  - (iv) types of transaction undertaken, etc.
- (d) Information and reasons for risk categorization of customers to be treated as confidential by RE.

**LawKNIT Analysis:** The inclusion of risk categorization as ‘type of products/services offered’ may be used by RE to block services which they categorized as gambling or betting.

**8. Amendments with respect to CDD measures**

For opening account of legal entities, following additional documents/ information will be taken by RE:

- (a) **Sole proprietary firm:** “Registration certificate”, required as a proof, includes Udyam Registration Certificate (URC) issued by the Government.
- (b) **Company:** information about the names of the relevant persons holding senior management position; and the registered office or the principal place of its business.
- (c) **Partnership firm:** names of all the partners and address of the registered office, and the principal place of its business.
- (d) **Trust:** names of the beneficiaries, trustees, settlor and authors of the trust, the address of the registered office of the trust; and list of trustees and documents of trustee.

**LawKNIT Analysis:** The submission of information of the person responsible for the operations and management of these legal entities will lead to greater transparency and increase compliance of such legal entities under KYC MD.



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