AML-KYC GUIDELINES

INTRODUCTION

- Money laundering involves activities by which the proceeds of illegal acts are converted into legal acts.
- Since the banking channels are increasingly being made use of for this purpose.
- Precautions exercised by the banks can help in curbing money laundering and targeting those who engaged in this.
- The RBI has framed specific guidelines that deal with prevention of money laundering.
- These guidelines require banks to establish policies, procedures, and controls to deter money laundering activities.

PREVENTION OF MONEY LAUNDERING ACT

Prevention of Money Laundering Act, 2002 extends to the whole of India and came into force on July 01, 2005.

OBJECTIVE: The objective of the Act is to **prevent money-laundering** and to provide for **confiscation of property** derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

OFFENCE OF MONEY-LAUNDERING: Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering.

PUNISHMENT FOR MONEY-LAUNDERING: Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years (up to 10 years in certain exceptional cases) and shall also be liable to fine which may extend to Rs. 5 lacs.

ATTACHMENT OF PROPERTY INVOLVED IN MONEY-LAUNDERING: The Director or Deputy Director authorised by him can provisionally attach property by giving a notice up to 90 days.

OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES: RBI had issued detailed guidelines on the subject.

There are certain obligations on the bank **to preservation and reporting of customer account information**, for which RBI has issued directives u/s 35A of Banking Regulation Act 1949 & Rule 7 of Prevention of Money-laundering Rules as under:

MAINTENANCE OF RECORDS OF TRANSACTIONS

Banks are to maintain proper record of transactions, where:

a. **cash transactions above Rs.10 lakh** or its equivalent in foreign currency;

b. **series of cash transactions connected to each other**, of below Rs.10 lakh or its equivalent in foreign currency within a month and the aggregate value of such transactions exceeds Rs 10 lakhs

c. **cash transactions in forged or counterfeit currency** notes or bank notes and where any forgery of a valuable security has taken place

d. **suspicious transactions** in cash or otherwise,

INFORMATION TO BE PRESERVED:

Information to be preserved should include

- the nature of the transactions;
- the amount of the transaction and
- the currency in which it was denominated;
- the date on which the transaction was conducted; and

- the parties to the transaction.

MAINTENANCE AND PRESERVATION OF RECORDS

Banks should maintain for at least 5 years from the date of cessation of transaction between the bank and the customer, all necessary records of transactions, both domestic or international, which will permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of persons involved in criminal activity.

Records pertaining to the identification of the customer and his address (e.g., copies of documents like passports, Identity cards, PAN etc.) are to be properly preserved **for at least 10 years** after the business relationship is ended.

REPORTING TO FINANCIAL INTELLIGENCE UNIT-INDIA (FIU-IND)

Banks are to report information relating to cash and suspicious transactions to the Director, Financial Intelligence Unit-India (FIU-IND).

CTR – Cash Transaction Report
STR – Suspicious Transaction Report
CCR – Counterfeit Currency Report
NTR – Non- Profit Organization Transaction Report
CBTR – Cross Border Wire Transaction Report

a. The **cash transaction report** (CTR) for each month should be submitted to FIU-IND by 15th of the succeeding month.

b. The **Suspicious Transaction Report** (STR) should be furnished within 7 days of arriving at a conclusion that any transaction, whether cash or non-cash, or a series of transactions integrally connected are of suspicious nature.

FINE ON BANKS/ FIS: If the Director, in the course of any inquiry, finds that a banking company, financial institution or any intermediary or any of its officers have failed to comply with the provisions, he may levy a fine not lesser than Rs 10,000 but may extend to Rs 1,00,000 for each failure.

Anti-Money Laundering

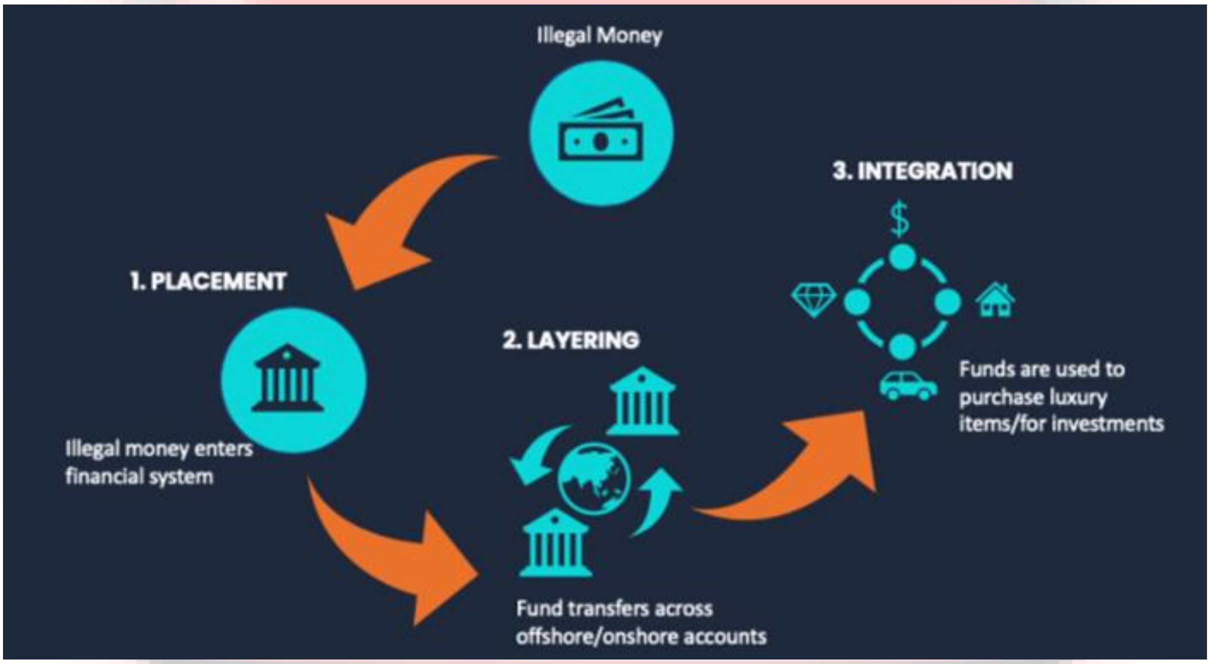
Process of converting illegal money into legal/ legitimate one.

Stages of Money Laundering:

Placement

Layering

Integration



PMLA (prevention of Money-laundering act) 2002

To prevent the usage of the banking system for money laundering

To put in place the controls for the detection and reporting of suspicious activities

Maintenance of records of Transactions

- Cash transactions of above Rs 10 lac or its equivalent are to be reported

- Cash transactions where the value of all these transactions within a month aggregating rupees 10 lac even of these transactions or below rupees 10 lac
- Cash transactions in forged or counterfeit currency notes or banknotes and forgery of valuable security have taken

Preservation of records

Banks should maintain for at least five years from the date of cessation of transactions between the bank and the customer, all the necessary records

- Reporting of the financial intelligence unit
- Cash Transaction Report
- Counterfeit currency notes report
- Non-profit organization Transaction Report
- Cross-border wire Transaction Report
- Suspicious Transaction Report.

Violations under the prevention of money laundering act

Whoever commits the offense of money laundering shall be punishable with rigorous imprisonment for a term which shall **not be less than three years but which may extend to seven years** and shall also be liable to a **fine which may extend to five lakh rupees**: Provided that where the proceeds of crime involved in money-laundering relate to any offense specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.

Central KYC records registry

- CKYCR is the central repository of KYC records of customers in the financial sector with uniform KYC norms and the inter-usability of KYC records across the sector.
- A **14-digit identifier is issued.** All the reporting entities including banks or file the CKYCR which is the electronic copy of KYC records

of customers within 3 days after the commencement of an account-based relationship.

OTP Based EKYC account

- Consent and declaration to be obtained that no account has been opened and will be opened using OTP-based KYC
- The aggregate balance of all the accounts of the customer should not exceed Rs 100000
- The aggregate of all the credits in an FY should not Exceed Rs 200000-
- For loan accounts, **only term loans can be sanctioned** and the aggregate amount of term loans cannot exceed Rs 60000
- **CDD** is to be completed within the 1-year failure to which the account shall be closed. In the case of a loan account further, no debit is allowed.

Customer Due Diligence

- Collect and verify the information & positively establish the identity of the customer
- Understand the nature of the activities of the customer and satisfy regarding them to be legitimate.
- **Basic Due Diligence**
- **Simplified Due Diligence**
- **Enhanced Due Diligence**
- **Screening of Customers**

If KYC requirements are not completed

Partial freezing (DEBIT) after the initial notice of 3 months followed by 3-month notice

If not completed even after 6 months total freeze the account

KNOW YOUR CUSTOMER (KYC)

KYC Guidelines have been issued by RBI under Section 35A of the Banking Regulation Act to check Money Laundering i.e. using of banking channels for the conversion of illegal funds to legal funds and financial frauds.

Guidelines

Based on recommendations of the Financial Action Task Force (FATF) on Anti Money Laundering standards and on Combating Financing of Terrorism (CFT)

Four Pillars:

(i) Customer acceptance policy:

(ii) Customer identification procedures;

(iii) Categorization of customers; &

(iv) Risk Management.

Customer Acceptance Policy:

- No account should be opened fictitious, Benami, or on behalf of other persons whose identity has not been disclosed/verified
- Should not match with any person or entity name listed in the sanction list
- Name appearing in Schedule of UAPA, Unlawful Activities Prevention Act, 1967
- FIU (financial intelligence unit) Alert List
- ECGC (Export Credit Guarantee Corporation of India Limited), RBI caution List
- Criminal lists of various law enforcement authorities

OFFICIALLY VALID DOCUMENT (OVD) of individual

- **PROOF OF IDENTITY**
- **The passport**
- **The driving license**
- **Voter's identity card**
- **PROOF OF ADDRESS**

Risk Management

Risk profiles to be maintained (Low, medium & High Risk)

Low-Risk customers, such as:

· Salaried employees

· People belonging to lower economic strata of the society

· Government Departments

Updating KYC of Low-Risk Customers: Every 10 years

Medium Risk Customers:

· Gas Dealers · Car/boat/plane dealers · Electronics (wholesale) · Travel agency, Telemarketers, Telecommunication service providers · Auctioneers, Restaurants,

Updating KYC of Medium Risk Customers: Every 8 years.

High-Risk Customers:

Trusts, charities, NGOs, and organizations receive donations. · Companies having close family shareholding or beneficial ownership - Firms with sleeping partners. · Accounts under Foreign Contribution Regulation Act. · Politically Exposed Persons · Non-Resident customers. · Accounts of Cash intensive businesses such as accounts of bullion dealers (including sub-dealers) & jewelers.

Updating KYC of High-Risk Customers: Every 2 years.

Customer Identification Procedure

- To identify the customer
- Verify the identity using sources and documents
- There must be sufficient information to establish the identity of the customer
- Ascertain the purpose of the intended nature of the banking relationship.

OVDs – Officially valid documents

- **Valid for all customers:** Passport, DL, PAN Card, Voter ID Card, NREGA Job Card, Letter issued by UIDAI or NPR
- **Valid for Low-Risk Customers:** Simplified procedure to be followed:
- **ID card with applicant's Photograph issued by:**
  - Central/ State Govt Deptt
  - Statutory/ Regulatory Authorities
  - PSU
  - SCBs

Public Financial Institutions

In the case of a Low-Risk Customer where the customer is unable to complete the documentation and the **due diligence is pending**, it is to be done in 6 months after establishing the relationship

For simplified measures, the utility Bills not older than 2 months, property tax receipts, bank account/ PO Account Statements, Pension or Family pension payment orders (if they contain the address), letters of allotment of accommodation from govt authorities & Documents issued by Govt Deptt of foreign jurisdictions and letter issued by foreign embassy or mission of India are **valid for as proof of address.**

Monitoring Transactions

- As per **PMLA/PMLR** stipulations
- Unusual transactions

- Large and complex transactions
- Transactions exceeding the threshold amounts
- Transactions not consistent with customer profile
- High or quick turnover
- 5 reports namely CTR, CCR, STR, CBTR, and NTR are to be submitted with FIU-IND

E-KYC – AADHAAR Enabled Verification

Valid under PMLR 9 for KYC verification

Information like age, name, gender, and photograph is electronically available

Validated by biometrics

Other Important Account Types:

Small Accounts:

- where the customer is a **Low-risk Customer** unable to provide OVD, a small deposit account is opened subject to:
- the aggregate of total credits in FY is not to exceed Rs 100000-
- the aggregate of withdrawals in a month not to exceed Rs 10000-
- balance at any point is not above Rs 50000
- just to provide a self-attested photograph affixed with signatures or thumb impression
- to be opened only where branches are CBS linked
- A/c is operational for the first 12 months, after the 12 months if the customer produces the receipt of applying for OVD, a 12month period be provided. This means the next review after 24 months in total.

(C) MONITORING OF TRANSACTION

- RBI has advised banks to set key indicators for risk sensitive (eg high turnover accounts or complex or unusual transactions accounts) accounts, taking note of the background of the customer, such as the country of origin, sources of funds, the type of transactions involved and other risk factors.
- High risk associated with such accounts should be considered by banks to identify suspicious transactions for filing Suspicious Transaction Reports (STRs) to FIU-IND Revenue, Ministry of Finance. (**Financial intelligence unit of India)**

(d) Risk Management:

- RBI guidelines also require that the Board of Directors of the bank puts in place an effective KYC programme by establishing appropriate procedures and ensuring their effective implementation.
- Internal Auditors should specifically check and verify the application of KYC procedures at the branches and comment on the lapses observed in this regard.

NORMS FOR PERIODIC UPDATION OF KYC

A) Full KYC exercise will be required to be done at least every two years for high risk individuals

B) Full KYC exercise will be required to be done at least every ten years for low risk and

C) At least every eight years for medium risk individuals and entities.

D) Fresh photographs will be required to be obtained from minor customer on becoming major.