

Professionals Be Aware of PMLA (Prevention of Money Laundering Act) Provisions

**-Organized Finance, Corporate & Allied Law Study
Circle of the Bombay Chartered Accountants' Society**

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Agenda

- **Introduction to Money Laundering**
 - Basics of Money Laundering
 - PMLA Act 2002
 - FATF
 - Need of PMLA for professionals
- **Applicability of PMLA to Chartered Accountants – Gazette notification dated May 03, 2023**
 - Notification
 - Applicability
- **Obligations of CAs as REs**
 - Registration
 - Policies & procedures
 - Client On-boarding
 - Transaction Monitoring
 - Reporting
 - Other obligations
- **Role of ICAI**
- **Gazette notification dated May 09, 2023**

INTRODUCTION TO MONEY LAUNDERING

- Basics of Money Laundering
- PMLA Act 2002

What is Money laundering ?

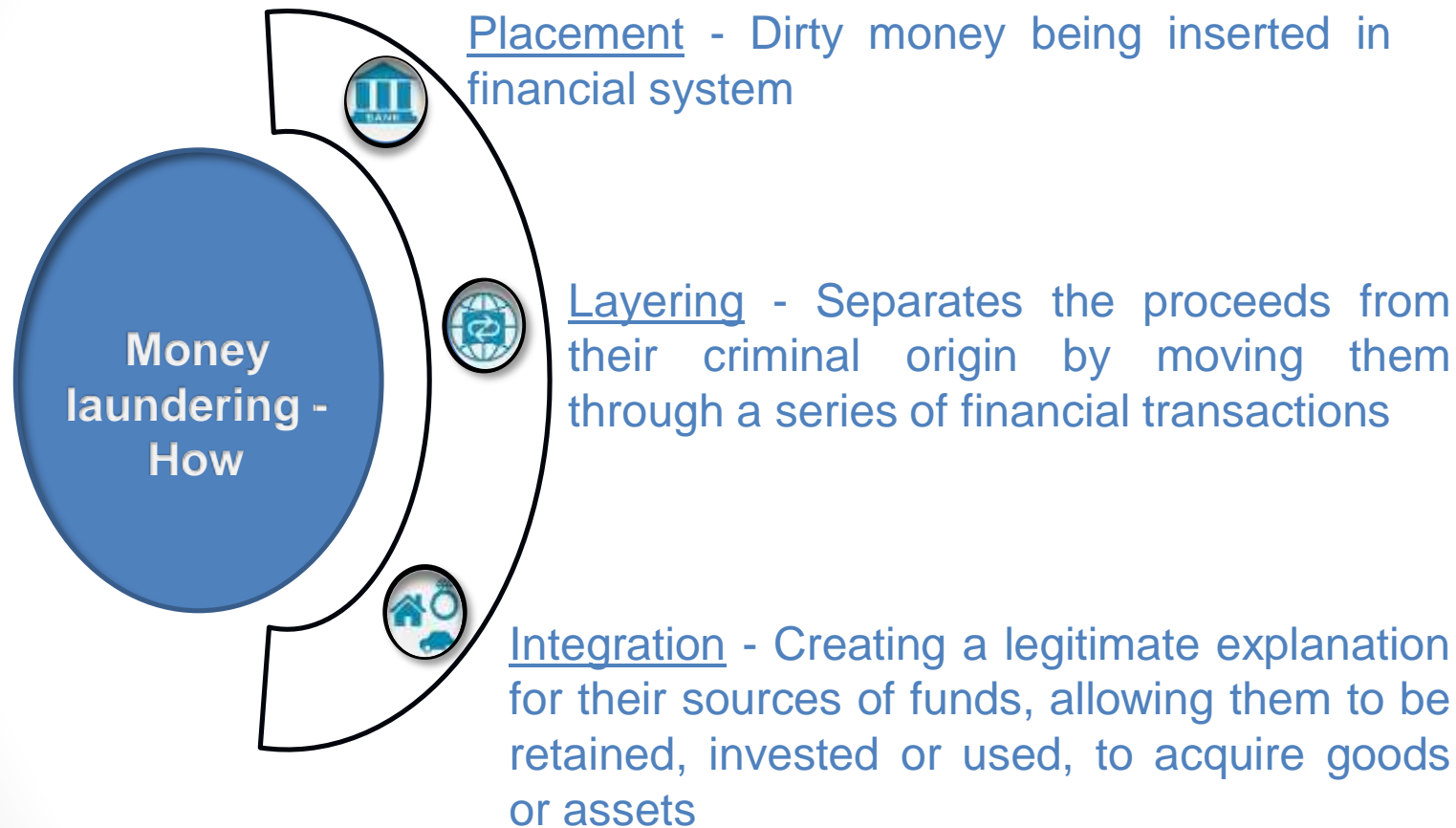
According to the United States Treasury Department Money Laundering is:

- The process of making illegally-gained proceeds (i.e. "dirty money") appear legal (i.e. "clean").

Money Laundering-Where & Why

- As money laundering is a consequence of almost all profit generating crime, it can occur practically anywhere in the world
- Because the objective of money laundering is to get the illegal funds back to the individual who generated them, launderers usually prefer to move funds through stable financial systems

Money Laundering-How



The process given above may not be in the same order



Collection of Dirty Money

PLACEMENT



Dirty Money Integrates into the Financial System

A TYPICAL MONEY LAUNDERING SCHEME

LAYERING



Purchase of
Luxury Assets
Financial Investments
Commercial/Industrial Investments



INTEGRATION



PMLA 2002

- The Political Declaration and Global Programme of Action, annexed to the resolution S-17/2 was adopted by the General Assembly of the United Nations at its seventeenth special session on the 23-02-1990.
- The Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1998 calls upon the Member States to adopt national money-laundering legislation and programme.
- In order to implement the aforesaid resolution and the Declaration, The Indian Parliament enacted the Prevention of Money Laundering Act, 2002 (made effective from 01-Jul-2005).

PMLA 2002

- Amended in 2009, 2013, 2015, 2017, 2018, 2019, 2022 and last in 2023.
- Applicable to the Whole of India including the erstwhile State of Jammu & Kashmir
- Preamble: An Act 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
- AML stands for Anti Money Laundering and PMLA stands for Prevention of Money Laundering Act. Both acronyms used interchangeably in regular parlance

PMLA 2002

- Offence of money laundering [Sec. 3] defined as
 - 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 including its concealment, possession, acquisition or use and projecting or claiming it as untainted property
 - shall be guilty of offence of money-laundering.
- It is hereby clarified that,—
 - (i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely

PMLA 2002

- (a) concealment; or
 - (b) possession; or
 - (c) acquisition; or
 - (d) use; or
 - (e) projecting as untainted property; or
 - (f) claiming as untainted property, in any manner whatsoever;
- (ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever

PMLA 2002

- **Proceeds of crime [Sec.2(1)(u)]** means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or
- the value of any such property or
- Where such property is taken or held outside the country, then the property equivalent in value held within the country.
- 2019 amendment: It is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

PMLA 2002

- The offences listed in the schedule to PMLA, 2002 are scheduled offence which are divided in 3 parts – [sec. 2(1)(y)]
- Part A comprise of 29 Scheduled offences with No Monetary limits
- Part B for scheduled offences where the monetary threshold of Rs. 100 Lakhs for initiating investigations – Only 1 offence listed
- Part C deals with trans border crimes. consist of 2 offences in addition to all the offences listed under Part A.

Scheduled offences in Part A

Indian Penal Code, 1860;

Copyright Act, 1957;

Unlawful Activities (Prevention) Act, 1967;

Trade Marks Act, 1999

Prevention of Corruption Act, 1988;

Information Technology Act, 2000

Customs Act, 1962

Offences under the Child Labour

SEBI Act, 1992

Passport Act, 1967

Scheduled offences in Part A

Environment Protection Act,
1986;

Water (Prevention and Control of
Pollution) Act, 1974

Child Labour (Prohibition
and Regulation) Act, 1986

Air (Prevention and Control of Pollution)
Act, 1981

The Emigration Act, 1983

The Companies Act, 2013 (Section 447 of
Companies Act-Punishment for fraud shall be
treated as scheduled offence under PMLA by
2018 Amendment and accordingly ED could
initiate action either suo moto action or on
reference by Registrar of Companies for
enforcement of the provisions of PMLA, 2002)

Scheduled offences in Part C

1.

All 29 entries of Part A

2.

Chap. XVII of IPC- Offences against property

3.

Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Prevention of Money Laundering Act (PMLA 2002)

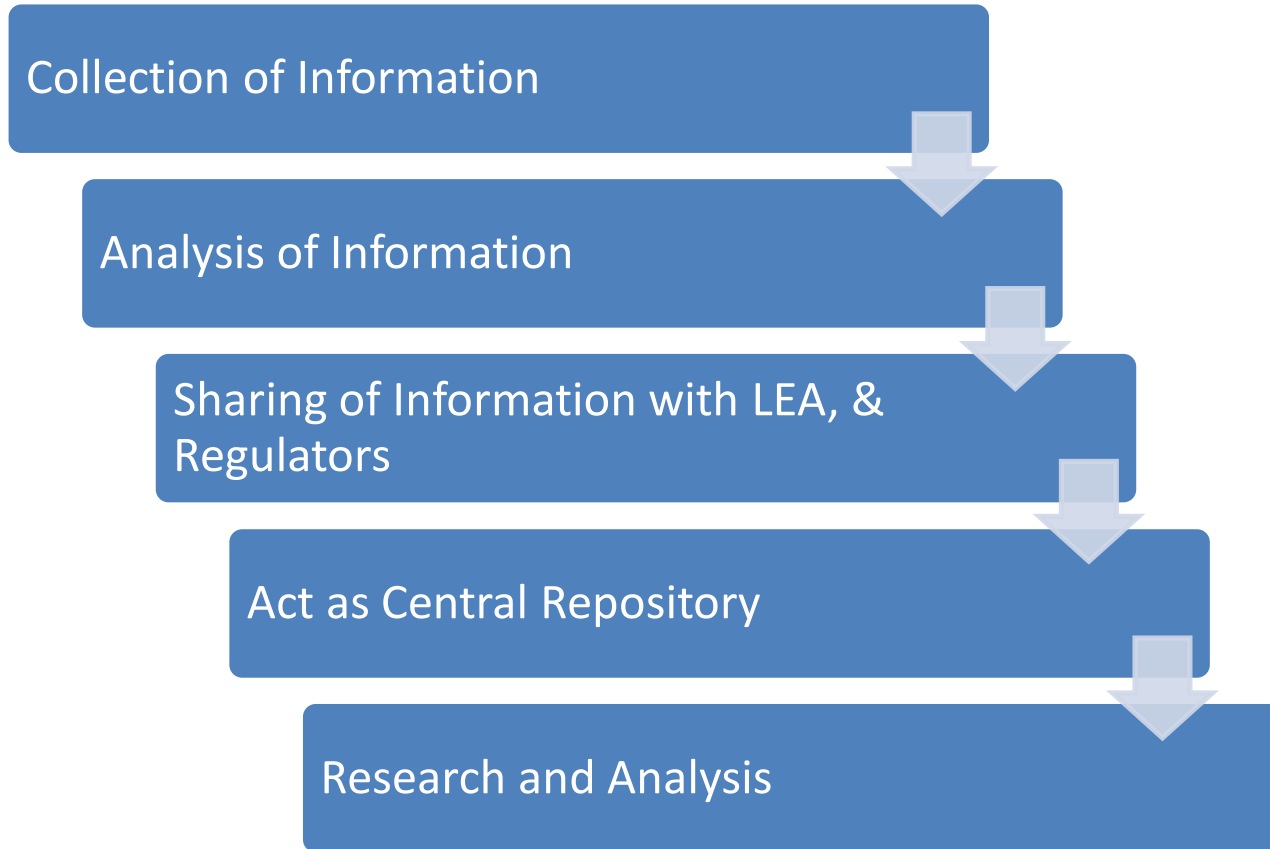
Section 4 - Punishment for Money-Laundering

- "Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall **not be less than three years** but which may extend to **seven years** and shall also be liable to fine.
- Imprisonment of **10 years** instead of 7 years; where the proceeds of crime involved in money-laundering relates to any offence under The Narcotic Drugs and Psychotropic Substances Act.

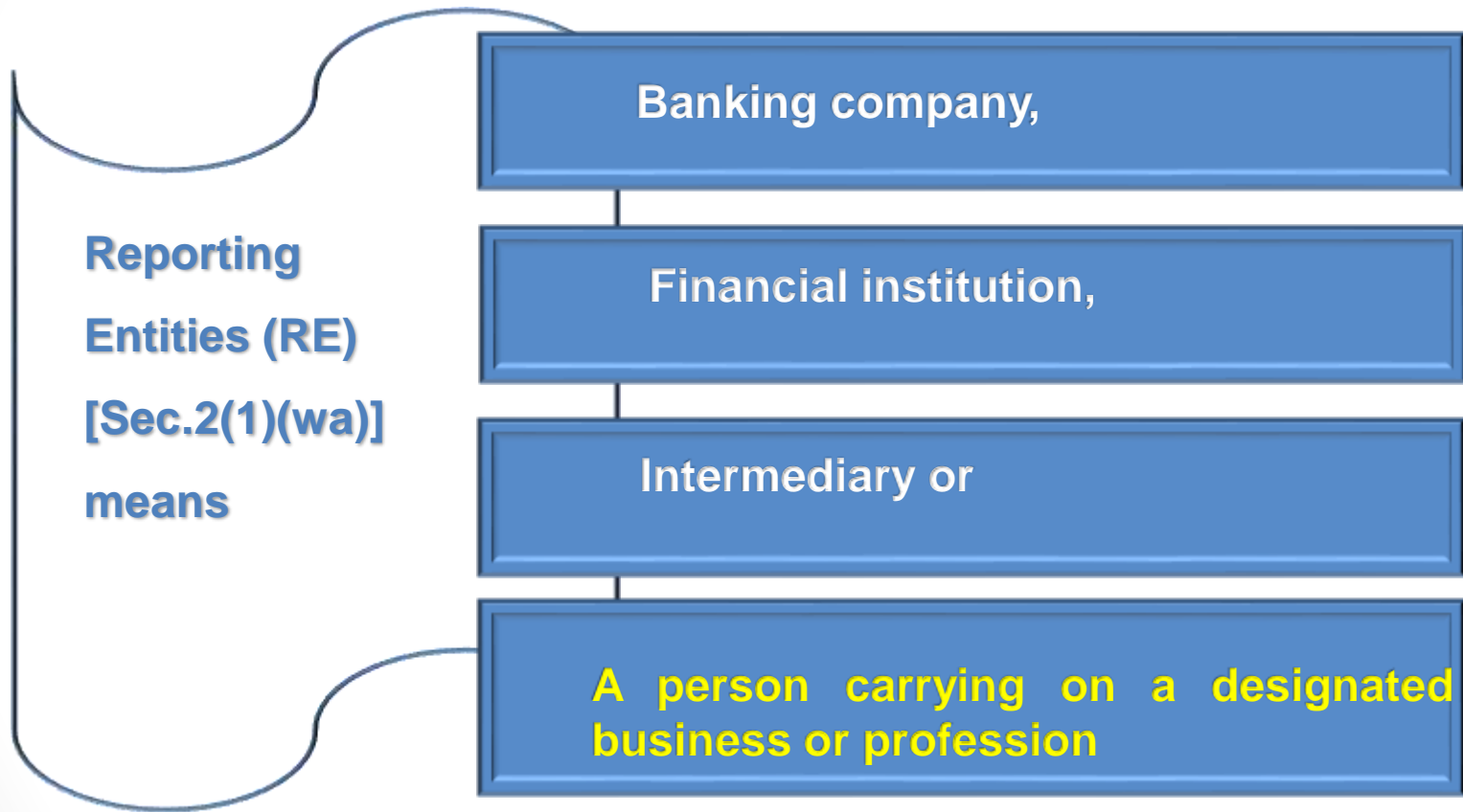
Regulatory Agency - PMLA

- The Directorate of Enforcement (ED)
 - Under Department of Revenue, Ministry of Finance
 - is responsible for investigating the cases of offence of money laundering under Prevention of Money Laundering Act, 2002
- Financial Intelligence Unit - India (FIU-IND)
 - central national agency to facilitate information sharing among various law enforcement agencies and International FIUs.
 - Independent body reporting directly to the Economic Intelligence Council (EIC), Ministry Finance

Functions of FIU India



PMLA 2002



FATF - Background

- Global watchdog for dirty money and terror financing.
- Sets standards for countries to fight financial crimes.
- Evaluates countries and offers improvement suggestions.
- Classifies jurisdictions based on risk level.
- India joined FATF in 2010
- During last evaluation held in 2023, India cleared 37 of the 40 stringent evaluation parameters.

FATF - Background

- India is now in the FATF's exclusive club of top performers – joining UK, France and Italy from G20, surpassing the US, China, Germany, Japan and Canada for maintaining higher standards in curbing money laundering and terror financing.

Need of PMLA for Professionals

- To strengthen and enhance reporting mechanisms to identify potential offenders
- To assimilate, adopt, conform & effectively implement the FATF recommendations 24 and 25.
 - Recommendation 24: Focuses on identifying and mitigating terrorist financing risks associated with designated non-financial businesses and professions .
 - Recommendation 25: Emphasizes customer due diligence (CDD) measures for designated non-financial businesses and professions to prevent accounts being misused for money laundering.

Global scenario

- The inclusion of accountants and legal professionals as reporting entities (REs) under Anti-Money Laundering (AML) laws is a growing global trend, driven by the recognition of their potential vulnerability to misuse by criminals.
- Countries like the US, Canada, UK, and Australia have already implemented such measures.

APPLICABILITY OF PMLA TO
CHARTERED ACCOUNTANTS –
NOTIFICATION DATED MAY 03, 2023

Gazette notification S.O. 2026(E) dated 3rd May 2023

Following financial transactions carried out by a Chartered Accountant in practice ***on behalf of his client, in the course of his or her profession*** shall fall under the purview of PMLA, 2002–

- (i) Buying and selling of any immovable property
- (ii) Managing of client money, securities or other assets
- (iii) Management of bank, savings or securities accounts
- (iv) Organisation of contributions for the creation, operation or management of companies
- (v) Creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities.

Applicability

- The notification is applicable to Chartered accountants with certificate of practice practicing individually or through a firm:
 - actually carrying a financial transaction
 - on behalf of his/her client
 - in relation to the specified activities

To summarize: Funds resulting from the specified activities related to financial transactions or required for execution of those transactions, are routed through or managed by a Chartered Accountant.

- Practicing CA carrying out any of the specified activities shall be treated as a **Reporting entity** and will be required to comply with guidelines issued by FIU-IND.

QnA

I'm a CA and often make tax payments on behalf of clients. Does PMLA apply to these transactions?

No, not all client-related payments handled by CAs fall under PMLA.

Following payments made by CAs on behalf of their clients are exempt from PMLA

- Taxes
- Statutory Fee/Levy
- Registration Charges and fee for other professionals such as Senior counsels.



QnA

Q: Are the following services provided by CA covered under PMLA?

- Accounts and Books Writing Services
 - Auditing, Attestation and Certification Services
 - Special Purpose Audit Reports Due Diligence Reports
 - Furnishing of Returns or information related to direct tax and indirect taxes
 - Tax Audit and other Review Services
 - Services under FEMA, MCA, RERA etc.
 - Paying Taxes on behalf of the Clients viz. IT, TDS, GST, MCA Fees, or any type of Govt. Fees etc.
 - Application of PAN, TAN, GST, PF, ESIC, PT, Trademark Number etc.
- Incorporation services
- Incorporation of Companies LLP and Trust not for buying and selling purposes
 - Incorporation of Companies LLP and Trust
 - Project Financing

QnA

A:

Service	Covered under PMLA?
Accounts and Books Writing Services	No IF not managing any funds/bank accounts of clients
Auditing, Attestation and Certification Services	No
Special Purpose Audit Reports Due Diligence Reports	No
Furnishing of Returns or information related to direct tax and indirect taxes	No
Tax Audit and other Review Services	No
Services under FEMA, MCA, RERA etc.	No IF not managing any funds/bank accounts of clients
Paying Taxes on behalf of the Clients viz. IT, TDS, GST, MCA Fees, or any type of Govt. Fees etc	No UNLESS client bank account or client money/assets managed by the CA and that also if in relation to the above 5 activities.
Application of PAN, TAN, GST, PF, ESIC, PT, Trademark Number etc. Incorporation services	No

QnA

A:

Service	Covered under PMLA?
Incorporation of Companies LLP and Trust not for buying and selling purposes	No IF not managing any funds/bank accounts of clients
Incorporation of Companies LLP and Trust	Yes IF it involves buying and selling of such entities on its own
Project Financing	Yes since it involves organisation of contributions for creation, operation or management of the Companies

QnA

Q: Whether CA acting in the following capacities are covered under the notification dated 03rd May,2023?

- Official Liquidator
- Insolvency Professional
- Independent director
- Nominee director
- Recovery Consultant
- Executor of the will
- Insurance Broker
- Trustee

QnA

A.

Service	Covered under Notification dated 03 rd May, 2023?
Official Liquidator	No
Insolvency Professional	No
Independent director	No
Nominee director	No
Recovery Consultant	Yes
Executor of the will	Yes Applicable only when a client relationship is established.
Insurance Broker	Yes Since it involves managing of client's money
Trustee	A. Public trust – No since it is for altruistic purposes & not in the course of professional assignment. Such Trustees shall consider other notifications issued for compliance with provisions of PMLA B. Private Discretionary trust – Yes since it can be in the course of professional obligations. Applicable only when client relationship is established.

QnA

1.Question

As a CA, if I handle financial transactions using a Power of Attorney, does the Prevention of Money Laundering Act (PMLA) apply to me?

Ans. Yes, CAs in practice executing certain financial transactions under a Power of Attorney fall within the purview of PMLA, 2002. However, it's crucial to remember that this only applies if the transactions are carried out "in the course of your profession."

2.Question

One of my relatives has given POA to manage his financial transaction due to his old age. Will I be treated as RE?

Ans. No but it is advisable to document that the engagement is in a personal capacity.

QnA

Q. So, how does a well-defined scope help me with PMLA compliance?


A.

Clarity on Professional vs. Personal: This helps in distinguishing transactions from any personal financial assistance you might offer outside your professional capacity.


Identifying PMLA-relevant Transactions: By outlining the specific activities covered under the engagement, you can easily identify which transactions fall within the PMLA purview (e.g., managing client funds, buying property). This helps you focus your KYC and reporting efforts on the relevant transactions.

Protecting Yourself: A documented scope serves as evidence that you acted within the professional boundaries defined, potentially shielding you from liability concerns related to PMLA.

QnA



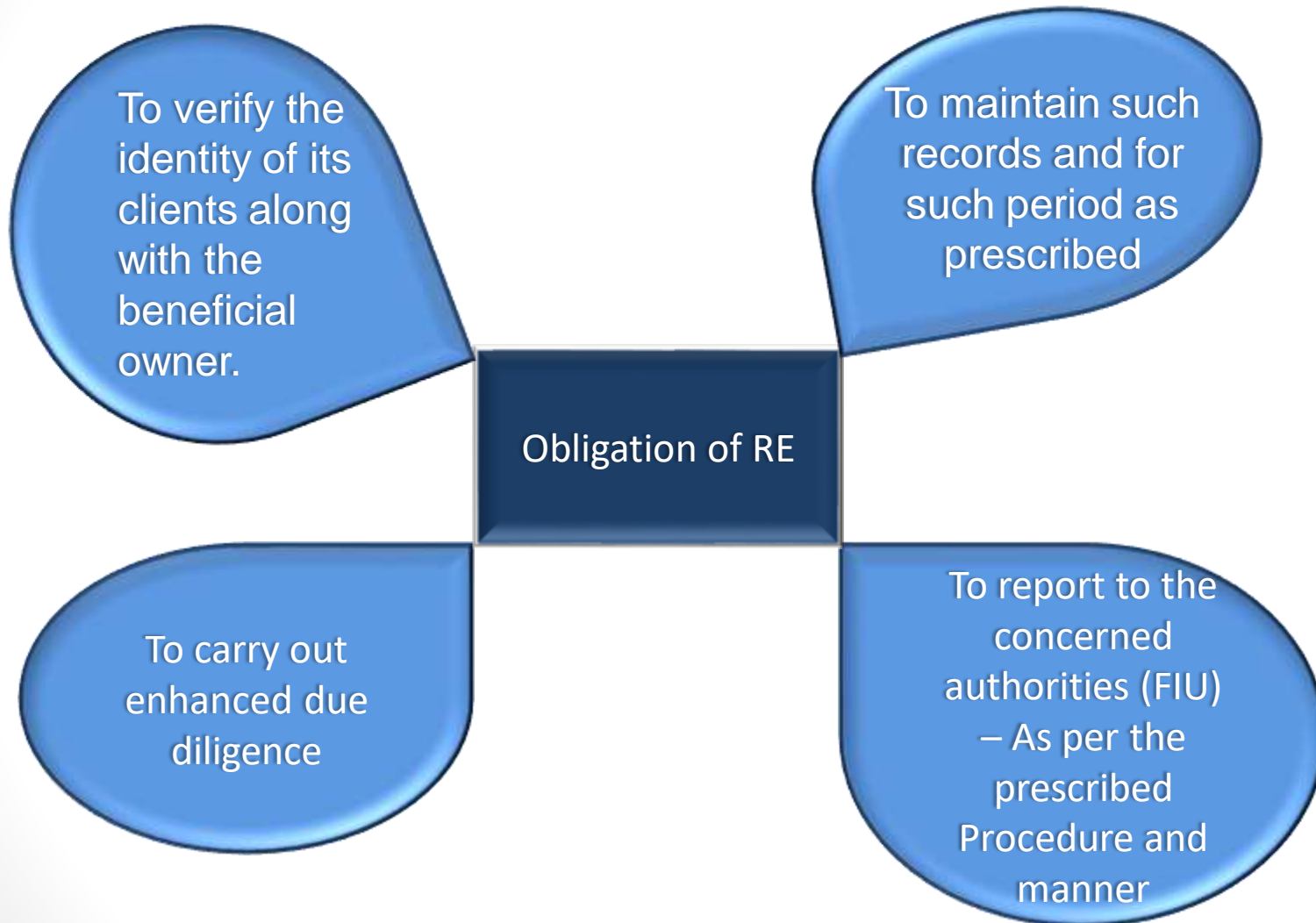
Does this mean I can just ignore PMLA for all personal transactions?



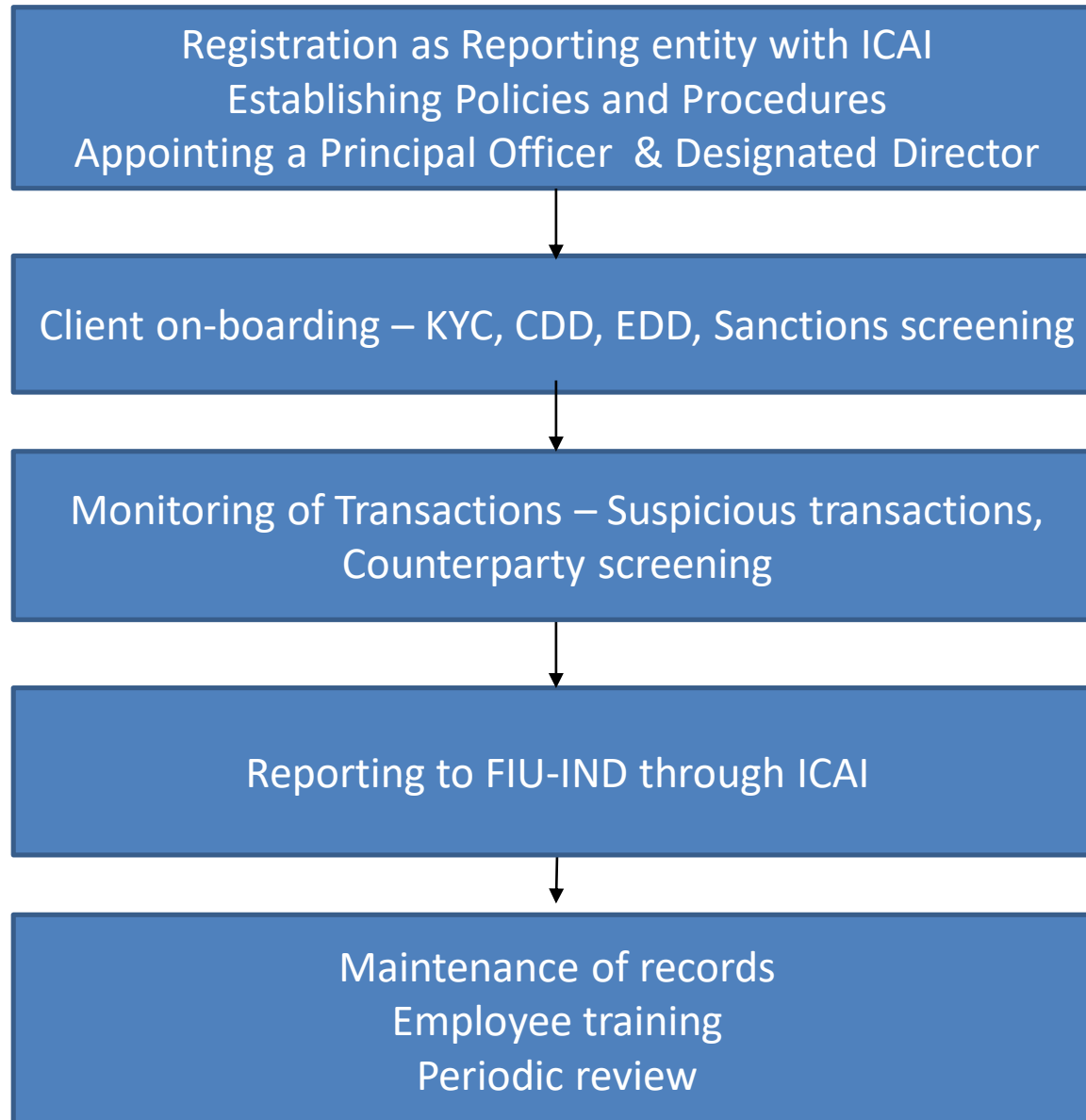
Yes, you may ignore as per 03rd May notification but remember that you can be prosecuted under other provisions of PMLA and code of ethics of ICAI.

OBLIGATIONS OF CHARTERED ACCOUNTANTS AS REPORTING ENTITIES

Obligations of RE



AML Workflow



Registration Obligations

Registration of reporting entities:

- The Practicing CAs engaging in the specified activities shall register with ICAI by filling the form provided by ICAI.
- Link to the form: [Form](#)

Internal policies, procedures and controls

REs to have policies and procedures related to:

- Appointment of designated director, principal officer and branch-level compliance officer
- Customer identification
- Customer risk profile
- Customer acceptance
- Customer transaction monitoring
- Identification of the red flags indicators in the financial transactions
- Reporting mechanism to FIU-IND through ICAI
- Maintenance of records

Designated Director and Principal Officer

Appointment:

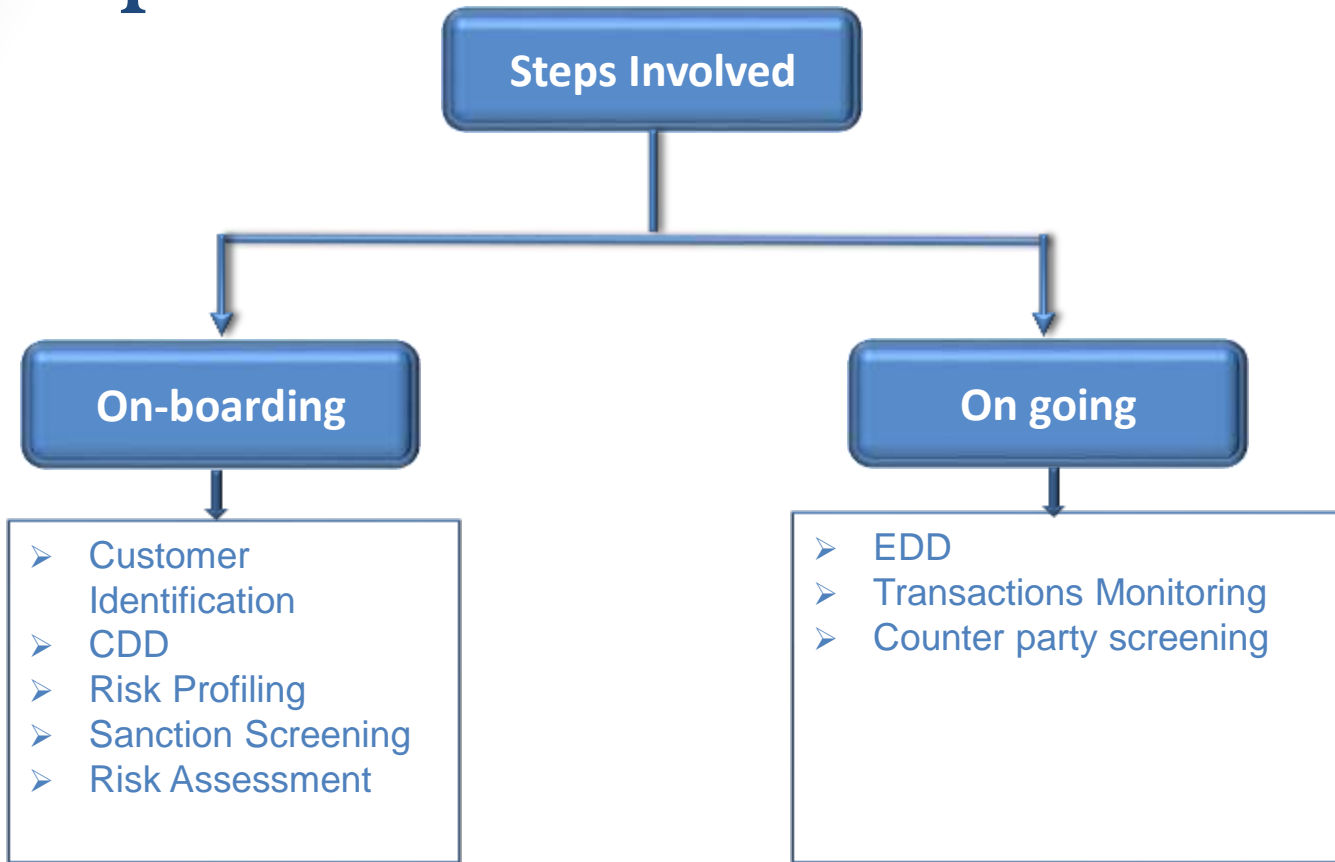
Firm/ Proprietorship concern : REs to appoint Designated Director (DD) who shall be Managing Partner or Proprietor as the case may be. Appoint any officer as Principal Officer (PO)

Individual Professionals: Professionals themselves shall serve as Principal officer

Role & Responsibility:

- **DD** to ensure overall compliance with the obligations under Chp IV
- **PO** to ensure reporting of transactions U/r 8
- **Overall:** Implementing internal mechanisms, communicating firm-wide policies, and ensuring compliance with statutory requirements

Steps Involved



Reporting

KYC

- Requirement of robust mechanism in place for complying with KYC requirements prior to on boarding of clients
- Carrying out re-KYC and continued due diligence (CDD) of existing customers

KYC Norms are applicable for ALL engagements pertaining to attest functions w.e.f 1st January, 2017. Link to the announcement of ICAI – [KYC norms](#)

KYC norms issued by ICAI

Structure of client	Information required
Individual/Proprietor	<ol style="list-style-type: none">1. Name of the Individual2. PAN No. or Aadhar Card No. of the Individual3. Business Description4. Copy of last Audited Financial Statement5. Type of engagement
Corporate entity	<ol style="list-style-type: none">1. Name and Address of the Entity2. Business Description3. Name of the Parent Company in case of Subsidiary4. Copy of last Audited Financial Statement5. Type of engagement6. Company PAN No.7. Company Identification No.8. Directors' Names & Addresses9. Directors' Identification No.

KYC norms issued by ICAI

Structure of client	Information required
Non-corporate entity	<ol style="list-style-type: none">1. Name and Address of the Entity2. Copy of PAN No.3. Business Description4. Partner's Names & Addresses (with their PAN/Aadhar Card/DIN No.)5. Copy of last Audited Financial Statement6. Type of engagement

Customer Identification

Q. What is the purpose of client identification?

A. The aim is to verify the identity of both individual and non-individual clients (companies, trusts, etc.) engaging in financial transactions. This extends to identifying beneficial owners.

Q. Who is a beneficial owner?

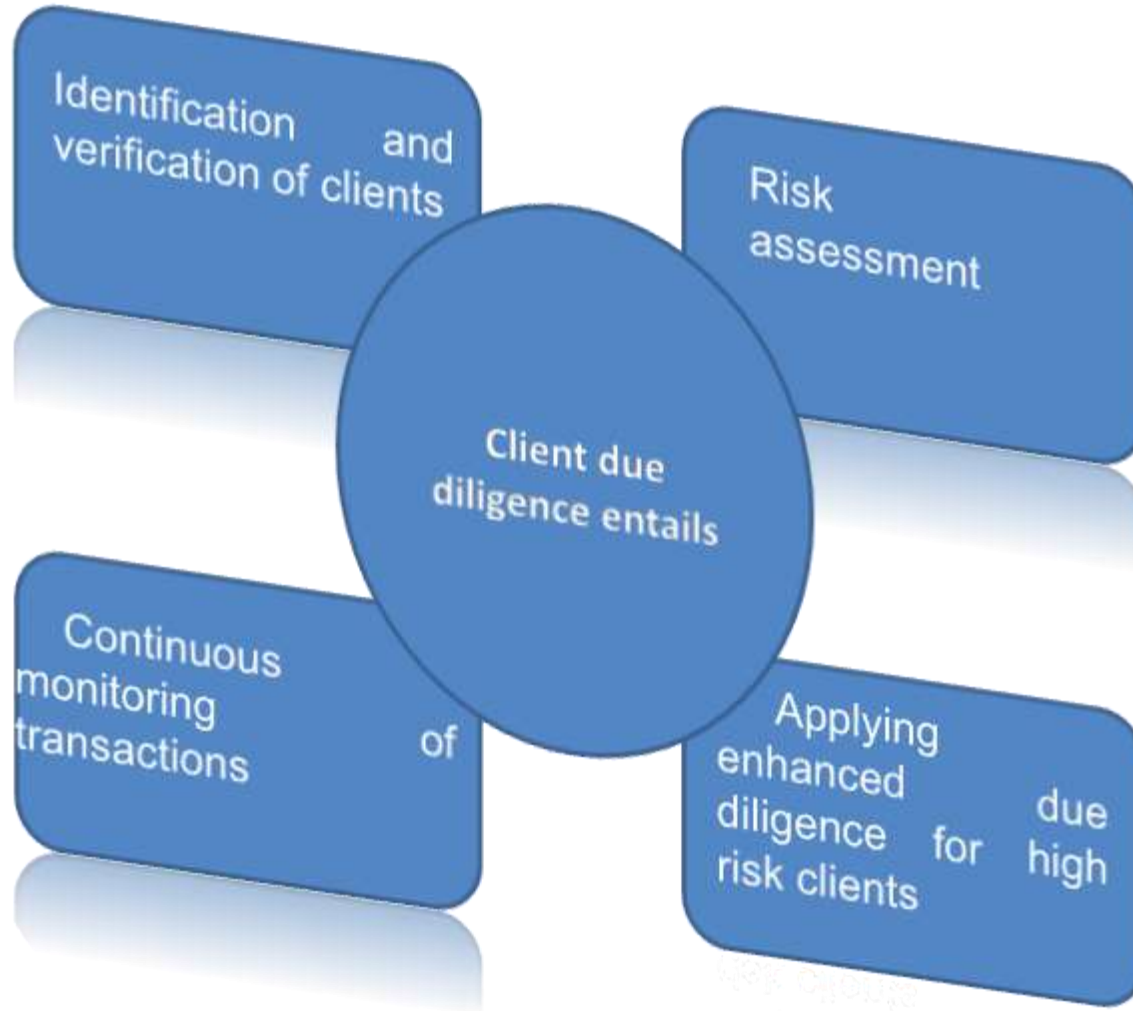
A. Beneficial owner u/s 2(fa) means

- an individual
- who ultimately owns or controls a client of a RE
- or the person on whose behalf
- a transaction is being conducted
- and includes a person who exercises ultimate effective control over a juridical person.

Q. What is the criteria for identifying beneficial owner?

A. The criteria are based upon the percentage of shareholding or profit sharing.

Client Due Diligence (CDD)



Risk profile

Q. What is the purpose of risk profile?.

A. Based on risk profile of the client, extent of due diligence, frequency of transaction monitoring, etc. can be understood.

Q. What kind of information can be used for risk profiling?

A. Information such as nature of employment/business, geographical location, any publicly available information, etc. can be used for risk profile of client

Q. What are some factors that should be considered when risk profiling?

A. Factors such as politically exposed person* involvement, cross-border transactions, etc. should also be considered.

Q. What is Politically exposed person?

A. Individuals who have been entrusted with prominent public functions by a foreign country, including the heads of States or Governments, senior politicians, senior government or judicial or military officers, senior executives of state-owned corporations and important political party officials

Sanctions screening

REs shall conduct sanctions screening

- during the on-boarding process and
- when any of the notified activities as per the notification are carried out

Links to Sanctions list have been provided by ICAI: [Link](#)

Risk assessment

REs to

- carry out risk assessment to understand risk exposure
- adopt risk based approach (RBA) to facilitate priority allocation of resources for appropriate control and oversight of AML/CFT/CPF safeguards
- implement appropriate policies, procedures, and controls to manage and mitigate identified risks
- document and update the risk assessment regularly, considering all relevant factors to determine risk levels and suitable mitigation measures

Enhanced Due Diligence (EDD)



Question
What is enhanced due diligence (EDD)?

Ans. Enhanced due diligence (EDD) refers to more rigorous and robust measures undertaken by relevant persons when dealing with complex, unusually large transactions, or unusual patterns of transactions with no apparent economic or lawful rationale.

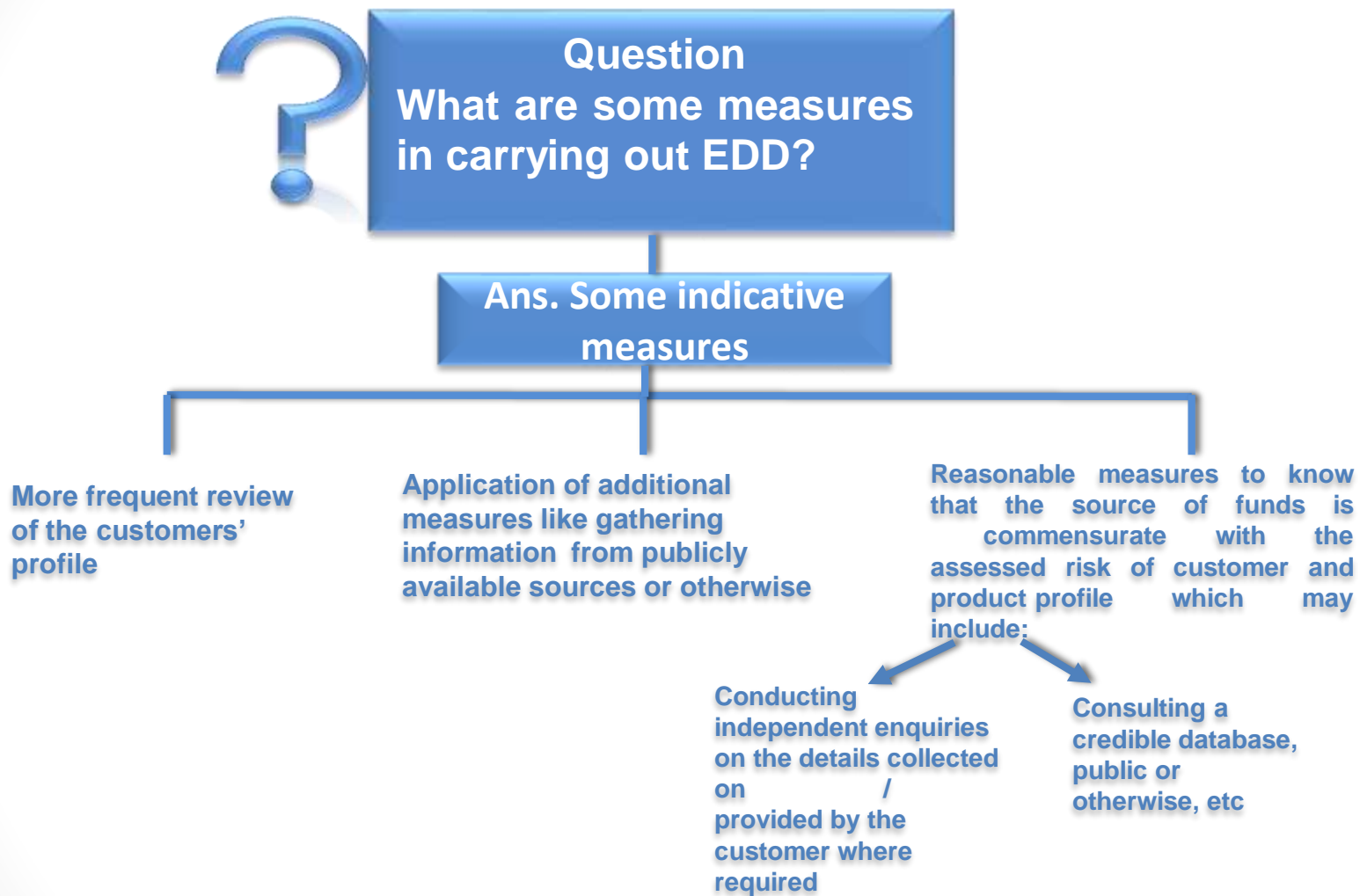
Enhanced Due Diligence (EDD)




Question
When should EDD be conducted?

Ans. EDD should be conducted when the risks of money laundering, terrorist financing, or proliferation financing are higher.

Enhanced Due Diligence (EDD)



Suspicious Transaction

 **Question**
What is suspicious transaction?

Ans. Suspicious transaction includes an attempted transaction, whether or not made in cash which, to a person acting in good faith –

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

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

appears to have no economic rationale or bonafide purpose; or

gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism;

Client Transaction Monitoring

- REs to document process of identification of red flag indicators for client transaction monitoring of the financial transactions
- Special attention should be paid to all complex, unusually large transactions and all unusual patterns which have no apparent economic or visible lawful purpose.
- ICAI issued “Red Flag Indicators”, which are helpful for CA reporting entities i.e. Members in practice carrying notified activities.



Question
What are red flag indicators?



Ans. Red flag indicators are signs that suggest a transaction or activity might be related to money laundering.

Client Transaction Monitoring

Q. What are some indicative red flag indicators?

A. Indicative red flag indicators are as follows:

- Client receives unusual payments from unlikely sources which is inconsistent with sales
- Client appears to be living beyond declared income/ turnover
- Client obtains loan from unidentified parties
- Client obtains loans on a relatively low income
- Transactions where there is a lack of information or explanations, or where explanations are unsatisfactory
- Transactions with companies whose identity is difficult to establish as they are registered in countries identified as tax havens, secrecy laws
- Many large cash transactions when not expected
- Apparent use of personal account for business purposes
- Client match with UN lists/UAPA lists/ other criminal or TF list/ FIU-Alerts list
- Use of wire transfers and the Internet to move funds to/from high-risk countries and geographic locations


Client Transaction Monitoring

Reference of Reg Flag Indicators on Member SSP portal:

OF CHARTERED ACCOUNTANTS OF INDIA (ARLIAMENT)


Home ICAI Digital Learning Hub Change Password Logout

Membership Status: Active	Membership Type: FCP (Fellow With COP)	Fellowship Date: 01-Jun-2007	COP Status: Active (Full Time)
Membership Fees Paid Until: 2024-25	Region: WEST	Member Since: 01/Apr/2002	Last COP Grant : 01/Jun/2002
Last Restoration Date:	No Of UDINs Generated : 28 (2023)	CPE Credits (Str/UnStr) : 36/6 (2024)	KYM Status: Approved (View Now)
Articles Under Me (Current/Entitlement) 1/10	PMLA Compliance (RFIs)		


Member Functions


(Click on the Form for Transaction)

Employment/Engagement (Form 190A)
Surrender Membership/COP


Article Functions

(Click on the Form for Transaction)

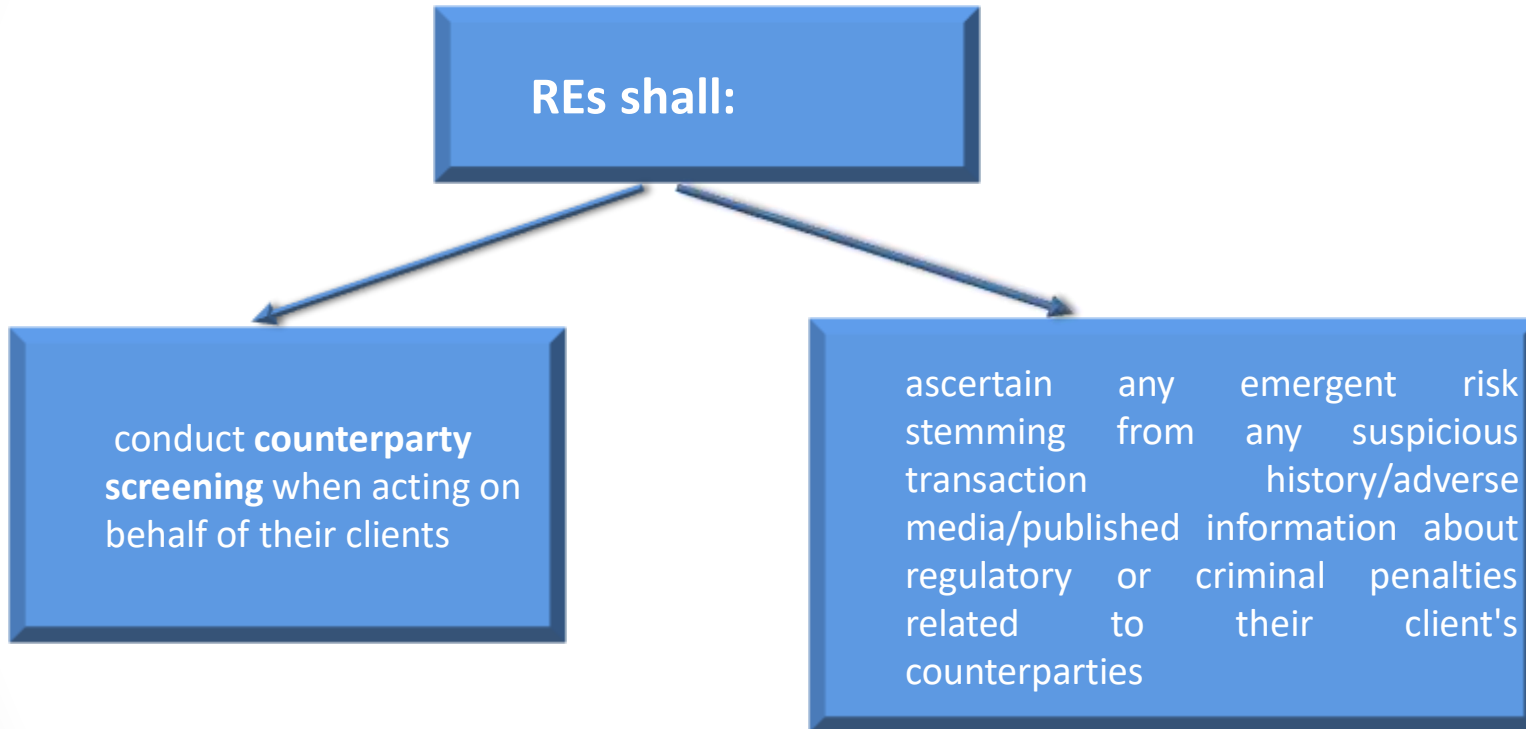
Industrial Training Completion / Termination (Form 105)


Firm Functions

(Click on the Form for Transaction)

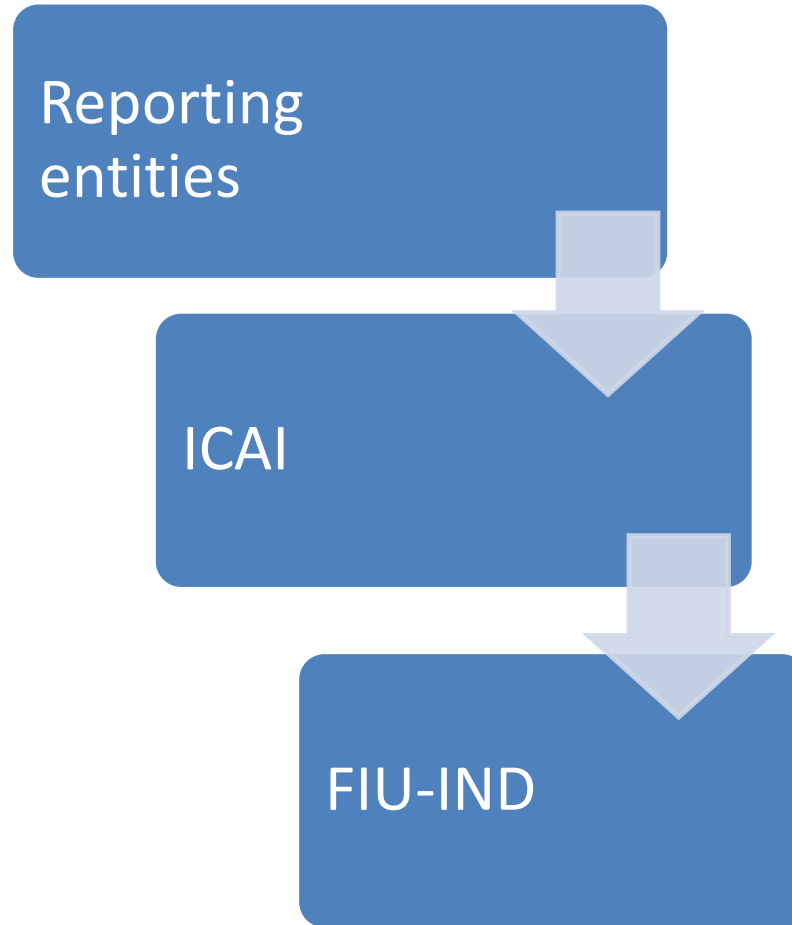
Update/Surrender Firm GST Form
Change Request Form (Reconstitution/Change in Particulars)

Counterparty screening



Reporting to FIU-IND through ICAI

Flow of reporting shall be as follows:



Reporting to FIU-IND through ICAI

As per FAQs issued by ICAI, REs are required to furnish following reports to FIU-IND through ICAI:

Report	Threshold for reporting	Periodicity of reporting*
Cash transaction report	1. Individual transactions exceeding Rs. 10 lakhs 2. Series of connected transactions exceeding Rs. 10 lakh within a month or its equivalent in foreign currency	15 th of the succeeding month
Suspicious transaction report	When the red flag indicators get triggered	Within 7 working days from the date of forming of suspicion on such transaction.
Wire transfer transaction report (WTR)	All cross -border wire transfers of the value of more than Rs. 5 lakhs or its equivalent in foreign currency where either the origin or destination of fund is in India	15 th of the succeeding month
Not-for-profit organization transaction report (NTR)	All transactions involving receipts by non-profit organizations of value more than Rs. 10 lakhs, or its equivalent in foreign currency	15 th of the succeeding month

***Reporting only applicable if such transactions occur.**

Penalty and Prosecution

Q. What is the penalty for defaulting REs under PMLA, 2002?

A. Penalty on defaulting REs or its designated director or any of its employees shall **not be less than ten thousand rupees** but may extend to **one lakh rupees** for each failure.

Q. Can civil or criminal proceedings be initiated against REs, Designated directors or Principal Officers for reporting to FIU-IND?

A. No prosecution is contemplated by Chapter IV of the PMLA for defaults in compliance. Section 14 of the PMLA contemplates that no civil or criminal proceeding shall lie against the Reporting Entities, its directors and employees for furnishing information.

Prohibition on tipping off

- REs and their directors, officers, and employees (permanent and temporary) are prohibited from disclosing (“tipping off”) that an STR or any information is furnished to FIU-IND.
- This prohibition on tipping off extends to before, during and after the submission of an STR or any such information to FIU-IND.
- It shall be ensured that there is no tipping off to the client at any level as provided for under Section 12(2) of PMLA.
- Coercing a client into providing information by threatening to file an STR with FIU-IND would also amount to tipping off.

Maintenance of records

Q. What are the Records required to be maintained by the Reporting Entity ?

A. As per rule 3 of PML Rules, 2005, RE shall maintain the record of all transactions including, the record of:

- All cash transactions of more than Rs. 10 lakhs or its equivalent in foreign currency.
- All series of cash transactions that are connected to each other and that have a total value of more than Rs. 10 lakhs within a month, even if the individual transactions are less than Rs. 10 lakhs each.
- All transactions involving receipts by non-profit organizations of more than Rs. 10 lakhs.
- All cash transactions where forged or counterfeit currency has been used.
- All suspicious transactions, whether made in cash or by way of deposits, withdrawals, transfers, loans, investments, or collection services.
- All cross-border wire transfers of more than Rs. 5 lakhs.
- All purchases and sales of immovable property valued at Rs. 50 lakhs or more.

As per sec 12(e) of PMLA, 2002 RE shall maintain:

- ***Record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients***

Maintenance of records

Q. For how many years are records to be preserved?

A. Records are to be maintained for a period of 5 years

- after the business relationship between a client and the reporting entity has ended or
- the engagement has been closed **whichever is later**

Q. What information needs to be recorded and how is it to be maintained?

A. The following information is to be maintained:

- Nature of transaction
- Amount and currency of transaction
- Date of transaction
- Parties to transaction

Note: Records are to be maintained not only for 'specified transactions' but 'all transactions'.

Employee Training

Q. What procedures should be adopted at the time of hiring new employees?

A. RE to conduct adequate screening procedures at the time of hiring of new employees

Q. What training should be provided to employees of REs?

A. RE should conduct training related to procedures for :

- KYC
- CDD
- Sanctions screening
- Record-keeping
- Transaction monitoring and review

Instruction manual for the above to be included in training material

Periodic review

- REs to conduct periodic review of policies, procedures and controls
- The periodicity of review has not been defined in the guidelines issued by FIU-IND and FAQs issued by ICAI



ROLE OF ICAI

Role of ICAI

- Statutory Bodies i.e., ICAI shall have a role in regulating and supervising the relevant persons.
- They are responsible for understanding, mitigating, and managing ML/TF/PF risks, monitoring and supervising relevant persons, providing guidance, and facilitating information exchange with relevant authorities
- ICAI shall communicate their regulatory expectations to the regulated members including:
 1. Guidance on filing of Suspicious Transaction Reports with FIU-India should be issued to the relevant persons as notified under 'the notification'.
 2. Guidance on the procedures for KYC, CDD, sanctions screening, record-keeping and transaction monitoring and review should be issued.

NOTIFICATION DATED MAY 09, 2023

Gazette Notification S.O. 2135(E) dated May 09, 2023

Gazette notification S.O. 2135(E) dated 09th May, 2023 states that the financial transactions when ***carried out in the course of business on behalf of or for another person*** –

- i. acting as a formation agent of companies and limited liability partnerships;
- ii. acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and limited liability partnerships;
- iii. providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust;

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- iv. acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust; and
- v. acting as (or arranging for another person to act as) a nominee shareholder for another person.

Activities not covered in notification dated May 09, 2023

Activities not covered in the gazette notification dated May 09, 2023:

- i. any activity that is carried out as part of any agreement of lease, sub-lease, tenancy or any other agreement or arrangement for the use of land or building or any space and the consideration is subjected to deduction of income-tax as defined under section 194-I of Income-tax Act, 1961 (43 of 1961); or
- ii. any activity that is carried out by an employee on behalf of his employer in the course of or in relation to his employment; or
- iii. any activity that is carried out by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of a company to the extent of filing a declaration as required under clause (b) of sub-section (1) of section 7 of Companies Act, 2013 (18 of 2013); or

Activities not covered in notification dated May 09, 2023

- iv. any activity of a person which falls within the meaning of an intermediary as defined in clause (n) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003).

Obligations of Reporting entities

As per FIU-IND circular dated 17th July, 2023:

- Entities carrying out the specified activities are referred as “Trust and Company Service Providers (TCSPs)”.
- TCSPs shall be covered in the definition of “Reporting entities”.
- TCSPs shall comply with the obligations under PMLA and PML rules including FINNET 2.0 registration, appointment of Principal officer and Designated director, formulating risk management practices, performing customer due diligence, record keeping, employee training and implementation of internal mechanisms to detect and report suspicious transactions to FIU IND.
- Reporting shall be done directly to FIU-IND instead of being done through ICAI.

References

- Gazette notification S.O. 2036(E) dated 03rd May, 2023
- PMLA, 2002
- PML Rules, 2005
- FAQs issued by ICAI on gazette notification dated 03rd May, 2023
- AML/CFT Guidelines for Professionals with Certificate of Practice from ICAI, ICSI and ICMAI” on 19th June, 2023 issued by FIU-IND.
- Gazette notification S.O. 2135(E) dated 09th May, 2023
- Red Flag Indicators for Relevant Persons as notified vide Central Govt. Notification F.No. P-12011/12/2022-ES Cell-DOR dated 03rd May, 2023
- Circular F.No. 9-41/2022-23/Intermediaries/TCSP/FIU-IND dated 17th July, 2023 issued by FIU-IND

Links

- Link to form of ICAI for RE registration:

<https://docs.google.com/forms/d/e/1FAIpQLSfX2M1oTsPnnJA0HxxWrdTfUWEaKrFKV2qI2EXhG-RSK1Nicg/viewform>

- Link to KYC norms issued by ICAI:

<https://resource.cdn.icai.org/44165icai-kyc-esb.pdf>

- Links to Sanctions list provided by ICAI:

<https://resource.cdn.icai.org/76716ceclea61841-b.pdf>

thank
you!

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