

AML/CFT COMPLIANCE OBLIGATIONS FOR ACCOUNTANTS AND TRUSTS OR COMPANY SERVICE PROVIDERS (TCSPs)

By

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Case Study 1 : Accountant and lawyers assist in a money laundering scheme

Suspicious flows of more than USD 2 million were identified being sent in small amounts by different individuals who ordered wire transfers and bank drafts on behalf of a drug trafficking syndicate who were importing of 24 kg of heroin concealed in cargo into Country Z. Bank drafts purchased from different financial institutions in Country Y (the drug source country) were then used to purchase real estate in Country Z. An accountant was used by the syndicate to open bank accounts and register companies. The accountant also offered investment advice to the principals. A firm of solicitors was also used by the syndicate to purchase the property using the bank drafts that had been purchased overseas after they had first been processed through the solicitor's trust account. Family trusts and companies were also set up by the solicitors.

(Source; FATF Report on Money Laundering Typologies)



Case Study 2 : An accountant provides specialist financial advice to organized crime

A law enforcement operation identified an accountant, Mr. J, who was believed to be part of the criminal organization involved in money laundering and re-investment of illicit proceeds derived from drugs trafficking led by Mr. X. Mr. J's role was mainly that of a "legal and financial consultant". His task was to analyze the technical and legal aspects of the investments planned by the organization and identify the most appropriate financial techniques to make these investments appear licit from a fiscal stance. He was tried as much as possible to make these investments profitable. Mr. J was an expert in banking procedures and most sophisticated international financial instruments. He was the actual financial "mind" of the network involved in the re-investment of proceeds available to Mr. X. Mr. J operated by sub-dividing the financial transactions among different geographical areas through triangle transactions among companies and foreign credit institutions, by electronic transfers and stand-by credit letters as a warrant for commercial contracts which were later invested in other commercial activities.

(Source; FATF Report on Money Laundering Typologies)

AML/CFT Guidelines Issued by Other Countries

Country	Issued date	Issued Institution	Target Audience
	2008 June	Financial Action Taskforce (FATF)	<ul style="list-style-type: none"> Accountants
Singapore	2014 October	Institute of Singapore Chartered Accountants	<ul style="list-style-type: none"> Accountants
Trinidad and Tobago	2015 September	FIU Trinidad and Tobago	<ul style="list-style-type: none"> Accountants
UK	2018 March	The Institute of Chartered Accountants in England and Wales	<ul style="list-style-type: none"> Accountants Service Providers
New Zealand	2018 March	Department of Internal Affairs	<ul style="list-style-type: none"> Accountants Tax Agents and Bookkeepers
Pakistan	2018 October	CA Pakistan	<ul style="list-style-type: none"> Accountants
Barbados	2019 November	Anti-Money Laundering Authority, Central Bank of Barbados	<ul style="list-style-type: none"> Lawyers Accountants
	2019 June	Financial Action Taskforce (FATF) (RBA)	<ul style="list-style-type: none"> Accountants
	2020 June	Financial Intelligence Unit- Sri Lanka	<ul style="list-style-type: none"> Accountants & TCSPs



**FIU Sri Lanka issued Guidelines on Anti-Money
Laundering and Countering the Financing of Terrorism
Compliance Obligations for Accountants and Trusts or
Company Service Providers, No. 02 of 2020 on June 10,
2020**



Summery of the Guideline

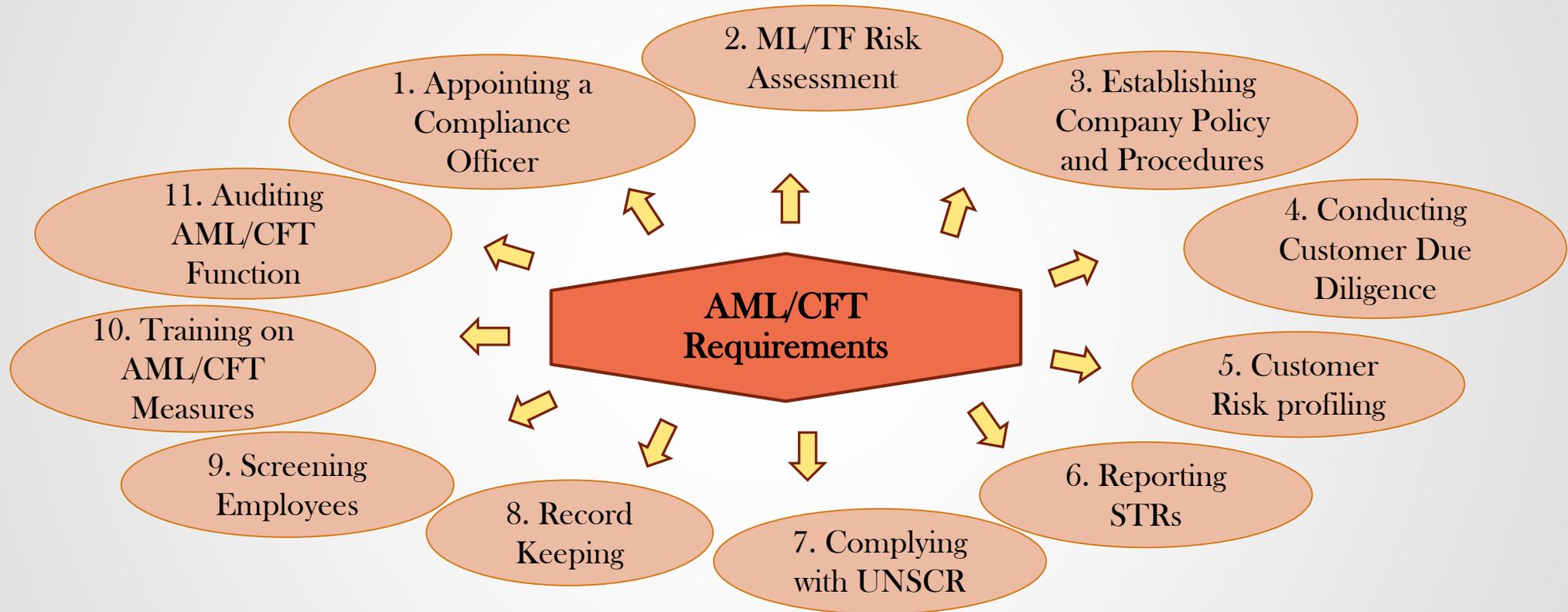
Section	Content
Part I	Introduction
Part II	Risk Based Approach
Part III	Compliance
Part IV	AML/CFT Policy, Procedures and Controls
Part V	Customer Due Diligence
Part VI	Reporting Requirement
Part VII	Record Keeping Requirement
Part VIII	Other AML/CFT Requirements
Part XI	Penalties for Non-Compliance
Annexures	I. Examples for ML/TF risks associated with the Captured Activities II. Sample ML/TF Risk Assessments III. Compliance Officer Declaration Form IV. ML/TF Suspicious Indicators V. Case studies VI. Schedule V



KEY AML/CFT OBLIGATIONS FOR ACCOUNTANTS AND TCSPs



Key AML/CFT Obligations



APPOINTMENT OF A COMPLIANCE OFFICER



Requirement of Appointing a Compliance Officer

- Accountants and TCSPs are obliged to appoint a Compliance Officer under the requirements of AML/CFT laws and regulations in Sri Lanka.
- Accordingly, Section 14(1)(a) of the **Financial Transactions Reporting Act, No. 06 of 2006 (FTRA)** specifies the legal requirement to appoint a Compliance Officer.

Who is a Compliance Officer?

- **Compliance Officer** is the person who is responsible for ensuring the Institution's compliance with the **AML/CFT** requirements.
- Compliance Officer should be a **Senior Management level** officer.



Duties of the Compliance Officer

Compliance Officer is responsible to ensure the Institution's compliance with the AML/CFT obligations by carrying out following tasks,

- Assessing the overall ML/TF risk of the Institution
- Periodically updating the Institutional ML/TF risk
- Preparing the AML/CFT Policy
- Obtaining the approval of the Board/Partners/Top Management for the AML/CFT Policy
- Making aware all levels of the Institution of the risk assessment and the AML/CFT Policy
- Implementing measures to conduct customer due diligence for clients
- Implementing measures to screen the clients against designated sanctions lists
- Conducting training sessions on AML/CFT obligations for relevant employees
- Conducting ML/TF Risk profiling for the clients
- Implementing measures for record keeping and submission of STRs
- Employee screening
- Establish an audit function to test AML/CFT procedures and systems of the Institution

Procedure of Appointing a Compliance Officer

Download the “Compliance Officer Declaration Form” from www.fiusrilanka.gov.lk



Make the appointment of the Compliance Officer by the Managing Partner/Chief Executive Officer of the Institution



Notify the appointment of the Compliance Officer to the Director FIU



Post or hand deliver the hard copy of the declaration form to:

Director, Financial Intelligence Unit
Central Bank of Sri Lanka
No 30, Janadhipathi Mawatha
Colombo 01



Send the soft copy of the duly filled declaration form to: fiudnfbp@cbsl.lk



After the Appointment...

- Compliance Officer should **participate in Training Sessions** conducted by the FIU, on AML/CFT obligations.
- Compliance Officer should **be knowledgeable** on relevant Money Laundering and Terrorist Financing risks of the sector.
- Compliance Officer should be **contactable**.
- If the Compliance Officer resigns from the Institution, Chief Executive Officer/Managing Director or Partner should inform of the same to the Director-FIU and should **immediately appoint a new person** as the Compliance Officer.
- **New appointment** of the Compliance Officer should be informed to the Director/FIU using the same procedure.

ML/TF RISK ASSESSMENT



Importance of ML/TF Risk Assessment

It provides foundation for:

- entire risk-based AML/CFT programme
- efficient allocation of resources across AML/CFT functions in most effective way
- developing appropriate risk mitigation or controlling measures according to identified risk levels.



Risk Assessment is the base of entire AML/CFT Programme

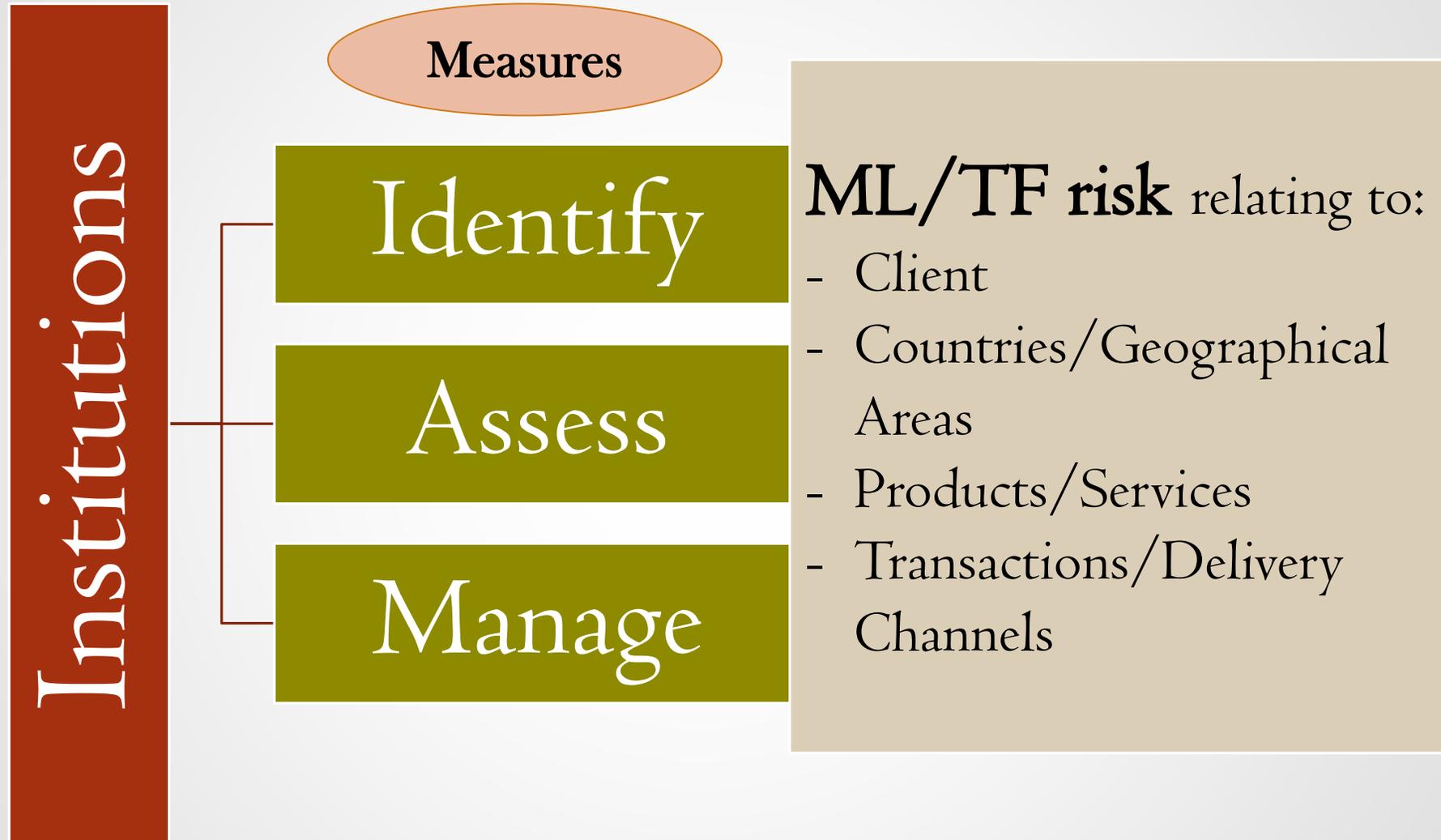


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ML/TF Risk Management Concept



AML/CFT COMPLIANCE POLICY AND PROCEDURES



Legal Requirement of an AML/CFT Compliance Policy

- Section 14(1)(b) of the Financial Transactions Reporting Act, No. 06 of 2006
- Rules 6 (f) and (g) of the Designated Non-Finance Business (Customer Due Diligence) Rules, No. 1 of 2018

Accordingly, it is required to formulate an internal Policy approved by the Board of Directors (BOD) or Senior Management subject to any written law in force for the time being on AML/CFT to manage the identified ML/TF risks.

Importance of an AML/CFT Compliance Policy for your Institution

- To endorse regulator's presumption that your Institution acts within a defined AML/CFT framework
- To have a proper and fixed guidance within the Institution on AML/CFT compliance



AML/CFT Compliance Policy and Procedures Should be:

- I. Written
- II. Well Documented
- III. Approved by the BOD/ Senior Management
- IV. Well Communicated among all employees and staff
- V. Reviewed periodically



What should be included in the AML/CFT Policy?

- The procedure of:
 - conducting Institutional ML/TF Risk Assessment
 - conducting Customer Due Diligence (CDD) measures
 - identifying and verifying the identity of the beneficial owners when establishing business relationships with legal persons and legal arrangements
 - risk profiling of customers and beneficial owners
 - conducting enhanced CDD
 - screening clients against designated lists by United Nations Security Council
 - keeping records
 - submitting Suspicious Transaction Reports
 - providing training programmes for employees
 - screening employees
 - maintaining an independent audit function

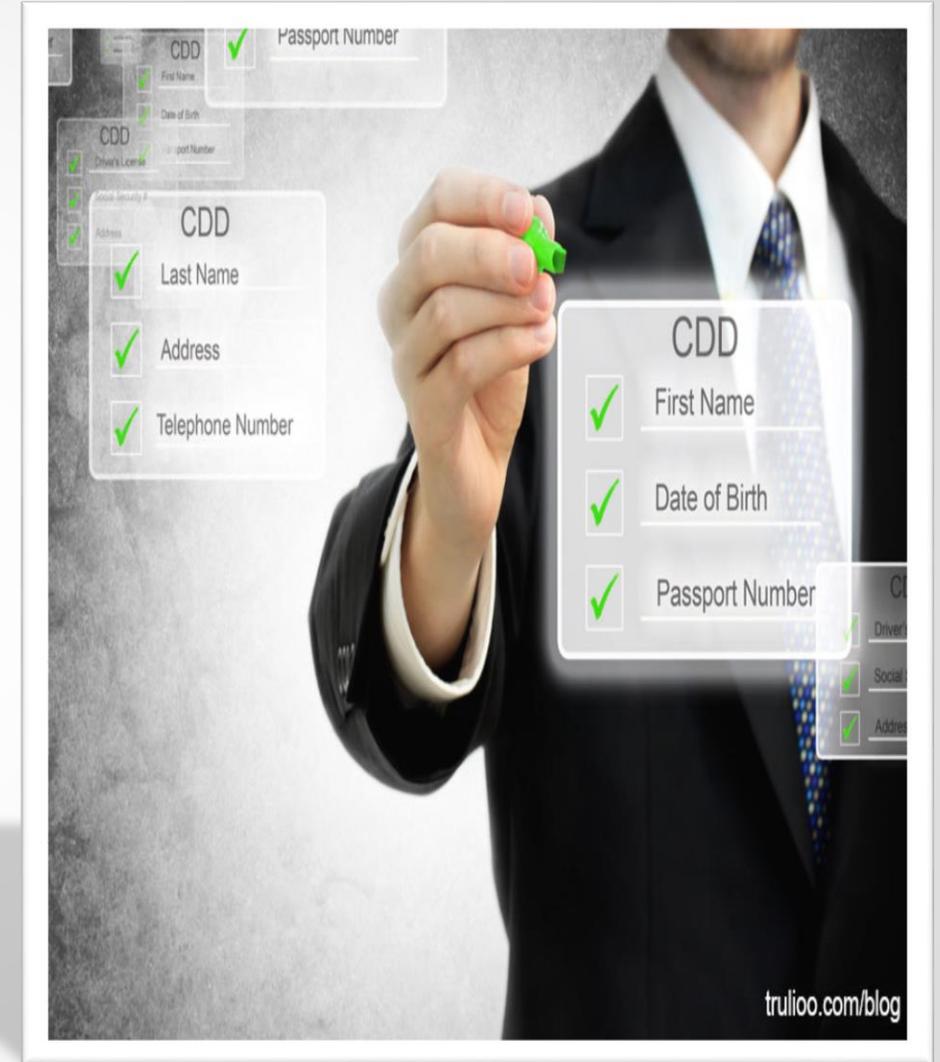


References to formulate an Institutional AML/CFT Policy

- Financial Transactions Reporting Act, No. 06 of 2006
- Designated Non-Finance Business (Customer Due Diligence Rules) No. 1 of 2018
- Guidelines on Anti-Money Laundering and Countering the Financing of Terrorism Compliance Obligations for Accountants and Trusts or Company Service Providers, No. 02 of 2020
- Guidelines for Designated Non-Finance Businesses on Identification of Beneficial Ownership, No. 02 of 2019
- Guidelines for Designated Non-Finance Businesses on Suspicious Transactions Reporting, No. 01 of 2019



CONDUCTING CUSTOMER DUE DILIGENCE (CDD)



What is CDD?

- Identify the client and, verify client's identity using reliable source documents, data or information.
- Verify whether any person purporting to act on behalf of the client is authorized, and verify the identity of such person.
- Identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, using relevant information or data obtained from a reliable source, to the satisfaction of the non-finance business.

Source: CDD Rules for DNFBPs

Accountants are required to conduct CDD

when they engage in,

- buying and selling of real estate ;
- managing of client money, securities or other assets ;
- management of bank, savings or securities accounts ;
- organization of contributions for the creation, operation or management of companies ; and
- creation, operation or management of legal person or arrangements and the buying and selling of business entities.



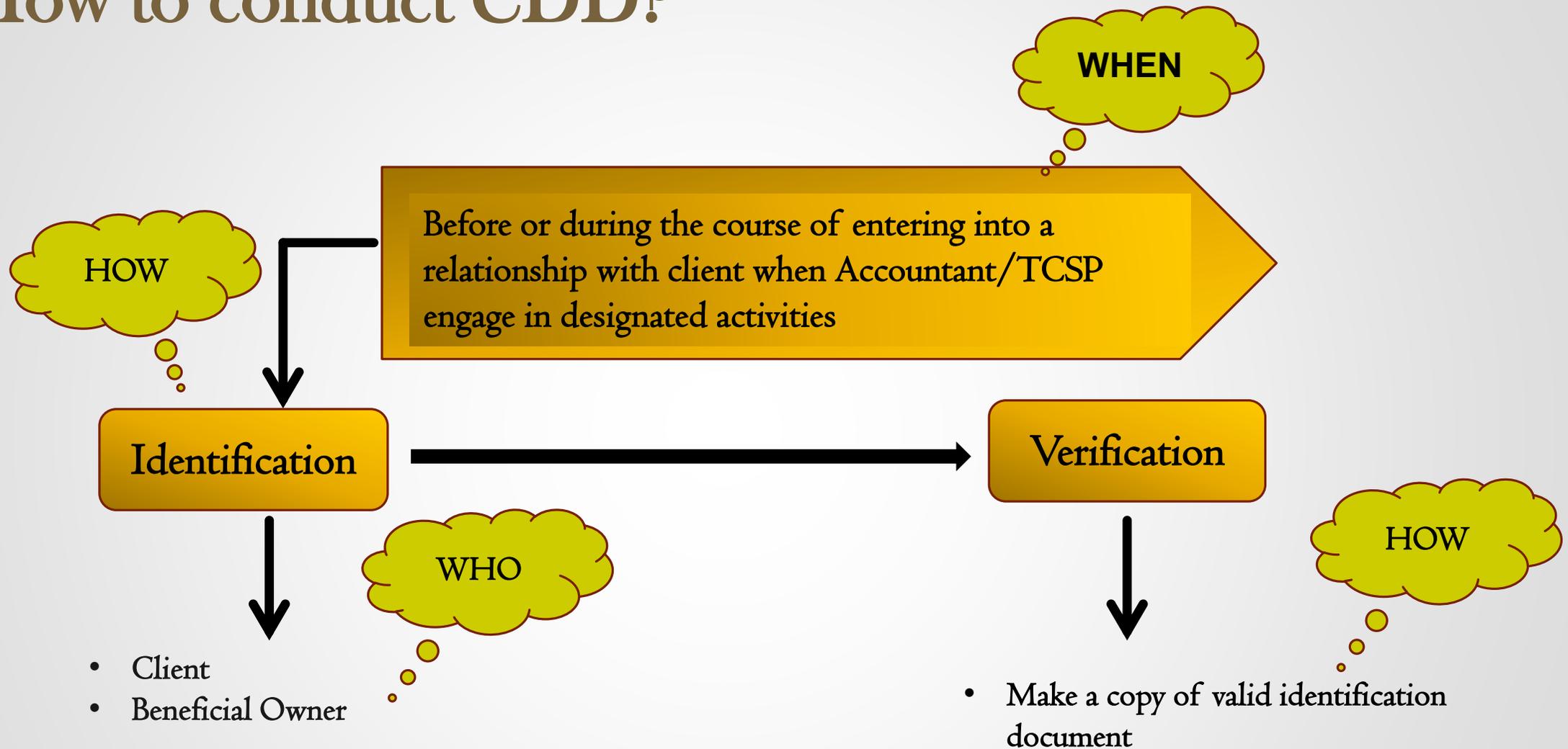
TCSPs are required to conduct CDD

When they performing following services;

- formation or management of legal persons ;
- acting as or arranging for another person to act as, a director or secretary of a company, a partner or a partnership or a similar position in relation to other legal persons ;
- providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or for any other legal person or arrangement ;
- acting as or arranging for another person to act as, a trustee of an express trust ;
- acting as or arranging for another person to act as, a nominee shareholder for another person.



How to conduct CDD?

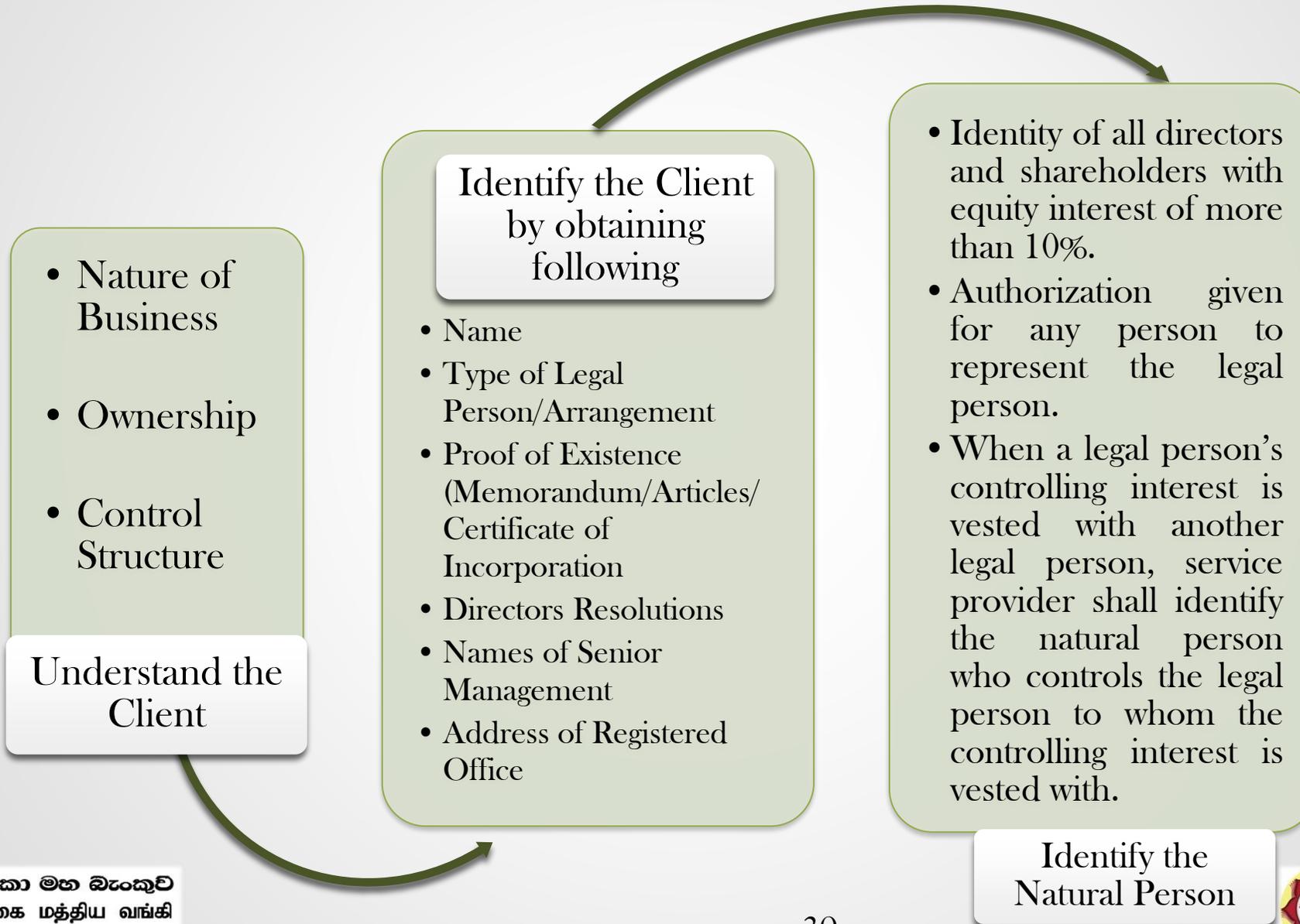


Minimum Information Required to Identify the Client/Beneficial Owner

- (a) the full name;
- (b) permanent residential or mailing address;
- (c) occupation, name of employer, business or principal activity;
- (d) an official personal identification number or any other Identification document that bears a photograph of the customer or beneficial owner such as the National Identity Card, passport or driving license;
- (e) date of birth;
- (f) nationality;
- (g) source of funds;
- (h) purpose of transaction;
- (i) telephone numbers (residence, office or mobile)



CDD for Legal Persons or Legal Arrangements



Customer Risk Profiling

Customer Risk Profiling is the formal process of rating the client as high or low based on their ML/TF risk exposure which is conducted using the CDD information obtained.



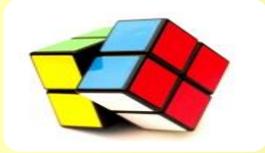
Areas to be Concentrated for Customer Risk Profiling



Clients Category



Geographic Location of Business /Country of Origin/Country of Residence



Services/Transactions/ Delivery Channels



Others Important Areas



Customer Risk Profiling Process

Identify the ML/TF Risk

Rate the Client

Document the Risk Rating

ECDD for High Risk Clients



Enhanced Customer Due Diligence (ECDD)

Enhanced CDD is obtaining following additional information from a client been rated as a high risk for ML/TF risk, in addition to minimum CDD information specified by the CDD Rule 11.

- obtain additional information on the client and beneficial owner (e.g. volume of assets and other information from public database)
- obtain approval from the Senior Management , if any, before establishing or in the case of an existing client for continuing such business relationship with the client
- obtain additional information on the intended nature of the business relationship
- regularly update the identification data of the client and the beneficial owner
- enquire and record the reasons for prospective or performed transactions

ECDD should be Conducted for following Clients;



- Clients rated as High Risk
- Politically Exposed Persons
- Non-face-to-face clients
- NGOs and NPOs
- Clients from High Risk Countries

IDENTIFYING AND REPORTING SUSPICIOUS TRANSACTIONS

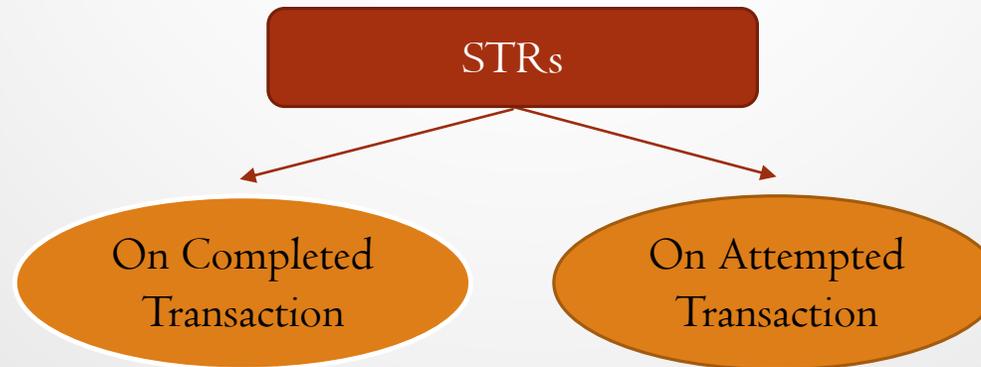


Suspicious Transactions Reporting

If the Institution has

- any suspicion that any transaction is related to commission of any unlawful activity or any other criminal offence
- information that suspect may be relevant to an act preparatory to an offense under provisions of Convention on the Suppression of Terrorist Financing Act No. 25 of 2005 (CSFTA)
- information that suspect may be relevant to an investigation/prosecution for an act of any unlawful activity or offense under CSFTA or PMLA

an STR should submit to the FIU.



Important Facts in Reporting STRs

- The STR must be submitted to the FIU within 2 working days from forming the suspicion.
- The STR must be submitted in Written form.
- The CO can inform about the suspicion through telephone.
- However, should be followed by a written STR within 24 hours of informing the suspicion.
- There is a prescribed form to submit STRs.

The form is prescribed in “Suspicious transactions (Format) Regulations of 2017”

Procedure of handling STRs

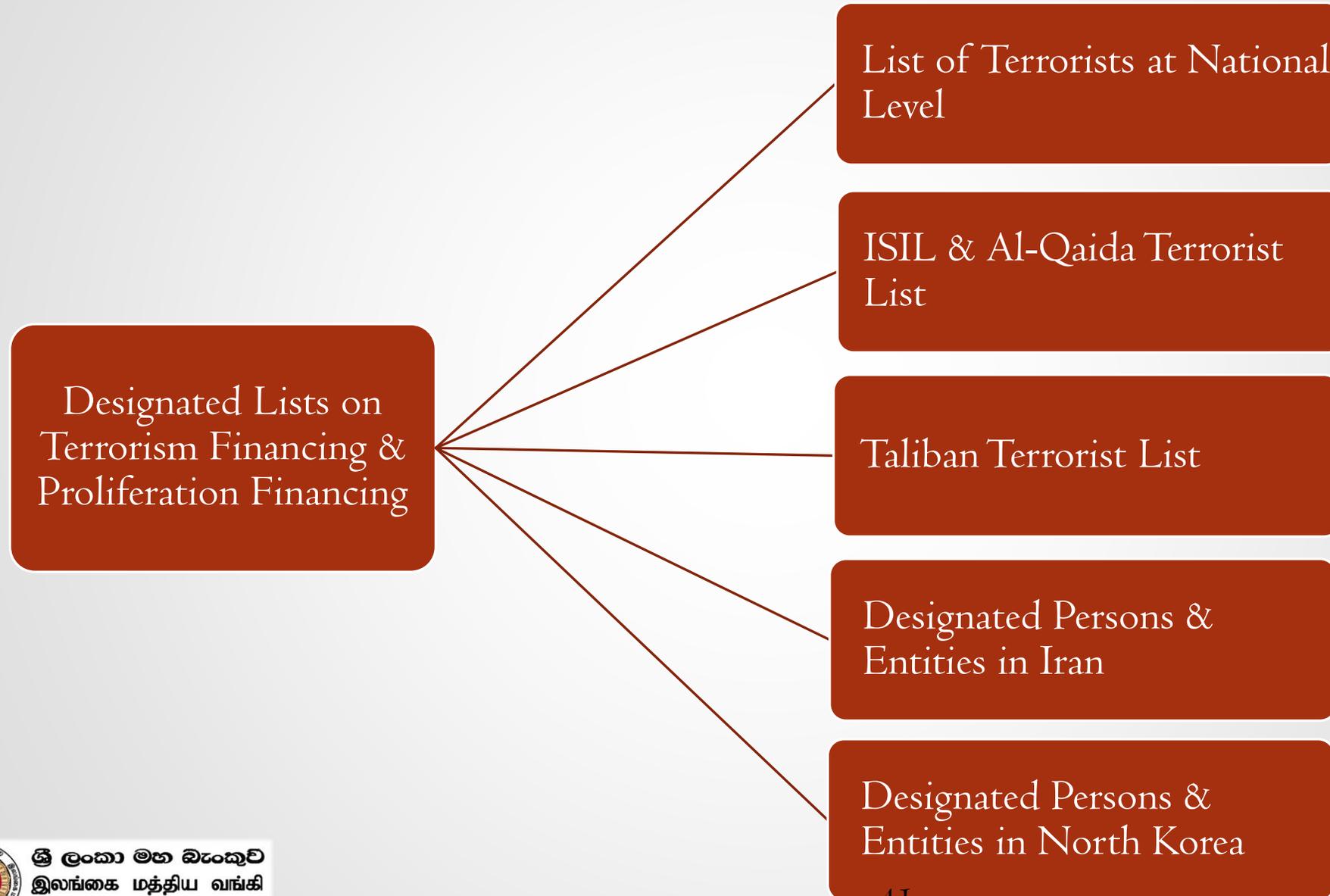
- The FIU has a separate division for analyzing STRs.
- Confidentiality of reports are highly protected.
- Details of Institutions/persons who reported STRs are not revealed for any outside party as per the Rule 14 of the CDD Rules.
- You are Protected under the Section 12 of the FTRA.



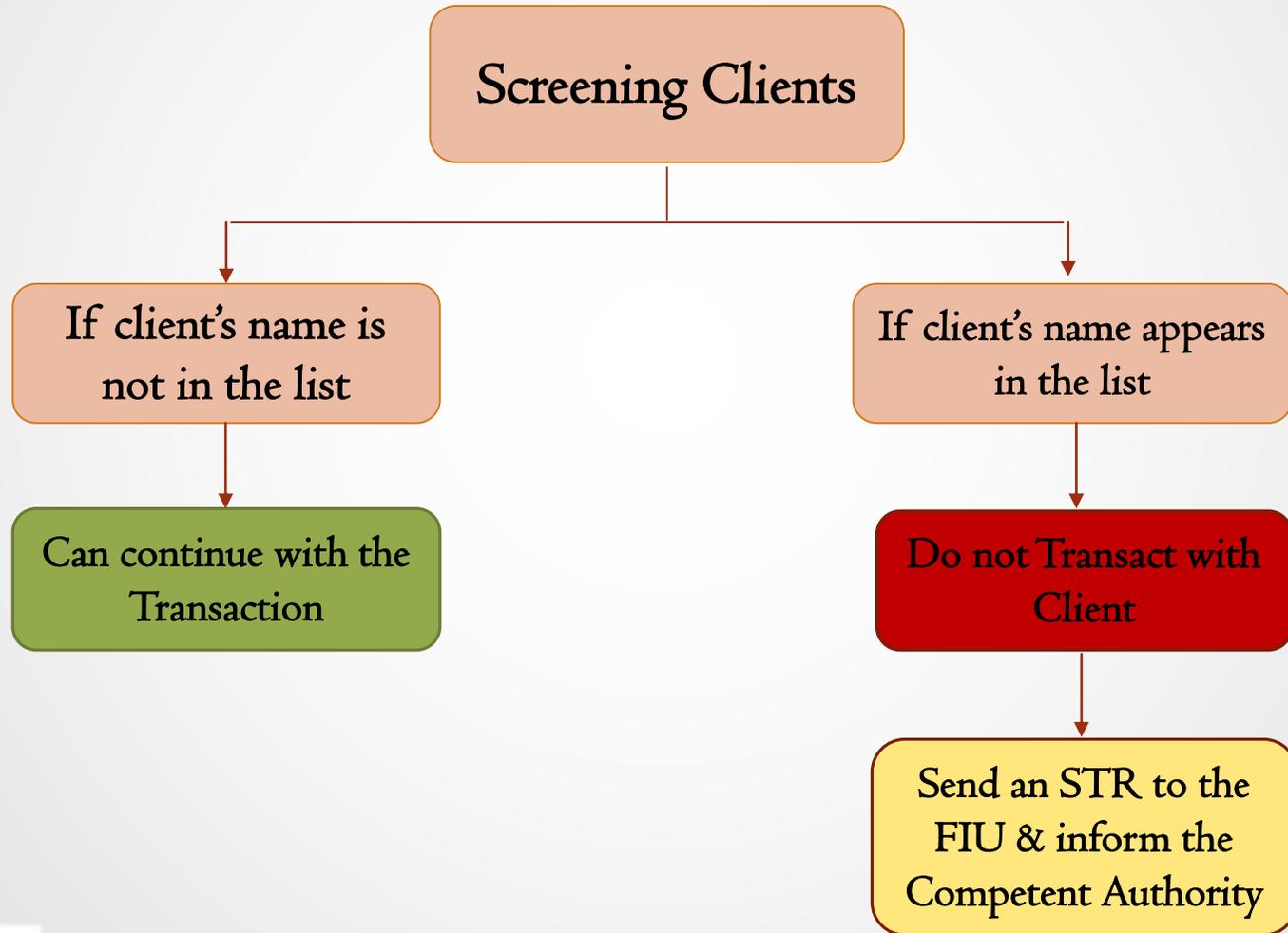
COMPLYING WITH UNSCR



Overview of the Designated Lists



Screen Clients Against Designated Lists



OTHER AML/CFT COMPLIANCE OBLIGATIONS

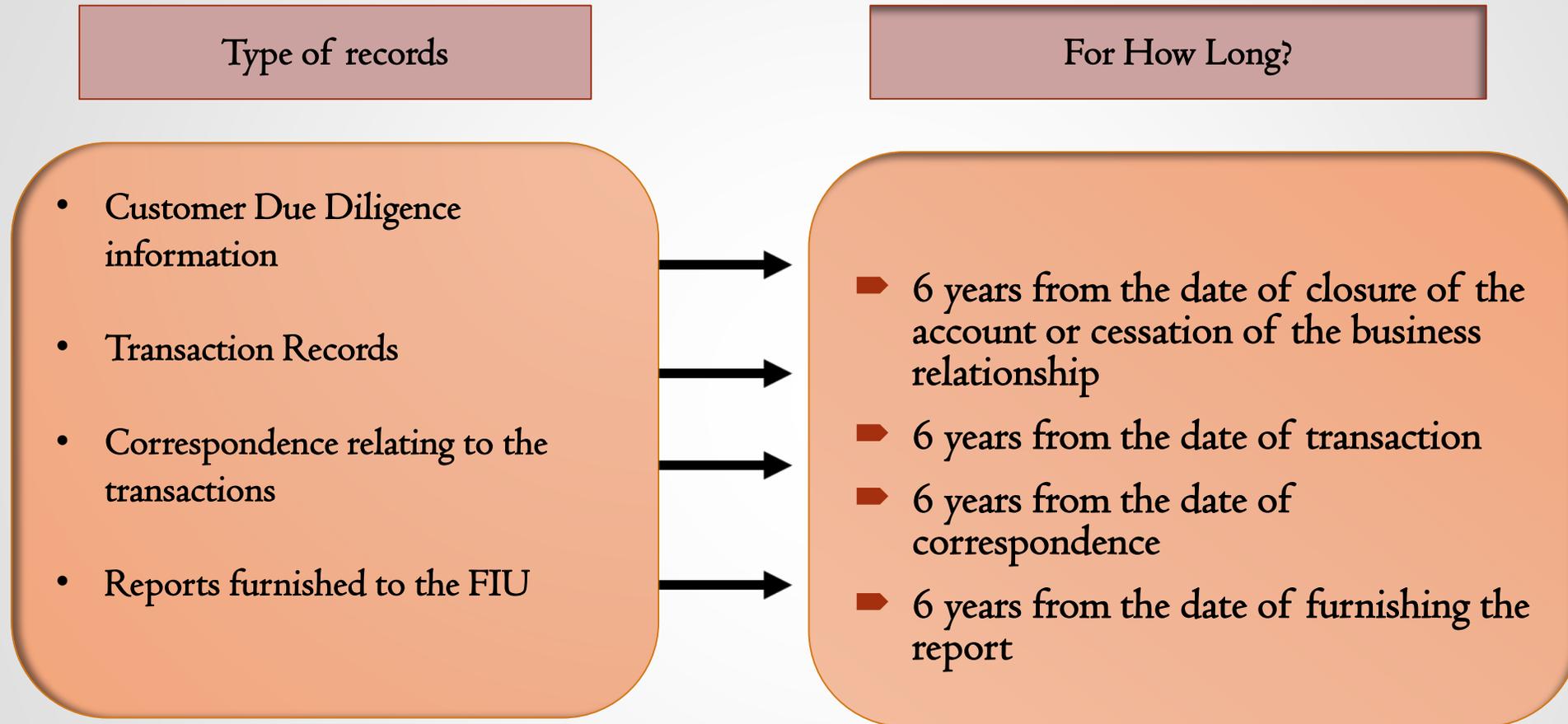


Other AML/CFT Compliance Obligations

- Record Keeping
- Screening Employees before Hiring
- Training on AML/CFT Measures
- Auditing of AML/CFT Measures



Record Keeping Requirement



HOWEVER; records must be retained for more than 6 years if, FIU directs to keep any information/record of transaction/report for such longer period.



Screening Employees before Hiring

Why?

Rule 6 (iv) of the CDD Rules for DNFBPs requires to establish screening procedures to ensure that the institution's ML/TF risk is at a minimal with respect to the employees

When?

Before appointing or hiring employees on permanent basis or any other basis

How?

By obtaining a Police Report, Gramaseva Certificate, Non-relative referrals or any other valid references



Training on AML/CFT Measures

Why?

Rule 6(vi) of the CDD Rules requires to provide training programmes for relevant employees to ensure they have adequate knowledge on AML/CFT measures

On What?

On identification of suspicious transactions, effectively managing the risk of money laundering and terrorist financing

To Whom?

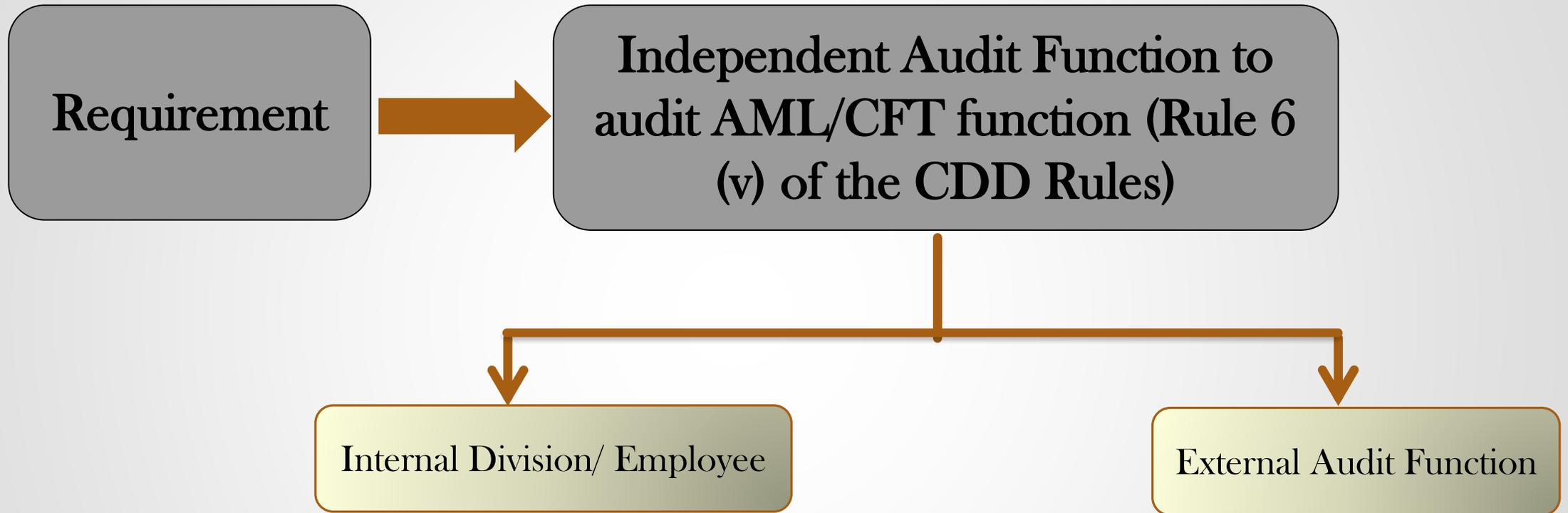
Employees/agents/any individual authorized to act on behalf of the Institution's AML/CFT Compliance Policy

Frequency?

Decide based on the level of ML/TF Risk, Capacity of the Institution and the level of knowledge on ML/TF



Auditing of AML/CFT Measures



Thank You



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