

# Frequently Asked Questions (FAQs)

AML Supervisory Board

**INSTITUTE OF COST AND MANAGEMENT ACCOUNTANTS OF  
PAKISTAN**

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## **PREAMBLE**

Institute of Cost and Management Accountants of Pakistan (ICMA Pakistan), under section 5(7)(a) of the AML Act, has been designated as an AML/CFT Regulator/Supervisor of its members through the Finance Division, Government of Pakistan notification dated December 23, 2019. Thereby requiring the Institute to act as a Self-Regulatory Body (SRB). As an SRB, the Institute is obligated to prescribe regulatory and supervisory measures for the Cost and Management Accountants (CMAs) in practice falling for customer due diligence and record keeping as well as ensuring compliance with the provisions and obligations specified under the AML Act. The Financial Monitoring Unit (FMU) has issued Anti-Money Laundering and Combating Financing of Terrorism Guidelines for Designated Non-Financial Business Professions. FMU has instructed the AML/CFT Regulator/Supervisor, including the Institute, to follow these guidelines for issuing their own AML/CFT Regulations.

In this regard, ICMA Pakistan is delighted to publish Frequently Asked Questions (FAQs) on Anti-Money Laundering (AML) and Counter Financing of Terrorism (CFT). The purpose of preparing these FAQs is to provide guidance and assistance to the CMAs in understating and implementing their statutory obligations under the “Anti-Money Laundering and Combating Financing of Terrorism Regulations for Cost and Management Accountants Reporting Firms (CMAs)” issued by ICMA Pakistan and legal/ regulatory framework in force in Pakistan in addition to the international legislation on AML and CFT.

These FAQs are aimed to facilitate CMA Firms to easily grasp and execute their obligations and to comply with the regulatory expectations for Anti – Money Laundering and Sanctions Compliance. The FAQs have been prepared for illustrative purposes only and should not be considered as a substitute of AML/ CFT Regulations.

## **SECTION I – GENERAL QUESTIONS**

### **1. What is the applicability Criteria of members for the purpose of AML / CFT Compliance requirements?**

The Institute's AML Regulations deals with the responsibilities of the Institute's Members in Practice that in the ordinary course of business are engaged in the rendering of "Accountant" and "Trust and Company Service Provider" services, as specified. Such Members in Practice have to comply with specific customer due diligence, record keeping and other AML / CFT Requirements as per the AML Regulations.

### **2. What is meant by "Accountant" for the purpose of AML Regulations?**

"Accountant" means sole practitioners, partners or employed professionals within professional firms when they prepare for or carry out transactions for their client concerning:-

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

Explanation: The term "Accountants" is not meant to refer to 'internal' professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to AML/CFT measures.

### **3. What is a Trust or Company Service Provider under the AML Regulations?**

A trust or company service provider is any person whose business is to provide any of the following services:-

- a) Forming companies or other body corporates;
- b) Acting or arranging for another person to act;
  - (i) as a director or secretary of a company
  - (ii) as a partner of a partnership; or
  - (iii) in a similar capacity in relation to other legal persons;
- c) Providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or legal arrangement; and;
- d) acting, or arranging for another person to act, as a trustee of an express trust or similar legal arrangement.

### **4. Please give some examples of Services that can be categorized as 'Accountant' or 'Trust and Company Service Provider' (collectively called Specified Services).**

Some of the common examples of Services that can be categorized as 'Accountant' or 'Trust and Company Service Provider' (collectively called Specified Services) are as under:-

#### **Managing client funds, accounts, securities, or other assets**

- The practicing firm is engaged in managing payments to or from its clients' accounts as a specified service; and, with the exception of payments for professional fees, any instance where the practicing firm receives or holds client funds and controls the payment of those funds will also be specified service.
- The key determining factor is whether the practicing firm has control over the flow of funds (if it has the

control then the activity is specified service).

- Taking a payroll situation, for example, if practicing firm is preparing the vouchers or uploading the payments in the system that are then actioned by the client, in such a case the practicing firm is not controlling the funds, rather client is. However, if practicing firm is authorizing salary payments from the client's account directly into client staff's personal accounts, then this is a specified service.
- The practicing firm has the authority to make payments on behalf of its client's business directly from client's bank accounts.
- The practicing firm makes investments on behalf of a client in securities and/or other assets using funds from the client's bank accounts which practicing firm has the authority to transfer.
- The practicing firm manages the sale and / or purchase of trust assets for the client using funds from the client's bank accounts which practicing firm has the authority to transfer.
- The practicing firm disburses the funds generated from a company's winding up / liquidation to a creditor in line with the relevant administration requirements.

#### **Acting as a formation agent for legal persons or legal arrangements**

- This activity refers to forming a legal person (such as a company) or legal arrangement on behalf of a client; for example, registering a company with the SECP.
- The activity does not include instances where the practicing firm simply provides advice about formation of a legal person that is acted on by either the client themselves or a third party. In the case of forming a company, if client asks a lawyer to get the company registered in accordance with the practicing firm's advice, the specified service would be undertaken by the lawyer and they would have to apply their AML / CFT compliance program to that activity/ service.
- Example of that kind of activity would be the Incorporation / Registration of a company with the SECP on behalf of a client.
- Example of that kind of activity would be the Incorporation of an entity (partnership/ firm/ society/ company etc.) on behalf of a client.

#### **Acting, or arranging for another person to act as a director or secretary of the Company or a partner in a partnership firm**

- This activity refers to the scenario where the Practicing firm / member is acting as a Director of a company or a Partner in a partnership concerns. This also includes where the firm has arranged any other person to act in this capacity.
- This activity will be classified as a specified service only if the practicing firm has the authority to act or arrange a person as a director of the company or a partner in a partnership concern.
- Where the firm has only assisted the company / partnership in appointment of director / partner by sharing the database of the individuals and the firm has no authority with regards to the selection process of the candidate, that service will not be classified under the Specified Services.

## **Providing an office or address for a company or legal arrangement**

- A practicing firm which, in the ordinary course of business, provides a registered office or a business address, a correspondence address, or an administrative address for a company, or a partnership, or for any other legal persons or arrangement, is a specified service.

### **5. What is meant be “arranging” for someone to act?**

Arranging for someone to act in a particular capacity has a narrow meaning. An example would be if the Reporting Firm has provided a client with a company director, selecting the director without further reference back to the client and completing some or all of the formalities to appoint the director. It does not include the normal process of headhunting or advertising to find a suitable candidate for a position that a recruitment agency would carry out.

### **6. What does in the ‘ordinary course of business’ mean?**

Whether an activity is in the ordinary course of business is ultimately a question of judgment and depends on the nature of the entity’s business. There is no bright – line test to determine the answer, and that is because all businesses are different. However, some relevant factors to take into consideration would be whether the activity:-

- Is normal or otherwise unremarkable
- Is frequent
- Is regular (meaning predictable, consistent)
- Involves significant amounts of money
- Is a source of income
- Involves significant resources
- Involves a service offered to customers

### **7. Is book keeping services, provided to the clients, falls under the purview of the AML/ CFT specified Services?**

If the firm is only providing book keeping services, it does not fall under the AML/ CFT specified Services.

### **8. Is due diligence services provided by the firm to the client in the sale / purchase of a business entity falls under the specified services?**

The services provided by an Accountant in the buying or selling of business entities would include financial due diligence. This would be one of the main reasons why a customer / client would engage the services of an accountant in the first place. To exclude this service, it would undermine the intent of including accountants under AML / CFT.

### **9. What is meant by High Net Worth Individual in the context of Reporting firms providing services to clients?**

In practice, if the reporting firm is onboarding a new customer / client and the services to be provided to the client involve managing significant assets or funds (above a certain threshold identified by the reporting firm in its AML / CFT policy), the reporting firm would need more information and verification of the source of funds and/or wealth, and thus would fall under the requirements of Enhanced Customer Due Diligence as per International Practice. The reporting firm would also require Senior Management approval before onboarding of such clients.

### **10. Is being a joint signing authority with the client on their bank account falls under the ambit of the AML/ CFT specified Services?**

The key determining factor is whether you have control over the flow of funds – if you do have control, it will fall

under the ambit of the AML/ CFT specified Services.

**11. Whether filing of Forms on behalf of the Company for its Incorporation classified in the reporting activity?**

Filing of Statutory forms for the Incorporation of the Company or Body Corporate is mentioned in the definition of the "Trust or Company Service Provider" and, therefore, classified as a Reporting Activity.

**12. Whether filing of Statutory forms / Annual Returns (Form A / B / 29 / 45) on behalf of the Company in accordance with the Companies Act, 2017 classified in the reporting activity?**

Once the company is formed, the filing of Statutory Forms / Annual Returns is a regulatory requirement under the provisions of the Companies Act, 2017, therefore, does not fall under the Reporting Activity.

**13. Are outsourcing of trainees to finance departments fall under definition of "Accountants"?**

It depends on the terms and conditions of the engagement with the client. If the outsourced trainees are only deputed for book keeping where there is no authority involved, the service will not be covered under the definition of "Accountants".

**14. As an auditor, if the firm is only certifying receipt of subscription money of its client in case of right issue, does it come under the category of reporting firm?**

The certificate of receipt of Subscription money of the client does not fall under the purview of the Accountant or Trust and Company Service Provider definition.

**15. All firms are required to submit Form A irrespective of the fact that they are practicing or reporting firms?**

All Practicing firms of ICMA Pakistan are required to submit Form 'A' by July 31<sup>st</sup> every year.

**16. When we will report suspicious activity of client? At the end of year or at the time of identification of suspicious activity?**

The reporting firms are required to file the suspicious transaction report promptly to the Financial Monitoring Unit (FMU) whenever any suspicious activity of the client is identified.

**17. If a firm incorporates a company via nominee director, will be the firm bear status of Reporting firm?**

This activity will fall under the definition of Trust and Company Service Provider and therefore, the firm will be classified as a Reporting Firm.

**18. Whether reporting firm perform risk assessment, client screening, enhance due diligence and monitoring on all client services or it is limited to those services covered as Accountant and Trust and Company Service Provider?**

When the firm is classified as a reporting firm, it will be required to perform Risk Assessment and Due Diligence on all the clients under its portfolio.

**19. Does statutory audit fall under AML/ CFT specified Services?**

No, the Statutory Audits does not fall under definition of the 'Accountant' or 'Trust and Company Service Provider'.

**20. Is there any financial limit or benchmark above which the Forms become applicable?**

The applicability is based on Services provided by the firms. Hence, there is no financial limit / threshold / benchmark for the firms to be classified as a Reporting firm.

**21. Will the gratuitous services (for which no consideration is paid) provided as accountant or trust service provider be classified under reporting firm?**

The firm will also be classified as a Reporting firm if the services of ‘Accountant’ or ‘Trust and Company Service Provider’ are provided without any consideration or professional fee.

**22. Where firm is providing support services like mailing address for receiving notices and bank statements in client’s name, is that firm a reporting firm?**

Provision of address for the purpose of correspondence falls under the ambit of ‘Trust and Company Service Provider’ and, therefore, the firm will be classified as a Reporting firm.

**23. Will providing Internal Audit Services falls under Accountant or Trust and Company Service Provider definition?**

Provision of Internal Audit Services does not fall under the ambit of ‘Accountant’ or ‘Trust and Company Provider’ definition.

**24. Is Tax Representative considered as Trust?**

Provision of services related to Tax Advisory does not fall under the ambit of ‘Trust & Company Service Provider’ definitions.

**25. How about Corporate Secretariat services like making of agendas for meeting, calling of meetings, preparing minutes, and like.**

Provision of Secretariat services does not fall under the ambit of ‘Accountant’ or ‘Trust & Company Service Provider’.

**26. Is there any helpline or direct number that can be shared for queries of AML focal points?**

Yes, for Resolution of Queries related to AML Regulations compliance, the ICMA Pakistan has developed a dedicated Email Address: [aml.supervisor@icmap.com.pk](mailto:aml.supervisor@icmap.com.pk)

**27. What are Politically Exposed Persons (PEPs)?**

“Politically exposed persons” or “PEPs” – means any person entrusted with a prominent public function by the State of Pakistan, a foreign country or an international organization and includes Heads of state or government, and members and senior officials of legislature, judiciary, executive, military and regulatory authorities, and senior executives of corporations, departments or bodies that are owned or controlled by the state.

**28. At what level / grade / designation officers should be considered as PEP?**

Reporting Firm shall implement appropriate internal risk management systems, policies, procedures and controls to determine if any customer or a beneficial owner is a PEP. However, the reporting firm should consider the nature of the prominent public function held by the PEP (e.g. level of seniority, access to or control of public funds and the nature of the position).

**29. Is there a time limit to declassify a customer as PEP who is no longer a PEP?**

The entity should consider the level of influence that the individual could still exercise and whether the individual's previous and current function are linked in any way.

**30. "Based on the law and Regulations, it is my understanding that the definition of 'accountant' so far as it refers to 'prepare for or carry out transactions for their clients' relates to 'preparation and being part of actual execution process and documents for a transaction' in the first part and 'execution of actual transaction for and on behalf of the client' on the other part. The decision-making process of the client behind their decision making to carry out the instant transaction, of course, cannot be taken to be included in this ambit. For example, if a client engages a person for services in respect of general advice about valuations in a market where the client operates or valuation of a particular entity, or for legal position in respect of certain legal provisions like applicability of a particular tax or so on, these do not fall within the above definition of Accountant.**

The wording of the definition is "preparation for OR carry out transactions for" so it does not require the accountant to be part of the actual execution of the process - indeed, attempted but non-completed transactions are captured under FATF preventive measures obligations. If the account is preparing for a transaction that does not get processed to completion, this requires the same due diligence as once that was completed, and is indeed covered under the activity definitions. However, "advice" as such is not covered (either general advice about market valuations or legal advice) as a relevant transaction. The types of transactions covered include (i) buying and selling of real estate, (ii) managing client money, securities or other assets, (iii) management of bank, savings or securities accounts, (iv) organization of contributions for the creation, operation or management of companies, (v) creating, operating or management of legal persons or arrangements, and buying and selling of business entities. So if the accountant prepares paperwork for the purchase of a company that does not go through, that is covered. But advice on the valuation of a company would not be covered.

**If a person is being nominated by the Government as a Director in a company does the person bear status of Trust or Company Service Provider?**

It's not clear to me under what circumstance this would happen, but technically there is no exemption for government appointed Directors. If this is a government appointed position where acting as the Director is the person's employment, then I don't think that they would qualify. However, if the individual was appointed in their capacity as an accountant to take over the Director job and is being paid for this as a service rendered to a client (that client may be the government in this case), then I think that it would.

**31. A Member in practice fall under the definition of "Trust and Company Service Provider", when he is acting as a director of a company, as a 'service provider' to client or holding the company as a Trust, whether a member in practice will fall under the definition, solely because he is designated as the director of a Private Limited Company, in which he genuinely hold shares. (For clarification in query: Such a director would not be involved in routine operations and would hence be a non-executive director of a Private Limited Company).**

It is correct that the member would only count as a Trust and Service provider if he/she is acting as the director of a company as a service provider (if he/she is being paid for the service of acting as a Director or if they are doing so as part of their paid employment). If the member is not being paid to act as a Director and it is doing so based on their own interests then no, they would not be captured as a TCSP.

**32. If a Member is Authorized by the promoters of the company to present them before SECP to submit application/ documents for grant of license u/s 42 of the Companies Act, 2017, to make amendments in the documents and to collect license on their behalf, will he fall under the definition of "Trust and Company Service Provider. It is to be noted that, incorporation of Company is a separate process and it is possible that Company was already incorporated (it's the renewal of license case) or it will be incorporated afterwards.**

I think this depends on whether or not the Member is presenting themselves as the ongoing contact for the company. From the description it seems that the activities described would qualify as "providing a registered office, business address or accommodation, correspondence or administrative address for a company, partnership or any other legal person or arrangement."

**33. If a partner of any CA firm is a trustee in his personal capacity in a trust, will that fall under the definition as provided under (xix) (d) of the Definitions para AML/ CFT Regulations of ICMA Pakistan. Since, as a firm no service is being provided to 'act' as a trustee? To clarify he/ she is not 'acting for another person' and doing so in his personal capacity.**

Similar to the question about acting as a Director in personal capacity, the act of serving as a trustee is only covered in the event that the accountant is being paid to perform that role by a client. Whether or not it is part of a firm-provided service is not relevant though, it is whether it is a service provided to a paying client.

**34. If a partner is a director in a company in which he himself has a stake (meaning he is a substantial shareholder, and it is his personal business), again he is not acting as a director on behalf of another person but is a director since he himself is a stakeholder. Will that fall under the definition as provided under (xix) (b) of the Definitions para under the AML/ CFT Regulations of ICMA Pakistan?**

It is only covered if it is a service being offered to a client, and for which the accountant is being paid for by the client. As there is no client in this scenario, it would not be covered.

**35. If a practicing member of ICMA Pakistan is also a director of a limited company, does he need to report activities of that limited company as Suspicious Transactions under the ambit of the AML/ CFT Regulations of ICMA Pakistan?**

If an accountant needs to report on the activities of a company for which it is acting as a director as part of its service to the client. In this case the company would be the client of the member/accounting firm and if the accountant identifies transactions that might be suspicious then yes they would have to be reported to the FMU.

## **SECTION II – ANTI MONEY LAUNDERING (AML) REGIME**

### **36. Who will be designated as the AML Contact Person by the Practicing firms?**

The Practicing Firm is to designate Senior Management Personnel as the AML contact person. The contact details of the designated person are to be shared with the ICMA Pakistan for all AML related correspondence.

### **37. What is meant by “Senior Management”?**

Senior Management includes;

- a) A sole proprietor of the Firm
- b) Individual holding the position of Chief Executive Officer / Managing Partner, Chief Operating Officer in a Firm
- c) A partner or an employee of the firm with sufficient knowledge of the firm’s money laundering and terrorist financing risk exposure, and of sufficient authority, to take decisions affecting its risk.

### **38. How to do risk assessment?**

Reporting Firms are required to assess the money laundering and financing of terrorism risk that they may reasonably expect to face in the course of their business. In making this assessment, the reporting firms is required to consider:

- i. Nature, size and complexity of its business;
- ii. Products and services it offers;
- iii. Methods by which it delivers products and services to its customers;
- iv. Types of customers it deals with;
- v. Countries it deals with;
- vi. Institutions it deals with;
- vii. Any guidance material produced by ICMA Pakistan;
- viii. Any other factors that are set out in AML/CFT regulations.

Reporting entities also need to consider whether any of their products involve new or developing technologies that may favor customer anonymity.

Further, the ‘National Risk Assessment Report, 2019 (NRA)’ will help the firms in accessing this risk. To obtain the NRA, please contact at [aml.supervisor@icmap.com.pk](mailto:aml.supervisor@icmap.com.pk)

### **39. What is National Risk Assessment (NRA)?**

The National Risk Assessment (NRA) is a government-wide activity undertaken to develop risk-based anti-money laundering and countering the financing of terrorism (AML / CFT) actions and facilitate allocation of available resources to control, mitigate, and eliminate risks.

### **40. In a Sole Proprietor’s case, who is to be the Compliance Officer?**

Sole Proprietor must designate an employee to be the Compliance Officer. However, if there are no employees, then the Sole Proprietor may either appoint a Compliance Officer or may act as the Compliance Officer himself. The Compliance Officer can carry out other duties not related to AML / CFT compliance. It does not have to be a standalone position.

## SECTION III – CUSTOMER DUE DILIGENCE (CDD)

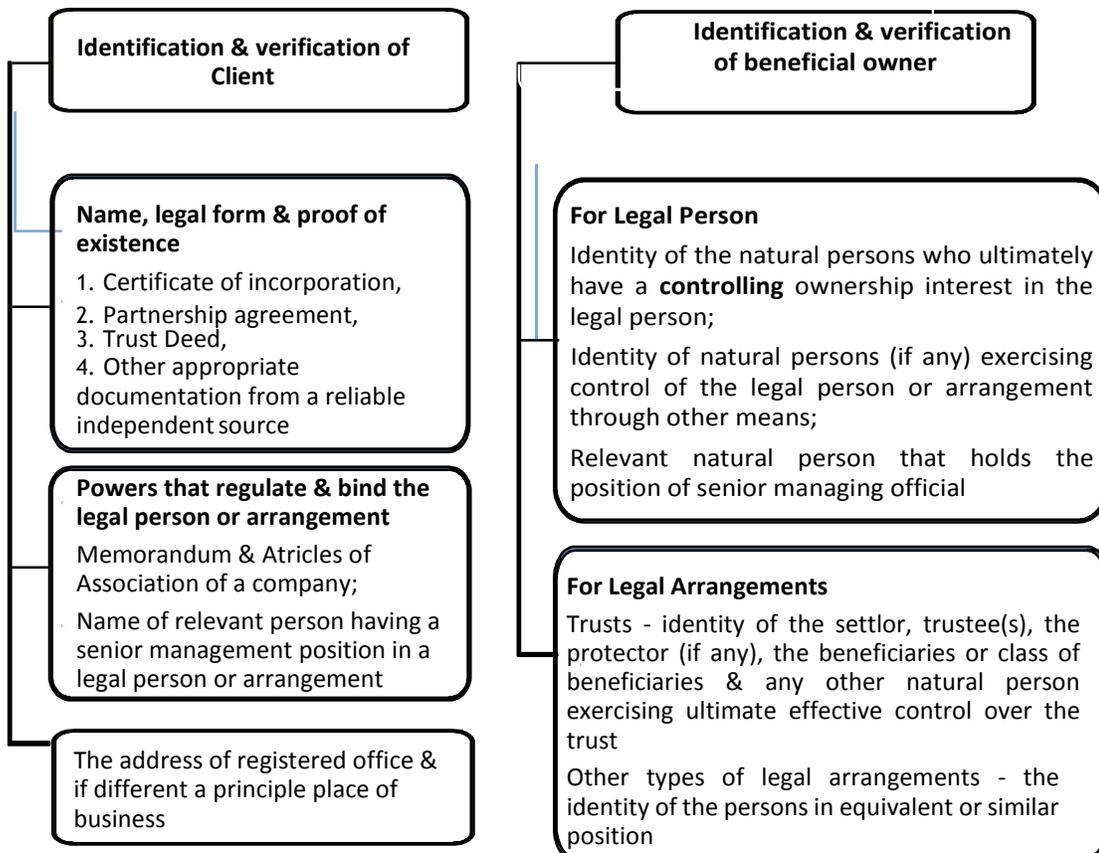
### 41. What is meant by “Customer Due Diligence” under AML Regulations?

“Customer Due Diligence” or CDD – means:-

- a) Identifying the customer and verifying the customer’s identity on the basis of documents, data or information obtained from customer and/or from reliable and independent sources;
- b) Identifying, where there is a beneficial owner who is not the customer, and taking adequate measures, to verify his identity so that the reporting firm is satisfied that it knows who the beneficial owner is, including, in the case of a legal person, trust or similar legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement;
- c) Understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship; and
- d) Monitoring of business relationships on ongoing basis to ensure that it is being conducted in consistent with the reporting firm’s knowledge of the customer, their business and risk profile, including, where necessary, the source of funds and, updating records and data / information to take prompt action when there is material departure from usual and expected activity through regular matching with information already available with the reporting firm.

### 42. How to conduct CDD / Know Your Client (KYC)?

The information usually obtained in the process of CDD is:-



### 43. Who to conduct Customer Due Diligence on?

CDD to be conducted on the following (if applicable):

- The customer; and
- Any beneficial owner of a customer; and
- Any person acting on behalf of a customer.

For further details, see Section 8-24 of the AML/CFT Regulations.

### 44. Does the Reporting Firm need to do CDD on all clients?

It is mandatory for the Reporting Firm to conduct CDD for existing and new clients / customers to which the services of Accountant or Trust and Service Company Services are being provided. However, for other services such as audit, it is not mandatory but the Firms are encouraged to conduct CDDs.

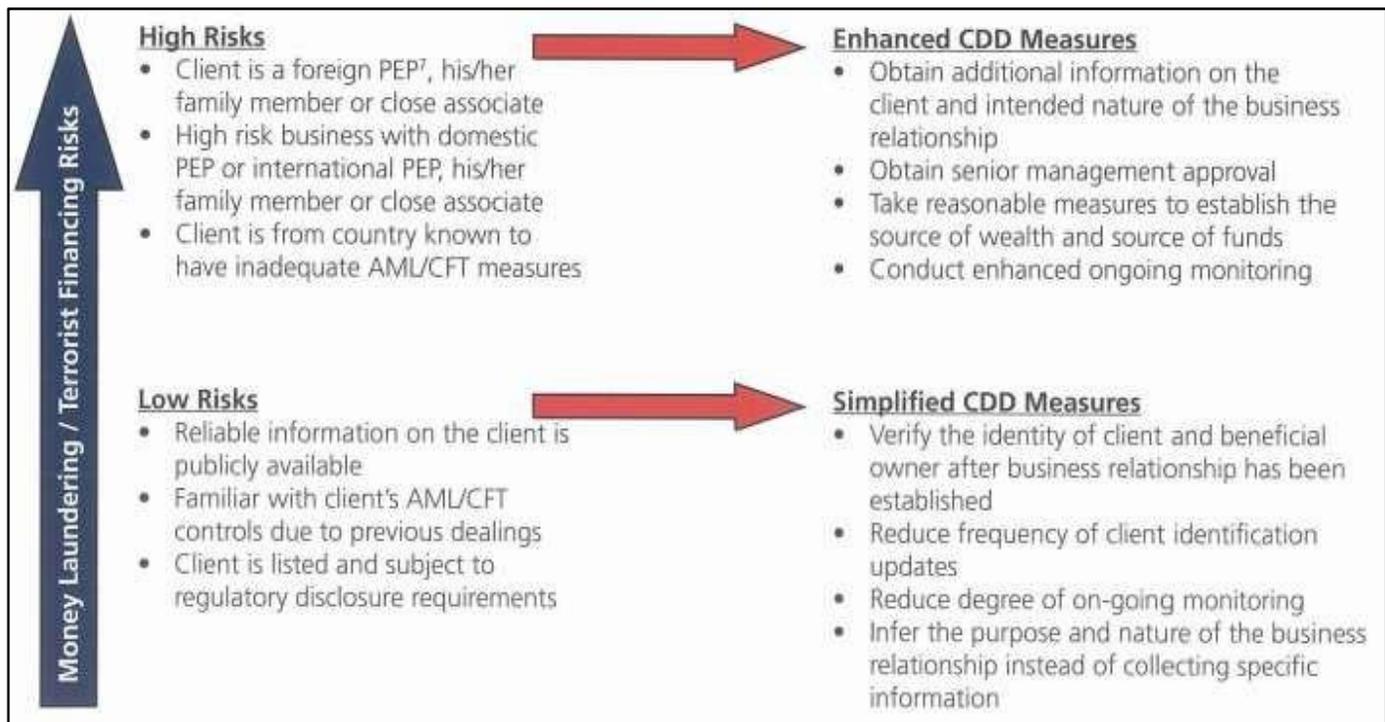
### 45. What is the requirement to apply CDD measures to existing customers?

Reporting firms are required to apply CDD requirements to existing customers on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained.

Reporting Firms should also conduct CDD on existing customer when there is a significant change in client's profile.

### 46. What is Risk Based Approach for Customer Due Diligence?

All the CDD measures would be applied, however the extent of the measures would depend on risk of ML / TF.



#### **47. How often should the ongoing monitoring of client relationship be carried out?**

Reporting Firm's policy and procedures should specify how often ongoing monitoring is to be conducted. A clear cycle should be indicated for each risk category or type of customer / client, for example at least once a year for high risk cases, at least once every two years for medium risk cases and every three years for low risk cases, or where a review is triggered by a defined event.

#### **48. When can Simplified Due Diligence measures be applied?**

Simplified due diligence is the lowest level of due diligence that can be conducted on a client / customer. This is appropriate where there is low risk of products/services or customer becoming involved in money laundering or terrorist financing.

#### **49. What are the SDD measures?**

SDD measures may include but shall not be limited to:-

- (a) Verifying the identity of the customer and the beneficial owner after the establishment of the business relationship;
- (b) Reducing the degree of on-going monitoring and scrutinizing transactions;
- (c) Not collecting specific information or carrying out specific measures to understand the purpose and intended nature of the business relationship but inferring the purpose and nature from the type of transactions or business relationship established.

#### **50. When Enhanced Due Diligence measures are applied?**

Enhanced due diligence measures are applied in situations that are flagged and assessed as high risk where there is an increased likelihood of money laundering or terrorist financing presented either by customers, service/product; and/or jurisdiction.

#### **51. Can Customer Due Diligence be outsourced?**

You can authorize another person or business to act as your agent to carry out CDD, or to get the necessary information from clients. However, you are still legally responsible for ensuring that the CDD meets the required regulatory compliance.

Please refer to section 24 of ICMA Pakistan AML/CFT Regulations for details regarding reliance on Third Party.

## **SECTION IV – SUSPICIOUS TRANSACTION REPORT (STR) / CURRENCY TRANSACTION REPORT (CTR) FILING**

### **52. Can STR only be generated for a customer with whom business relation has been established?**

It is normal practice for a Firm to turn away business that they suspect might be criminal in intent or origin. Where an applicant or a customer is reluctant / refused to provide adequate documentation (including the identity of any beneficial owners or controllers), consideration should be given to filing a STR.

### **53. Should STR only be generated for transactions that have been executed?**

No. STR should be generated where an attempted transaction gives rise to knowledge or suspicion of Money Laundering / Terrorist Financing.

### **54. What is the procedure to file STR / CTR?**

The Financial Monitoring Unit (FMU) has developed an online portal for the filing and submission of STR / CTR. The portal is called goAML (<https://goamlweb.fmu.gov.pk/PRD/Home>).

The reporting firm will be required to register themselves on the portal for the purpose of filing the STR/ CTR.

### **55. Is there a requirement to file STR with the Institute?**

As per the AML Regulations and the AML Act, the reporting firms are only required to file STR with FMU through goAML portal. No STR is required to be filed with the Institute.

### **56. What is meant by 'tipping off'?**

Disclosing the fact that a STR or related information has been filed with the FMU is called Tipping Off. It is considered as an offense and is strictly prohibited under the AML Legislation.

### **57. What is CTR?**

CTR stands for Currency Transaction Report which has to be filed with the FMU. It is a threshold based report of cash transaction involving payment, receipt, or transfer of an amount by customers of a reporting firm.

## **SECTION V – TARGETED FINANCIAL SANCTIONS**

### **58. Who should be included in the screening of sanctions list?**

Sanctions list screening should be performed for the customer, beneficial owner of the customer and person(s) acting on behalf of a customer.

### **59. What happens if a customer's name appears on sanctions list?**

If a customer's name is matched with a name on a sanctions list, further checks will be needed to determine whether it is a true match. In case of a true match or suspicion of a proscribed / designated person, following actions have to be taken immediately by the firm:-

- Freeze without delay the customer's funds and assets or block the transaction (if it is an existing customer);
- not provide any services, property or funds to the person in question in accordance with the respective SRO; and
- reject the transaction or attempted transaction or the onboarding of the customer, if the relationship has not commenced
- Lodge a STR with the FMU and notify ICMA Pakistan in the manner as may be directed by ICMA Pakistan from time to time
- Implement any other obligation under the AML Act 2010, United Nations (Security Council) Act 1948 and Anti-Terrorism Act 1997 and any regulations made there under.
- Notify the National Counter Terrorism Authority, in case that person is designated under the Anti-Terrorism Act, 1997.

## **SECTION VI – ULTIMATE BENEFICIAL OWNERSHIP**

### **60. What is meant by Ultimate Beneficial Owner?**

“Beneficial owner” means the natural person who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted and includes legal heir(s) and the person who exercise ultimate effective control over a person.

### **61. How would you differentiate between direct or indirect ownership or control?**

Direct owner refers to individuals and entities who directly own shares in any legal entity. For example, if you own 25% of the shares in a particular entity, you become a direct owner. A direct owner need not necessarily be an individual (natural person) and can also be another entity as in the case where the parent company is a direct owner in its subsidiary. A person can be an indirect owner, if a company or any other business entity in which he has shares, owns another company. For example, if Company ‘B’ is owned to the extent of 25% by Company ‘A’, and Company ‘A’ is owned to the extent of 50% by a natural person, then the said Person is an indirect owner of Company ‘B’ through Company ‘A’, to the extent of 12.5% ownership in Company ‘B’ i.e. 50% of 25%.

### **62. How would you differentiate between beneficial ownership and legal ownership?**

Ownership is the right to possess, use, sell, donate or give as a gift any asset or property belonging to a person known as the “owner.” An owner can either be a beneficial owner or a legal owner.

A legal owner of an asset may either be a natural person or a legal person that holds the legal title of that asset. On the other hand, a beneficial owner is the person with the right to enjoy or benefit from the asset – this can include the right or entitlement to any income from the property. In majority of the situations, the same person is the legal owner as well as the beneficial owner. A beneficial owner must always be a natural person, as a legal person cannot exert “ultimate” control over an asset or entity. This is due to the fact that legal persons are always controlled, directly or indirectly, by natural persons.

### **63. How would you differentiate between a legal person and a natural person?**

Legal persons are any legal entities which are formed and established through a law, such as public companies, private companies, limited liability partnerships, associations not for profit, etc. registered under the Companies Act, 2017.

Natural persons are individuals, who for the purpose of FATF recommendations, shall be recognized as ultimate beneficial owners if exercising ownership and control rights in companies indirectly through legal persons.

## **SECTION VII – RECORD KEEPING**

### **64. What is meant by Record in the context of AML Legislation?**

Records means information related to client due diligence, enhance due diligence, business relationships, or transactions (domestic or International) and all information related to STRs and CTRs.

### **65. For how long, the reporting firm is required to keep the records?**

Records related to Customer Due Diligence, business relationships and enhanced due diligence shall be kept for a minimum period of five years. Further, the records related to STRs and CTRs shall be kept for a minimum period of ten years from the date of filing of STR / CTR.

Where transactions, customers or instruments are involved in litigation or where relevant records are required by a court of law or other competent authority, the Reporting firm shall retain such records until such time as the litigation is resolved or until the court of law or competent authority indicates that the records no longer need to be retained.

## **SECTION VIII – POLITICALLY EXPOSED PERSONS (PEPs)**

### **66. Who are Politically Exposed Persons (PEPs)?**

PEP means an individual who is or has been entrusted with a prominent public function either domestically or by a foreign country, or in an international organization and includes but is not limited to:

- (i) For foreign PEPs, Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations and political party officials;
- (ii) For domestic PEPs, Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, political party officials;
- (iii) For international organization PEPs, members of senior management or individuals who have been entrusted with equivalent functions.

### **67. Is there a time limit to declassify a customer as PEP who is no longer a PEP?**

The entity should consider the level of influence that the individual could still exercise and whether the individual's previous and current function are linked in any way.

## **SECTION IX' – INDEPENDENT AUDIT**

### **68. What is meant by Independent Audit in the context of AML / CFT for Reporting Firms?**

The Independent Audit obligation is a check of a reporting firm's AML / CFT Programme. It will assess whether the AML / CFT Programme is functioning in practice and that the policies, procedures and controls in place are based on the money laundering and financing terrorism risks identified by the Reporting Firm.

### **69. What is the Scope of Independent Audit within the reporting firm?**

Firms do not have to appoint external auditors to carry out the independent audit. However, the audit should be carried out by a part of the firm which is independent from the AML function being assessed, and the degree of audit required will depend on the size of the firm.

This may be conducted by:

- The audit programme should be adequate and in line with the Reporting Firm's size, context, complexity, internal risk assessment. It may be supported by audit policies and procedures, audit testing scripts and working papers along with the audit reports.
- The audit programme scope should cover all relevant components of the compliance programme (risk assessment; policies and procedures; CDD and record keeping; PEPs, targeted financial sanctions and enhanced measures; suspicious transaction monitoring and reporting; senior management oversight; training; and any outsourcing relationships) on a reasonable timeframe.
- The audit programme should focus on effectiveness of the mitigating controls implemented by the Reporting Firm, rather than a "tick box approach." The policies and procedures should be adequately implemented in practice, and systems including IT and technology systems, should be working as intended and reliance can reasonably be placed upon them.
- The audit program should identify areas where the Reporting Firm did not meet minimum legal or regulatory AML / CFT standards, further, the processes should be in place to monitor the remediation of identified deficiencies, and that deficiencies are being remediated in practice.

Sole Proprietor firms or firms having smaller number of partners / professional staff may use the following guidance;

- A check should have been made of the AML systems and controls by an individual who is not directly involved in the function being audited. This might include that individual checking that there are systems in place for carrying out CDD, record keeping and suspicious transaction reporting.
- The audit should be documented and that any issues requiring remediation are actioned.
- Sole practitioners, who do not employ or manage staff would not be expected to carry out a particularly formal review, but would be expected to be able to demonstrate to the supervision team that they understand the concepts and requirements of AML compliance. The sole practitioner would, in effect, be the compliance officer and the auditor.
- Small firms employing 2 persons would ideally have one person in the compliance officer role, and the other carrying out the audit function.