

Legal regime for AML (*Anti Money Laundering*) in India

(more emphasis of Stock Broking & Depository Participant)

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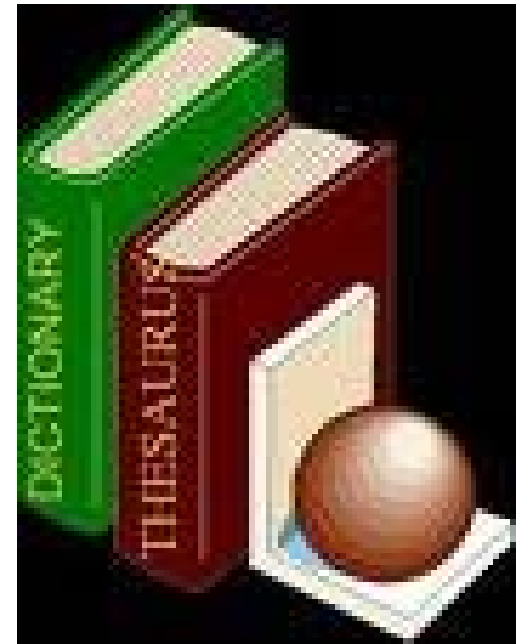


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Dictionary Meaning of Laundering

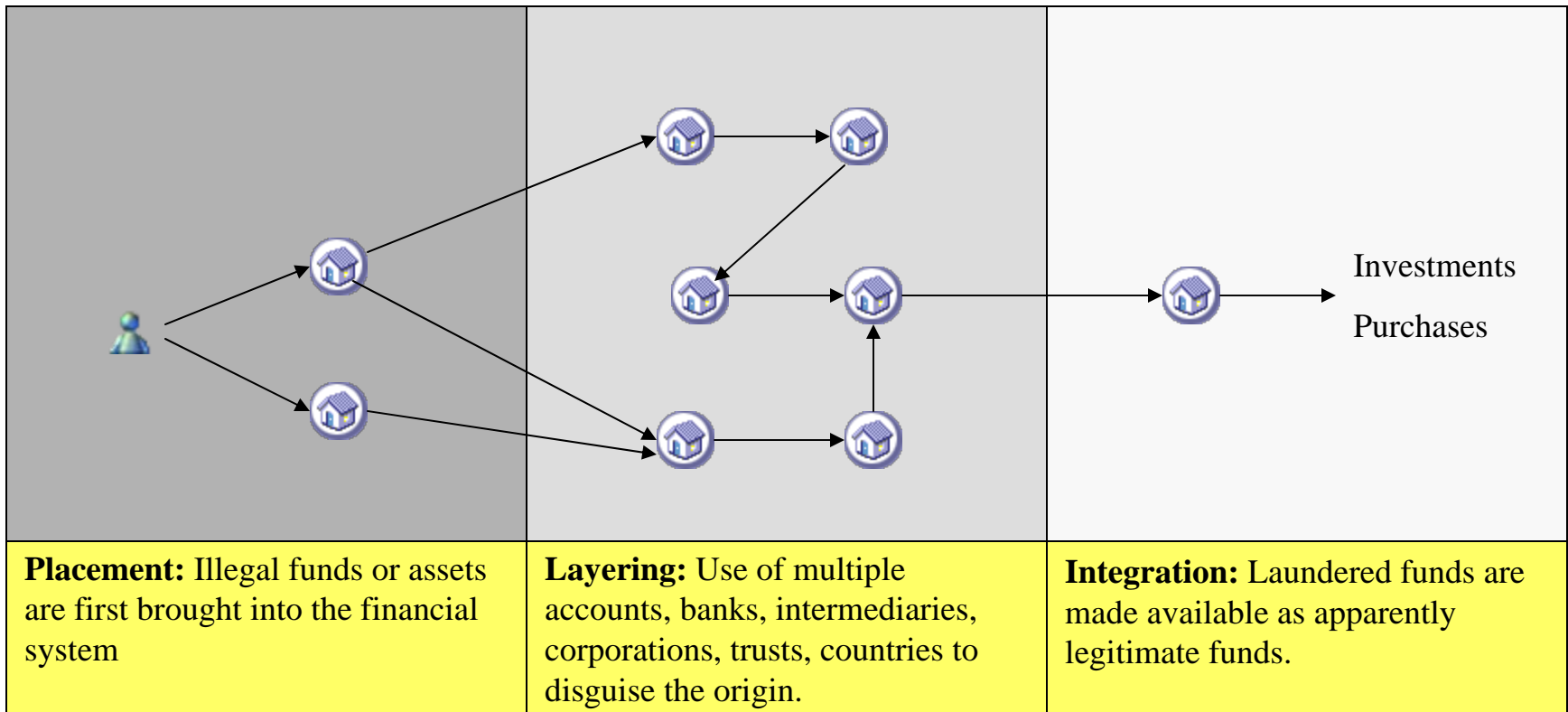
- to disguise the source of illegal or secret funds or profits, usually by transmittal through a foreign bank or a complex network of intermediaries.
- to disguise the true nature of (a transaction, operation, or the like) by routing money or goods through one or more intermediaries.



What is Money Laundering ?

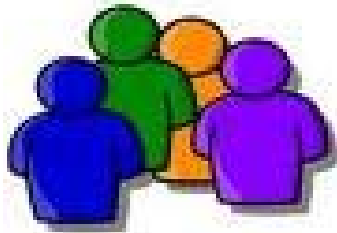


Money Laundering is the process by which illegal funds and assets are converted into legitimate funds and assets.



Important: All money laundering transactions need not go through this three-stage process.

Agenda for discussion



AML in India

Implication on
Financial Sector

International
Scenario

Key
Issues

Money Laundering



Money Laundering Legislation in India

- The Prevention of Money Laundering Act, 2002 (PMLA) enacted to prevent money laundering and provide for confiscation of property derived from, or involved in, money laundering
 - Enacted on 17th Jan, 2003
 - Brought into force from 1st July, 2005
- Administered by:
 - Financial Intelligence Unit for verification of identity of clients, maintenance of records and reporting
 - Enforcement Directorate for investigation of and prosecution for money-laundering offences



Subordinate legislations: Rules under PMLA

- Various Rules came into effect from July 2005
 - Rules detailing Powers of Director FIU & ED
 - Rules detailing the method of attachment of property, period of retention etc.
 - Rules detailing the receipt & management of confiscated assets
 - Rules relating to legal obligations of reporting entities



Subordinate legislations: Rules under PMLA

- Rules detailing the legal obligations of reporting entities:
 - Prevention of Money Laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005





Legal Obligation under PMLA

PMLA and the Rules impose obligations on

Banking Companies

Financial Institutions

Intermediaries

PMLA on SSJ Entities

**SSJ Finance and Securities
Private Limited**

**SSJ Commodities Private
Limited**

Tirtha Securities Private Limited

Anshul K Jain



Obligations of reporting entities

- Appointment of Principal Officer:
 - Every reporting entity shall communicate the name, designation and address of the Principal Officer to the Director, FIU-IND
- Furnishing of information by the Principal Officer:
 - furnish the information referred to in the Rules to the authorities
 - retain copy of such information for the purposes of official record



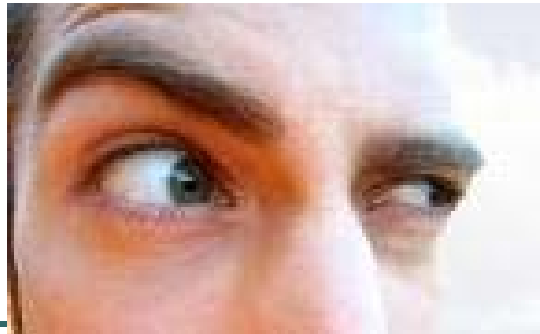
Reporting obligations

- “All cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency
- All series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month”
- CTR should be filed by the 15th day of the succeeding month



Reporting obligations

- Reporting of Suspicious Transactions:
 - All suspicious transactions whether or not made in cash
 - STR should be filed with FIU within **seven** working days of establishment of suspicion at the level of Principal Officer.



Suspicious transaction

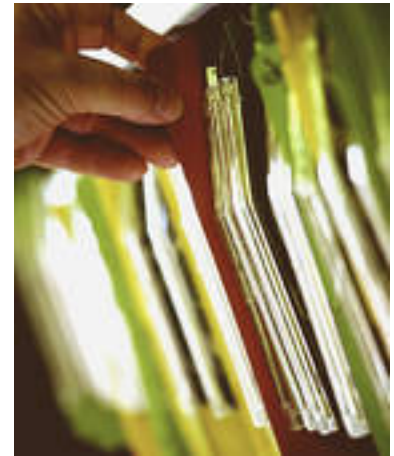
- Suspicious transaction means a transaction whether or not made in cash which, to a person acting in good faith –
 - gives rise to a reasonable ground of suspicion that it may involve the proceeds of crime; or
 - appears to be made in circumstances of unusual or unjustified complexity; or
 - appears to have no economic rationale or bonafide purpose;



Related Obligations

- Records containing information for reporting purposes:
 - Nature of transaction
 - Amount & currency of transaction
 - Date of transaction
 - Parties to transaction
 - Manner as prescribed by the regulators (RBI/SEBI/IRDA)

- Maintain & retain reported records for 10 years from cessation of transaction between client & reporting entities (**Rule 6**)







Client Identity

- Verify identity of clients:
 - Identity of clients
 - Current and permanent address
 - Nature of business
 - Financial status
- Maintain records of the identity of clients for a period of 10 years from the date of cessation of the transactions with the client. (Rule 10)



Know Your Customer (KYC) Guidelines



	<p>Customer Acceptance - Ensure that only legitimate and bona fide customers are accepted.</p>
	<p>Customer Identification- Ensure that customers are properly identified to understand the risks they may pose.</p>
	<p>Transactions Monitoring- Monitor customers accounts and transactions to prevent or detect illegal activities.</p>
	<p>Risk Management- Implement processes to effectively manage the risks posed by customers trying to misuse facilities.</p>

Guidelines issued by RBI, SEBI

Legal obligations & guidelines imply

Transactions Monitoring-

- Monitor customers accounts and transactions to prevent or detect illegal activities.
 - Issue of Mechanism to verify financial details
 - Transactions inconsistent with customers profile (business)
 - Unexplained transfers between multiple accounts with no rationale
 - Sudden activity in dormant accounts

Risk Management-

- Implement processes to effectively manage the risks posed by customers trying to misuse facilities.
 - Categorization of customers: high/medium/low risk : a dynamic concept
 - Constant interaction between front desk and the compliance team required
 - Awareness and training of staff



Legal obligations & guidelines imply

- Set up processes and technology to **identify** and report suspicious transactions
 - Capture customer details
 - Generate alerts
 - Collect and analyse additional information
 - Decide whether transactions are suspicious
 - Ensuring reporting of quality data electronically
- Alignment of people, process and technology
- Confidentiality and Privacy



Reasons for Suspicion



- **Activity in accounts**
 - Unusual activity compared with past transactions
 - Sudden activity in dormant accounts
 - Activity inconsistent with what would be expected from declared business
- **Identity of client**
 - False identification documents
 - Identification documents which could not be verified within reasonable time
 - Accounts opened with names very close to other established business entities
- **Background of client**
 - Suspicious background or links with known criminals
- **Multiple accounts**
 - Large number of accounts having a common account holder, introducer or authorized signatory with no rationale
 - Unexplained transfers between multiple accounts with no rationale

Reasons for Suspicion



- **Nature of transactions**

- Unusual or unjustified complexity
- No economic rationale or bona fide purpose
- Frequent purchases of drafts or other negotiable instruments with cash
- Nature of transactions inconsistent with what would be expected from declared business

- **Value of transactions**

- Value just under the reporting threshold amount in an apparent attempt to avoid reporting
- Value inconsistent with the client's apparent financial standing

Client of Special Category (CSC)

- NRIs,
- HNIs,
- Trust, Charities, NGOs,
- Politically Exposed Persons (PEP),
- persons of foreign origin,
- companies having closed share holding/ownership,
- companies dealing in foreign currency,
- shell companies,
- overseas entities,
- clients in high risk countries,
- non face to face clients,
- clients with dubious background. Current/Former
- Head of State, Current/Former senior high profile politician,
- Companies offering foreign exchange, etc.) or clients from high risk countries (like Libya, Pakistan, Afghanistan, etc.) or clients belonging to countries where corruption/fraud level is high (like Nigeria, Burma, etc).
- Clients with dubious reputation as per public information available
- Firms with sleeping partner
- Client whose name are appearing in UNSCR List



Risk Profiling



- In case of individual
 - occupation of the proposed client;
 - primary source of income of the proposed client;
 - primary bankers of the proposed client;
 - investment values of the proposed client as on date;
 - pattern of investment;
 - any borrowing
 - family background and other contributors to family income;
 - occupation and source of income of close relative i.e. parents, spouse, siblings, children, etc.
 - general and social reputation
 - involvement in any scam/criminal/anti social activity, directly or indirectly;
 - if investing in capital market, since when;

Risk Profiling



- In case of Non-individual
 - Business carried on by the entity;
 - Nature of the entity;
 - Annual turnover and revenue of the entity;
 - Investment, if any, already made in capital market;
 - Identity of the stakeholders in the entity;
 - Beneficial owners of the entity;
 - Persons in actual control and management of the entity;
 - general and social reputation;
 - involvement in any scam/criminal/anti social activity, directly or indirectly;
 - scope and nature of the proposed transaction, its purpose and end use and whether the proposed transaction seems unnecessarily complex or unusual

Responsibility of Employees

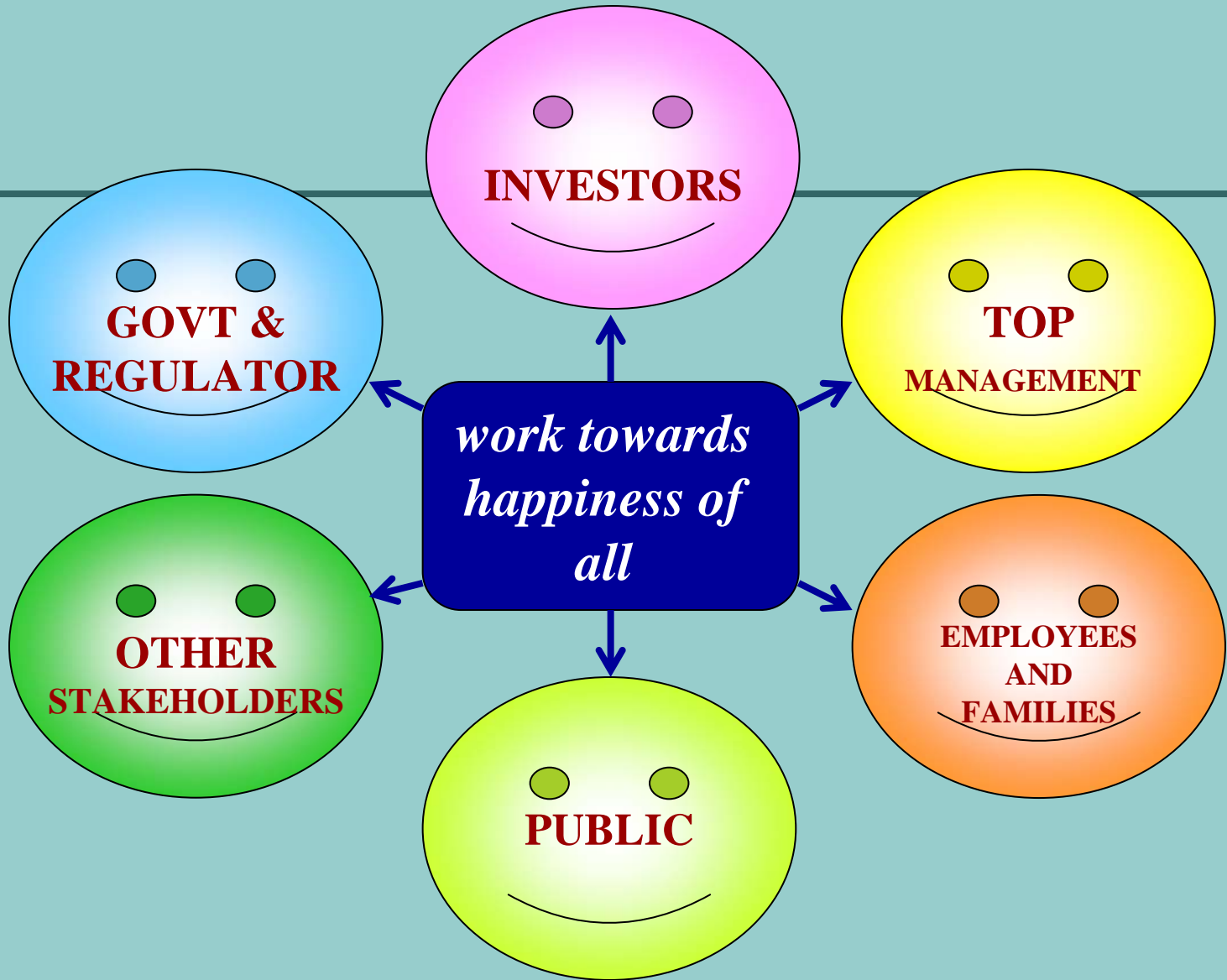


- All the employees shall monitor concerned transactions conducted by SSJ and all branches/divisions, etc. on a continual basis and shall report all cash transaction or suspicious transaction to their Department Head.
- Department Head shall inform the said transactions to the Principal Officer.
- The Principal Officer, after due verification and obtaining approval of Chief Executive Officer, shall file CTR or STR with FIU.
- All employees shall maintain utmost confidentiality while dealing with such transactions.
- It is likely possible in some cases that transactions are abandoned/aborted by clients on being asked to give some more details or to provide documents. It is clarified that employee should report all such attempted transactions also as suspicious transaction, irrespective of the amount of the transaction.
- Upon reporting STR, employees shall ensure that securities or monies forming part of such suspicious transaction are not returned/refunded to the client. If the client makes a request for such refund or makes any other request for operation of account, the employee must consult with Department Head and Principal Officer. Principal Office will consult the regulatory authorities for determining what action in such cases.
- In exception cases, Principal Officer may recommend to Chief Executive Officer for closure of dealing with client and Chief Executive Officer may take appropriate action on the recommendation of Principal Officer.

International scenario



- **Mid 1980s** - Growing concern of international community to deprive criminal elements of the proceeds of their crimes.
- **1989 – Financial Action Taskforce (FATF)** set up to ensure global action to combat money laundering.
 - Forty Recommendations - Complete set of counter-measures against money laundering
 - Nine Special Recommendations on Terrorist Financing
 - 33 members
- **1995 - Egmont Group** set up to stimulate international cooperation amongst FIUs. Best Practices for exchange of information.
 - 101 Members
- **1997- Asia/Pacific Group on money laundering (APG)** set up to create awareness and encourage adoption of AML measures.
- **40 Recommendations + 9 Special Recommendations on TF** International standards – FATF



We have to bring all together





Questions & Suggestions



