



# FREQUENTLY ASKED QUESTIONS (FAQs)

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## **FREQUENTLY ASKED QUESTIONS (FAQs)**

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### **PREAMBLE**

The Anti – Money Laundering and Countering Financing of Terrorism (AML / CFT) regime seeks to help instill public confidence in the country’s financial systems globally. AML / CFT regime in Pakistan is applicable for banks, financial institutions, financial service providers and the Designated Non – Financial Business and Professions (DNFBPs).

In this regard, the Institute of Chartered Accountants of Pakistan (ICAP / the Institute) is pleased to publish the first version of the Frequently Asked Questions (FAQs) on AML & CFT aiming to provide clear and concise understanding of the AML & CFT Obligations under the AML Framework issued by ICAP “*Framework for Regulation and Supervision of Chartered Accountants to comply with Anti – Money Laundering and Countering the financing of Terrorism Requirements*”.

These FAQs aim to facilitate ICAP’s firms to comprehend and implement their obligations under the AML Framework and to meet evolving regulatory expectations for Anti – Money Laundering and Sanctions Compliance.

It includes information on a range of topics, such as Customer Due Diligence, Ultimate Beneficial Ownership, Politically Exposed Persons, STR & CTR filing requirements, Sanctions Compliance, and more information about how to comply with AML Framework issued by the Institute.

The following questions and answers have been prepared for illustrative purposes only.

### **SECTION ‘A’ – GENERAL UNDERSTANDING**

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

The Institute’s AML Framework 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 Framework.

**2. What is meant by “Accountant” for the purpose of AML Framework?**

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

- (a) The buying and selling of real estate;
  - (b) Buying and selling of business entities;
  - (c) The managing of client money, securities or other assets;
  - (d) The opening or management of bank, savings or securities accounts;
  - (e) The organisation of contributions necessary for the creation, operation or management of companies;
- or
- (f) Creation, operation or management of legal persons or arrangements.

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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 AML Framework?**

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. 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.

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- 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

### 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.

### 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.

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### **5. What is “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 Framework?**

If the firm is only providing book keeping services, it does not fall under the AML framework.

### **8. Is being a joint signing authority with the client on their bank account falls under the ambit of the AML Framework?**

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 Framework.

### **9. Whether filing of Forms on behalf of the Company for its Incorporation classified in the reporting activity as per the AML Framework?**

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.

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- 10. 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 as per the AML Framework?**

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 as per the AML Framework.

- 11. 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" as per the AML Framework.

- 12. 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 as per the AML Framework.

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

As per the AML Framework, all Practicing firms of Chartered Accountants are required to submit Form 'A' by July 31<sup>st</sup> every year.

- 14. 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.

- 15. 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.

- 16. 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?**

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.

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**17. Is statutory audit fall under AML framework?**

No, the Statutory Audits does not fall under definition of the ‘Accountant’ or ‘Trust and Company Service Provider’ as per the AML Framework.

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

The applicability of the AML Framework 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.

**19. 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.

**20. 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.

**21. If a firm certify the Foreign Royalty Payment Form as per the requirements of SBP, will the firm fall within the definition of Reporting Firm?**

Certifying the Foreign Royalty Payment Form as per the requirement of State Bank of Pakistan does not fall under the definition of ‘Accountant’ or ‘Trust and Company Service Provider’.

**22. 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 Service Provider’ definition.

**23. Is Tax Representative is considered as Trust?**

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

**24. 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’ as per the AML Framework.



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25. **Apart from the webinar, if we have questions regarding the Reporting Firm's obligations, can we contact ICAP, is there any helpline or direct number that can be shared for queries of AML focal points?**

For Resolution of Queries related to AML Framework compliance, the contact details are as under;

Dedicated Email Address: [aml.dept@icap.org.pk](mailto:aml.dept@icap.org.pk)

Dedicated Direct helpline: +92 21 35184102

### **SECTION 'B' – AML REGIME**

26. **What is the effective date of ICAP's AML Framework?**

The effective date of the ICAP's AML Framework is. March 5, 2020.

27. **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 ICAP for all AML related correspondence.

28. **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.

29. **How to do risk assessment?**

Reporting Firms are required to follow the 'Risk Based Approach (RBA)', under this approach resources are targeted at high risk areas, so the cost of compliance is reduced for the business. RBA requires the Reporting Firm to identify and assess the reasonable possible risks relating to Money Laundering (ML) / Terrorist Financing (TF) that their business may face.

In making this assessment, the Reporting Firm is required to consider:

- The nature, size and complexity of the Reporting firm's business;
- The diversity of a Reporting firm's operations, including geographical diversity;
- The Reporting firm's clients, products and activity profile;
- The degree of risk associated with each area of Reporting firm's operations; and
- The extent to which the Reporting firm is dealing directly with the client or is dealing through intermediaries, third parties, correspondents or non-face to face access.

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For details regarding the risk assessment approach to be adopted, please refer Section I of the AML Framework.

Further, the ‘**National Risk Assessment Report, 2019 (NRA)**’ will help the firms in accessing this risk. To obtain the NRA, contact ICAP at [aml.dept@icap.org.pk](mailto:aml.dept@icap.org.pk).

### **30. 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.

### **31. 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 ‘C’ – CUSTOMER DUE DILIGENCE**

### **32. What is meant by “Customer Due Diligence” under AML Framework?**

“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.

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### 33. 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 II of the AML Framework.

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

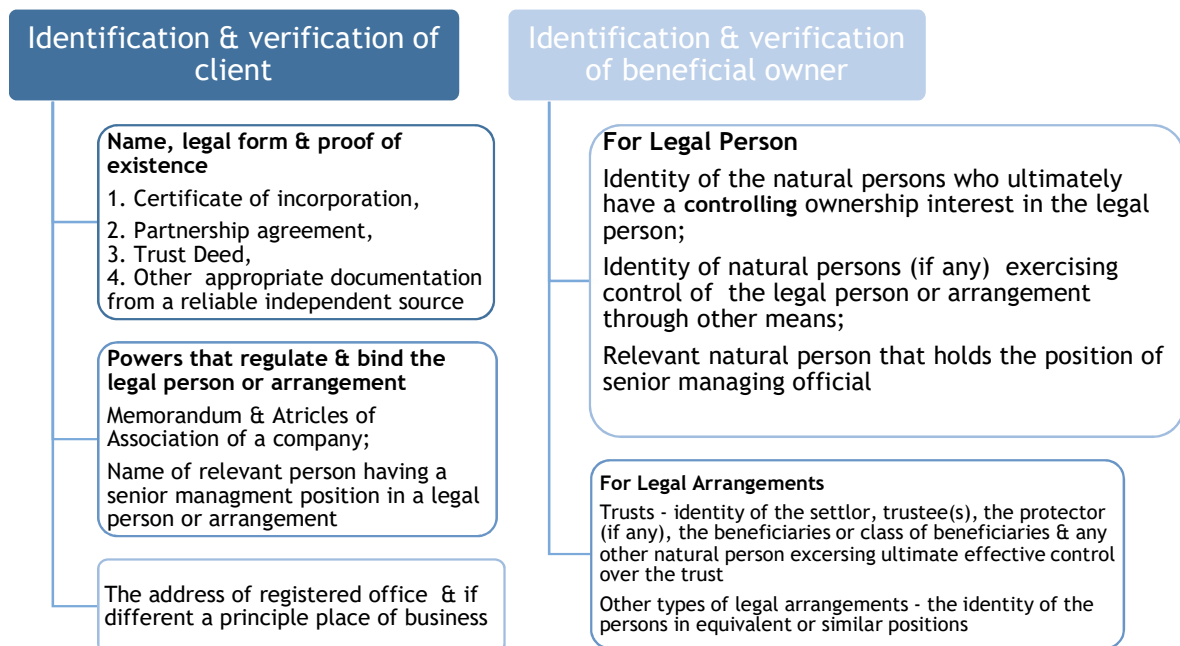
It is mandatory for the Reporting Firm to conduct CDD for existing and new clients / customers to which the services of Accountant or Trust and Service Company Services are being provided. However, for other services such as audit, it is not mandatory but the Firms are encouraged to conduct CDDs.

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

Under the transition provisions of the AML Framework, the Reporting Firm is to conduct CDD for existing clients to which the services of Accountant or Trust and Service Company Services are being provided.

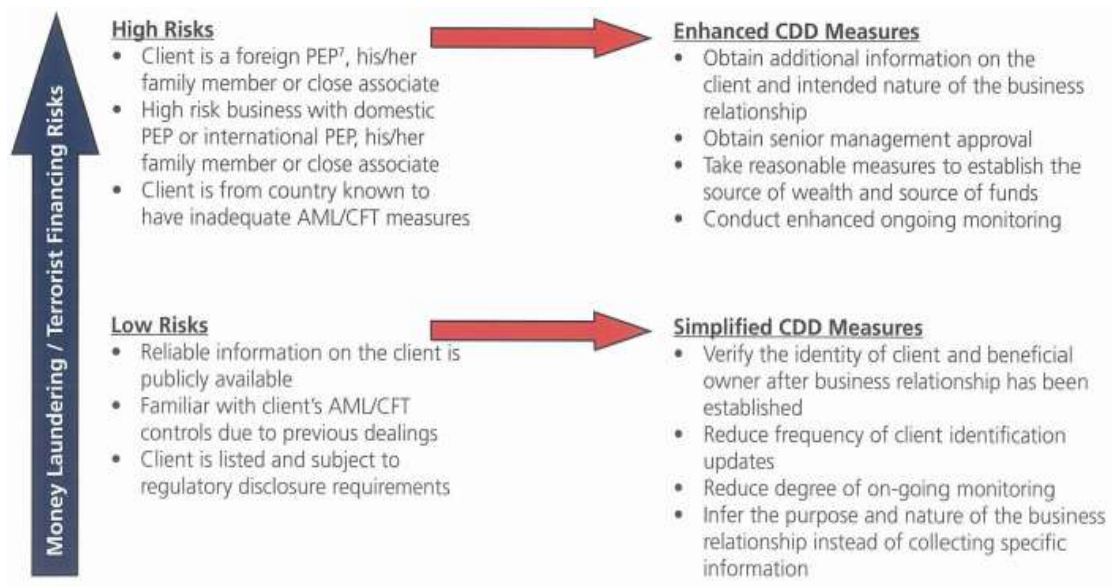
### 36. How to conduct CDD / Know Your Client (KYC)?

The information usually obtained in the process of CDD is:



### 37. 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.



### 38. 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.

### 39. 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.

### 40. 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.

### 41. 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.

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

**42. 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.

**43. 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.

**44. 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.

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

As per the AML Framework 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.

**46. 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 Framework.

**47. 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 'E' – SCREENING COMPLIANCE**

**48. 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.

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### **49. Is the Reporting Firm required to screen all of its existing clients?**

Yes, after the implementation of AML Framework of ICAP i.e. March 5, 2020, the firms are required to screen all their existing customers / clients having business relationship with the firm at that point of time.

### **50. 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:

- a) Freeze without delay the customer's fund or block the transaction (if it is an existing customer);
- b) Reject the customer, if the relationship has not commenced;
- c) Lodge a STR with the FMU;
- d) Notify the Ministry of Foreign Affairs, in case that person is designated under United Nations Security Council Resolutions, and
- e) Notify the National Counter Terrorism Authority, in case that person is designated under the Anti-Terrorism Act, 1997.

## **SECTION 'F' – ULTIMATE BENEFICIAL OWNERSHIP**

### **51. 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.

### **52. 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%.

### **53. 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.

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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.

### **54. 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 ‘G’ – RECORD KEEPING**

### **55. 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.

### **56. 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.

## **SECTION ‘H’ – POLITICALLY EXPOSED PERSONS (PEPs)**

### **57. 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.

### **58. 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)

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### **59. 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.