

PMLA



Prevention of Money Laundering Act

By :-

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THE PREVENTION OF MONEY
LAUNDERING ACT, 2002
(15 OF 2003)

As Amended
by The Finance
Act, 2016

Definition - Money Laundering

OFFENCE OF MONEY LAUNDERING:-

- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted **property** shall be guilty of offence of money-laundering.



- In easier terms, any action which leads to conversion of Illegal money/assets into legitimate fund/assets shall be considered as an "Offence of Money Laundering" .

Definitions....

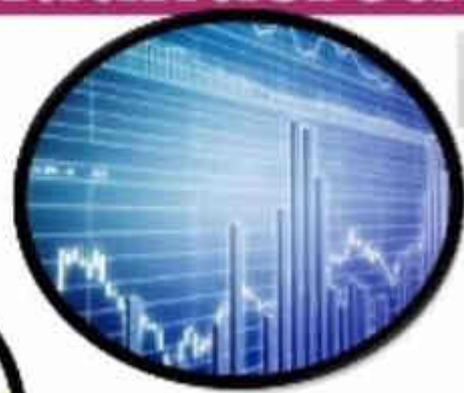
- ❑ **Proceeds of Crime**:- Means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country]
- ❑ **Property**:- Means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

Some of the Popular Activities through which Money is laundered...

False Export-Import Invoices



Stock Markets



Agricultural Products



Showing Loans



Popular Activities



Creating Bogus Companies

**BEWARE OF
FAKE
COMPANIES**

Property Markets

PLACEMENT

LAYERING



Collection of Dirty Money



Dirty Money Integrates into the Financial System

A TYPICAL MONEY LAUNDERING SCHEME

Payment by "Y" of False Invoice to Company "X"

Transfer on the Bank Account of Company "X"

Loan to Company "Y"

Wire Transfer



Purchase of Luxury Assets
Financial Investments
Commercial/Industrial Investments

INTEGRATION



Stages in Money Laundering

Placement

- Illegal funds or assets are bought into the financial system.

Layering

- Use of multiple accounts, banks, intermediaries, corporations, countries etc. to disguise the origin.

Integration

- Funds are made available as apparently legitimate.

Placement

- ❑ Placement refers to the physical disposal of bulk cash proceeds derived from illegal activity.
- ❑ This is the first step of the Money-Laundering process and the ultimate aim of this phase is to remove the cash from the location of acquisition so as to avoid detection from the authorities.
- ❑ This is achieved by investing criminal money into the legal financial system by opening up a bank account in the name of unknown individuals or organizations and depositing the money in that account.
- ❑ It may involve use of smurfing techniques through which the launderers make numerous deposits of amounts of money that are small enough to avoid raising suspicion.

Layering

- ❑ Layering is the movement of funds from institution to institution to hide their origin.
- ❑ It consists of putting funds, which have entered the financial system, through series of financial operations to mislead potential investigators and to give the funds the appearance of having legal origins.
- ❑ Launderers may purchase expensive items such as jewellery, yachts or cars in order to change the money's form.

Integration

- ❑ It refers to the reinsertion of the laundered proceeds back into the economy in such a way that they re-enter the financial system as normal business funds.
- ❑ The funds may be reintroduced in the economy through, for instance, the purchase of luxury items or through investment in assets such as shares in a company or real estate.

Objective

- ❑ The PMLA seeks to combat money laundering in India and has 3 main objectives:

To Prevent and Control Money Laundering

To Confiscate and Seize the property obtained from the Laundered Money

To deal with any other issue connected with Money Laundering in India

Punishment

Any person found guilty of Money Laundering

**Rigorous
Imprisonment from 3
years to 7 years,**

AND

Fine up to Rs.5 lakh

If Proceeds of Crime involve any offence under paragraph 2 of Part A of Schedule Offences (i.e. under the Narcotic Drugs and Psychotropic Substance Act,1985)

**Rigorous
Imprisonment from 3
years to 10 years,**

AND

Fine up to Rs.5 lakh

□ In addition , the tainted property shall be confiscated by the Central Government u/s 8(5).

Attachment, Adjudication & Confiscation

- ❑ **Sec.5 :- Attachment of Property involved in Money-Laundering**
- ❑ **Sec.6 :- Adjudicating Authorities, Composition, Powers, etc.**
- ❑ **Sec.7 :- Staff of Adjudication Authorities**
- ❑ **Sec.8 :- Adjudication**
- ❑ **Sec.9 :- Vesting of property in Central Government**
- ❑ **Sec.10:- Management of Properties confiscated**
- ❑ **Sec.11:- Power regarding Summons, Production of Documents and Evidence etc.**

Sec. 5:- Attachment of Property involved in Money-Laundering

- ❑ Where the Director or any other officer not below the rank of Deputy Director, has reason to believe (recorded in writing), on the basis of material in his possession, that-
 - a) Any person is in possession of any proceeds of crime; and
 - b) Such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime, he may by order in writing, provisionally attach such property for a **period not exceeding 180 days** from the date of the order.
- ❑ The Director or any other officer not below the rank of Deputy Director shall immediately after attachment forward a copy of the order, alongwith the material in his possession to the Adjudicating Authority.
- ❑ Every order of attachment made under this section shall cease to have effect after the expiry of the specified period or on the date of the order made u/s 8 (2), which ever is earlier.
- ❑ This section shall not prevent the person interested in the enjoyment of the immovable property attached from such enjoyment.
- ❑ The Director or any other officer who provisionally attaches any property shall **within a period of 30 days** from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

Sec. 48:- Authorities

- There are 4 Authorities for the purpose of this act:-**
 - a) Director or Additional Director or Joint Director,**
 - b) Deputy Director,**
 - c) Assistant Director, and**
 - d) Such other classes of officers as may be appointed for the purposes of this Act.**

Sec. 8:- Adjudication

- ❑ On receipt of complaint u/s 5(5), or applications made u/s 17(4) or u/s 18(10), if the Adjudicating Authority has reason to believe that any person has committed an [offence u/s 3 or is in possession of proceeds of crime], it may **serve a notice of not less than 30 days** on such person calling upon him to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired the property attached u/s 5(1), or seized or frozen u/s 17 or 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government.
- ❑ Where a notice specifies that any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person.
- ❑ Where such property is jointly held by more than one person than such notice shall be served to all persons holding such property.

Sec. 8:- Adjudication....

- **The Adjudicating Authority shall, after-**
 - a) **Considering the reply of the notice issued;**
 - b) **Hearing the aggrieved person and the director or any other officer authorised by him in this behalf; and**
 - c) **Taking into account all the relevant materials placed on record before him, by an order, record a finding whether all or any of the properties which are referred in the notice are involved in money-laundering.**
 - **If a property is claimed by a person other than a person to whom the notice had been issued than an opportunity of being heard shall also be given to such person also to prove that the property is not involved in money-laundering.**

Sec. 8:- Adjudication....

- ❑ If an Adjudicating Authority decides that any property is involved in money-laundering than he shall by an order in writing, confirm the attachment of the property or retention of the property or record seized or frozen and record a finding of that effect.
- Such attachment or record shall – (a) continue during the pendency of the proceedings relating to any offence under this act; and (b) become final after an order of confiscation is passed by the Special Court.
- ❑ Where the provisional order of attachment made u/s 5(1) has been confirmed then the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached or frozen.
- ❑ If Special Court finds that the offence of money-laundering has been committed , it shall order that such property involved in money- laundering or the property which has been used for the commission of the offence of money-laundering shall stand confiscated to the Central Government.
- ❑ If Special Court finds that the offence of money-laundering has not been committed or the property is not involved in money-laundering , it shall order release of such property to the person entitled to receive it.

PRESUMPTION (Section 22 and 23)

- Presumption in PMLA, 2002 are loaded against the defendant.

Presumption



Section 22: As to records or property in certain cases

- A presumption is raised that property/records/documents found/seized from the possession or control of a person actually belong to such person (from whom they are seized) and the contents of such records are true.
- Further, there is also a presumption as to the records being in the handwriting/signatures of the person from whose possession they are seized. Due to the operation of the presumption, the onus, once again, is on accused to rebut the same.

Section 23: In inter-connected transactions

- Presumption that where money-laundering involves two or more connected transactions and one or more such transactions is/are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation under Section 8, it shall, unless otherwise proved to the satisfaction of the adjudicating authority, be presumed that the remaining transactions form part of such interconnected transactions i.e., involved in money-laundering as well.

BURDEN OF PROOF(Section 24)

- **Section 24 of the PMLA casts the burden of proving that (alleged) proceeds of crime are not involved in Money Laundering on the Accused.**



Burden of proof

Section 24(a): a person charged with the offence of money laundering u/s 3, the Authority or the Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money laundering

Section 24(b): any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering

Sec. 9:- Vesting of Property in Central Government

- Where an order of confiscation has been made in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances.
- The Special Court or the Adjudicating Authority shall attach or seize the property only after giving an opportunity of being heard to the person interested in the property attached or seized or frozen.
- If any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of chapter-V , then it may, by order declare such encumbrance or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrance or lease-hold interest.
- Proviso given under this sec. says that any liability in respect of such encumbrances which may be enforced against any person shall not be discharged from such person.

Sec. 10:- Management of Properties Confiscated

- ❑ The Central Government may, by order published in the official gazette, as many of its officers (not below the rank of a joint secretary to the government of India) as it thinks fit, to perform the functions of Administrator.**
- ❑ The Administrator appointed shall receive and manage the property in relation to which an order has been made in such manner and subject to such conditions as may be prescribed.**
- ❑ The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government u/s 9.**

Summons, Searches and Seizures

- Sec.16 :- Power of Survey**
- Sec.17:- Search & Seizure**
- Sec.18:- Search of Persons**
- Sec.19:- Power to Arrest**
- Sec.20:- Retention of Property**
- Sec.21:- Retention of Records**
- Sec.22:-Presumption as to Records or Property in certain cases**
- Sec.23:-Presumption in Inter-Connected Transactions**
- Sec.24:-Burden of Proof**

Sec.16 "Power of Survey", if an Authority

The Authority after completion of survey forward a copy of the reasons so recorded along with material in his possession to the Adjudicating Authority.

On the basis of material which is in his possession, and

Has Reason to Believe which is in writing

An offence u/s 3 has been committed /commission of such offence is carried on

Then he may conduct a survey on that person and may enter any place which are:-

Within the limits of the area assigned to him.

He is authorised for the purpose of this sec. By any other authority(to whom such area is assigned)

Authority may require any proprietor, employee or any other person who may at that time and place is there to :-

Afford him necessary facility to inspect such records as he may require and are available at that place at that time,

Afford him necessary facility to check or verify the proceeds of crime or any transaction which is related to that proceeds of crime which may be found during survey; and

Furnish such information as he may require for his proceedings.

"Search & Seizure" (Sec.17)

If the Director or any other officer (not below the rank of Deputy Director) on the basis of information in his possession, has reason to believe that any person:-

Has committed any act which constitutes money-laundering, or

Is in possession of any proceeds of crime involved in money-laundering, or

Is in possession of any records relating to money-laundering, or

Is in possession of any property related to crime

Then, he may authorise any officer subordinate to him to:-

Enter and search any building, place, vessel, vehicle or aircraft

Break upon the lock of any door, box, locker, almirah, safe or other receptacle (where the keys thereof are not available)

Seize any or Property found

Place marks of Identification on such record or property

Make a note or an inventory of such record or property

Examine on oath any person

The authority shall within a period of 30 days from such seizure or freezing, file an application before the Adjudicating Authority (Requesting for retention of seizure or for continuation of the order of freezing served

The Authority after search and seizure forward a copy of the reasons so recorded along with material in his possession to the Adjudicating Authority.

**“Search & Seizure”
(Sec.17)**

If an authority is satisfied that any information obtained during survey is concealed/tampered, then he may enter and search the building or place

The Authorised officer may freeze such record or property which cannot be seized

“Search of Persons” (Sec.18)

If an authority has reason to believe (in writing) that any person has secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for relevant to any proceedings under this Act, he may search that person and seize such record or property.

The authority immediately after search and seizure, forward a copy of the reasons and material in his possession to the Adjudicating Authority.

Where an authority is about to search any person, he shall, if such person so requires, take such person **within 24 hours** to the nearest Gazetted Officer, superior in rank to him or a Magistrate.

If the requisition is made, the authority shall not detain the person for more than 24 hours prior to taking him before the Gazetted Officer, superior in rank to him or a Magistrate.

The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person.

Before making the search the authority shall call upon two or more persons to attend and witness the search and it shall be made in the presence of such persons.

The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.

The Authority shall record the statement of the person searched.

No female shall be searched by any one except a female.

The authority seizing any record or property shall, within a period of 30 days from such seizure, file an application requesting for retention of such record or property, before the Adjudicating Authority.

Section 19 "Power to Arrest"

If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (to be recorded in writing) that any person has been guilty of an offence punishable under this act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person forward a copy of the order along with the material in his possession, to the Adjudicating Authority.

Every person arrested shall **within 24 hours** be take to a Judicial Magistrate or a Metropolitan Magistrate. The period of 24 hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's Court.

Sec.20 "Retention of Property"

Where any property has been seized or frozen and the authorised officer has on the basis of material in his possession and has reason to believe (in writing) that such property is required to be retained for the purposes of adjudication. Such property may if seized, be retained or if frozen, may continue to remain frozen for a **period not exceeding 180 days** from the day on which such property was seized or frozen.

The office authorised by the Director shall immediately after he has passed an order for retention or continuation of freezing of the property for the purposes of adjudication forward a copy of the order along with the material in his possession to the Adjudicating Authority.

On the expiry of the said period, the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation or freezing of such property beyond the said period.

The Adjudicating Authority before authorising the retention/continuation of freezing of such property beyond the specified period, he shall satisfy himself that the property is prima facie involve in Money-Laundering and it is required for the purpose of adjudication.

After passing the order of confiscation Special court shall direct the release of all the property other than the property involved in Money-Laundering.

Where an order releasing the property has been passed by the special court/Adjudicating Authority, the Director or any other officer authorised by him in this behalf may withhold the release of any such property for a **period of 90 days from the date of [receipt] such order**, if he is the opinion that such property is relevant for the appeal proceedings under this Act.

Sec 21 "Retention of Records"

Where any records has been seized or frozen and the Investigating Officer or the authorised officer in this behalf, has reason to believe that any of such records are required to be retained for any inquiry. Such records may if seized, be retained or if frozen, may continue to remain frozen for a **period not exceeding 180 days** from the day on which such property was seized or frozen.

The person from such records seized or frozen, shall be entitled to obtain copies of records.

On the expiry of the said period, the records shall be returned to the person from whom such records were seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation or freezing of such records beyond the said period.

The Adjudicating Authority before authorising the retention/continuation of freezing of such records beyond the specified period, he shall satisfy himself that the records are required for the purpose of adjudication.

After passing of an order of confiscation, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

Where an order releasing the records has been made by the special court/Adjudicating Authority, the Director or any other officer authorised by him in this behalf may withhold the release of any such record for a **period of 90 days** from the date of [receipt] such order, if he is the opinion that such record is relevant for the appeal proceedings under this Act.

Sec. 26 :- Appeals to Appellate Tribunal

- ❑ The director or any person aggrieved by an order made by the Adjudicating Authority may prefer an appeal to the Appellate Tribunal.
- ❑ Any reporting entity aggrieved by any order of the Director may also prefer an appeal to the Appellate Tribunal.
- ❑ Every appeal shall be filed **within a period of 45 days** from the date on which a copy of the order made by the Adjudicating Authority or Director is received.
- ❑ Appellate Tribunal after giving an opportunity of being heard entertain an appeal after the expiry of the said **period of 45 days**, only if it is satisfied that there was sufficient cause for not filing it within that period.
- ❑ On receipt of an appeal, the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- ❑ The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or Director, as the case may be.
- ❑ The Appellate Tribunal shall dispose of the appeal **within 6 months from the date of filing of the appeal.**

Sec. 42 :- Appeal to High Court

- ❑ Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court **within 60 days** from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order.
- ❑ The High Court may if it is satisfied that the Appellate was prevented by sufficient cause from filing the appeal within the said period allow it to be filed within a **further period not exceeding 60 days**.

Sec. 62:- Punishment for Vexatious Search

- ❑ Any authority or officer exercising powers under this act or any rules made there under, who without reasons recorded in writing, -
 - a) Searches or causes to be searched any building or place; or
 - b) Detains or searches or arrests any person,
- ❑ Then he shall be liable for punishment for such offence, i.e.:-
 - Imprisonment for a term up to 2 years, or
 - Fine up to Rs. 50,000, or
 - Both

Sec. 64:- Cognizance of Offences

- ❑ No court shall take cognizance of any offence u/s 62 or sub sec.(1) of section 63 except with the previous sanction of Central Government.
- ❑ The Central Government shall, by an order either give sanction **within 90 days** of the receipt of the request in this behalf.

Sec. 63:- Punishment for False information or failure to give information

- ❑ Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this act, then he shall be liable for punishment , i.e.:-
 - Imprisonment for a term up to 2 years, or
 - Fine up to Rs. 50,000, or
 - Both.
- ❑ If any person, -
 - a) Being legally bound to state the truth of any matter relating to an offence u/s 3, refuses to answer any question put to him by an authority in the exercise of its powers under this act, or
 - b) Refuses to sign any statement made by him in the course of any proceedings under this act, which an authority may legally require to sign, or
 - c) To whom a summon is issued u/s 50 either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce books of account or documents at the place or time,
 - Then, he shall be liable for **penalty, a sum which shall not be less than Rs.500 but which may extend to RS. 10,000 for each such default or failure.**
- ❑ No order shall be passed by an authority unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

Reporting Entity to maintain records (Sec 12)

- Every Reporting Entity shall:-
 - a) Maintain a record of all transactions
 - b) Furnish all the information to the Director (whether attempted or executed)
 - c) Verify the identity of its client
 - d) Identify the Beneficial owner
 - e) Maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.
- Every information maintained, furnished or verified shall be kept confidential.

Reporting Entity to maintain records (Sec 12)...

- ❑ **“Reporting Entity”** means a banking company, financial institution, intermediary or a person carrying on a designated business or profession.
- ❑ **“Value”** means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.
- ❑ **“Banking Company”** means
 - All Nationalized Banks, Private Indian Banks and Private Foreign Banks
 - All Co-operative Banks viz primary Co-operative Banks, State Co-operative Banks and Central (District Level) Co-operative Banks
 - State Bank of India and its Associates and Subsidiaries
 - Regional Rural Banks

Reporting Entity to maintain records (Sec 12)...

- ❑ **“Financial Institution” means**
 - **Financial Institution as defined in Sec 45-I of the RBI Act namely EXIM Bank, NABARD, NHB, SIDBI, IFCI Ltd., IDFC Ltd., IIBI Ltd. And TFCI Ltd.**
 - **Insurance Companies**
 - **Hire Purchase Companies**
 - **Chit Fund Companies as defined in the Chit Funds Act.**
- ❑ **“Intermediary” means person registered u/s 12 of the SEBI Act, 1992:-**
 - **Stock brokers**
 - **Sub- brokers**
 - **Share Transfer Agents**
 - **Registrars to Issue**
 - **Merchant Bankers**
 - **Underwriters**
 - **Portfolio Managers**

Top 10 remittance corridors, 2010

Source: :Recipient **0.0** :\$bn



Financial Intelligence Unit

- FIU-IND in order to achieve its mission of providing quality financial intelligence for safeguarding the financial system from the abuse of money laundering, terrorist financing and other economic offences, has set three strategic objectives as under:
- Combating money laundering, financing of terrorism and other economic offences;
- Deterring money laundering and financing of terrorism;
- Building and strengthening organisational capacity.
- The main function of FIU-IND is to receive cash/suspicious transaction reports, analyse them and, as appropriate, disseminate valuable financial information to intelligence/enforcement agencies and regulatory authorities.

RBI penalises 22 Banks

for violation of its instructions, among other things, on Know Your Customer/Anti Money Laundering



Monetary Penalty (in ₹ Crores)

Andhra Bank	2.50	Kotak Mahindra Bank Ltd.	1.501
Bank of Baroda	3.00	Oriental Bank of Commerce	2.00
Bank of India	3.00	Punjab and Sind Bank	2.50
Canara Bank	3.001	Punjab National Bank	2.50
Central Bank of India	3.00	State Bank of India	3.00
Deutsche Bank A.G.	1.00	The Federal Bank Ltd.	3.00
Development Credit Bank Ltd.	1.00	The Lakshmi Vilas Bank Ltd.	2.50
Dhanlaxmi Bank Ltd.	2.00	The Ratnakar Bank Ltd.	0.50
Indian Overseas Bank	3.002	United Bank of India	2.50
ING Vysya Bank Ltd.	1.50	Yes Bank Ltd.	2.00
Jammu & Kashmir Bank Ltd.	2.501	Vijaya Bank	2.00

Cautionary Letter

Barclays Bank PLC	Standard Chartered Bank
BNP Paribas	State Bank of Patiala
Citibank N.A.	The Bank of Tokyo
Royal Bank of Scotland	Mitsubishi UFJ Ltd.



PROVE YOURSELF ONCE MORE

Finish the paperwork soon to avoid hiccups later

WHAT ARE KYC NORMS?

KYC stands for know your customer. Compliance with KYC norms is mandatory in case of investments in mutual funds, direct equities, opening of a bank account, taking a gas connection and others

WHAT IS THE RATIONALE?

To prevent money laundering (by infusing unaccounted money into banking system)

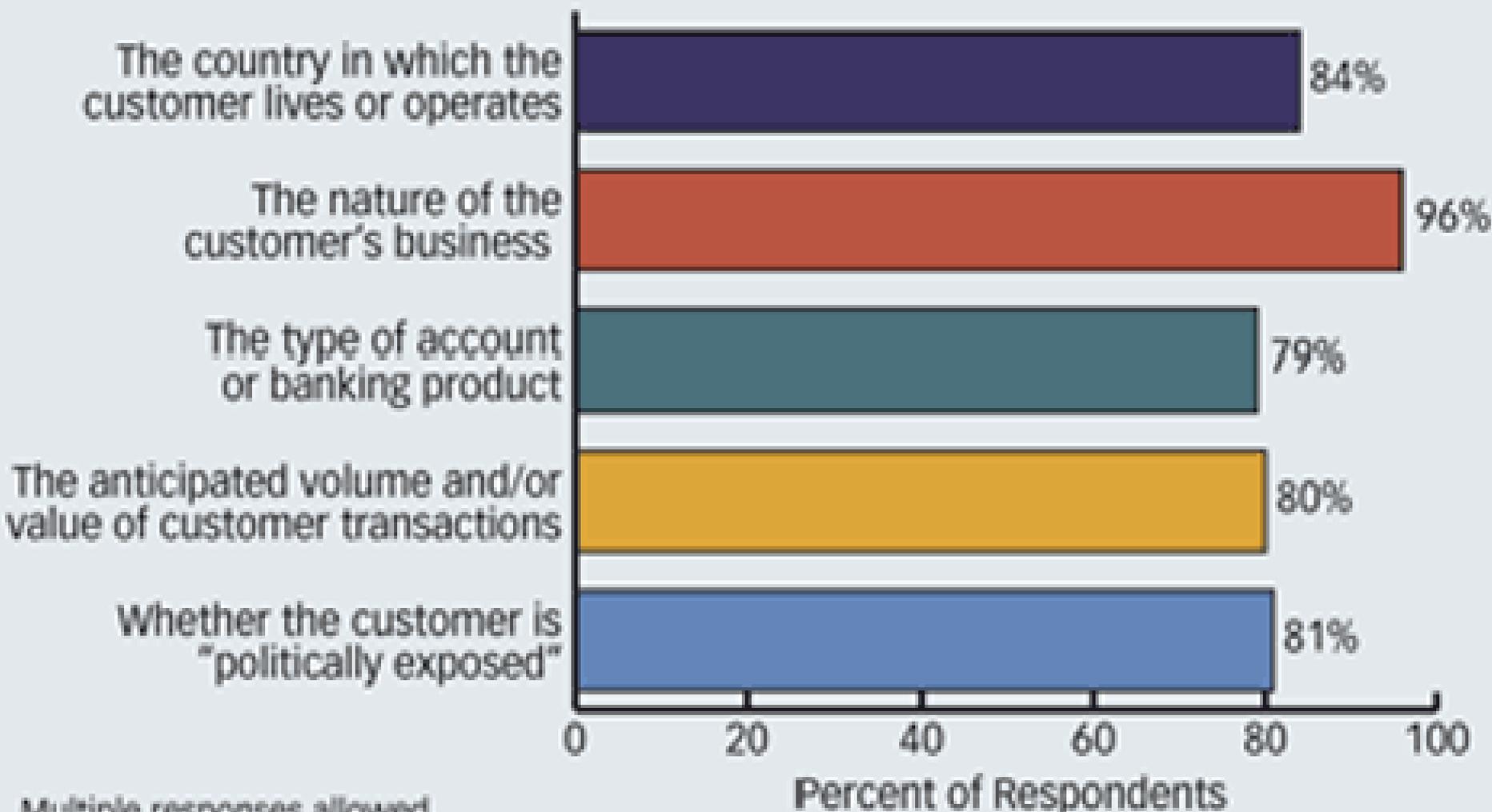
WHAT BANKS ARE ASKING FOR

- Self attested copy of Permanent Account Number (PAN).
- Self attested proof of address
- Passport size photograph
- KYC form sent by the bank duly signed.



Red Flags

Factors considered by financial institutions when using a risk-based approach at the account-opening stage:



Multiple responses allowed.

Source: KPMG's Global Anti-Money Laundering Survey, 2007

Thank You

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