



**ABU DHABI COMMERCIAL BANK**

**India**

**ANTI MONEY  
LAUNDERING POLICY**

Amended upto December, 2006

**© I N D E X ©**

Sr. No.	Particulars
1 .	Preamble
2 .	Rationale/Objective of the Policy
3 .	Money Laundering
4 .	Know Your Customer (KYC)
5 .	Process and Procedures to monitor Suspicious Transactions
6 .	Reporting System for High Value Cash/Suspicious Transactions
7 .	Evaluation of KYC Guidelines by Concurrent Auditor
8 .	Retention of Records

9 .	Training
1 0 .	Duties/Responsibilities
1 1 .	The importance of KYC Guidelines to the Employees
1 2 .	Transactions Monitoring
1 3 .	Appointment of MLRO & duties of MLRO
	Annexure 'A'
	Annexure 'B'
	Annexure 'C'
	Annexure 'D'

## **1. PREAMBLE**

Money Laundering is a serious threat to financial system of all countries and it leads to destruction of the country's sovereignty and character. This has been widely recognized at the international level. The recognition has culminated in concerted efforts the world over to fight this ultra-criminal activity thru enactment of stringent laws, regulations and measures aimed at securing financial systems against money laundering. FATF (Financial Action Task Force) was constituted in 1989 and is a concrete step initiated at the global level. The three basic tenets of Anti Money Laundering i.e., Know Your Customer (KYC), Source of funds and End use/destination of funds have been covered in the policy enclosed.

The adoption of this policy is aimed at increasing awareness of money laundering activity and its ill effects and to simultaneously contribute, on the part of staff members to counter ML in a significant way, including guarding against the ML all times.

The directives by Regulators at all levels and other bodies to which ADCB India subscribes will be abided by ADCB - India while giving effect to this policy.

Good compliance is generally best facilitated by a willing adoption the regime of best practice; ADCB-India, as a whole, would aim at this while implementing this policy.

## **2. RATIONALE/OBJECTIVE OF THE POLICY:**

ML is the process which criminals engineer to cover the real origin and ownership of dirty or illegal money emanating from criminal illegal activities, and thereby render the prosecution and confiscation of funds so generated, impossible.

The rationale, therefore, would be to reflect the global resolve to prevent and fight ML activity, by establishing governing standards to insulate the Bank from being used as a component of financial system to launder money.

In the light of above, the objectives have been laid down as enumerated below:

- (a) Enable the Bank to conduct clean, commercial business, conforming to standards set by Banking Industry; within the framework designed by regulations and H.O.
- (b) To follow, without exception, the internationally accepted standards used for KYC compliance.
- (c) To report and take suitable action, upon detecting the suspicious activity involving shades of money laundering as directed by regulators and H.O. from time to time.
  
- (d) To comply with applicable laws in India with reference to ML and adhere to standards accepted internationally by the financial world on the subject.

The policy does in a implicit way, envisages AML aspects on the lines of recommendations given by Financial Action Task Force.

### **3. MONEY LAUNDERING:**

The activity is an involvement in any transactions/or series of transactions that is designed to disguise the nature/source of proceeds derived from illegal activities, which may comprise drug trafficking, terrorism, organized crimes, murders, fraud, etc.

It is important for all staff members to be conversant and be absolutely familiar with the ML process (described below) as they must be vigilant all the times and should any of the aspects involved in ML process touch/surface our business they must be able to read the danger signal and blow the whistle.

- c. **Placement**: The first stage is successfully disposing of the physical cash received thru illegal activity. The crooks accomplish this by placing this into traditional or non-traditional financial institutions.
- d. **Layering**: The second stage concentrates on separation of proceeds from criminal activity thru the use of various layers of monetary transactions. These layers are aimed at wiping audit trails, disguise the origin and maintain anonymity for people behind the transactions. E.g. Fraudulent letters of credit transactions, over invoicing for goods transshipped from another country, using high value credit cards to pay for goods/services and accounting for the credit card invoices with balances held in offshore banking secrecy havens .
- e. **Integration**: The final link in money laundering process is sometimes called the integration stage. This occurs when the laundered or cleaned up money is legitimately brought back into financial systems operated by end user and when it is safe and insulated from enquiry by any agency with a legitimate reason for querying the existence of money. E.g. Loan back technique or loan-default technique where the

lender bank seeks to recover its assets (loans to money launderers) by attaching the securities held by bank which exist in the form of black money.

#### 4. CUSTOMER ACCEPTANCE POLICY:

In the context of the concerns regarding 'Money Laundering' it is appropriate that the bank lays down appropriate guidelines regarding whom it shall accept, or more precisely, whom it shall not accept as its customers as also suitable set of 'Know Your Customer' norms and formalities for accepting a customer. It will be desirable to eliminate the possibility of accepting as customers, persons, institutions or parties where there may be reasonable apprehension that the account could be used for money laundering or other anti social activities. As a preventive and as a prudential measure the bank may not open accounts in such cases as the following:

2. Where the customer's identification is not established to the satisfaction of the bank;
3. Where benami account is proposed to be opened;
4. Where there is reasonably reliable information that the prospective customer has a doubtful past;
5. Savings bank accounts expressly forbidden by the Reserve Bank of India.
6. Accounts of terrorist individuals/organizations as advised by the Reserve Bank of India or other authorities and persons related/connected to/with them.

The responsibility for screening the customer will be with the Team Leader, Front Office and with respective Team leaders

in NR centers and in cases of doubt may consult the Head, Retail Banking, before taking a decision.

## 5. KNOW YOUR CUSTOMER (KYC)

### 5.1 Introduction:

The importance of KYC approach, a very essential and preliminary aspect, need not be over emphasized. The issuance of a comprehensive circular by Reserve Bank of India in August 2002 on this approach depicts the seriousness and recognition attached to KYC principle in guiding the Indian commercial banks in this regard.

### 5.2 Objectives:

- (a) To establish procedures to verify the bonafide indentification of individuals/corporate office accounts.
- (b) To establish process and procedures to monitor high value transactions and suspicious transactions.
- (c) Establish systems for conducting due diligence and reporting of such activities.

The focus of KYC is 'back to basics' where elaborate standard for obtaining detailed information regarding new customers at the initial stage and that of existing customers over a period of time would be achieved. This would help in establishing the genuineness and bonafides of customers and keeping a watch over transactions,

particularly those of a suspicious nature, and reporting these to the regulators/law enforcers.

### 5.3 Customer Identification and Profile:

(a) *Accounts of Individuals:*

In Bombay and Bangalore, accounts can be opened on the basis of any of the following:

- Introduction from a third person having an existing relationship with the Bank of between 6/12 months or by a well known local authority or through staff member knowing the potential customer.
- Valid Passport alone when the address on the passport and the account opening form is the same.
- Any other document from each of the undernoted two lists for a photo ID and proof of residence.

<i>Group A</i>	<i>Group B</i>
Passport when address differs	Credit Card Statement
Election ID Card	Salary Slip
Pan Card	Income/Wealth Tax Assessment
Govt./Defence ID Card	Electricity Bill
ID card of reputed employees	Telephone Bill
Driving Licence (latest)	

Documents under Group A will establish the identity of the account holder and

documents under Group B will give the present address.

While the above should normally suffice, it is possible that proof of address may not be established. We may, therefore, obtain a letter from the employers giving the correct address or obtain the credit card statement, etc.

Joint Account Holders who are not closely related will have to establish their identity and address separately.

In respect of NRI accounts, introduction/verification of signature to be made by a Bank (including ADCB)/Indian Embassy High Commissioner/Consulate/Notary Public/Person known to our Bank.

Ration card will not be used as proof of residence as per Government guidelines.

(b) ***Other than Individual Accounts:***

Accounts of the following customers will be opened by the Bank after obtaining documents stated against their names and any document/introduction the Bank may feel necessary.

- Company:  
Certificate of Incorporation,  
Memorandum and Articles of  
Association, Certificate of

Commencement of Business and a copy of the Resolution of the Board of Directors.

- Society/Association/Clubs:  
Resolution for opening the account and a copy of the bye-laws and certificate of registrations in the case of registered clubs, societies and associations.
  
- HUF  
Declaration from the Karta.
  
- Trust  
A copy of resolution, trust deed and copy of registration certificate.
  
- Firms  
In the case of partnership firm, partnership deed, partnership letters and introduction from a person known to the Bank.

Interviews should also be conducted wherever possible and a letter of thanks in all instances of opening accounts should be sent by post/courier to the recorded address of customers and introducers with the purpose of thanking them for opening the account and for verification of genuineness of address furnished by the customer. Undelivered envelopes should be followed up closely.

Operating staff should exercise due diligence and care while opening an account in terms of RBI

guidelines/regulations and legal compliance in force. However, KYC should not be used to deny customer from opening accounts.

***(c) Customer Profile:***

Due diligence will also involve correctly profiling the customer in the account opening forms covering the following (See Annexure D):

- i. Occupation
- ii. Date of Birth
- iii. Educational Qualification
- iv. Dealing with other Banks
- v. Existing Credit facilities
- vi. Assets (approx)
- vii. Source of funds

It may also be ensured that KYC guidelines are made applicable to new and existing account holders.

Introduction of large number of accounts by a single introducer should be dealt with cautiously and we must satisfy ourselves about this.

**5.4 Identification Of High Value/ Suspicious Transaction/Terrorism Finance:**

The extant guidelines from Reserve bank of India will be mandatorily followed by ADCB India;

- i. Banks are required to issue travelers cheques, demand drafts, mail transfers, and telegraphic transfers for Rs.50,000 and above only by debit to

customer's accounts or against cheques and not against cash. Further, the applicants (whether customers or not) for the above transactions for amount exceeding Rs.50,000 should affix permanent (Income Tax) account number on the applications. Since KYC is now expected to establish the identity of the customer and as the issue of demand draft etc. for Rs.50,000 and above is by debit to account, the requirement for furnishing PAN stands increased uniformly to Rs.50,000/-.

- ii. The banks are required to keep a close watch of cash withdrawals and deposits for Rs.10 lakhs and above in deposit, cash credit or overdraft accounts and keep record of details of these large cash transactions in a separate register.

## **5.5 Transaction of Suspicious Nature:**

Identification of suspicious transactions,

For identification of suspicious transaction, we should take the precautions which would be exercised by a man of normal prudence. Some of the indicators of suspicious transaction are:

- i. Involvement of funds for illegal activity.
- ii. Intending to hide or disguise assets derived from illegal activities.
- iii. Intention to evade anti-money laundering guidelines.
- iv. Customer has no business or apparent lawful purpose and has no linkage with such business.

## **5.6 Terrorism Finance**

RBI has circulated a list of Terrorist organizations, which will require to be referred to, to check existence of such accounts of Terrorist organizations and initiate appropriate action before opening an account. The list of Terrorist organizations will be installed in the ISBS system and will 'pop-up' at the time an account is being input into the system so that the staff inputting the data can access such list. If any such name does come up, the agencies/regulators should immediately be informed.

## **5.7 Adherence to FCR Act 1976:**

In case of foreign organization, in addition to the usual documents, a certificate to the effect that the organization is one registered with the Government of India and adheres to the FCRA 1976 will also be obtained at the time of opening such accounts.

## **6. PROCESS AND PROCEDURES TO MONITOR SUSPICIOUS TRANSACTIONS**

### **6.1 Transactions of suspicious nature:**

Staff are required to record and report all transactions of suspicious nature in deposit, loan and remittances accounts etc., with full details to Head – Operations. The procedure to be followed is as under:

The Officer-in-Charge of the C&R/NRI Dept. will ensure compliance with the KYC guidelines. The officer, who has interviewed the customer, should affix his signature for having interviewed the prospective customer and the C&R/NRI officer before permitting opening of the account should satisfy himself that all aspects of KYC guidelines are complied with.

At the time of opening of the account, based on customer's profile, a threshold limit of transaction is to be determined.

It shall be our endeavour that the system should be programmed to capture the transactions not consistent with the customer's profile (i.e., transactions beyond the threshold limit), and to generate a message to exercise caution by the operating staff. The system will be programmed to generate a report at the end of the day giving the particulars of transactions put through beyond the respective threshold limits set for the customers. The C&R/NRI officer should invariably check the report at the end of the day and satisfy himself about the genuineness of the transactions. Till such time the software is developed and introduced, we will proceed as per para 5.2.

C&R/NRI officer should use reasonable judgment in determining the suspiciousness of the transaction and the accounts wherein the suspicious transactions were found are to be closely monitored, so that the documentary evidence upon which a suspicion is aroused is built properly.

The cautious approach in the process is very essential to take care that the customers are not driven away from the Bank.

An exemplary list of suspicious transactions is provided in Annexure 'A'.

## 6.2 Transactions of Large amounts:

It will be a prudent practice to segregate after scrutiny, the large sized transactions and satisfy ourselves about such transactions. Accordingly, the following threshold limits would be put in place for all concerned departments to scrutinize such entries and to satisfy themselves about the genuineness of the same.

<i>Transactions Limit</i>	<i>Value</i>
1. Inward/Outward Clearing	Rs.10 mio and above
2. Cash Deposit/Withdrawal	Rs.1 mio
3. Bill Discounted/Collection	Rs.10 mio
4. Cheques Purchased (all currencies)	Rs.1 mio
5. Outward/Inward Remittance	Rs.10 mio
6. Letter of Credit	Rs.10 mio
7. Performance/ Financial Guarantee	Rs.10 mio

The Branch management may vary these limits in the light of experience and subject to directives to be received from Regulators, from time to time.

## 7. REPORTING SYSTEM FOR HIGH VALUE CASH/SUSPICIOUS TRANSACTIONS

### 7.1 Cash transactions of Rs.10.00 lacs and above:

Operating staff is required to record and report all individual cash deposits and withdrawals of Rs.10.00 lacs in deposit, cash credit and overdraft accounts etc., at monthly intervals to the Head – Operations.

## **7.2 Suspicious Transactions:**

To observe “Four Eyes” concept in reporting suspicious transactions at branch level, first dealing officer at the branch will report to the C&R officer who will get himself satisfied about existence of a suspicious activity/nature and then himself report to Head Operations who will bring this to the notice of Dy. Chief Executive/Chief Executive.

Further course of action is to be decided by the Management in consultation with Solicitors to take up the matter with the appropriate law enforcing authorities designated under the relevant laws governing such activities.

## **7.3 Terrorist Finance:**

In case the name of any banned organization appear as payee/endorsee/applicant, it will be our endeavour to ensure that the computer will throw a caution. Reporting of such transactions as and when detected will be as above.

## **8. EVALUATION OF KYC GUIDELINES BY CONCURRENT AUDITOR**

An independent evaluation of KYC compliance would require to be carried out by Concurrent Auditor. He would be required to comment on the effectiveness for measures taken by branches for implementation of KYC guidelines and prevention of money laundering at Bombay and Bangalore.

## **9. RETENTION OF RECORDS:**

In terms of the Banking Regulation Act, records such as Account Opening Forms, vouchers, ledgers, registers, etc., pertaining to Banking Transactions for specified periods are required to be

maintained. In addition, the following documents in respect of accounts, which have been reported for suspicious activities, are required to be retained at the end of business relationship with the customer, which in any case shall not be less than 5 years.

- Customer Profiles
- Reports made to government authorities concerning suspicious customer activity relating to possible money laundering or other criminal conduct together with supporting documentation.
- Any other documents required to be retained under applicable money laundering laws/regulations.

All financial transactions records are to be retained for at least 5 years after the transaction has taken place and are to be made available for scrutiny of Law enforcing agencies, Audit functionaries as well as Regulators, as and when required.

#### **10. TRAINING:**

Staff would be trained on an ongoing basis for strict implementation of KYC guidelines and AML measures.

#### **11. DUTIES/RESPONSIBILITIES**

The chain of duties and responsibilities at branches are as under:

<i>Personnel</i>	<i>Duties/Responsibilities</i>
Employee/officer in charge of accounts/officer vested with the authority to open new accounts	<p>To interview the potential customer</p> <p>To verify the introductory reference/customer profile.</p> <p>To arrive at threshold limit for each account (new as well as existing) and to exercise due diligence in identifying suspicious transactions.</p> <p>To ensure against opening of accounts in the name of terrorist/banned organizations.</p> <p>To adhere with the provisions of Foreign Contribution Regulation Act 1976.</p> <p>To comply with the guidelines issued by the Bank from time to time in respect of opening and conduct of account.</p>
Head of Operations	<p>To scrutinize and satisfy himself the information furnished in the account opening form/customer profile/ threshold limit are in strict compliance with KYC guidelines before authorizing opening of account.</p> <p>To certify regarding compliance with KYC guidelines and report suspicious transactions to Dy. Chief Executive/Chief Executive.</p>
Concurrent Auditor	To verify and record his comments on the effectiveness of measures taken by branches/level of implementation of KYC guidelines.
Top Management	Prompt reporting of information regarding suspicious transactions to concerned law enforcing authority in consultation with Solicitors.

## 12. THE IMPORTANCE OF KYC GUIDELINES TO THE EMPLOYEES:

The Bank employees will conduct themselves in accordance with the highest ethical standards and in accordance with the extant regulatory requirements and laws. Staff should not provide advice

or other assistance to individuals who are indulging in money laundering activities.

Money laundering activities cover not only the criminals who try to launder their ill-gotten gains, but also the banks/ financial institutions and their employees who participate in those transactions and have knowledge that the property is criminally derived. "Knowledge" includes the concepts of "conscious avoidance of knowledge."

### **13. TRANSACTIONS MONITORING:**

A customer's account opened with proper and reasonable identification requires active and careful review on an on-going basis by verification of transactions.

#### **13.1 OFFSHORE TRANSACTIONS:**

1. Offers of multimillion rupee deposits of below market rates from a confidential source to be sent from or guaranteed by an offshore Bank/institutions thru a letter, telex or official communication.
2. Transactions with an offshore 'shell' bank whose name sounds similar to a major international Bank with little variance.
3. Loans made on the strength of a borrower's financials which reflect large investments in and income from businesses incorporated in Bank secrecy havens countries or non-cooperative countries and territories (e.g.: Egypt, Indonesia, Nigeria, Myanmar, Phillipines, Ukraine, Guatemala, Grenada, Nauru, Cook Islands and St. Vincent and Grenadines.)

### 13.2 TRADE SERVICES:

1. Transactions not providing clear description of goods/technology being shipped.
2. Transfer of Documentary Credit reflecting unreasonable profit margin in the underlying transaction or names of an offshore financial institution.
3. Commercial L/C or collection item, not with precise presentation of transport document.
4. L/C designating place of payment other than beneficiary's stated location.
5. L/C amended (just before the payment) with reference to Beneficiary's name/address, or including assignment of proceeds and transfers at the time of presentation of documents.
6. Standby letters of credits used as bid bonds or performance bonds without the reference to underlying projects or contract.
7. L/C involving unusual intermediary or number of intermediary/ies.
8. L/Cs requiring the Bank to allow payment request by beneficiary in the same country without presentation of documents to be sent to opening Bank.

9. Witnessing international transactions in the accounts of customers with no such history of international transactions or irrelevant to stated business.
10. Irrational or unusual payment terms/prices or interest rates and penalties and compensations in L/C.
11. L/C for transactions of large size involving high risk countries.
12. B/L mentioning containerized cargo/es without container/s numbers/or sequential numbers.
13. Exceptional degree of secrecy/confidentiality with respect to L/C transactions, required by customer.
14. L/C requesting consignee's name in Bill of Lading with a vague clause e.g. to be advised or determined between applicant and beneficiary, rather than the established practices in Documentary Credit.

### **13.3 General Accounts:**

1. High activity but low balances,
2. Insensitivity to transaction fees
3. Alterations in account activity/patterns inconsistent with account history.
4. Customers desiring unnecessarily complex transactions,
5. References to/by persons impossible to verify or difficult to access.
6. Unusual documentation.

7. Credit transactions by cheques/all cash withdrawals.

#### **13.4 Loan/ Credit transactions:**

1. Customer uses cash collateral / parked offshore to obtain loan/facility.
2. Purpose of loan not recorded or ambiguous.
3. End use of loan proceeds not consistent with purpose advised to Bank.
4. Borrower settling “problem” loans by large amounts of cash suddenly with no reasonable explanation of funds/source.
5. Purpose of loan does not make economic sense; or provision of cash collateral but non-disclosure of purpose of loan.
6. Using cash deposit for collateralizing a loan.
7. Loan proceeds unexpectedly channeled offshore.

#### **13.5 Correspondent Bank Transactions:**

Transactions conducted thru correspondent relationships need to be managed taking a risk based approach.

- (a) Normal TT/DD transactions thru vostro A/cs or local correspondent accounts, involving funds transfers do not pose big risk within India, however, remittances received without remitter’s name, details of originating bank should be carefully monitored irrespective of beneficiary account and type while honoring (at counters) drafts and telegraphic transfers above Rs.2,50,000/-. The

Indian Operations will be extra watchful as regards identity of beneficiary, the frequency of receiving such remittances.

- (b) Similarly, while issuing FIRC's (Foreign Inward Remittance Certificates) against drafts, the staff will ascertain the remitter's name/location from overseas branches. (Since the beneficiary is allowed to declare the remitter's name and purpose of remittance, it is likely that a launderer will mislead the Bank to destroy the audit trails.)
- (c) Arrangements should be made to ensure that correspondents advise the Bank of any local exchange control regulations and restrictions on international transfers. Similarly, it should be ascertained whether correspondent bank themselves are regulated for money laundering prevention in their country and if so, whether the correspondent is required to identify their customers in comparable standards which are at least at par with Indian Banking industry's practices.
- (d) Especially in USA, the provisions of USA Patriot Act need to be complied with.

### **13.6 Sale Of Exchange – Outward Remittances**

Under FEMA 2000, various current account transactions have been liberalized for Indian Residents/Corporates. Even the choice of documents and the manner in which they will undergo scrutiny is entirely Authorised Dealer's responsibility. On this background, utmost care and precautions need to be taken by us. The following

checkpoints will be applied, inevitably, to ensure that a known entity for a known and permitted bonafide purpose effects on outward remittance (by drafts/telegraphic transfers) to a known beneficiary thru a bank account abroad.

1. Beneficiary is an acceptable person (Natural or legal)
2. Establishment of prima facie connection or locus standi between remitter and beneficiary.
3. Purpose; the underlying transaction or motive behind the transaction is not sham and illusory or vexatious. End use of funds with reference to beneficiary bears out well with documents produced and the status of remitter.
4. Transaction is borne by complete set of documents or any other formality bank requires the remitter to fulfill, is complied with without haphazardness or any haggling and irrational references.
5. RBI directives clearly permit the transaction with reference to quantum and conditions.
6. Transactions above US\$5000 or equivalent to be effected only for an existing customer thru his/their account with us or against a non-customer remitter's requests at the instance of remitter's bank and their pay order.  
(Identification of a non-customer is very crucial in such cases.)
7. Pattern of the remittances commensurate to customer's nature of business as disclosed at the time of setting up account/s.

#### 14. APPOINTMENT OF MLRO & DUTIES OF MLRO:

The Bank shall appoint an official of fairly senior cadre with sufficient operational experience and investigative mind. He would have the necessary freedom to act on his own authority and should report to Chief Executive – India.

1. The MLRO's role would be to maintain controls and procedures aimed at deterring criminal elements from using the products and services of the Bank and implement this policy.
2. He will also be instrumental in adhering to KYC principle and effective customer identification and should provide necessary guidance to operating staff.
3. His vigilance in computerized and non-computerized transactions and track patterns would be important.
4. He shall keep himself abreast of all latest developments in AML area in other organizations and countries and effect the changes in AML measures suitably to improve AML exercise the Bank.
5. MLRO will
  - f) Maintain up-to-date list of high risk countries,
  - g) Identify for the Bank, the high, moderate and low risk activities from AML angle.
  - h) Identify unusual transactions.
6. Depending on the Suspicious Transaction Report (STR), he shall co-ordinate with senior management to decide on continuing account relationship with increased caution/alert. In this context, he would decide to report the suspicious transaction to Regulatory law enforcement agencies.

7. He shall arrange to conduct training for staff with latest course material on AML and case studies.
8. MLRO will report to Chief Executive – India once in half-year, the progress and status of the AML measures in vogue and improvements, findings and Bank's on-going preparedness on AML activity.

The MLRO function is crucial and important and we will need to recruit a suitable person who, in addition to the MLRO functions, could also act as compliance officer of the Bank.

#### **15. STAFF ACCOUNTABILITY IN REGARD TO 'KNOW YOUR CUSTOMER' AND 'ANTI MONEY LAUNDERING':**

It is important to ensure that the guidelines/instructions lay down with regard to 'Know Your Customer' and 'Anti Money Laundering' in this Policy is followed in letter and spirit. Therefore, the staff entrusted with this responsibility is urged to get themselves fully conversant therewith and implement them carefully and diligently. Besides, the concurrent auditors should be requested to audit 100% of the new account mandates and to report any deficiencies or deviations observed. They should also audit the large value transactions and report any deficiencies or deviations observed in the compliance of 'Anti Money Laundering' Policy. They should also issue/incorporate separate certificates in their quarterly reports whether the provisions of the 'Know Your Customer' and 'Anti Money Laundering' Policies are being fully complied with.

In the event of any discrepancies or deviations observed (whether in the reports submitted by the auditors, the quarterly reports submitted by the MLRO or otherwise), it is important to ascertain the possible consequences thereof

and set the position right within a short time frame and to avoid any adverse repercussions. At the same time it is also necessary to analyze such cases and to determine whether the same were caused by any shortcomings in the exercise of due diligence on the part of the bank's officials/staff. For the purpose the Country Manager - India will examine all such cases as he may consider appropriate and submit the same to Management Committee with his findings as to the causes, responsibility and consequences of the deficiencies or deviations which will turn examine the same, take a view and initiate such action as may be appropriate including with regard to staff accountability.

**SUSPICIOUS TRANSACTIONS**

***“Behaviour which to the eye of the observer appears to be unusual or out of context in the circumstances within which it is observed.”***

Money launderers involve many types of transactions while disguising the dirty money and layering it. So it is difficult to define a suspicious transaction. However, it may be one that is inconsistent with a client's known business, profession or activity/trade he/she carries on. The key to detect such suspicious transactions is to knowing sufficiently about client to recognize that a transaction/or series of them is unusual.

1. Availing exchange for business trips which is disproportionate to the duration of stay and not befitting the status of the business executive of the company.
2. Cash being tendered for availing foreign exchange by corporate customers.
3. Customers who receive various remittances frequently from centers abroad and make various remittances frequently abroad.
4. Frequent visits to same destinations by a large number of officials who draw disproportionately high amount of exchange.
5. Receipt of international remittances from services irrelevant to customer's business/profession or from destinations in countries which are known for money laundering e.g. tax havens and countries which do not have anti money laundering legislations.

6. Money activities in accounts of customers, which show sudden and disproportionate growth in volumes.
7. Customer or his representative reluctant to give information relating to customer's activities.
8. Customer's account exhibiting large deposits through tender of currency bearing the labels of other banks.
9. A single cash deposit of substantial amount comprising of large component of high/low denomination notes.
10. Unlimited applications/requests for drafts/pay orders against cash.
11. Customers requiring exchange of small denominations of notes for larger denominations and vice versa.
12. Several cash deposits/withdrawals below a specified threshold limit to avoid filing a report. These may be necessary in case of transactions above the threshold level, i.e. initial splitting of transactions.
13. Individual/group that induces or attempts to induce the bank employee/s to avoid filing reports/or any other forms.
14. Depositing small amount of cheques but rare big withdrawals..
15. Request for wire transfers, out of country, financed by multiple banker's cheques (just below threshold limit).

16. Customer receiving wire transfers and converting the balances in monetary instruments favoring third parties.
17. Cancellation of Banker's cheques obtained for large amounts favoring Govt. Depts., under the pretext of cancellation of transaction/contract or request for cancellation of drafts/pay order of large sums obtained from the Bank after a lapse of substantial period of time.
18. A customer or a non-customer receives incoming telegraphic transfers "payable on proper identification" and/or to convert the funds to banker's cheques and mail them to customer or non-customer when
  - a. The amount is very large, or just below the specified threshold limit decided by the Bank or legislation.
  - b. Funds come from a foreign country
  - c. Transactions are repeated.

Risk based monitoring of transactions (Automatic/Manual) will be undertaken and accordingly guidance will be provided to employees who interact with customers, carry out their instructions or effect transactions.

**PROHIBITION - AGAINST DISCLOSING SUSPICIOUS TRANSACTION REPORT (STR)**

In no circumstances, employees must alert a client or his representative/s about the suspicious transactions/dealings or about which an STR is underway for reporting to MLRO (tipping off).

The list of suspicious transactions furnished here is not exclusive and staff members would be always expected to monitor transactions of all types which pass thru their desks with fair amount of judgment and vigilance over and above the normal

precautions they would take for completing transactions. The understanding of customer's identity vis-à-vis his stated norms of dealings, services, etc. would also have a bearing on transactions before they are viewed as suspicious transactions.

## ANTIMONEY LAUNDERING LEGISLATION IN INDIA

Government of India has recently passed the Prevention of Money Laundering Act 2002 (PML). The objective of the Act is

“to prevent money laundering and to provide for confiscation of property derived from, or involved in, money laundering and for matters connected therewith or incidental there too,.....”

### Important Provisions of PML Act, 2002 :

1. Section 3, (Offence)

Whosoever directly or indirectly - attempts to indulge or knowingly assists or knowingly is a party or is involved, in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering,”

2. Section 2 (U) – (Proceeds of Crime)

3. Section 2(U) – Property –

Property means any property or assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds, end instruments evidencing title to or interest in, such property or assets, wherever located;”

4. Section 2(w) – Records

5. Section 24 – Burden of Proof

“When a person is accused of having committed an offence under Section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused.”

It should be noted that PML Act, overrides the provisions contained in any other law for the time being in force (Section 71).

***Presumption in interconnected transactions:***

*Sec.23, clarifies that “where money laundering involves two or more interconnected transactions and one or more such transactions is or are proved to be involved in money laundering, then for the purposes of adjudication or confiscation under Sec.8, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority, be presumed that the remaining transaction form part of such interconnected transactions.”*

**APPLICABILITY OF PML TO ADCB-INDIA:**

As the definition of property is wide under the Act, it would cover all the products handled by ADCB such as Currency Notes, travelers cheques, foreign currency notes, and assets of every description which would include balances in local and nostro bank accounts, if such products/assets fall within the definition of proceeds of crime. Therefore, it is important to ensure that proceeds of crime do not pass thru the counters of ADCB - India.

The exercise of due diligence procedures and adoption of AML policy could prove a valid defence for ADCB - India.

PML Act addresses no issue covering money from lawful activity being used directly or indirectly for perpetrating criminal activity; It deals only with proceeds of crime. ADCB's AML policy broadly encompasses the aspects relating to end use of funds as well as identity of the beneficiary too.

### EXISTING LEGISLATION IN INDIA

A study of the existing laws which aim to prevent money laundering and facilitate confiscation of proceeds of crime needs to be taken and MLRO would thoroughly overview these statutes and their administration to exercise prevention of ML. The synopsis of these laws should also form a part of training programmes to be imparted to staff.

(a) Criminal law amendment ordinance (passed by virtue of 5.72 of GOI Act) XXXVII of 1994:

The act came into force since August 1944. By virtue of this law, prosecution agencies (Police) can get the proceeds of crime relating to bribe, breach of trust, and cheating confiscated by an order of attachment. Upon completion of the criminal prosecution, the police authorities can get an order forfeiting the proceeds.

(b) The smugglers and Foreign Exchange Manipulators (Forfeiture of property) Act 1976.

This Act came into effect from Nov 1975, and applies to persons convicted under the Customs Act 1962 or Sea Customs Act 1878, or other foreign exchange laws.

It is a very comprehensive legislation in India on ML and cover all kinds of ML and referred crimes except drug trafficking or offences under penal code.

(c) Narcotic Drugs and Psychotropic Substances Act 1985:

The Act came into force in November 1985 and aims to control operations relating to Narcotic Drugs and to provide for the

forfeiture of property derived from or used in illicit traffic in narcotic drugs.

(d) Foreign Contribution Regulation Act 1976:

Under this Act, Central Government regulates the flow of foreign money funds to various organizations. Banks should open accounts for registered charities and N.G.O. Foreign Contribution cannot be received by charities and NGOs not registered under FCRA.

(e) Foreign Exchange Management Act (FEMA) 1999 – RBI can give directives to Authorized Dealers to prevent violation of laws:

It is envisaged here that ADCB should be able to assist the law enforcement agencies in their investigations, should a case arise in its banking business. The laws do not require reporting of suspicious activities as required under various AML conventions.

However, the records of the Bank shall be open to inspection under above law. Besides, RBI has enormous powers to direct banks including power to issue cease and desist orders.

(f) Indian Penal Code and Code of Criminal procedure 1973.

(g) The prevention of Terrorism Act (POTA) 2002 –

The act seeks to deal with types of heinous crimes like subversion, insurgency and terrorism in place of the existing criminal justice system which is not designed to deal with such horrific crimes. It also meets the requirement of the United Nations resolution calling upon member nations to enact a model deterrent law to curb the increasing menace of internal and global terrorism.

(h) Income Tax Act 1961.

(i) Conservation of Foreign Exchange and Prevention of Smuggling activities Act 1974.

Format of Customer Profile

[A/c No. \_\_\_\_\_]

Date of profile \_\_\_\_\_ Name of the A/c holder/s

\_\_\_\_\_  
\_\_\_\_\_

Date of A/c opening: \_\_\_\_\_

Address: (verified and \_\_\_\_\_

Confirmed by bank official)

\_\_\_\_\_

Tel: \_\_\_\_\_ Fax: \_\_\_\_\_ Cell:

\_\_\_\_\_

Nature of business: \_\_\_\_\_

Purpose of opening a/c \_\_\_\_\_

(should cover potentiality of \_\_\_\_\_

foreign remittances, sale of \_\_\_\_\_

foreign exchange, loan/facility, shift of group accounts from other banks, etc.)

Existing Credit Facilities \_\_\_\_\_

Activity/Turnover expected in the account

\_\_\_\_\_

Annual income/source: \_\_\_\_\_

Any other material fact relevant for monitoring the account:

Classification            High/Moderate/Low risk  
(Strike out non-applicable classes)

Signature of the official \_\_\_\_\_

Review \_\_\_\_\_