

AML/CFT COMPLIANCE OBLIGATIONS

GUIDE TO REAL ESTATE AGENTS

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Financial Intelligence Unit

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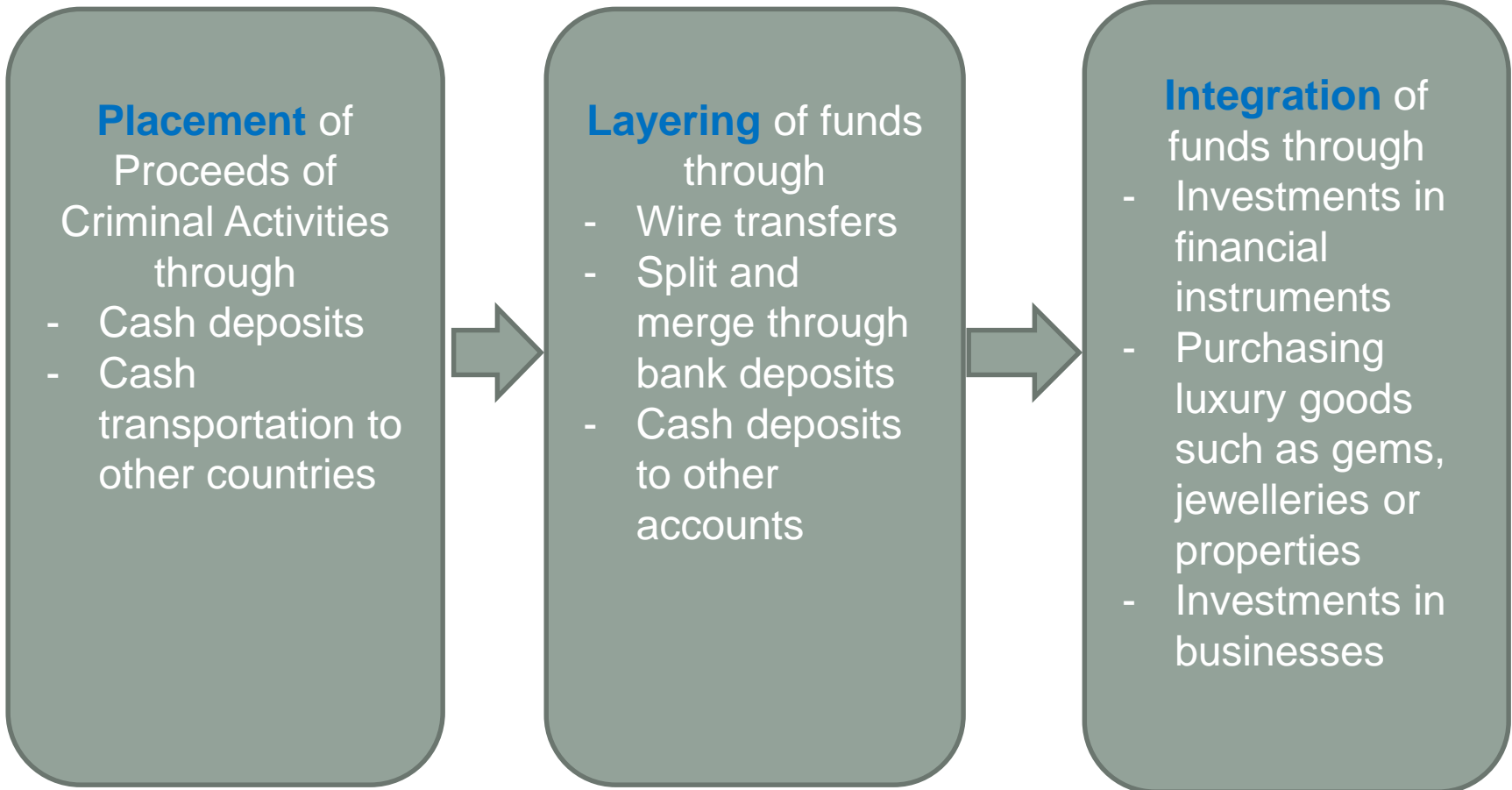
நிதியியல் உளவறிதல் பிரிவு

What Is Money Laundering?

The processing of criminal proceeds (profits or other benefits) in order to disguise their illegal origin (The Financial Action Task Force - FATF).



Three Stages of Money Laundering



Case Study: ML Using Real Estate Agents

A trustee for a trust established in abroad approached a **real estate agent** to buy a property in country X.

The real-estate agent made inquiries with the bank M to ask whether a loan could be granted. The bank rejected the application, as the use of trusts and non-financial professional services appeared to be purposely done to disguise the identity of the beneficial owner or the real owner.



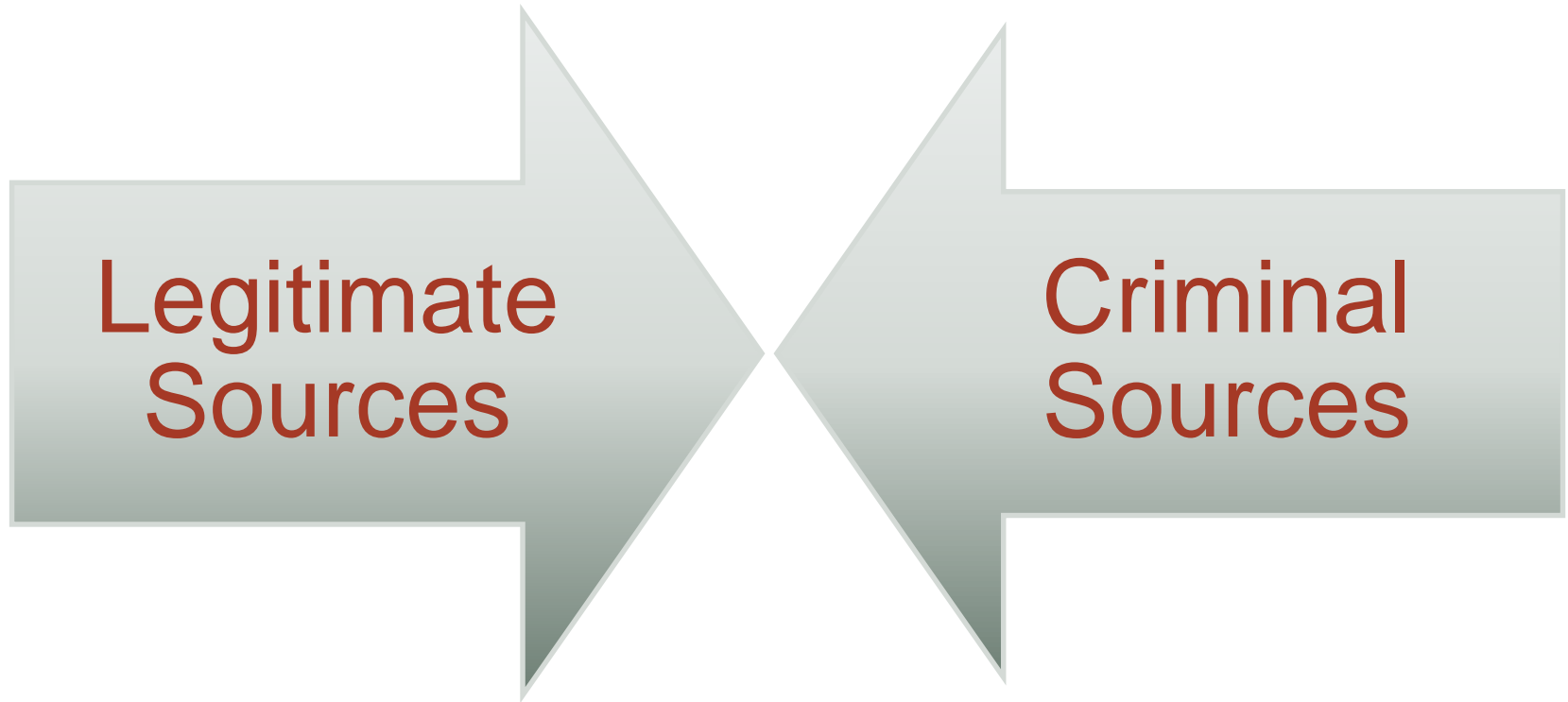
Based on this suspicion, the real estate agent submitted a suspicious transaction report (STR) to the Financial Intelligence Unit.

At the investigations it was found that one of the members of the board of the trust was found to be related to a terrorist organization.



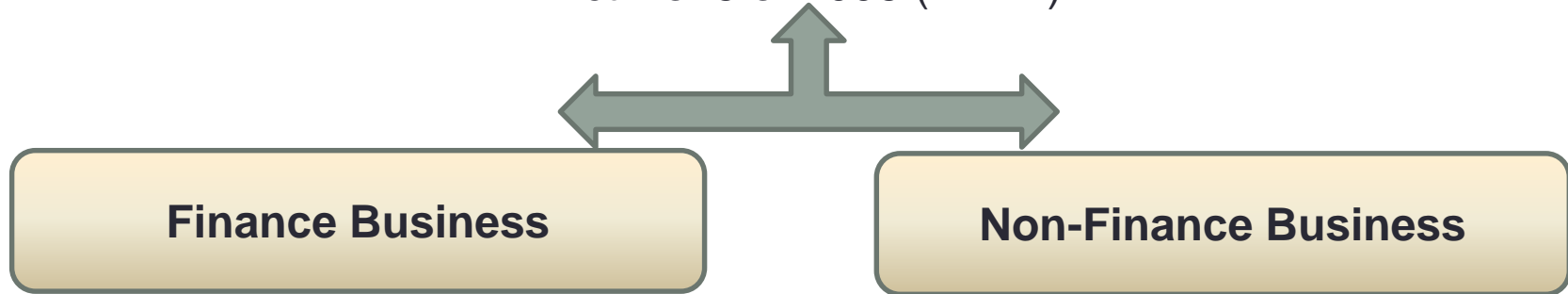
What Is Terrorist Financing?

- Providing funds for terrorism activities
- Funds can be earned through;



WHY ARE YOU UNDER AML/CFT COMPLIANCE OBLIGATIONS?

“**Institution**” defined under Sec. 33 of the Financial Transactions Reporting Act No. 6 of 2006 (FTRA)



- Licensed Banks
- Licensed Finance Companies
- Insurance Companies
- Stock Brokering Firms
- Authorized Money Changers
- Money Value Service Providers

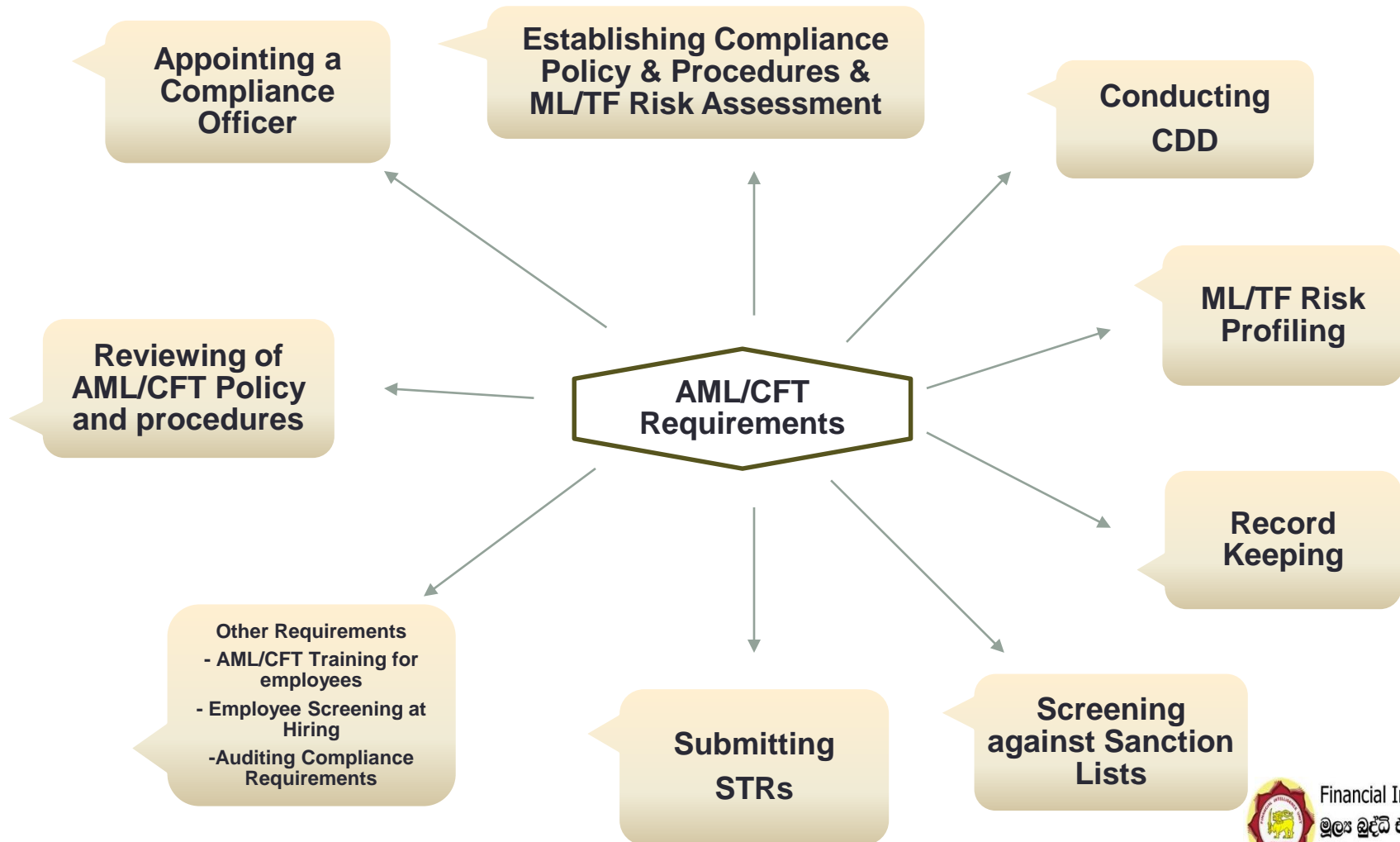
- Casinos & Gambling Houses
- **Real Estate Agents**
- Dealers in Precious Metals & Stones
- Lawyers & Notaries
- Accountants
- Trusts & company service Providers



AML/CFT REQUIREMENTS FOR REAL ESTATE AGENTS



How To Protect the Institution From ML/TF Risk?



Appointing a “Compliance Officer (CO)”

How to Appoint a CO?

Fill the “Compliance Officer Registration Form”

It can be downloaded from
www.fiusrilanka.gov.lk

Submit to the FIU following
instructions on the FIU
website

- Co must be at the Senior Management Level
- CO must have direct access to Board of Directors / Top Management



Duties of the Compliance Officer

COs are responsible to make sure the Institution's compliance with the AML/CFT Obligation by attending on the following tasks;

- Assessing the overall ML/TF Risk of the Institution
- Periodically updating the Institutional ML/TF Risk
- Preparing the AML/CFT Compliance Policy Document
- Obtaining the approval of the Board/Top Management for the policy
- Making aware all levels of the Institution of the Risk assessment and the Policy
- Implementing measures to conduct Customer Due Diligence for customers
- Implementing measures to screen the customers against the designated sanctions lists
- Conducting ML/TF Risk Profiling of the customers
- Implementing procedures for record keeping, submission of STRs, employee screening
- Maintaining an independent audit function to audit AML/CFT functions



3. AML/CFT Compliance Policy and Procedures Should Be

- Written



- Management approved



- Well communicated among all the employees and staff

- Reviewed periodically



AML/CFT Compliance Policies/Procedures

If the Institution doesn't have an AML/CFT Policy & Procedures



Refer following documents to prepare an AML/CFT policy and procedures

1. Financial Transactions Reporting Act No. 6 of 2006
2. Designated Non-Finance Business (Customer Due Diligence Rules) No. 1 of 2018
3. Guidelines on AML/CFT Compliance Obligations for Dealers in Real Estate, Precious and Semi-Precious Stones



Conducting ML/TF Risk Assessment for Institution



Risk Assessment for the Institution

ON WHAT?



Customers



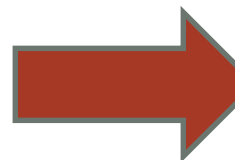
Products/Services



Delivery Channels



Geographic Locations



I. Identify the Risk
(High/Low)

II. Establish
Mitigating
Measures
High
Situations
for
Risk

See the given
Example Checklist
on conducting this
risk assessment



An Example of a Checklist for Institutions' ML/TF Risk Assessment:

Customer Risk	YES	NO	MITIGATION MEASURES
Do you have clients that:			
operate in a cash intensive business?			
reside outside Sri Lanka?			
are intermediaries or "gatekeepers" such as professionals that hold accounts for clients where the identity of the underlying client is not disclosed to you?			
are located in a known high crime rate area? the nature of their business makes it difficult to identify the true owners or controllers?			
are politically exposed persons?			
do not have an address or who have several addresses without justified reason?			
have a criminal record?			
have links to organized crime?			



An Example of a Checklist for Institutions' ML/TF Risk Assessment:

	YES	NO	N/A
Product/Service Risk			
Do you offer products or services that:			
make it difficult to fully identify clients?			
assist in the establishment of a company?			
Do you:			
perform tasks for the purpose of concealing the client's beneficial owner?			
perform tasks of real estate transfer between clients in an unusually short time period without visible legal, economic or other justified reason?			
provide services linked with establishing, operating or managing of a shell company, company in nominal ownership?			



An Example of a Checklist for Institutions' ML/TF Risk Assessment:

Delivery Channels/Business Relationships Risk	YES	NO	N/A
Do you:			
conduct non-face-to-face transactions?			
Do you have business relationships that:			
involve complicated financial transactions?			
involve payments towards/from third persons and cross-border payments?			
involve high risk real estate transactions?			
involve cash payments?			



An Example of a Checklist for Institutions' ML/TF Risk Assessment:

Geographical Risk	YES	NO	N/A
Do you or your clients operate or undertake activities in the following countries:			
Any country subject to sanctions, embargoes or similar measures issued by the United Nations (UNSCR)?			
Any country identified as a financial secrecy haven or jurisdiction?			
Any country identified by the Financial Action Task Force (FATF) as non-cooperative in the fight against money laundering or terrorist financing or subject to a FATF statement?			
Any country identified by credible sources as lacking appropriate money laundering or terrorist financing laws and regulations or as providing funding or support for terrorist activities?			
Any country that is known to have significant levels of corruption, or other criminal activity?			



Conducting Customer Due Diligence



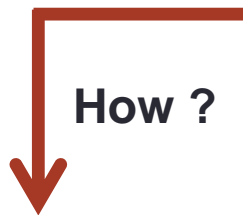
Conducting Customer Due Diligence (CDD) ?

WHEN ?



Real estate agents, when they are involved in transactions for their customers in relation to the buying and selling of real estate;

How ?



Identification



Verification

WHO ?



- Customer
- Beneficial Owner

HOW ?



- Make a copy of ID/Passport/Driving License



Customer/Beneficial Owner Identification

WHAT TO COLLECT ?

As per the Rule 11 of the CDD Rules for DNFBPs

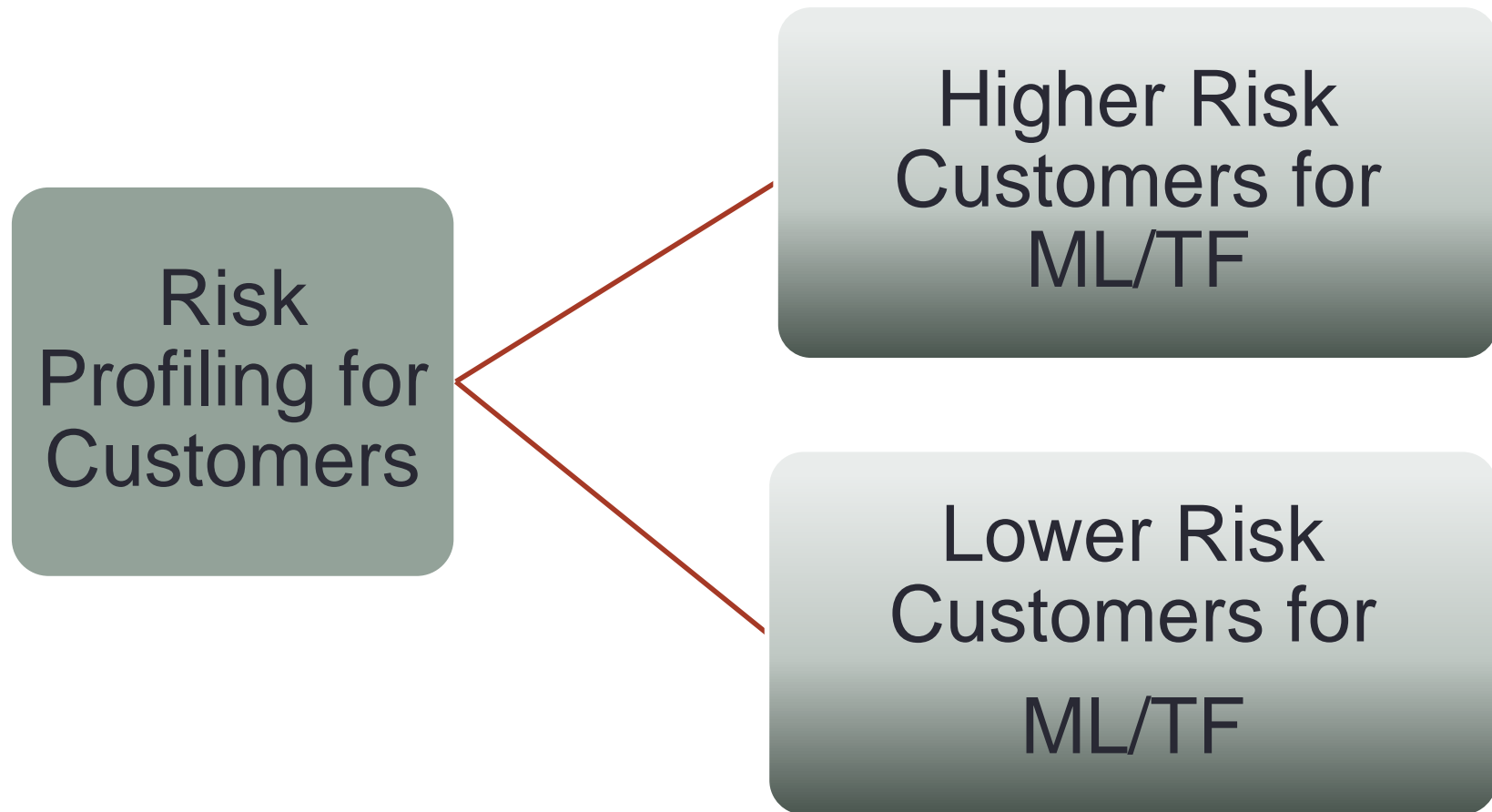
- (a) the full name;
- (b) permanent residential or mailing address;
- (c) occupation, name of employer, business or principal activity;
- (d) an official personal identification number or any other Identification document that bears a photograph of the customer or beneficial owner such as the National Identity Card, passport or driving license;
- (e) date of birth;
- (f) nationality;
- (g) source of funds;
- (h) purpose of transaction;
- (i) telephone numbers (residence, office or mobile).



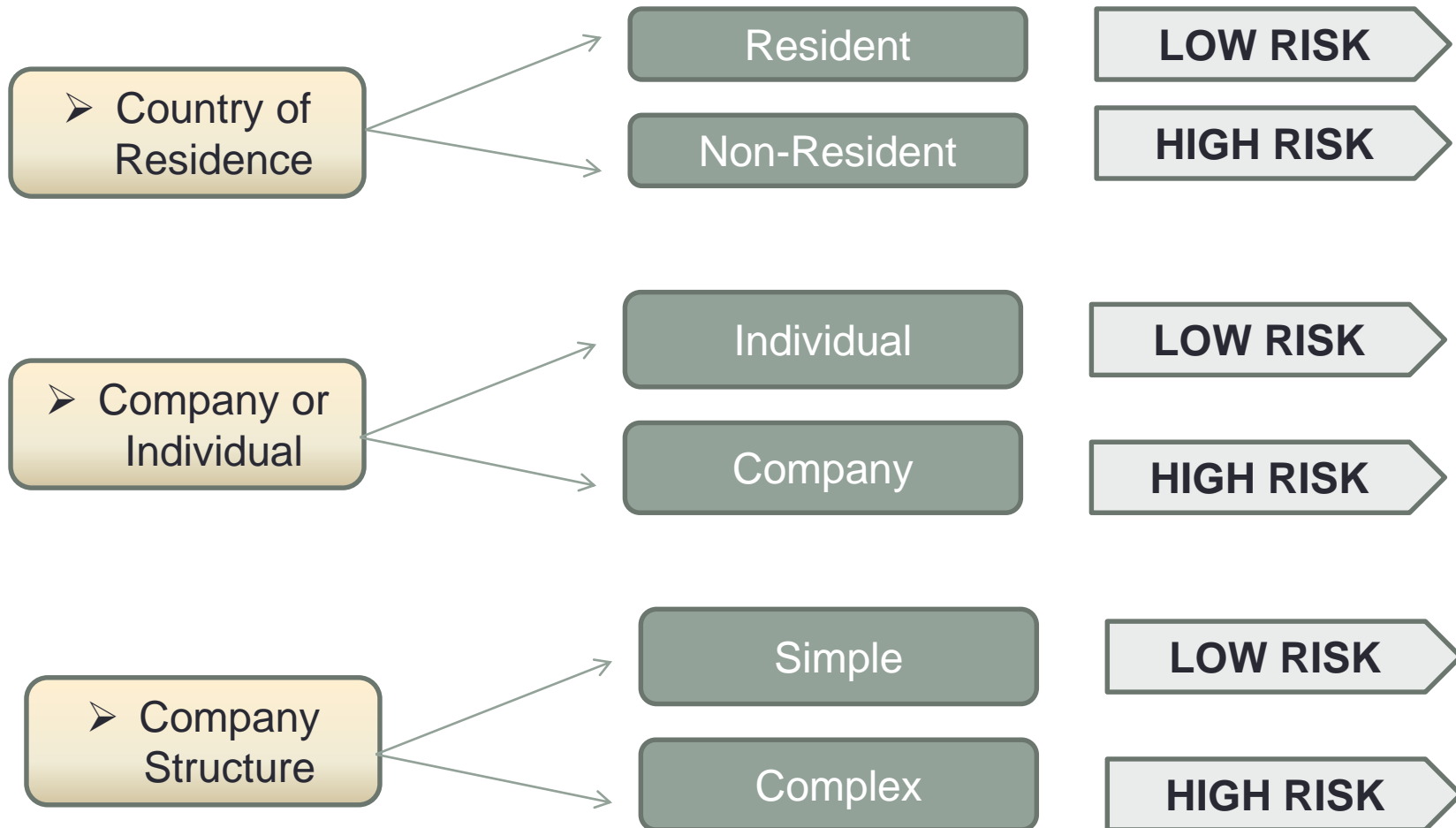
Customers' ML/TF Risk Profiling



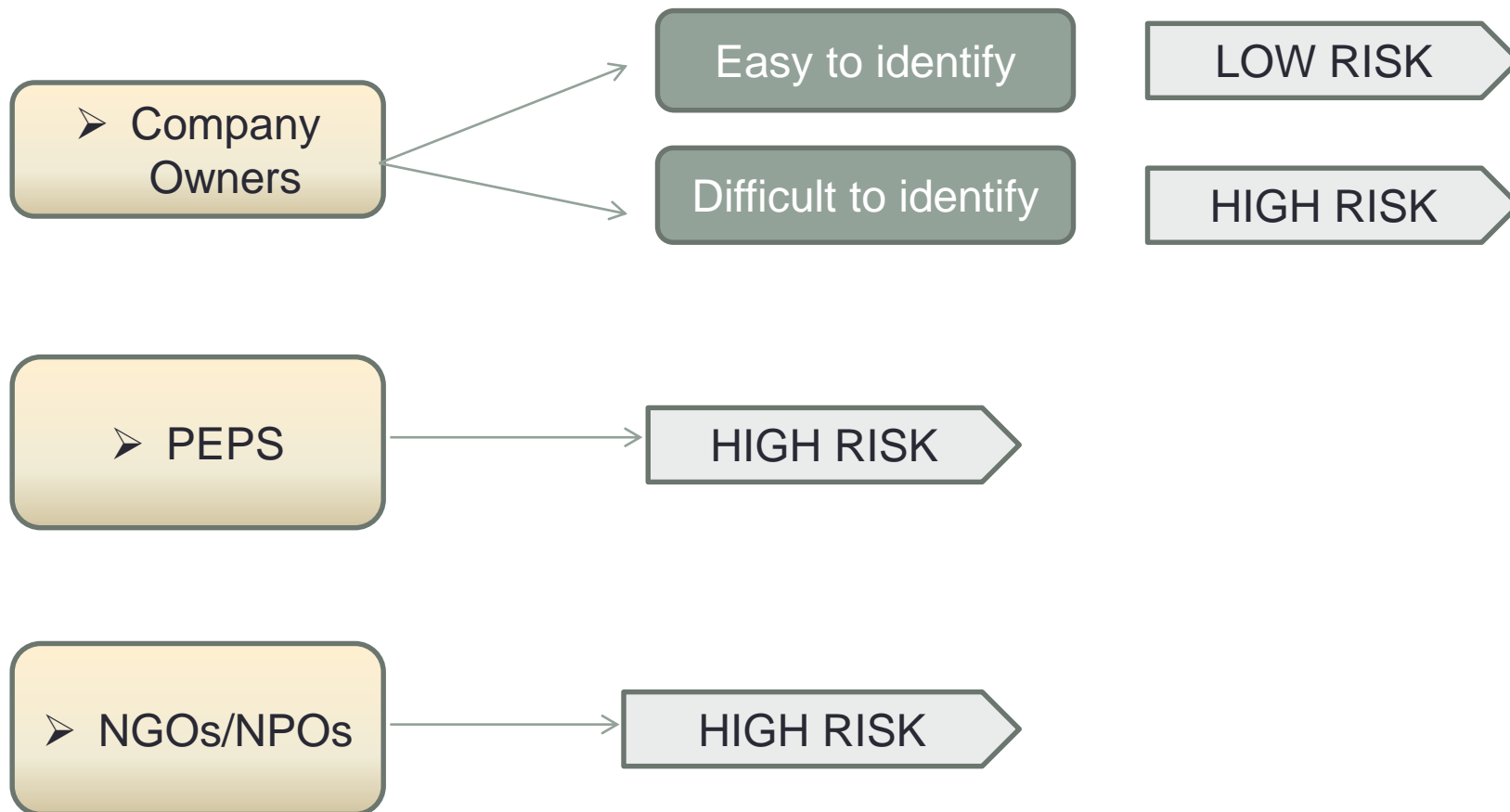
Risk Profiling for Customers on Collected Data



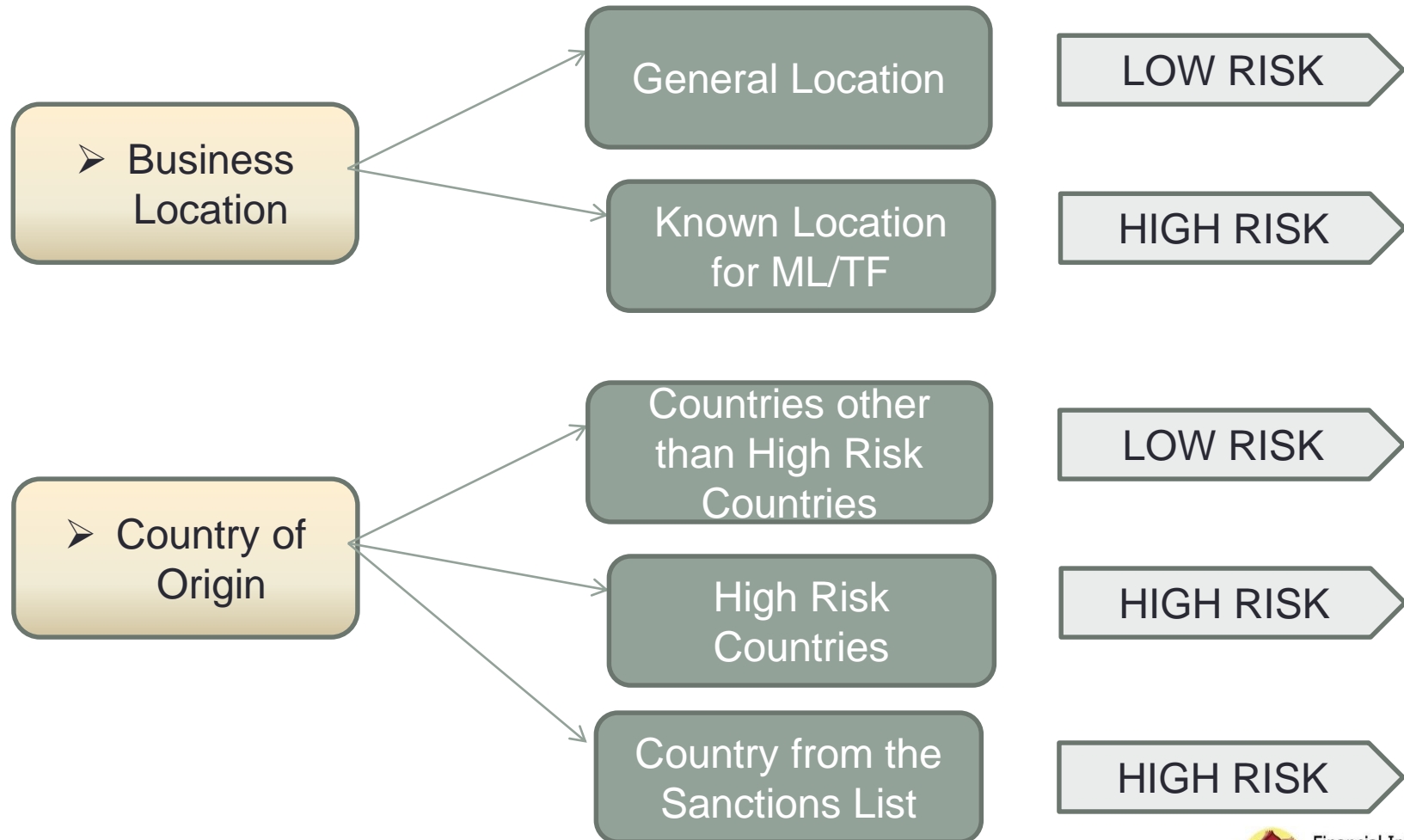
Ex. How to Profile Customers on ML/TF Risks?



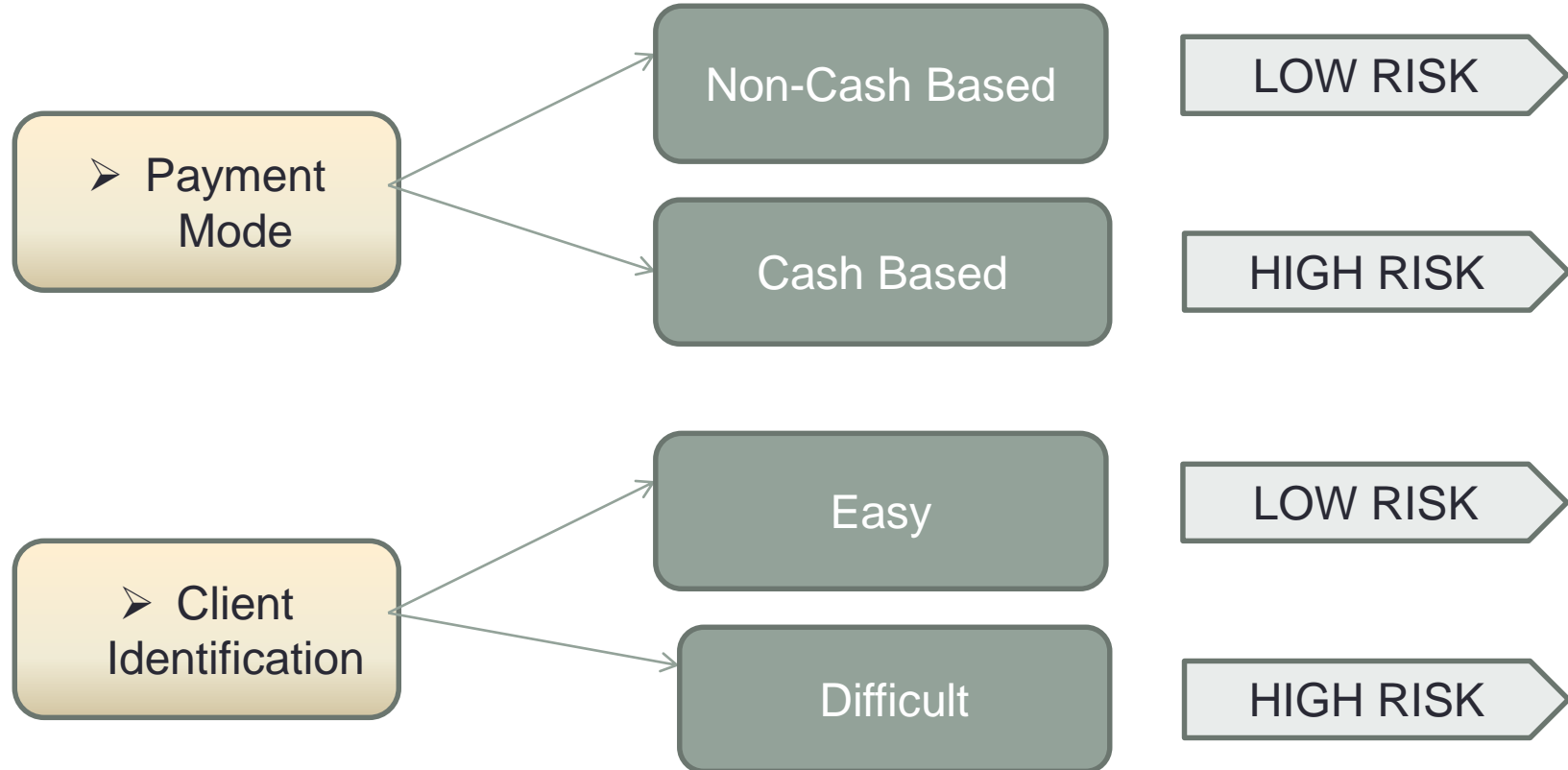
Customer Risk Profiling Cntd...



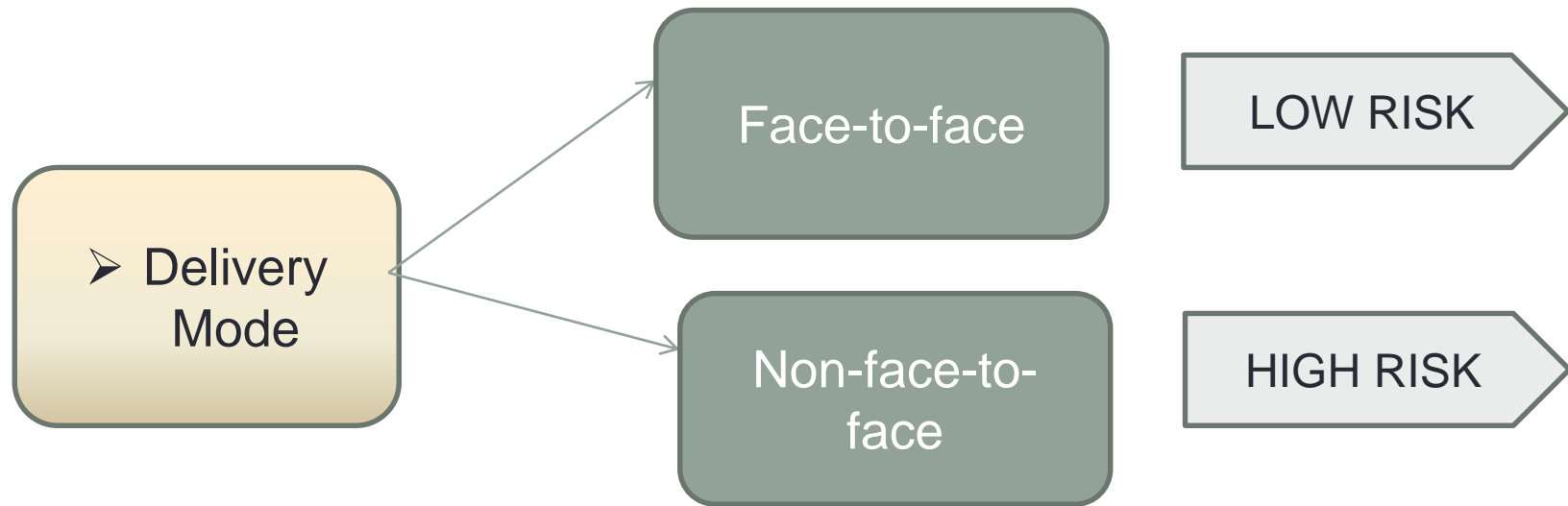
Ex. Geographical Risk



Ex. Products/Services Risk



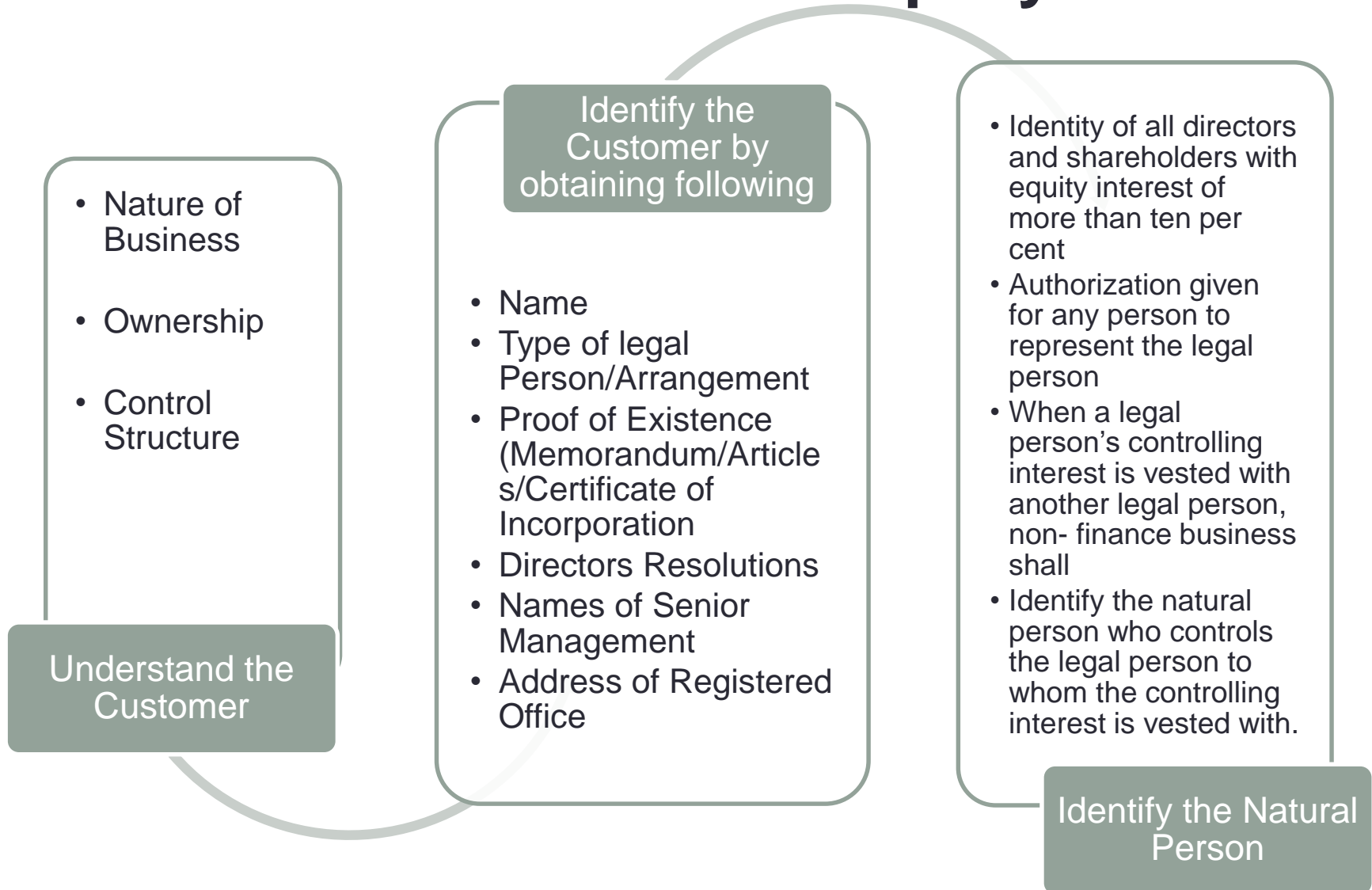
Ex. Delivery Channel Risk



CDD For Legal Persons and Legal Arrangements



When the Customer is a Company ?



Customer Risk Profiling

Identify the ML Risk

- The ML/TF risk to be assessed for each and every customer

Rate the Customer

- Rate the risk level
- Institution can determine the matrix for the grading of risk level
- Ex : High/Low or High/Medium/Low

Document the Risk Rating

- Risk Rating of each customer must be documented

ECDD for High Risk Customers

- Enhanced CDD must be carried out for customers identified as high risk



An Example for Customer Risk Assessment and Profiling:

	Risk Assessment Criterion	Lower Risk	Higher Risk
1.	Type of Customer:	An individual	A legal person or a legal arrangement
		A resident	A non-Resident
		Customers from non-Higher Risk Countries	Customers from higher Risk Countries
		Non-PEP customers	Higher Risk Domestic PEP or Foreign PEPs
2.	Type of Transaction Relative to Customer	Normal frequency and normal value	High frequency & high value or suspicious patterns in conducting transactions such as splitting
3.	Mode of Delivery	Over the counter or face-to-face	Internet based or phone based
4.	Destination country (for remittance)	Non-high-risk countries	Higher risk countries
		Own country	Other country that appear unrelated
5.	Jurisdiction or Country of Origin	Same jurisdiction or country	Different jurisdictions or countries
			High number of inward transactions, followed by immediate withdrawals



Enhanced Customer Due Diligence (ECDD)

↓ To Whom ?

Customers rated as High Risk

Politically Exposed Persons

Non-face to face customers

NGOs and NPOs

Customers from High Risk Countries

Legal Persons and Arrangements



Enhanced Customer Due Diligence

WHAT TO DO ?

Obtain Additional
Information on
Customer/Beneficial
Owner

Obtain Approval from
Senior Management

Obtain Additional
Information on intended
nature of relationship

Regularly update
identification data



Record Keeping



Keeping Records

WHAT are the records?

- CDD Information
- Copies of ID/Passport/Driving License
- Transaction Records
- Correspondance relating to transactions
- Any other Report Furnished to the FIU

For How Long?

- 6 years from the date of closure of business relationship
- 6 years from the date of transaction
- 6 years from the date of correspondance
- 6 years from the date of furnishing the report

HOWEVER;

Must retain for more than 6 years if,
 FIU directs to keep any information/record of transaction/report for such longer period



Screening Customers Against Sanction Lists



Screening Customers against Sanction Lists Published under “**United Nations Security Council Resolutions (UNSCR)**”

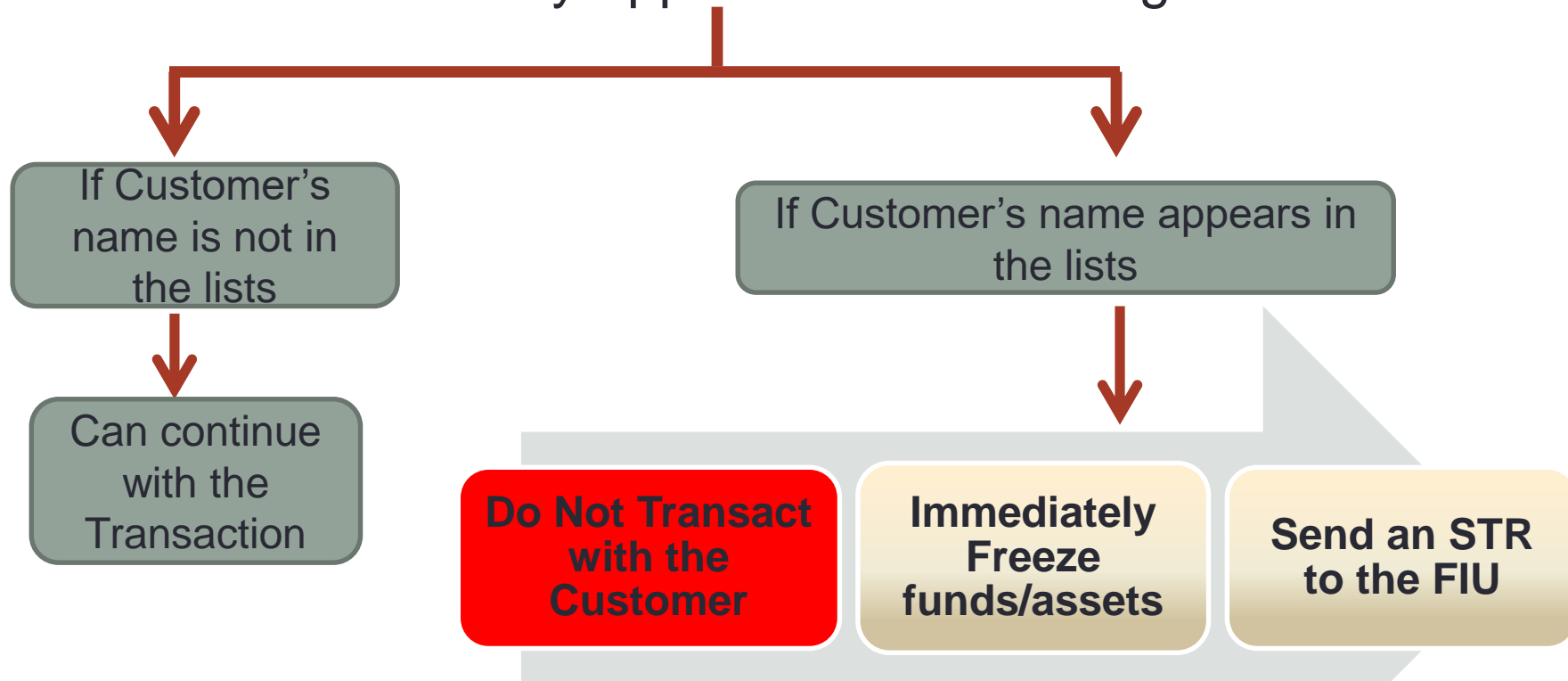
What is UNSCR ?

Please Refer www.fiusrilanka.gov.lk/UNSanctions



What Does the Institution Required To do ?

Institutions should cross-check whether any customer/beneficiary appears on such designated lists



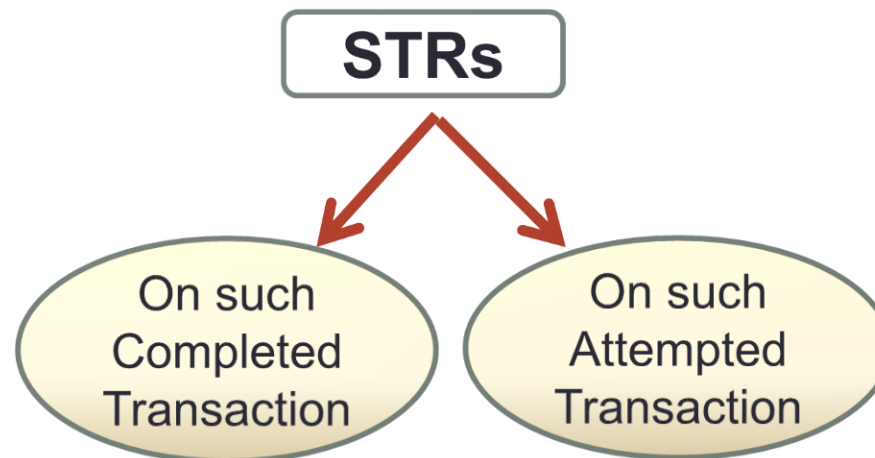
Reporting of Suspicious Transactions



Reporting Suspicious Transactions (STRs)

If the Institution has

- any suspicion that any transaction is related to commission of any unlawful activity or any other criminal offence
- information that Suspect may be relevant to an act preparatory to an offense under provisions of Convention on the Suppression of Terrorist Financing Act No. 25 of 2005 (CSFTA)
- information that suspect may be relevant to an investigation/prosecution for an act of any unlawful activity or offense under CSFTA or PMLA



How Soon Shall Report?

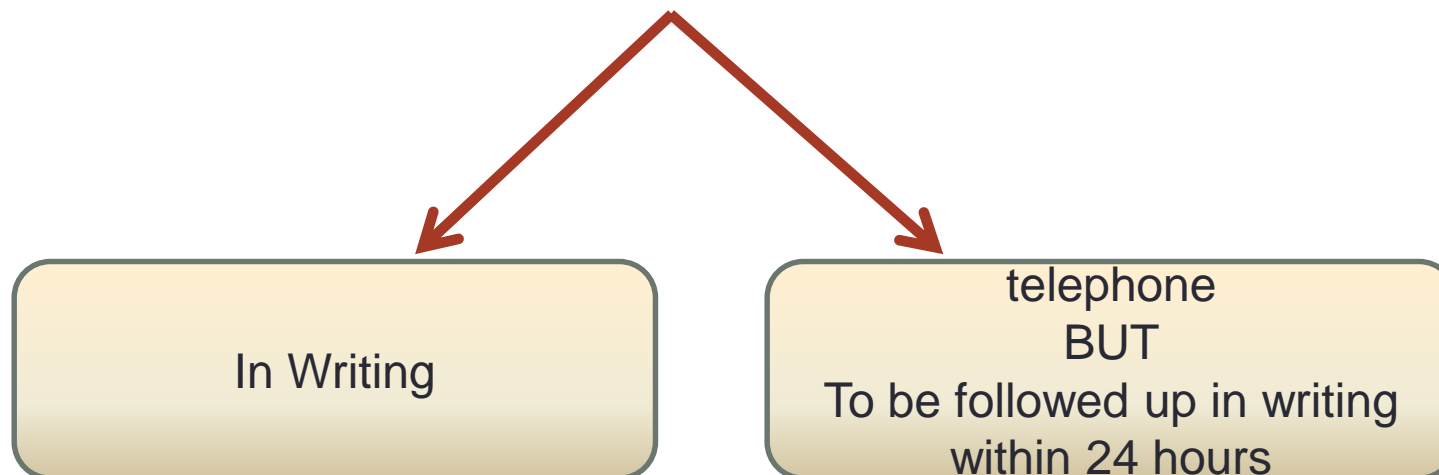
- As soon as practicable after forming such suspicion

BUT!!!

**Not later than
two working
days
therefrom...**



On What Form?



How To Send STRs ?

- Use Schedule V of the Suspicious Transactions (Format) Regulations of 2017
- [http://www.fiusrilanka.gov.lk/docs/Regulations/2015-56/2015-56\(E\).pdf](http://www.fiusrilanka.gov.lk/docs/Regulations/2015-56/2015-56(E).pdf)



Schedule V

CONFIDENTIAL

Province :

District :

SUSPICIOUS TRANSACTION REPORT					
a. This report is made pursuant to the requirement to report suspicious transactions under the Financial Transaction Reporting Act, No. 6 of 2006 b. Under Section 12 of the Act, no civil, criminal or disciplinary proceedings shall be brought against a person who makes such report in good faith.					
PART A - DETAILS OF REPORT					
1	Date of Sending Report				
2	Is this replacement to an earlier report ?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
PART B - INFORMATION ON SUSPICION					
3	Name in Full (if organization, provide registered business/organization name)				
4	Residential/ Registered Address				
5	NIC No. / Passport No. / Business Registration No.				
6	Gender	Male	<input type="checkbox"/>	Female	<input type="checkbox"/>



7	Country of Residence and Nationality (if an individual)	
8	Business/ Employment Type	
9	Occupation (where appropriate, principal activity of the person conducting the transaction)	
10	Name of Employer (where applicable)	
11	Contact Details	
PART C - DESCRIPTION OF SUSPICION		
12	Details of Transaction / Activity	
13	Ground / Reasons for Suspicion	



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PART I: SEC. (I) - GAZETTE EXTRAORDINARY OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA - 21.04.2017

PART D - DETAILS OF REPORTING PERSON		
14	Date of Reporting	
15	Signature	
16	Name of Reporting Person/Agency	
17	NIC Number	
18	Designation / Occupation	
19	Address	
20	Contact Details	

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Red Flags for Suspicious



Some Red Flags for STRs

- Customer procurements/purchases property in the name of a nominee such as an subordinate or a relative (other than a spouse), or in the name of minors or incapacitated persons or other persons who do not have the economic capacity to carry out such purchases.
- Customer does not want to put their name on any document that would connect them with the property or submit different names on offer letters to purchase, or closing documents and deposit receipts.
- Customer tries to hide the identity of the beneficial owner or requests that the transaction be structured to hide the identity of the beneficiary.
- Purchaser is a shell company and a representative of the company who do not like to disclose the identity of the beneficial owner.
- Address given by customer is unknown, believed to be false, or simply a correspondence address.



Red Flags Cntd...

- Customer does not satisfactorily explain the last-minute substitution of the purchasing party's name.
- Customer pays substantial down payment in cash and balance is funded by an unusual source or offshore bank.
- Customer purchases property without inspecting it. It realizes that the customer needs to fund for the property and not much worries about the location or any other characteristic of the property.
- Customer purchases many properties in a short time period, and seems to have few concerns about the location, condition and anticipated repair costs, etc., of each property.
- Customer is known to have paid large remodeling or home improvement invoices with cash, on a property for which property management services are provided.



Red Flags Cntd...

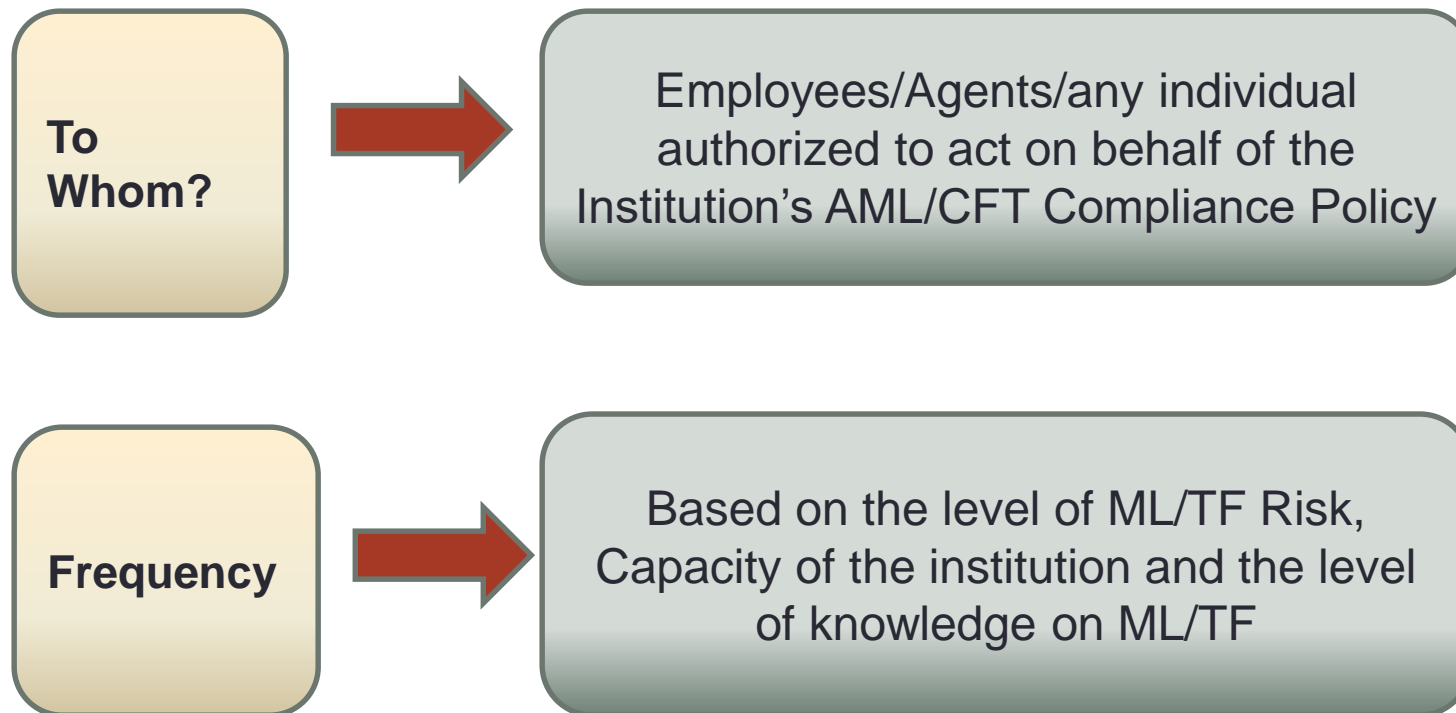
- Transaction does not match the business activity known to be carried out by the customer.
- Transaction is entered at a value significantly different (much higher or much lower) from the real or market value of the property. m) Property is sold in a series of successive transactions each time at a higher price between the same parties.
- Buyer takes on a debt significantly higher than the value of the property.
- Customer suddenly cancels / aborts transaction and requests refund either back to himself /herself / itself or to a third party.
- Customer pays for the purchase entirely in cash (to include electronic funds transfers), especially when such a purchase is large or does not match the known profile of the customer, and especially when the purchase funds are transferred from an offshore jurisdiction.



Trainings on AML/CFT Obligations



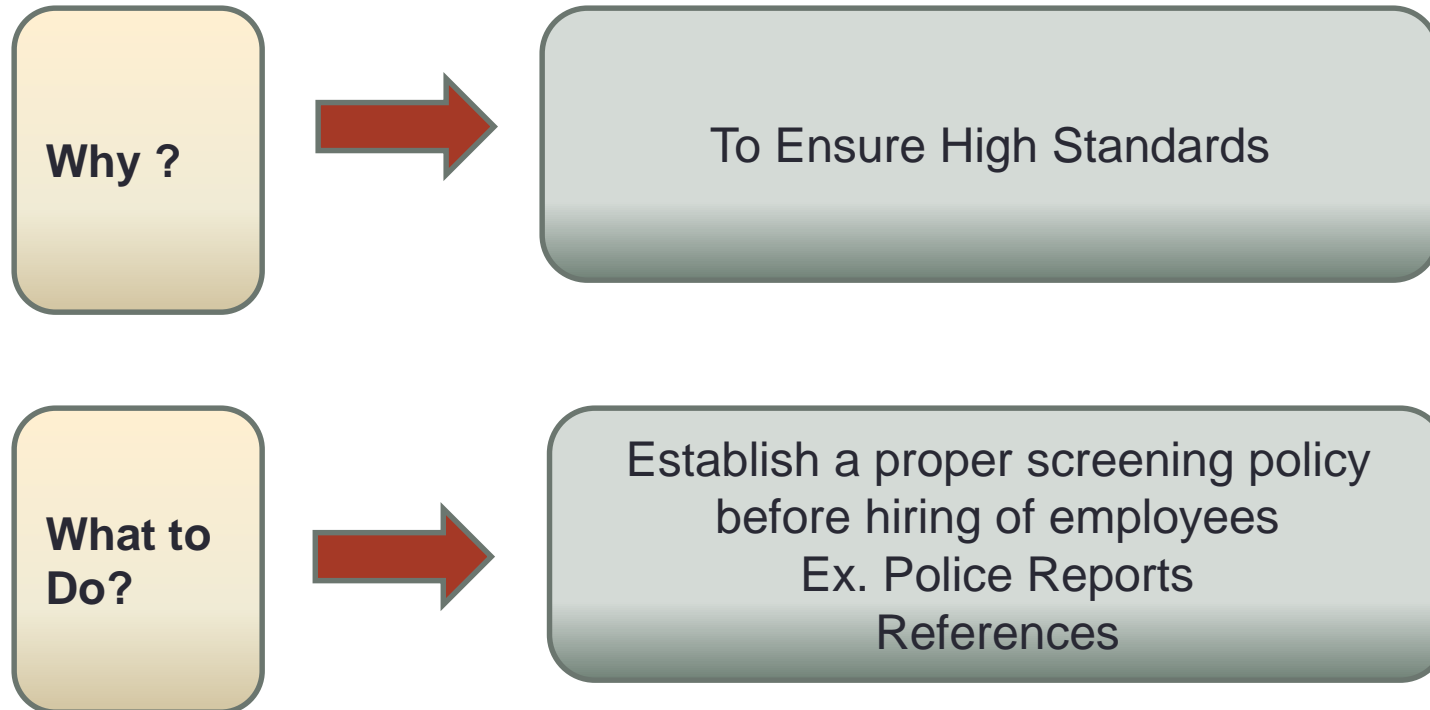
AML/CFT Training



Screening Persons before Hiring



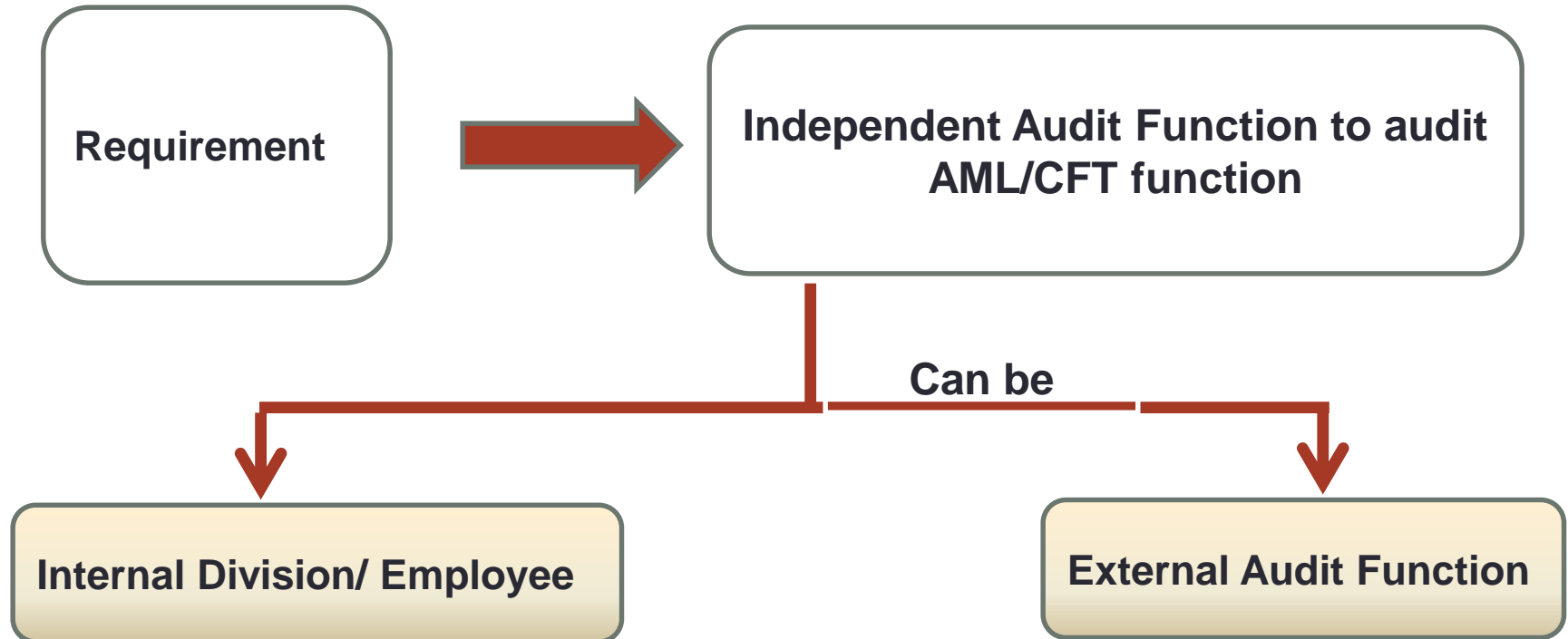
Screening Employees before Hiring



Auditing AML/CFT Measures



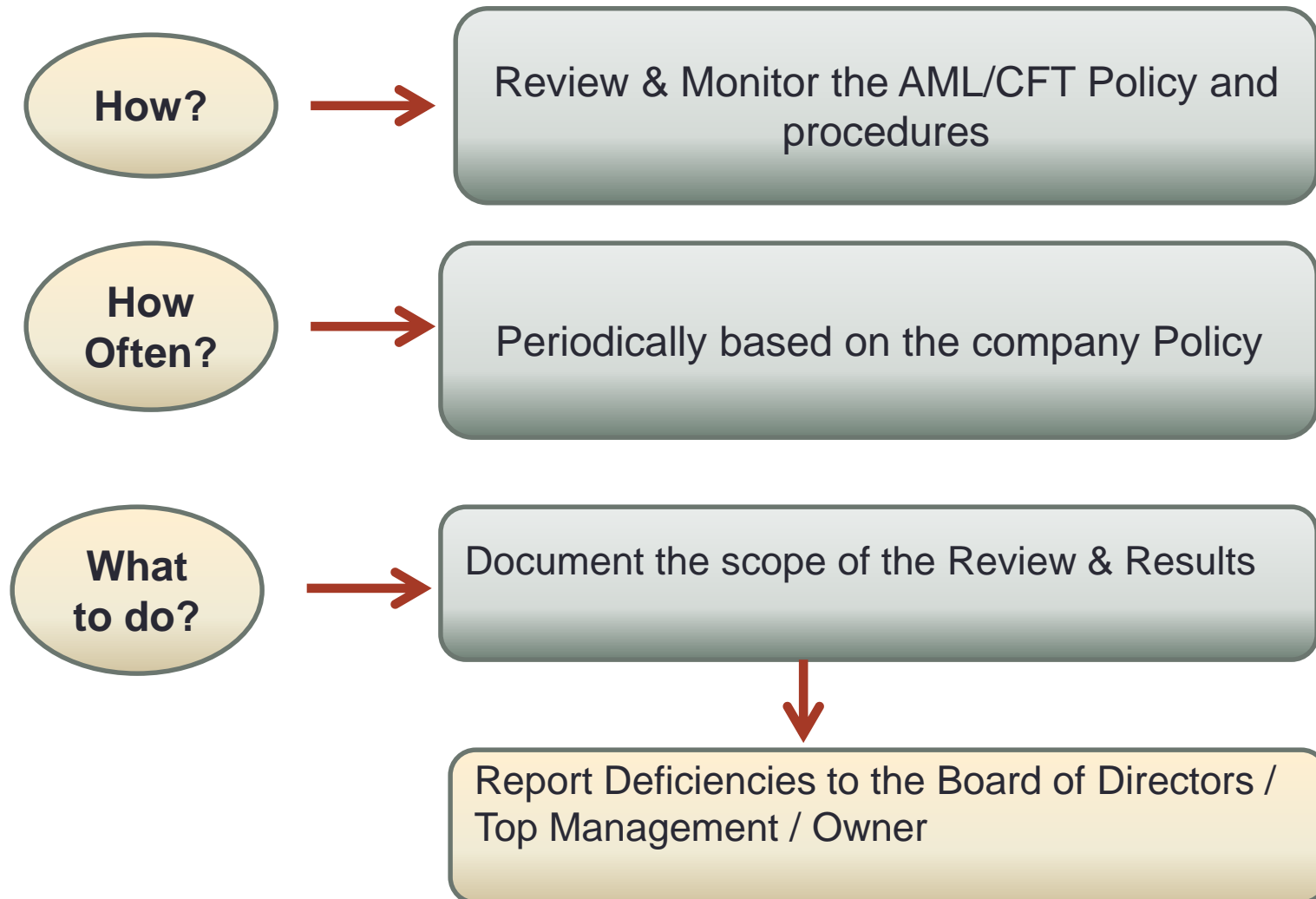
Establishing an Independent Audit Function



Effective Maintenance of the AML/CFT Compliance Programme



How to fulfill the AML/CFT Compliance Obligations effectively



Non-Compliance with AML/CFT Obligations?

**Will lead to financial penalties
and other actions including
regulatory and disciplinary
measures against the
“Institution”**



Contact the Financial Intelligence Unit of Sri Lanka (FIU Sri Lanka) for More Details:

Mail: Director,
Financial Intelligence Unit of Sri Lanka,
Central Bank of Sri Lanka,
No. 30, Janadhipathi Mawatha,
Colombo 01.

Telephone: +94112477125/509

Fax: +94112477692

E-mail: fiu@cbsl.lk

Web: www.fiusrilanka.gov.lk



Financial Intelligence Unit

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