



GUIDANCE

ON

POLITICALLY EXPOSED PERSONS (PEPs)

For

DNFBPs

**Supervised by
The Compliance Commission of The
Bahamas**

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INTRODUCTION

PEP DEFINITION

A politically exposed person (PEP) is defined by the Financial Action Task Force (FATF) as “an individual who is or has been entrusted with a prominent public function.”¹

The FATF recognized that, due to their position and influence, many PEPs are in positions that potentially can be abused for the purpose of committing money laundering (ML) offences and related predicate offences, such as corruption and bribery. PEPs are also known to be involved in activities related to terrorist financing (TF) and Proliferation Financing (PF). As a result of the aforementioned factors PEPs pose a higher risk to financial institutions and DNFBPs.

FATF Recommendations 12 and 22 require countries to ensure that financial institutions and Designated Non-financial Businesses and Professions (DNFBPs) implement additional Customer Due Diligence measures to business relationships with PEPs. These additional measures assist in preventing the misuse of the financial system and DNFBPs by PEPs, and by detecting such potential abuse if and when it occurs.

PURPOSE OF THIS GUIDE

This Guide is intended to provide DNFBPs, supervised by the Compliance Commission (CC) of The Bahamas with guidance on how to apply AML/CFT/CPF and Customer Due Diligence (CDD) obligations to PEPs in adherence to FTRA 2018, FTRR 2018 and The FATF recommendations.

This guide provides information deemed helpful by the CC to its registrants, however it is not intended to replace the Bahamas AML/CFT Laws.:

¹ FATF GUIDANCE “Politically Exposed Persons (Recommendations 12 and 22)”

FATF classifies PEPs into three categories:

- Foreign PEPs
- Domestic PEPs
- International Organization PEPs

PEP CLASSIFICATION

The definition of PEPs and the application of AML/CFT/CPF regulations concerning PEPs extend to the following categories of persons:

Foreign PEPs are individuals who have been entrusted with a prominent public function by a foreign jurisdiction, inclusive of, a head of state or government, legislator, senior politician, senior government, judicial or military official, senior executive of a state owned corporation, or senior political party official.

Domestic PEPs are Individuals who are elected to political positions or appointed to prominent public roles within their country of residence. Like foreign PEPs, the domestic category includes heads of state and other foreign government officials, members of political parties, members of the military, members of the judiciary and senior executives.

International Organization PEPs are persons who have been entrusted with a prominent function by an international organization, and refers to members of senior management or individuals who have been entrusted with equivalent functions, i.e. directors, deputy directors and members of the board or equivalent functions.

Examples of some International organizations are;

- United Nations (UN)
- International Monetary Fund (IMF)
- Organization of American State (OAS)
- Inter-American Development Bank (IDB)

Family Members are individuals who are related to a PEP either through birth/blood or through marriage or similar (civil) forms of partnership e.g., the spouse, parents, siblings, children and children of the spouse of the person (client) i.e. Immediate Family members.

Close Associates are individuals who are closely connected to a PEP, either socially or professionally, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the PEP. Examples are (business partners and individuals involved in financial transactions with politically exposed persons or heads of international organizations.)

PEP RISK

PEP Risk is the risks associated with providing financial and business services to those with a high political profile or who hold high public office. The potential risk stems from the possibility of PEPs misusing their position and power for personal gain through bribery or corruption. Family members and close associates of PEPs may also pose a higher risk as PEPs may use family members and/or close associates to conceal any misappropriated funds or assets gained through abuses of power, bribery or corruption.

Preventive Measures

To address these risks, FATF Recommendations 12 and 22 require countries to ensure that financial institutions and designated non-financial businesses and professions (DNFBPs) implement measures to prevent the misuse of the financial system and non-financial businesses and professions by PEPs, and to detect such potential abuse if and when it occurs. These requirements are preventive (not criminal) in nature, and should not be interpreted as stigmatizing PEPs as such being involved in criminal activity. Refusing a business relationship with a PEP simply based on the determination that the client is a PEP is contrary to the letter and spirit of Recommendation 12.

LEGAL REQUIREMENTS

Risk Management Systems

In keeping with FATF's Recommendations 12 and 22, The Financial Transaction Reporting Act (FTRA) 2018 section 14(1), requires that every financial institution have in place appropriate risk management systems to determine whether a facility holder or beneficial owner is a Politically Exposed Person and shall;

(a) Prior to establishing or continuing a business relationship with PEP facility holders or beneficial owners, obtain the approval of **senior** management of the institution;

(b) Take reasonable measures to identify the source of wealth (SOW) and source of funds (SOF) of the facility holder.

(c) Conduct enhanced on-going monitoring of the business relationship;

RISK MITIGATION & MANAGEMENT

Controls & PEP ML/TF Risk Level

Alongside identifying a PEP, the DNFBP will need to determine the level of risk posed by that PEP. High-risk PEP threats will demand enhanced due diligence, which are beyond the normal customer due diligence process. In responding to low-level threats, standard due diligence may suffice.

When a DNFBP is considering whether to establish or continue a business relationship with a PEP, the focus should be on (1) the level of ML/TF risk associated with the particular PEP, and (2) whether the institution has adequate controls or checks in place to mitigate the risk in order to prevent the institution from being used for illicit purposes should the PEP be involved in criminal activity.

CDD & Risk Assessment

The decision of establishing/continuing of a business relationship with a PEP should be taken on the basis of the customer due diligence (CDD) process and with an understanding of the particular characteristics of the public functions that the PEP has been entrusted with. This decision should be guided primarily by an assessment of ML/TF/PF risks, even if other considerations, such as regulatory risk, reputational risk, or commercial interests are also taken into account. Financial institutions and DNFBPs should consider whether they may be more vulnerable to domestic PEPs compared to foreign PEPs

Suspicious Transaction Reports

Small financial institutions, with little or no exposure to foreign financial markets, who determine they are dealing with a foreign PEP, should consider in detail the reasons why such a relationship is being started. Financial institutions who operate in domestic markets where there are known issues relating to corruption should consider whether their exposure to domestic PEPs may be higher than to foreign PEPs. In all cases, where a financial institution or DNFBP suspects or has reasonable grounds to suspect that

funds are the proceeds of criminal activity, a Suspicious Transaction Report (STR) should be filed with the Financial Intelligence Unit (FIU).

Domestic & International Organization PEPs

For domestic PEPs and international organization PEPs, financial institutions must take reasonable measures to determine whether a customer or beneficial owner is a domestic/international organization PEP, and then assess the risk of the business relationship. For higher risk business relationships with domestic PEPs and international organization PEPs, financial institutions should take additional measures consistent with those applicable to foreign PEPs. (FATF)

Foreign PEPS

Foreign PEPs are always considered high risk and require the application of enhanced due diligence (EDD) measures, as is the case for all higher risk customers.

RISK ASSESSMENT

Understanding the Public Function(s)

In case the customer is determined to be a domestic/international organization PEP, then financial institutions or DNFBPs should undertake a risk assessment of the PEPs business relationship. To this end, they should gather sufficient information to understand the particular characteristics of the public functions that the PEP has been entrusted with and, in the case of an international organization, the business model of that organization. Information on international organizations, for example, may be found on their respective website

Risk Factors/Elements

The risk assessment should be a composite assessment of all the risk factors, and needs to be done to determine if the business relationship with the PEP is of a higher risk. This assessment of the business relationship may take into account, among other factors; **i)** customer risk factors, **ii)** country risk factors, and **iii)** product, service, transaction or delivery channel risks. Additional factors to be taken into account should include the nature of the prominent public function that the PEP has, such as his or her level of

seniority, access to or control over public funds and the type of the position held.

On-Going Monitoring

If the risk assessment establishes that the business relationship with the domestic/international organization PEP presents a normal or low risk, the financial institution and DNFBP is still required to conduct enhanced on-going monitoring of the business relationship. If, however, it suggests that the business relationship is of a higher risk, then the financial institution or DNFBP needs to take consistent measures that are required for foreign PEPs i.e. EDD

ENHANCED CDD MEASURES

The enhanced CDD measures applied to Foreign/high risk PEP relationships may include the following:

- 1.** Identify and verify the customer/facility holder and the ultimate beneficial owner (UBO) of the assets.

Where a person is purporting to act on behalf of a beneficial owner it is best practice to inquire the reason for doing so. This may lead to awareness that the beneficial owner of the client is a PEP.

If the person who is acting on behalf of a PEP, or if a customer or beneficial owner is identified as a family member or close associate of a PEP, then the requirements for PEPs should also apply accordingly.

- 2.** Know the customer's country of residence.
- 3.** Utilize resources such as google searches, Artificial intelligence, UN Sanctions name checks etc. to determine whether the customer is a PEP.
- 4.** Obtain information directly from the customer via account opening/KYC forms concerning his current PEP status.
- 5.** Know the purpose for opening the account and the volume and nature of the activity expected for the facility or account if applicable.
- 6.** Obtain additional information on the intended nature of the business relationship, and on the reasons for intended or performed transactions; conducting enhanced monitoring of the business relationship, potentially by increasing the number and timing of controls applied, and identifying patterns of transactions that warrant additional scrutiny.

7. Know the client's Source of Wealth (SOW) and Source of Funds (SOF).
8. Obtain information about the direct family members or associates who have the power to conduct transactions on the facility/account.
9. Get senior management's approval before onboarding the client and their full commitment to apply the "KYC" program, by setting the appropriate procedures and verifying their efficiency.

TIME LIMITS OF PEP STATUS

Is a PEP always a PEP?

FATF Recommendation 12 also defines a PEP as being someone who has been (but may no longer be) entrusted with a prominent public function. The language of Recommendation 12 is consistent with a possible open-ended approach (i.e., "once a PEP—could always remain a PEP"). The handling of a client who is no longer entrusted with a prominent public function should be based on an assessment of risk and not on prescribed time limits. The risk-based approach requires that DNFBPs assess the ML/TF/PF risk of a PEP who is no longer entrusted with a prominent public function, and take effective action to mitigate this risk.

Possible Risk Factors of a PEP who is no longer entrusted with a prominent public function:

- The level of (informal) influence that the individual could still exercise;
- The seniority of the position that the individual held as a PEP; or
- Whether the individual's previous and current function are linked in any way (e.g., formally by appointment of the PEP's successor, or informally by the fact that the PEP continues to deal with the same substantive matters).

RED FLAGS AND SUSPICION INDICATORS

PEPs Attempting to Shield Their Identity

PEPs are aware that their status as a PEP may facilitate the detection of their illicit actions. This means that they may attempt to shield their identity, to prevent detection. Examples of ways in which this is done are:

- Use of complex corporate vehicles, without valid business reason e.g. (legal entities and legal arrangements) to obscure the beneficial owner.

- Use of intermediaries when this does not match with normal business practices or when this seems to be used to shield identity of PEP.
- Use of family members or close associates as legal owner.

The PEP and His Behavior

- The information that is provided by the PEP is inconsistent with other (publicly available) information, such as asset declarations and published official salaries.
- Funds are repeatedly moved to and from countries to which the PEP does not seem to have ties with.
- Use of corporate vehicles (legal entities and legal arrangements) to obscure i) ownership, ii) involved industries or iii) countries.
- The PEP makes inquiries about the institution's AML policy or PEP policy.
- The PEP seems generally unwilling to provide information about source of wealth or source of funds.
- The PEP is unable or reluctant to explain the reason for doing business in the country of the financial institution or DNFBP.
- The PEP provides inaccurate or incomplete information.
- The PEP seeks to make use of the services of a financial institution or DNFBP that would normally not cater to foreign or high value clients.
- The PEP is or has been denied entry to the country (visa denial).
- The PEP is from a country that prohibits or restricts its/certain citizens to hold accounts or own certain property in a foreign country.

The PEP'S Position or Involvement in Business

The position that a PEP holds and the manner in which the PEP presents his/her position are important factors to be taken into account. Possible red flags are:

- The PEP has a substantial authority over or access to state assets and funds, policies and operations.
- The PEP has control over regulatory approvals, including awarding licenses and concessions.

Industry/Sector with which the PEP is involved

A connection with a high-risk industry may raise the risk of doing business with a PEP. Examples of higher risk industries are:

- Arms trade and defense industry
- Businesses active in government procurement, (i.e., sell to gov.)

- Provision of public goods, utilities.
- Construction and large infrastructure
- Mining and extraction.
- Construction and large infrastructure.

Country Specific Red Flags and indicators

The following red flags and indicators relating to countries can be taken into account when doing business with a PEP:

- The foreign or domestic PEP is from a higher risk country (as defined by the FATF in Recommendation 19, or the Interpretative Note to Recommendation 10).
- Foreign or domestic PEPs from countries identified by credible sources as having a high risk of corruption.
- Foreign or domestic PEPs from countries that are dependent on the export of illicit goods, such as drugs.

WHAT “PEP” DOES NOT MEAN

A PEP or high-risk customer does **not** mean that the person(s) is or will automatically be involved in ML/TF or other criminal activity but that there is an increased opportunity to be involved. Additionally, any one of the above Red Flag scenarios alone does not necessarily mean an individual is corrupt or the situation is automatically high risk. However, DNFBPs should manage these risk scenarios by understanding and addressing the potential ML/TF/PF risks associated with these customers and their transactions.

ACRONYMS

AML Anti-Money Laundering

CFT Countering the Financing of Terrorism

CPF Countering Proliferation Financing

FATF Financial Action Task Force

FTRA 2018 Financial Transaction Reporting Act 2018

FTRR 2018 Financial Transaction Reporting Regulations 2018

CDD Customer Due Diligence

DNFBPs Designated Non-Financial Business and Professions

FIU Financial Intelligence Unit

ML Money Laundering

PEP Politically Exposed Person

STR Suspicious Transaction Report

TF Terrorist Financing

SOF Source of Funds

SOW Source of Wealth

For further guidance on PEPs, refer to:

<http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>.

http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2018/2018-0005/FinancialTransactionsReportingAct2018_1.pdf

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