



Guideline 7

Financial Transactions Reporting Act

This Guideline is an enforceable instrument issued pursuant to the powers of the Financial Intelligence Unit under the Financial Transactions Reporting Act No.22 of 2004 [Section 25.1.j FTR Act & Section 20.8 FTR Regulations].

Politically Exposed Persons

1 INTRODUCTION

- 1.1 Financial institutions¹ are required under Section 4 of the Financial Transactions Reporting (FTR) Act (2004) to identify their customers and verify their customers' identity.
- 1.2 These customer identification or customer due diligence (CDD) measures must be applied on a risk based approach. This means that a financial institution may simplify or enhance its CDD processes and procedures depending on the risk of money laundering and terrorist financing of a customer.
- 1.3 The objective of this Guideline is to provide further CDD requirements on dealing with foreign, domestic and international organisation politically exposed persons (PEPs).
- 1.4 These requirements are preventive 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 customer is a PEP is contrary to the letter and spirit of the FTR Act.

2 REQUIREMENTS OF THE FTR ACT AND FTR REGULATIONS ON FOREIGN PEPS

- 2.1 The FTR Act defines a “politically exposed person (PEP)” as any individual who is or has been entrusted with any prominent public function in a foreign country such as a Head of State or government, a senior politician, a senior government, judicial or military official, a senior executive of a state owned corporation and important political party official and includes the family members or close associates of any such person.
- 2.2 Section 20(6) of the FTR Regulations states that, any customer classed as a “foreign PEP” must be treated as a high risk customer and must undergo enhanced due diligence (EDD).

¹ Financial institutions include banks, non-bank financial institutions and non-financial businesses and professions that are covered by the FTR Act as specified in the Schedule of the FTR Act.

- 2.3 Pursuant to section 4(3) of the FTR Act and section 20(7) of the FTR Regulations, a financial institution must put in place risk management systems to determine whether a customer or the beneficial owner is a PEP.
- 2.4 Where the customer or beneficial owner is determined to be a foreign PEP, the financial institution must undertake EDD and must:
- (i) obtain approval of senior management before establishing (or continuing for existing customers) such business relationships with the customer;
 - (ii) take reasonable measures to establish the foreign PEP's source of wealth and the source of funds of customers and beneficial owners identified as PEPs; and
 - (iii) conduct enhanced ongoing monitoring of the business relationship.

3 ADDITIONAL REQUIREMENTS - DOMESTIC PEPS AND INTERNATIONAL ORGANISATION PEPS

- 3.1 Pursuant to sections 29(2) and 37 of the FTR Regulations, a financial institution, when first engaging with a customer, must undertake reasonable measures as part of its internal control systems, to determine whether the customer or the beneficial owner is a domestic PEP or an international organisation PEP.
- 3.2 Pursuant to sections 3, 20, 29, 32 and 35 of the FTR Regulations, where a customer or beneficial owner is determined to be a domestic PEP or international organisation PEP, the financial institution must undertake a risk assessment of that business relationship.
- 3.3 Pursuant to section 20(8) of the FTR Regulations, if the business relationship is assessed as having a high risk for money laundering or terrorist financing, the financial institution must treat the domestic PEP or international organisation PEP as a high risk customer and apply the enhanced due diligence measures outlined in section 4(3) of the FTR Act and section 20(6) of the FTR Regulations.
- 3.4 If the risk assessment determines that the business relationship does not present a higher risk for money laundering or terrorist financing, the financial institution may subject that domestic PEP and international organisation PEP customer to usual CDD requirements under the FTR Act, FTR Regulations and relevant FIU Guidelines.
- 3.5 The definition of PEPs is not intended to cover middle ranking or more junior individuals in the domestic PEP and international organisation PEP categories.

4 ADDITIONAL REQUIREMENTS - FAMILY MEMBERS AND CLOSE ASSOCIATES

- 4.1 Family members and close associates of all foreign PEPs must be treated as high risk customers and also be subjected to the EDD measures specified in section 4(3) of the FTR Act, section 20 of the FTR Regulations and this Guideline.

4.2 Family members and close associates of domestic PEPs and international organisation PEPs who engage in higher risk business relationship with a financial institution must also be subjected to EDD measures specified in section 4(3) of the FTR Act, section 20 of the FTR Regulations and this Guideline.

5 ADDITIONAL REQUIREMENTS - BENEFICIARIES OF LIFE INSURANCE POLICIES

5.1 In relation to life insurance policies, financial institutions must take reasonable measures to determine whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary, are PEPs. This should occur, at the latest, at the time of the payout of the policy proceeds.

5.2 Where higher risks are identified, financial institutions must undertake the following:

- (iv) inform senior management before the payout of the policy proceeds;
- (v) conduct enhanced scrutiny on the whole business relationship with the policyholder; and
- (vi) consider making a suspicious transaction report.

6 SOURCES OF INFORMATION FOR DETERMINING PEPs STATUS

6.1 CDD is the key source of information for the purpose of determining whether a customer or beneficial owner is a PEP during customer onboarding. This include identification and verification of customers and ongoing due diligence during the course of a business relationship. For example, information on customer's principle occupation or employment which is collected and verified during the CDD process may indicate that a customer is a PEP.

6.2 Other sources of information may include 1) experienced employees, 2) internet and media searches and 3) commercial databases such as World Check.

6.3 For existing non-PEP customers, ongoing due diligence of the business relationship must be undertaken to identify any customers that have acquired PEPs status during the course of the business relationship. Financial institutions should have proper systems and processes in place to enable it to undertake this ongoing due diligence of existing customers.

6.4 A customer that is a foreign PEP must always be treated as PEP even if he or she no longer entrusted with a prominent public function.

6.5 Once a domestic PEP or international organisation PEP is no longer entrusted domestically with a prominent public function, he or she may no longer be considered a PEP. However, a financial institution should continue to apply a risk-based approach to determine whether this customer who is no longer a domestic PEP should continue to be treated as a high risk customer. Thus, a financial institution may choose to undertake EDD for a longer period for a former PEP due to assessed higher ML/TF risks associated with the customer.

7 OVERSIGHT AND IMPLEMENTATION

- 7.1 The FIU and/or the relevant supervisory authority, in the course of its supervision, may assess the compliance of financial institutions with the requirements of this Guideline.
- 7.2 Non-compliance may result in sanctions as specified in section 43(2) of the FTR Act and section 42(2) and 42(3) of the FTR Regulations.
- 7.3 This Guideline is effective from 31 March 2018.

Financial Intelligence Unit
27 March 2018

Attached:

Appendix 1 Definitions

Appendix 2 PEPs Red Flags or Indicators

Appendix 1: Definitions

In this Guideline, unless the context otherwise requires:

‘Beneficial owner’ refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise effective ultimate effective control over a legal person or arrangement.

‘Close associate’ includes any person closely associated with a PEP for personal, social or business reasons. Some examples may include:

- a. business partners or associates;
- b. a prominent member of the same political party, civil organisation or labour/employee union as a PEP.

‘Customer’ for the purpose of this Guideline also includes potential customers.

‘Domestic PEP’ is a person who is or has been entrusted domestically with a prominent public function, for example, government ministers, politicians, senior government, judicial or military officials, senior executives of statutory bodies and state owned corporations, important political party officials, including the following:

- a. President;
- b. Prime Minister;
- c. Government Minister (including Assistance Minister and Acting Minister);
- d. Member of Parliament;
- e. Permanent Secretary and Deputy Permanent Secretary of a Government Ministry ;
- f. Ambassador or principal representative of Fiji to another country;
- g. Head (including Deputy or Assistant) of a government department, agency and statutory authority;
- h. Chief Executive Office (or equivalent) of a state owned company;
- i. Judicial officers such as magistrates, judges and the chief registrar;
- j. Leader and senior officials of a political party.

‘Enhanced due diligence’ include enhanced:

- a. scrutiny of customer’s identity (including of the beneficial owner and controller);
- b. scrutiny of the source and legitimacy of funds;
- c. transaction monitoring; and
- d. customer profiling.

‘Family member’ includes a PEP’s:

- a. Spouse, de-facto partner;
- b. children;
- c. parents;
- d. parents of his/her spouse;
- e. brothers and sisters (siblings).

‘International organisation PEP’ is a person who is or has been entrusted with a prominent function by an international organisation. This may include 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. An *international organisation* includes any organisation set up by either the governments of more than one country or any international organisation. Some examples include the Asian Development Bank, International Monetary Fund, South Pacific Tourism Organisation and United Nations agencies such as UNICEF.

‘Risk Based CDD’ means that a financial institution may simplify or enhance its identification and verification processes and procedures depending on the risk of money laundering and terrorist financing of a customer.

Appendix 2: PEPS Red Flags/Indicators (Source: FATF Guidance on Politically Exposed Persons-June 2013)

A. PEPS ATTEMPTING TO SHIELD THEIR IDENTITY:

PEPs are aware that their status as a PEP may facilitate the detection of their illicit behaviour. This means that PEPs may attempt to shield their identity, to prevent detection.

Examples of ways in which this is done are:

- a) Use of corporate vehicles (legal entities and legal arrangements) to obscure the beneficial owner.
- b) Use of corporate vehicles without valid business reason.
- c) Use of intermediaries when this does not match with normal business practices or when this seems to be used to shield identity of PEP.
- d) Use of family members or close associates as legal owner.

B. RED FLAGS AND INDICATORS RELATING TO THE PEP AND HIS BEHAVIOUR:

Specific behaviour and individual characteristics of PEPs may raise red flags / risk levels or cause a suspicion:

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

C. THE PEP'S POSITION OR INVOLVEMENT IN BUSINESSES:

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:

- a) The PEP has a substantial authority over or access to state assets and funds, policies and operations.
- b) The PEP has control over regulatory approvals, including awarding licences and concessions.
- c) The PEP has the formal or informal ability to control mechanisms established to prevent and detected ML/TF.
- d) The PEP (actively) downplays importance of his/her public function, or the public function s/he is relates to associated with.
- e) The PEP does not reveal all positions (including those that are *ex officio*).

- f) The PEP has access to, control or influence over, government or corporate accounts.
- g) The PEP (partially) owns or controls financial institutions or DNFBPs, either privately, or ex officio.
- h) The PEP (partially) owns or controls the financial institution or DNFBP (either privately or ex officio) that is a counter part or a correspondent in a transaction.
- i) The PEP is a director or beneficial owner of a legal entity that is a client of a financial institution or a DNFBP.

D. RED FLAGS AND INDICATORS RELATING TO THE 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. Competent authorities, financial institutions and DNFBPs are required for determining which types of clients may be higher risk. For this, financial institutions and DNFBPs will also be guided by national guidance or risk assessments. Which industries may be at risk depends on the risk assessments and varies from country to country, and on other industry safeguards that may be in place. Examples of higher risk industries are:

- a) Arms trade and defence industry.
- b) Banking and finance.
- c) Businesses active in government procurement, *i.e.*, those whose business is selling to government or state agencies.
- d) Construction and (large) infrastructure.
- e) Development and other types of assistance.
- f) Human health activities.
- g) Mining and extraction.
- h) Privatisation.
- i) Provision of public goods, utilities.

E. BUSINESS RELATIONSHIP / TRANSACTION, PURPOSE OF BUSINESS RELATIONSHIP:

Red flag and indicators can also relate to the specific business relationship or transaction:

- a) Multiple STRs have been submitted on a PEP.
- b) (Consistent) use of rounded amounts, where this cannot be explained by the expected business.
- c) Deposit or withdrawal of large amounts of cash from an account, use of bank cheques or other bearer instruments to make large payments.
- d) Use of large amounts of cash in the business relationship.
- e) Other financial institutions and DNFBPs have terminated the business relationship with the PEP.
- f) Other financial institutions and DNFBPs have been subject to regulatory actions over doing business with the PEP.
- g) Personal and business related money flows are difficult to distinguish from each other.
- h) Financial activity is inconsistent with legitimate or expected activity, funds are moved to or from an account or between financial institutions without a business rationale.

- i) The account shows substantial activity after a dormant period; or over a relatively short time; or shortly after commencing the business relationship.
- j) The account shows substantial flow of cash or wire transfers into or out of the account.
- k) Transactions between non-client corporate vehicles and the PEP's accounts.
- l) A PEP is unable or reluctant to provide details or credible explanations for establishing a business relationship, opening an account or conducting transactions.
- m) A PEP receives large international funds transfers to a gaming account.
- n) The PEP withdraws a small amount for gaming purposes and withdraws the balance by way of cheque.
- o) A PEP uses third parties to exchange gaming chips for cash and vice versa with little or minimal gaming activity.
- p) A PEP uses multiple bank accounts for no apparent commercial or other reason.

F. PRODUCTS, SERVICE, TRANSACTION OR DELIVERY CHANNELS:

Examples of products, industries, service, transaction or delivery channels, which are of a higher risk, irrespective of the type of customer are:

- Private banking.
- Anonymous transactions (including cash).
- Non-face-to-face business relationships or transactions.
- Payments received from unknown or un-associated third parties.

If these industries, products, service, transaction or delivery channels are used by PEPs, then this adds an additional risk factor (depending on the nature of the PEP). In addition to these examples, there are other products, industries, service, transaction or delivery channels that can become additionally vulnerable when used by PEPs.

Examples of these are:

- a) Businesses that cater mainly to (high value) foreign clients.
- b) Trust and company service providers.
- c) Wire transfers, to and from a PEP account that cannot be economically explained, or that lack relevant originator or beneficiary information.
- d) Correspondent and concentration accounts.
- e) Dealers in precious metals and precious stones, or other luxurious goods.
- f) Dealers in luxurious transport vehicles (such as cars, sports cars, ships, helicopters and planes).
- g) High end real estate dealers.

G. 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:

- a) The foreign or domestic PEP is from a higher risk country.
- b) Additional risks occur if a foreign or domestic PEP from a higher risk country would in his/her position have control or influence over decisions that would effectively address identified shortcomings in the AML/CFT system.
- c) Foreign or domestic PEPs from countries identified by credible sources as having a high risk of corruption.
- d) Foreign or domestic PEPs from countries that have not signed or ratified or have not or insufficiently implemented relevant anti-corruption conventions, such as the UNCAC, and the OECD Anti-Bribery Convention.

- e) Foreign or domestic PEPs from countries with a mono economies (economic dependency on one or a few export products), especially if export control or licensing measures have been put in place.
- f) Foreign or domestic PEPs from countries that are dependent on the export of illicit goods, such as drugs.
- g) Foreign or domestic PEPs from countries (including political subdivisions) with political systems that are based on personal rule, autocratic regimes, or countries where a major objective is to enrich those in power, and countries with high level of patronage appointments.
- h) Foreign or domestic PEPs from countries with poor and/or opaque governance and accountability.
- i) Foreign or domestic PEPs from countries identified by credible sources as having high levels of (organised) crime.