



GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO



FINANCIAL INTELLIGENCE UNIT
MINISTRY OF FINANCE

GUIDANCE NOTE
AML/CFT PROCEDURES FOR POLITICALLY EXPOSED PERSONS

PURPOSE AND CONTENTS

The Financial Intelligence Unit of Trinidad and Tobago (“the FIU”) provides this overview of the obligations under the Anti-Money Laundering/Counter Financing of Terrorism (AML/CFT) regime of Trinidad and Tobago for Politically Exposed Persons (PEPs).

This Guidance Note is intended to provide Financial Institutions and Listed Business with guidance on the application of customer due diligence requirements to PEPs. It adheres to the Recommendations of the Financial Action Task Force (FATF).

This guidance uses plain language to explain the most common situations under the specific laws and related regulations which impose AML/CFT requirements. It is provided as general information only. It is not legal advice, and not intended to replace the AML/CFT Acts and Regulations.

A. WHO IS A POLITICALLY EXPOSED PERSON?

A PEP is defined by Regulation 20(1) of the Financial Obligations Regulations (FORs) as,

“(a) individuals such as the Head of State or Government, senior politician, senior government, judicial or military officials, senior executives of State-owned corporations and important political party officials who are or have been entrusted with prominent functions—

- (i) by a foreign country; or***
- (ii) domestically for Trinidad and Tobago;***

(b) persons who are or have been entrusted with a prominent function by an international organization which refers to members of senior the board or equivalent functions;

(c) an immediate family member of a person referred to in paragraph (a) such as the spouse, parent, siblings, children and children of the spouse of that person; and

(d) any individual publicly known or actually known to the relevant financial institution to be a close personal or professional associate of the persons referred to in paragraphs

(a) and (b);”

The FATF definition of a PEP bears much similarity to that contained in the FORs. FATF defines a PEP as “an individual **who is or has been** entrusted with a prominent public function.” The FATF recognizes that, due to their status and influence, many PEPs are in positions that can be platforms for committing money laundering and related predicate offences. These include corrupt practices and bribery, as well as conducting activity related to the financing of terrorism.

Consequently, the FATF Recommendations require the application of additional customer due diligence to business relationships with PEPs due to the potential risk associated with PEPs. It must be emphasized that these measures are preventive in nature. **It is NOT to be inferred that all PEPs are involved in criminal activity or that they have been incriminated in any corruption.**

To address the risks associated with PEPs requires the effective implementation of FATF Recommendations (Rec.) 12 and 22. Rec. 12 sets out Anti Money-Laundering/Counter-Terrorism Financing (AML/CTF) measures applicable to financial institutions which engage in or enter into a business relationship with a PEP and Rec. 22 requires the same measures to be applied by Listed Business.

B. CATEGORIES OF PEPs

The definition of PEPs contained in the FORs identifies Foreign PEPs, Domestic PEPs, International Organisations PEPs and Individuals who are closely related to or close associates of a PEP.

1. **Foreign PEPs:** individuals who are or have been entrusted with prominent public functions by a **foreign country**, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations and important political party officials.
2. **Domestic PEPs:** individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations and important political party officials.

The following examples of domestic PEPs are included in the above definition: *

- i. **Head of State** – The President of the Republic of Trinidad and Tobago;
- ii. **Head of Government** – The Prime Minister of the Republic of Trinidad and Tobago;
- iii. **Senior Members of the Legislature** e.g. The Speaker of the House of Representatives and the President of the Senate;
- iv. **Senior Politicians** include persons elected to office in national, local or Tobago House of Assembly elections; or persons appointed to (i) serve as a Senator in the Parliament of Trinidad and Tobago, (ii) serve on the Tobago House of Assembly under the Tobago House of Assembly Act Chap. 25:03 or (iii) serve as an Alderman in a Municipality or Regional

Corporation under the Municipal Corporations Act Chap. 25:04; e.g. all Members of Parliament, Government Ministers, Mayors, Leader of the Opposition, Assemblymen, Chief Secretary and Deputy Chief Secretary of the Tobago House of Assembly, Parliament Secretaries;

- v. **Senior Government Officials** include a Permanent Secretary or any other person appointed as an Accounting Officer under the Exchequer and Audit Act or individual holding equivalent positions in a foreign country, e.g. Permanent Secretaries¹,
- vi. **Senior Judicial Officers** e.g. the Chief Justice, Judges of the Supreme Court (Court of Appeal and High Court Judges), Judges of the Industrial Court, Judges of the Caribbean Court of Justice, Masters, Chief Magistrate, Deputy Chief Magistrate, Magistrates, the Registrar, Deputy Registrar and Assistant Registrars²;
- vii. **Military Officials** – Senior Defence Force Officials including Major General, Brigadier General, Colonel, Lieutenant-Colonel. Senior Air Guard Officials including Group Captain, Wing Commander, Squadron Leader and Senior Coast Guard Officials including Rear Admiral, Commodore, Captain and Commander³;
- viii. **Senior Executives of State owned corporations** include (a) the chairman, deputy chairman, president or vice-president of the board of directors; (b) the managing director, general manager, comptroller, secretary or treasurer; or (c) any other person who performs for the body corporate functions similar to those normally performed by the holder of any office specified in (a) or (b) and who is duly appointed to perform those functions⁴. State owned corporations also include all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest;
- ix. **Important political party officials** include the Chairman, Deputy Chairman, Political Leader, Deputy Political Leader, Secretary and Treasurer of a political party registered under the Representation of the People Act Chap. 2:01 or individuals holding equivalent positions in a foreign country⁵.

*** NOTE: THESE EXAMPLES MAY NOT BE NOT EXHAUSTIVE.**

3. **International organisation PEPs:** persons who are or have been entrusted with a prominent function by an international organisation, 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.

International Organisations include but are not limited to:

- i. United Nations (UN) and affiliated international organisations;
- ii. Organisation of American States (OAS);
- iii. Inter-American Development Bank (IDB);

¹ A list of Permanent and Deputy Permanent Secretaries as at June 2017 may be found by following this link: <http://www.ircp.gov.tt/permanent-secretaries-deputy-permanent-secretaries>. A list of accounting officers appointed under the Exchequer and Audit Act may be found at this link: [http://www.fiu.gov.tt/content/LIST of ACCOUNTING OFFICERS June 20 2017.pdf](http://www.fiu.gov.tt/content/LIST_of_ACCOUNTING_OFFICERS_June_20_2017.pdf)

² By reference to the Supreme Court of Judicature Act Chap. 4:01

³ By reference to the Defence Act Chap. 14:01

⁴ By reference to the FORs Reg. 20(1)

⁵ By reference to the FORs Reg. 20(1)

- iv. International Labour Organisation (ILO);
 - v. Caribbean Financial Action Task Force (CFATF).
4. **Immediate Family members** are individuals who are related to a PEP either through birth or marriage. Regulation 20(1)(c) of the FORs, defines immediate family members of PEPs as, “...*the spouse, parents, siblings, children and children of the spouse of that person*”.

References to parents, siblings or children include biological as well as adopted children or step-children. A spouse would include a common law spouse and even an ex-spouse.

***It should be noted that connected familial relations as set out in Regulation 20 (1) (c) FORs are only relevant in relation to foreign and domestic PEPs and do not apply to International organisation PEPs.**

*A co-habitant or common-law spouse would also be treated as an immediate family member and a “spouse” for the purposes of Regulation 20 (1) (c) FORs⁶.

5. **Close associates** are individuals who are closely connected to any PEP, either personally or professionally. Reg. 20 (1)(d), FORs defines a Close associate as ...“*any individual publicly known or actually known to the relevant financial institution (or Listed Business via Rec 22) to be a close personal or professional associate...*” of the PEP e.g. a business partner.

C. DUE DILIGENCE MEASURES

Enhanced Due Diligence measures **must** be applied to foreign PEP, whether the PEP is a customer or beneficial owner, and to his/her immediate family members and close associates. Where dealing with domestic and international organisation PEPs enhanced due diligence will only apply where higher risks have been identified (Reg20 (3A)).

These enhanced due diligence measures include:

1. Ensuring that appropriate risk-management systems are in place to determine whether the customer or the beneficial owner is a PEP, or immediate family member or close associate of a PEP (Reg. 20(2));
2. Obtaining senior management approval **BEFORE** establishing (or continuing, for existing customers) the business relationship (Reg. 20(4));
3. Ensuring that reasonable measures are taken to determine the source of wealth and source of funds (Reg. 20(5)); and

⁶ By reference to The Cohabital Relationships Act ch45:55

4. Conducting enhanced on-going monitoring of the business relationship (Reg. 20(5)).

Reasonable measures should be taken to determine whether a customer or beneficial owner is a foreign or domestic PEP or a person who is or has been entrusted with a prominent function by an international organisation. The requirements for PEPs must also be applied to immediate family members and close associates of foreign PEPs only..

The key to the effective monitoring of a business relationship with a PEP, is for Financial Institutions and Listed Business to **APPLY 'KNOW YOUR CUSTOMER' (KYC) MEASURES.**

D. RED FLAGS / SUSPICIOUS INDICATORS

The FATF has developed a list of red flags /suspicious indicators that can be used to assist in detecting the misuse of the financial systems by PEPs during a customer relationship. This list of red flags/suspicious indicators is intended to assist in the detection of suspicious behaviour among those PEPs who abuse the financial system. It is not intended to stigmatize or 'brand' all PEPs.

1. PEPs ATTEMPTING TO SHIELD THEIR IDENTITY

PEPs are aware that their status as a public figure may facilitate the detection of their illicit activities. PEPs may therefore attempt to shield their identity, to avoid detection. Examples of ways in which this is done are:-

- ❖ Use of corporate vehicles (legal entities and legal arrangements) to obscure beneficial ownership. A "beneficial owner means the person who ultimately owns and controls an account, or who exercises ultimate control over a legal person or legal arrangement." Reg. 12(5) of the FORs.
- ❖ Use of corporate vehicles without a valid business reason.
- ❖ Use of intermediaries in cases which do not match normal business practice or when this appears to be a means of shielding the identity of a PEP. Pay attention to Reg. 13 of the FOR – Representative applicant.
- ❖ Use of family members or close associates as legal owners. The business partner, or child or spouse, for example, may appear in legal documents for the business/company, as the legal owner and not the PEP.

2. THE PEP AND HIS/HER BEHAVIOUR

Specific behaviour and individual characteristics of PEPs may raise red flags or a suspicion. For example:-

- ❖ Use of corporate vehicles (legal entities and legal arrangements) to obscure ownership or business(es)/company(ies) involved.
- ❖ Country of nationality/citizenship
- ❖ The PEP makes inquiries about the institution's AML/CFT policy or PEP policy.

- ❖ The PEP seems generally uncomfortable to provide information about source of wealth or source of funds.
- ❖ The information that is provided by the PEP is inconsistent with other (publicly available) information, such as asset declarations and published official salaries.
- ❖ The PEP is unable or reluctant to explain the reason for doing business in the country of the Financial Institution or Listed Business.
- ❖ Funds are repeatedly moved to and from countries to which the PEP does not appear to have ties.
- ❖ The PEP is or has been denied entry to the country (visa denial).

3. 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. For example:-

- ❖ 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 the award of licences and concessions.
- ❖ The PEP has the direct or indirect control over the mechanisms established to prevent and detect ML/TF.
- ❖ The PEP has access to, control or influence over, government or corporate accounts.
- ❖ The PEP (wholly or partially) owns or controls Financial Institutions or Listed Business, either privately, or ex officio.

4. COUNTRY SPECIFIC RED FLAGS AND SUSPICIOUS INDICATORS

Country or geographic risk factors may make a customer higher risk but additionally, the following red flags and indicators relating to countries should 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 Rec. 19, or the Interpretative Note to Rec. 10).
- ❖ Foreign or domestic PEPs from countries identified as having a high risk of corruption.
- ❖ Foreign or domestic PEPs from countries reputed to be dependent on the export of illicit goods, such as drugs.
- ❖ 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.
- ❖ Foreign or domestic PEPs from countries identified by credible sources as having high levels of (organised) crime.

E. FREQUENTLY ASKED QUESTIONS (FAQs)

- ❖ **Q: When do persons cease to be PEPs?**
A: In Trinidad and Tobago persons never cease being PEPs. The FORs do not specify a time limit in respect of a person's status as a PEP. Consequently, once a PEP always a PEP.
- ❖ **Q: Are EDD measures always necessary when dealing with PEPs?**
A: Reg. 20(3A) of the FORs specifies that for PEPs listed in Reg. 20(1)(a)(ii) and 20(1)(b) enhanced due diligence measures need **only be applied where higher risks are identified.** This is so, notwithstanding Reg. 20(3).
- ❖ **Q: What should be done if the information provided by a PEP turns out to be false?**
A: In such a case, Regulation 20(6) of the FORs stipulates that the FI or LB must immediately terminate the business relationship with the PEP and the matter must immediately be reported to the Compliance Officer. This applies also where information cannot be verified.
- ❖ **Q: What is the difference between a foreign PEP and a domestic PEP?**
A: Foreign PEPs are persons who are likely abroad. They may also include persons within Trinidad and Tobago but who are nationals of another country and ordinarily resident outside of Trinidad and Tobago and have been entrusted with a prominent public function by another country. Domestic PEPs are those persons who are nationals and have been entrusted with a prominent public function within and by Trinidad and Tobago.
- ❖ **Q: Do immediate family members also include half siblings and adopted children?**
A: Reference to siblings includes those of the whole and half blood and reference to children, include those who have been adopted.
- ❖ **Q: Who may be included as close personal associates of a PEP?**
A: This may include girlfriends, boyfriends, business partners and close friends of the PEP.

For further guidance on PEPs, please refer to <http://www.fatf-gafi.org/documents/documents/peps-r12-r22.html>.

And for further guidance on AML/CFT, you may refer to the following: <http://www.fiu.gov.tt> and <http://www.fatf-gafi.org>.

Susan S. François
Director
Financial Intelligence Unit

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