



## **GUIDELINE FOR POLITICALLY EXPOSED PERSONS 2019**

In exercise of the powers conferred by Section 45 of the Anti- Money laundering and Countering of Financing of Terrorism (AML and CFT) Act 2018, the Financial Intelligence Department hereby adopt this Guideline for the effective implementation of AML and CFT Act and Rules and Regulations 2022.

## SHORT TITLE, APPLICABLE AND COMMENCEMENT

1. This Guideline shall:
  - a) Be cited as the Guideline for Politically Exposed Persons 2019;
  - b) Applicable to all Reporting Entities;
  - c) Come into force with effect from 29<sup>th</sup> January 2020.

## AUTHORITY AND INTERPRETATION

2. The Financial Intelligence Department (FID) may issue notification, order and clarification in the form of circular from time to time as may be necessary to give effect and implement this Guideline. This Guideline shall be based on the AML and CFT Act and Rules and Regulations 2022 and may be read in conjunction with it.

## OBJECTIVE

3. This Guideline aims to provide guidance to the reporting entities on the application and implementation of AML and CFT requirements associated with “Politically Exposed Persons (PEPs)”.

## DEFINITIONS

4. In this Guideline, the following terms shall have the meanings indicated, unless the content clearly indicates otherwise:
  - a) **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, important political party officials.
  - b) **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, important political party officials.
  - c) **International organisation PEPs:** persons who are or have been entrusted with a prominent function by an international organisation, 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.

- d) **Family members:** The individuals who are related to a PEP either directly (consanguinity) or through marriage or similar (civil) forms of partnership.
- e) **Close associates:** The individuals who are closely connected to a PEP, either socially or professionally.
- f) **'Persons known to be close associates'** means:
  - i. A natural person known to have joint beneficial ownership of a body corporate or any other form of legal arrangement; or any other close business relations, with that PEP; or
  - ii. A natural person who has sole beneficial ownership of a body corporate or any other form of legal arrangement that is known to have been established for the benefit of that PEP.

## **PEPs RISK**

5. Relationships with PEPs may represent high risk of money laundering and financing of terrorism (ML and FT) due to the possibility that individuals holding such positions may misuse their power and influence for personal gain or advantage, or for the personal gain or advantage of close family members and close associates. Such individuals may also use their families or close associates to conceal funds or assets that have been misappropriated as a result of abuse of their official position or resulting from bribery and corruption. In addition, they may also seek to use their power and influence to gain representation and/or access to, or control of, legal entities for similar purposes.
6. It is important to understand, however, that the majority of PEPs are neither in a position to, nor do, abuse their position through corruption or other financial crimes and therefore will not represent any undue additional risk to an FI solely by virtue of their categorization as a PEP.
7. There are different customer identification and verification procedures for medium or low-risk PEPs and high-risk PEPs, including foreign PEPs. Therefore, foreign PEPs who are customers or beneficial owners of a customer shall be subject to same customer identification and verification procedures that are used for individuals.

8. The following characteristics might suggest that a PEP is a LOW RISK:
- a) customer is seeking to have access to a product/service/transaction which has been assessed by the reporting entity to pose a low risk (such as products, services or transactions to which simplified due diligence (SDD) measures may be applied);
  - b) customer does not have executive decision-making responsibilities;
  - c) the PEP is entrusted with a prominent public function in a jurisdiction where information is available showing that the jurisdiction has the following characteristics (the jurisdiction would have to be assessed separately):
    - i. low levels of corruption;
    - ii. political stability, and free and fair elections;
    - iii. strong state institutions;
    - iv. strong compliance with AML/CFT rules;
    - v. a free press with a track record for probing official misconduct;
    - vi. an independent judicial and criminal justice system free from political interference;
    - vii. a track record for investigating political corruption and taking action;
    - viii. legal protections for whistleblowers.
    - ix. well-developed registries for ownership of land, companies, etc.
9. The following characteristics might suggest that a PEP is of a HIGHER RISK:
- a) where the customer is seeking to have access to a product, service or transaction which is capable of being misused to launder the proceeds of corruption or bribery;
  - b) personal wealth or lifestyle inconsistent with known legitimate sources of income or wealth;
  - c) credible allegations of financial misconduct; and
  - d) the PEP is entrusted with a prominent public function in a jurisdiction where there is a higher risk of corruption and where information is available showing that the jurisdiction has any of the following characteristics (the jurisdiction would have to be assessed separately):
    - i. high levels of corruption;
    - ii. political instability;
    - iii. weak state institutions;
    - iv. weak AML/CFT measures;
    - v. armed conflict;
    - vi. non-democratic forms of government;
    - vii. widespread organised criminality;

- viii. political economy dominated by a small number of people or entities with close links to the state;
- ix. lack of a free press where journalistic investigation is constrained;
- x. a judicial and criminal justice system vulnerable to political interference;
- xi. lacking expertise and skills related to book-keeping, accountancy and audit, particularly in the public sector;
- xii. law and culture antagonistic to the interests of whistleblowers;
- xiii. weaknesses in the transparency of registries of ownership for land, companies, etc.;
- xiv. human rights abuses.

## **FAMILY MEMBERS AND CLOSE ASSOCIATES OF A PEP**

10. A family member<sup>1</sup> covers both biological and non-biological relationships of the PEP. A family member includes following individuals but not limited to:

- a) Parents;
- b) Siblings;
- c) spouse;
- d) child and their spouse; or
- e) spouse's parents.

11. An individual who is closely connected to a PEP may include the PEP's business partners or associates, extended family members, close friends and financially dependent individuals.

12. Reporting institutions must determine the extent to which the close associate is directly engaged or involved in the activity of the PEP on best effort basis.

13. The following characteristics might suggest a family member or a close associate of a PEP poses a higher risk:

- a) wealth derived from the granting of government licenses (such as mineral extraction concessions, license to act as a monopoly provider of services, or permission for significant construction or other projects);
- b) wealth derived from preferential access to the privatization of former state assets;

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<sup>1</sup>The list of "family members" is not an exhaustive list and therefore subject persons are required to assess the nature of a particular family relationship.

- c) wealth derived from commerce in industry sectors associated with high-barriers to entry or a lack of competition, particularly where these barriers stem from law, regulation or other government policy;
- d) wealth or lifestyle inconsistent with known legitimate sources of income or wealth;
- e) appointment to a public office that appears inconsistent with personal merit;
- f) credible allegations of financial misconduct (e.g. facilitated, made, or accepted bribes).

## **IDENTIFICATION OF PEP OR THEIR “CLOSE FAMILY MEMBER OR CLOSE ASSOCIATES”**

14. PEP has been defined as a natural person who is or has been entrusted with a prominent public function. However, there is no explanation of what constitutes a ‘prominent public function’ in the AML/CFT Rules and Regulation 2022. This depends on a number of factors such as the type, size, budget, powers and responsibilities associated with a particular public function and the organizational framework of the government or international organization concerned, and other factors that are considered as part of the risk assessment.

15. Factors that classify a natural person as a PEP shall be one of the followings:
- a) Being a high ranking official in the Parliament, the Cabinet or Judicial.
  - b) Being a high ranking official and having a significant role, duty in controlling or management in a central government, a provincial government, a government enterprise or other government organization.
  - c) Being a high ranking official and having commanding authority in military or police force.
  - d) Being a high ranking official or a committee member in a constitutional organization.
  - e) Being a signatory, authorizer, controller of government allocated funds and budgets
  - f) Any other factors determined by the FID from time to time.

16. The list of examples of who is to be considered to hold a prominent public function and therefore as a PEP are:

- a) The Prime Minister and Ministers;
- b) The Speaker and Members of the National Assembly;
- c) The Chairperson and Members of the National Council;
- d) The Holders and Members of the Constitutional offices;
- e) The Secretary to Government including a Cabinet Secretary;
- f) The Head of the Armed Forces;

- g) The Chief of Police;
- h) The Ambassadors and Consuls;
- i) The Head of Autonomous Agencies;
- j) The Dzungdags and Drangpons;
- k) The Chairpersons and/or Chief Executives of Corporations including Financial Institutions;
- l) The Heads of Civil Society Organizations;
- m) The Chairpersons of Dzungkhag Tshogdu's;
- n) The Chairpersons of ThondreTshogdes

17. This list is not exhaustive and reporting entities are required to assess on a case by case basis whether a particular office presents characteristics which would fall within the definition of a 'prominent public function'. The same public function may in one case or country lead to its holder being considered a PEP, while in another situation or country this may not be the case. By way of example, the position and powers of a Thrompon of a large city or head of a region in a foreign jurisdiction might not necessarily be equivalent to those of a Thrompon of a small city in Bhutan, and therefore a Thrompon may be treated differently depending on the Dzungkhag concerned.

#### **SOURCE OF INFORMATION FOR DETERMINATION OF PEPs, THEIR FAMILY MEMBERS AND CLOSE ASSOCIATES**

18. Section 81 of AML/CFT Rules and Regulation 2022, requires reporting entities to take reasonable measures to determine whether a customer or a beneficial owner is a PEP. This requirement is not only applicable to prospective customers but also to existing customers, given that existing customers, or their family members or close associates, may become PEPs at a point of time in the course of an ongoing relationship. Reporting entities shall therefore, ensure that risk management procedures include a mechanism to ascertain when an existing customer becomes a PEP. This forms part of the on-going monitoring obligation.

19. In determining whether the customer or beneficial owner is a PEP, a family member or close associate of PEP, reporting entities shall refer to any of the following sources of information:

- a) Internet and media searches;
- b) Public and subscription databases;
- c) In-house databases and information sharing within financial group;
- d) Customer's self-declaration; and/or
- e) Risk information shared by supervisory/regulatory authorities

- f) Any other sources determined by the FID from time to time.
20. Where publicly available information is used, reporting entities should assess the reliability of the sources being relied upon. Reporting entities should refer to different sources and should not rely solely on one particular source. All searches undertaken by the reporting entities shall be duly documented and retained as required by Section 67 of AML and CFT Act 2018.
21. Information obtained directly from the customer may be obtained in response to a question posed in the application or on-boarding form. Alternatively, reporting entities may develop a questionnaire with specific reference to criteria that identify PEPs including family members and persons known to be close associates of the PEP. Such a questionnaire would be required to be completed and signed by the customer and the beneficial owner, where applicable.
22. Reporting entities should also determine whether the use of commercial databases, to confirm the information provided by the customer, is necessary. Prior to making use of any commercial databases, reporting entities should understand how commercial databases are populated and how these are able to detect and flag PEPs, family members and persons known to be close associates of PEPs.
23. The sources of information referred above are not exhaustive and a reporting entity is encouraged to develop its own internal references in identifying individuals who are PEP, their family members or close associates.
24. The application of enhanced due diligence (EDD) to PEPs, their family members and close associates is mandatory as long as a PEP remains entrusted with a prominent public function, as defined above, and for a subsequent 12 month period from when he/she ceases to be a PEP. The risk based approach shall however continue to apply, and customer due diligence (CDD) measures proportionate to the risk, including EDD where appropriate, should be applied for as long as former PEP is applicable to higher risk of ML/TF.



## PEP SCREENING

25. PEP screening shall be undertaken in accordance with a reporting entity's risk appetite applying a risk based approach( RBA) which further includes but not limited to:
- a) Part of the on boarding process;
  - b) Periodic customer review; and
  - c) When there is a trigger event which warrants a customer due diligence review.
26. As a minimum, PEP screening should be undertaken on those parties who are subject to identification requirements to meet CDD standards. This could include, but is not limited to: account holders, beneficial owners (including settlors, named and vested beneficiaries) and individuals with control over the account.
27. Reporting entities may, depending on their size and geographical footprint, choose to source their PEP data for screening purposes from a third party vendor or develop their own internal database.
28. Reporting entities should have complete and accurate electronic customer data records and the PEP database used for screening should contain sufficient unique identifying data. Unique identifying data, whether maintained by vendors or determined internally by a reporting entity, should include the following:
- a) Name (all known names and aliases)
  - b) Date of Birth, and where this isn't available, Year of Birth
  - c) Country of political exposure
  - d) Gender (where available)
  - e) Politically exposed role(s), and date(s) or year(s) of appointment
  - f) Date or year that the PEP left their position (where applicable)
29. The accuracy and completeness of the PEP data should be subject to regular review and changes in personal details and political positions shall be reflected in a timely manner. In addition, should PEP be deceased, it shall be appropriately recorded.

## ENHANCED DUE DILIGENCE

30. Reporting entities must identify and closely monitor Politically Exposed Persons (PEPs) within financial transactions, implement an effective risk review and perform enhanced monitoring of the business relationship. The application of EDD measures is necessary to mitigate the potential risks associated with PEPs.
31. The AML/CFT Rules and Regulation 2022, Sections 80 and 84, require reporting entities to apply EDD measures when the customer and/or the beneficial owner is a PEP, both when establishing or continuing business relationships.
32. Family members of PEPs and persons known to be close associates of PEPs may also benefit from, or be used to facilitate abuse by a PEP. Therefore, the same EDD measures that are applicable to PEPs are also applicable in the case of family members or persons known to be close associates of a PEP. However, reporting entities should consider factors such as degrees of familial separation from, the level of exposure to, and the length of the relationship with, the political officeholder in determining whether a “Close Family Member” or “Close Associate” should be classified as a PEP and the level of due diligence they require.
33. It should be pointed out that the application of EDD measures to PEPs and their family members and persons known to be close associates does not necessarily mean that their business relationship or occasional transactions are connected to ML/FT.
34. Reporting entities are required to carry out customer due diligence (CDD) measures which are proportionate to the risks posed by the customer. When dealing with PEPs (or a family member or person known to be a close associate of a PEP), additional measures in the form of EDD are to be applied by the reporting entities in order to mitigate the higher ML/FT risks. However, reporting entities are not required to turn away a prospective customer or close a business relationship simply on the basis that the customer, or beneficial owner, is a PEP (or a family member or person known to be a close associate of the PEP).
35. It should be made clear however that if after conducting proper CDD on the customer or the beneficial owner, and after conducting a risk assessment, the reporting entity determines that the customer or beneficial owner falls outside its risk appetite (for example when the high risk posed by the customer is higher than can be effectively mitigated), the reporting entities should decline or close the business relationship, or not carry out the occasional transaction.

## Applicable CDD or Enhanced CDD Measures

36. Since not every PEP poses the same risk of ML/FT, reporting entities are required to assess and determine the level of ML/FT risk posed by that particular PEP, family member or person known to be a close associate. Reporting entities should therefore assess the different types of risks they are exposed to (geographical, product/service/transaction, customer, delivery/distribution channel/interface) and determine, based on the risk assessment undertaken, the level of EDD measures required in each particular case.
37. If the customer or beneficial owner is identified as a family member or close associate of a foreign PEP, a reporting entity is required to conduct enhanced CDD.
38. If the customer or beneficial owner is identified as a family member or close associate of a domestic PEP a reporting entity is required to assess the level of ML/TF risks posed by the business relationship with the family members or close associates.
39. In assessing the ML/TF risk level of customer or beneficial owner identified as family members or close associates of a domestic PEP, the reporting entity shall consider the following factors:
- a) The family members or close associates have business interests to the related PEP's public functions (conflict of interest);
  - b) The social standing or official capacity of the family members or close associates are such that it can be controlled, directed or influenced by the PEP;
  - c) Jurisdictions of which the family members or close associates originate from or reside in; and
  - d) The family members or close associates are known to be involved in businesses or activities that have a high probability of being abused as a vehicle for ML/TF by the PEP
  - e) Personal accounts held by a PEP or a related person to a PEP must receive special attention for transactional patterns related to ML/TF
40. It is important to point out that, by classifying the PEP, family member or person known to be a close associate of the PEP as low risk, the reporting entity is not, however, exempt from applying the EDD measures set out in Sections 63 and 64 of AML/CFT Rules and Regulation 2022. Notwithstanding this, in case where the customer, or beneficial owner, is considered to be a low risk PEP, the reporting

entity may apply a lighter level of EDD measures than in the case where the customer, or beneficial owner, is a high risk PEP.

41. When undertaking enhanced CDD measures on PEPs, their family members or persons known as close associates, the reporting entities shall in line with Section 6 of AML/CFT Rules and Regulation 2022;

a) obtain senior management approval

i. This means having the approval of an officer or employee of the institution with sufficient knowledge of the reporting entity's ML/FT risk exposure and sufficient seniority to take decisions affecting its risk exposure. The approval of senior management should be clearly documented.

ii. Senior management approval ensures that the necessary precautions and controls are in place before deciding to do business with a PEP. Senior management approval is required irrespective of the level of risk a PEP may pose. However, the level of escalation within the reporting entities structure will vary depending on the risk posed by the customer, as well as the entity structure and the level of delegation within the reporting entities structure.

iii. When considering whether to approve a PEP relationship, senior management should base their decision on the level of ML/FT risk the reporting entity would be exposed to if it entered into that relationship and how well equipped it is to manage that risk effectively.

b) take adequate measures to establish the source of wealth and the source of funds involved.

i. A reporting entity must take adequate measures to establish the source of wealth and the source of funds of the customer, in order to be satisfied that it does not handle the proceeds from corruption or other criminal activity. The extent of information and/or documentation to be requested by the subject person will vary depending on the risk posed by the customer.

ii. It is always necessary to seek source of wealth information however in case of lower risk situations, the reporting entity may take less intrusive and less exhaustive steps to establish the source of funds and source of wealth of the PEP, family members or known close associates of the

PEP. In such cases, the reporting entity may use information already available to the reporting entity (such as transaction records) or may rely on publicly available information and is not required to make further inquiries unless the reporting entity identifies certain anomalies from the information available to him. In all lower risk cases, especially when dealing with products, services or transactions that carry a lower risk of ML/FT, reporting entities can minimise the amount of information they collect and how they verify the information provided.

- iii. In higher risk situations, reporting entities are required to be more intrusive and take more exhaustive steps, and should consider whether to collect documentation from the customer in order to establish the source of funds and source of wealth of the PEP, family members or known close associates of the PEP. Reporting entities may wish to refer to information sources such as asset and income declarations, which some jurisdictions expect certain senior public officials to file and which often include information about an official's source of wealth and current business interests, and may be publicly available. Reporting entities should also be aware that some jurisdictions impose restrictions on their PEP's ability to hold foreign bank accounts or to hold other office or paid employment.
  - iv. As part of its EDD measures, reporting entities should consider, on a risk sensitive basis, whether the information regarding source of wealth and source of funds should be evidenced. For example, for source of wealth or funds from inheritance, a copy of the will could be requested, or if from a sale of property, evidence of transfer of legal title could be sought.
- c) conduct enhanced ongoing monitoring
- i. For low risk customers, the reporting entity is required to undertake less formal frequent reviews than higher risk customers. In the case of low risk customers, the reporting entity would be required to review the CDD measures undertaken at the establishment of the business relationship and update the CDD documentation as appropriate. Reporting entities would also be required to update the CDD documentation undertaken at the commencement of the business relationship or the undertaking of an occasional transaction when a new product, service or transaction is requested.

- ii. For higher risk customers, a reporting entities ongoing monitoring should be conducted more regularly and more thoroughly, and a closer analysis should be undertaken on the transactions and their origin. Reporting entities should also consider whether the business relationship with such customers should be maintained or the occasional transaction undertaken.
- iii. Reporting entities should remember that new and existing customers may not initially meet the definition of a PEP, but may subsequently become a PEP during the course of a business relationship. It is for this reason that an automated system of checks against publicly available information, or through specialist PEP databases of commercial service providers, would be useful in this respect.
- iv. Reporting entities should identify unusual transactions and regularly review the information they hold to ensure that any new or emerging information that could affect the risk assessment is identified in a timely fashion.
- v. In the case of long-term insurance business, reporting entities shall take reasonable measures to determine whether the beneficiaries of a policy and, where applicable, the beneficial owner of such beneficiary, are PEPs, their family members or known close associates, and such measures shall be taken no later than the time of payout or the time of the assignment, in whole or in part, of the policy.
- vi. Therefore, not later than the time of payout, or the time of the assignment, reporting entities are first expected to check whether there is any involvement of PEPs, family members or known close associates in the transaction. In the event that the beneficiary of the policy or, where applicable, the beneficial owner of the beneficiary are PEPs, family members or known close associates, senior management approval is required before proceeding with the payout under the policy. Moreover, reporting entities are required to scrutinise the relationship with the policy holder to ensure that the policy would not have been misused to channel funds to the PEP (e.g. a long-term insurance is set up and withdrawn within a short period of time, or there seems to be no apparent or logical sense for the particular customer to be a beneficiary in a policy).

42. Reporting entities should be careful to assess the logical and economical rationale of the entire set up. The extent of the checks to be undertaken will vary depending on the level of risk which the customer poses.

## **EXTENT OF APPLICATION OF PEP, THEIR FAMILY MEMBER OR CLOSE ASSOCIATE**

43. A reporting institution should apply appropriate risk assessment on PEP, their family members or close associates who no longer holds prominent public function.

44. The following considerations should be made when determining the length of time appropriate post departure from public function:

- a) The level of inherent corruption risk in their country of political exposure
- b) The position held and its susceptibility to corruption or misappropriation of state funds or assets
- c) Length of time in office and likelihood of return to office in future
- d) The level of transparency about the source of wealth and origin of funds, in particular those funds generated as a consequence of office held.
- e) Links to any industries that are high risk for corruption
- f) The overall plausibility of the stated customer profile and their net worth
- g) The level of transparency and plausibility of transactions processed through the account whether there is relevant adverse information about the customer widely published in reputable sources.
- h) How politically connected they remain once they have left office

45. A reporting entity may consider the following factors in determining whether a family member or close associate of a PEP who no longer holds a prominent public function should be considered as high risk:

- a) the level of informal influence that the PEP could still exercise, even though he no longer holds a prominent public function; and
- b) whether the PEP's previous and current function (though not in a public/official capacity) are linked by the fact that the PEP continues to deal with the same substantive matters.

46. Where a PEP is deceased but was the source of funds/wealth for close family members' or close associates', a risk based assessment will need to be made to

determine whether those relationships still merit appropriate levels of EDD on their own merits or whether they should be declassified.

47. Any declassification of a PEP should be subject to an appropriate level of senior management review and approval. This review should be documented. Once a PEP has been de-classified, their prior PEP status should be noted for investigatory purposes (e.g. in the event of a suspicious activity reporting).

## **TRAINING AND AWARENESS**

48. For those employees who are involved in PEP alert handling, appropriate training should be designed and delivered on a regular basis.