

Guidance Notes on Politically Exposed Persons (PEPs) for all Reporting Organizations



Bangladesh Financial Intelligence Unit

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1. Purpose

This guidance notes termed as “Guidance note on Politically Exposed Persons (PEPs)” is issued as per power conferred in section 23(1)(d) of Money Laundering Prevention Act, 2012 and in section 15(1)(d) of Anti Terrorism Act, 2009 for all the reporting organizations (as per section 2 (W) of Money Laundering Prevention Act 2012 and section 2 (20) of Anti Terrorism Act 2009) operating in Bangladesh.

The purpose of this guidance note is to assist the reporting organizations to obtain an explicit overview of the obligations under the Anti Money Laundering and Countering the Financing of Terrorism (AML/CFT) regime of Bangladesh for Politically Exposed Persons (PEPs).

This guidance notes is intended to provide the reporting organizations with guidance on the application of customer due diligence requirements associated with PEPs in adherence to the Financial Action Task Force (FATF) recommendations and international best practices.

2. Politically Exposed Persons (PEPs)

PEPs (as well as their family members and persons known to be close associates) are required to be subject to undertake enhanced due diligence by a reporting organization in general. This is because international standards issued by the FATF recognize that PEP may be in a position to abuse their public office, political power for private gains and PEP may use the financial system to launder the illicit gains. As FATF says ‘these requirements are preventive (not criminal) in nature, and should not be interpreted as stigmatizing PEPs as such being involved in criminal activity. The FATF has categorized PEPs into 3 (three) criteria which include:

- Foreign PEPs;
- Domestic PEPs (known as Influential Persons: IPs in Bangladesh) and
- Chief or similar high-ranking positions in an international organization.

It is important to note that only foreign PEPs automatically should be treated as high risk and therefore a reporting organization should conduct Enhanced Due Diligence (EDD) in this scenario. However, EDD should be undertaken in case of domestic PEPs (Influential Persons: IPs) and PEPs of the international organization when such customer relationship is identified as higher risk.

2.1 Who are Politically Exposed Persons (PEPs)?

A politically exposed person (PEP) is defined by the FATF as an individual who is or has been entrusted with a prominent public functions which include individuals in foreign country and domestic level. So, PEPs as per the FATF Standards and IPs as per Bangladeshi regulations, are the following individuals but not limited to-

- Heads of state or government, ministers and deputy or state ministers;
- Members of parliament or of similar legislative bodies;
- Members of the governing bodies of political parties (generally only apply to the national governing bodies where a member has significant executive power, eg. over the selection of candidates or distribution of significant party funds);
- Senior politicians
- Members of supreme courts, of constitutional courts or of any judicial body the decisions of which are not subject to further appeal except in exceptional circumstances;
- Members of courts of auditors or of the boards of central banks;
- Ambassadors, Charges d'affairs and high-ranking officers in the armed forces;
- Head or the senior executives or members of the administrative, management or supervisory bodies or State-owned enterprises;
- Chief, directors, deputy directors and members of the board or equivalent function of an international organizations

2.2 Chief or similar high-ranking positions in an international organization.

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

The definition of PEPs is not intend to cover middle ranking and more junior individuals as mentioned in 2.1 and 2.2.

2.3 Who should be considered a family member of a PEP?

Family members of a PEP shall include:

- spouse, or civil partner
- children and their spouses or civil partner
- parents

However, this is not an exhaustive list. Reporting organizations should take a proportionate and risk-based approach to the treatment of family members who do not fall into this definition. A corrupt PEP may use members of his/her wider family to launder the proceeds of corruption on his/her behalf.

It may be appropriate to include a wider circle of family members (such as aunts and uncles) in cases where a reporting organization assessed a PEP to pose a higher risk. This would not apply in relation to lower risk PEPs. In low-risk situations, a reporting organization should not apply any EDD measures to someone who is not within the definition above and should apply normal customer due diligence measures. A family member of a PEP is not a PEP themselves purely as a consequence of being associated with a PEP.

2.4 Close associates' of a PEP

A 'known close associate' of a PEP is defined as:

- an individual known to have joint beneficial ownership of a legal entity or a legal arrangement or any other close business relationship with a PEP
- an individual who has sole beneficial ownership of a legal entity or a legal arrangement that is known to have been set up for the benefit of a PEP

A 'known close associate' of a PEP is not a PEP themselves purely as a consequence of being associated with a PEP.

3. Various scenario related with PEPs/IPs

A PEP/IP must be treated as a PEP/IP after he or she leaves office for at least 12 months, depending on the risk. This does not apply to family members, who should be treated as ordinary customers, subject to normal customer due diligence obligations from the point that the PEP/IP leaves office. A family member of a former PEP/IP should not be subject to enhanced due diligence measures unless this is justified by the reporting organization's assessment of other risks posed by that customer.

If a person who is a PEP/IP is no longer entrusted with a prominent public function, that person should continue to be subject to risk-based enhanced due diligence for a period of at least 12 months after the date they ceased to be entrusted with that public function. Reporting organizations may apply measures for a longer period to address risks of money laundering or terrorist financing in relation to that person, but the BFIU consider this will only be necessary in the cases of PEPs/IPs where a reporting organization has assessed that PEP/IP is posing a higher risk.

4. PEPs versus Risk

4.1 Do all PEPs pose the same risk?

No—the risk of corruption will differ between PEPs. Reporting organization has to take appropriate approach that considers the risks an individual PEP poses based on an assessment of:

- the prominent public functions the PEP holds
- the nature of the proposed business relationship
- the potential for the product to be misused for the purposes of corruption
- any other relevant factors the reporting organization has considered in its risk assessment.

This guidance discusses on how reporting organization may differentiate between PEPs. In this guidance, the terms ‘lower risk’ and ‘higher risk’ are used to recognize that reporting organizations are required to apply Enhanced Due Diligence on a risk-sensitive basis. An overall risk assessment will consider all risk factors that a customer may present and come to a holistic view of what measures should be taken to comply. Not only risk factor means a customer should automatically be treated as posing a higher risk; it is necessary to consider all features of the customer.

4.2 What are some indicators that a PEP might pose a lower risk?

The following indicators suggest a PEP poses a lower risk:

- If he/she is seeking access to a product the reporting organization has assessed to pose a lower risk.
- If he/she is from a area where ML/TF risks is lower
- If he/she does not have executive decision making responsibilities (e.g. an opposition Member of the Parliament)

4.3 What are indicators that a PEP might pose a higher risk?

The following indicators suggest a PEP poses a higher risk:

a) Higher risk indicator – product

The reporting organization’s risk assessment finds the product or relationship a PEP is seeking for may be misused to launder the proceeds of large-scale corruption.

b) Higher risk indicators – geographical

A PEP may pose a greater risk if he/she is entrusted with a prominent public function in a country that is considered as a higher risk for corruption. To draw this conclusion, a reporting organization should have regard to whether, based on information available, the country has the following characteristics:

- associated with high levels of corruption
- political instability
- weak state institutions
- weak anti-money laundering defence
- armed conflict
- non-democratic forms of government
- widespread organized criminality
- a political economy dominated by a small number of people/entities with close links to the state
- lacking a free press and where legal or other measures constrain journalistic investigation
- a criminal justice system vulnerable to political interference
- lacking expertise and skills related to book-keeping, accountancy and audit, particularly in the public sector
- law and culture antagonistic to the interests of whistleblowers
- weaknesses in the transparency of registries of ownership for companies, land and equities
- human rights abuses

c) Higher risk indicators – personal and professional

The following characteristics might suggest a PEP poses higher risk:

- personal wealth or lifestyle is inconsistent with known legitimate sources of income or wealth; if a country has laws that do not generally permit the holding of a foreign bank account, a bank should satisfy itself that the customer has authority to do so before opening an account
- credible allegations of financial misconduct (eg facilitated, made, or accepted bribes)
- responsibility for, or able to influence, large public procurement exercises, particularly where procurement is not subject to competitive tender, or otherwise lacks transparency
- responsible for, or able to influence, allocation of scarce government licenses such as mineral extraction concessions or permission for significant construction projects.

4.4 What are some indicators that a PEP's family or known close associates pose a lower risk?

A family member or close associates of a politically exposed person may pose a lower risk if the PEP himself/herself poses a lower risk.

4.5 What are some indicators that a PEP's family or known close associates pose a higher risk?

The following characteristics might suggest a family member or close associates of a politically exposed person poses a higher risk:

- wealth derived from the granting of government licences (such as mineral extraction concessions, licence to act as a monopoly provider of services, or permission for significant construction projects)
- wealth derived from preferential access to the privatization of former state assets
- 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
- wealth or lifestyle inconsistent with known legitimate sources of income or wealth
- credible allegations of financial misconduct (e.g. facilitated, made, or accepted bribes)
- appointment to a public office that appears inconsistent with personal merit

5.What are reporting organizations' obligations under the Regulations?

5.1 The Regulations require reporting organizations to have in place appropriate risk-management systems and procedures to determine whether a customer or the beneficial owner of a customer is a PEP (or a family member or a known close associate of a PEP) and to manage the risks arising from the reporting organization's relationship with those customers. This includes where a PEP, family member or close associate is operating via an intermediary or introducer (this may include others in the regulated sector such as banking staff, lawyers, estate agents etc). There are many legitimate reasons for doing so (eg a solicitor acting in a property transaction). In these situations, and in line with FATF guidance, BFIU expects reporting organizations to understand as part of their due diligence why a PEP, family member or close associate is using such an arrangement and use that as part of their assessment of risk.

5.2 The Regulations state that in determining whether these systems and procedures are appropriate, a reporting organization should refer to:

- Its own risk assessment of the money laundering/terrorist financing risks;
- An assessment of the extent to which the risk would be increased by a business relationship with a PEP, family member or close associate. BFIU would expect that this is a case-by-case assessment and not an automatic assessment that a relationship creates a high risk of money laundering; and
- Any information provided by the BFIU. This will include the BFIU's publication, thematic reviews, speeches on financial crime issues, BFIU's annual report.

5.3 Where a reporting organization has identified that a customer (or beneficial owner of a customer) does meet the definition of a PEP (or a family member or known close associate of a PEP), the reporting organization must assess the level of risk associated with that customer and, as a result of that assessment, the extent to which enhanced due diligence measures need to be carried out. The risk factors set out in this guidance will help reporting organization to consider relevant factors when meeting these obligations. A reporting organization's assessment and its decision to apply relevant enhanced due diligence measures need to be clearly documented.

5.4 BFIU expects reporting organizations to make use of information that is reasonably available to them in identifying PEPs, family members or known close associates. This could include the following:

- Public domain information such as websites of the governments, reliable news sources and work by reputable pressure groups focused on corruption risk. Reporting organizations should use a variety of sources where possible.

- In line with the nature and size of the reporting organization, it may choose, but is not required, to use commercial databases that contain lists of PEPs, family members and known close associates. A reporting organization choosing to use such lists would need to understand how such databases are populated and will need to ensure that those flagged by the system fall within the definition of a PEP, family member or close associate as set out in the Regulations and this guidance.

5.5 BFIU expects that a reporting organization will not decline or close a business relationship with a person merely because that person meets the definition of a PEP (or a family member of a PEP or known close associate of a PEP). A reporting organization may, after collecting appropriate information and completing its assessment, conclude the risks posed by a customer are higher than they can effectively mitigate; only in such cases it will be appropriate to decline or close that relationship.

5.6 If, having assessed the risk associated with the customer and decided on an appropriate level of enhanced due diligence measures in line with this guidance, a reporting organization is unable to apply those measures, a reporting organization needs to comply with the requirement not to establish, or to terminate, a business relationship.

5.7 The following measures should be taken where a customer meets the definition of a foreign PEP, IPs/Chief of International Organization posing higher risk or a family member or known close associate of a foreign PEP, IPs/Chief of International Organization posing higher risk:

- obtain senior management approval for establishing or continuing business relationships with such persons
- take adequate measures to establish the source of wealth and source of funds that are involved in business relationships or transactions with such persons
- conduct enhanced, ongoing monitoring of those business relationships

The nature and extent of this due diligence should be appropriate to the risk that the reporting organization has assessed in relation to the customer. A reporting organization should apply more extensive measures for relationships assessed as high risk and less extensive measures for lower risk customers.

5.8 What measures may reporting organizations take in lower risk situations?

In lower risk situations a reporting organization may take the following measures:

- Conduct enquiries about a a PEP's family or known close associates in a flexible manner except those required to establish whether such a relationship does exist.

- take less intrusive and less exhaustive steps to establish the source of wealth and source of funds of PEPs, family members or known close associates of a PEP. It is necessary to seek source of wealth information but in all lower risk cases, especially when dealing with products that carry a lower risk of laundering the proceeds of corruption, reporting organizations should minimize the amount of information they collect and how they verify the information provided (for example, via information sources it has available).
- oversight and approval of the relationship takes place at a lower level of senior management.
- a business relationship with a PEP or a PEP's family and close associates is subject to less frequent formal review than it was considered high risk.

5.9 What measures may reporting organizations take in higher risk situations?

In higher risk situations a reporting organization may take the following measures:

- take more intrusive and exhaustive steps to establish the source of wealth and source of funds of PEPs, family members or known close associates of a PEP
- oversight and approval of the relationship takes place at a senior level of management
- a business relationship with a PEP (or a PEP's family and close associates) is subject to more frequent and thorough formal review as to whether the business relationship should be maintained

5.10 Long-term insurance contracts

In relation to life insurance policies, reporting organizations should be required to take reasonable measures to determine whether the beneficiaries and/or, where required, the beneficial owner of the beneficiaries, are PEPs. This should occur, at the latest, at the time of the payout. Where higher risks are identified, reporting organizations should be required to inform senior management before the payout of the policy proceeds, to conduct enhanced scrutiny on the whole business relationship with the policyholder, and to consider making a suspicious transaction report.

5.11 Beneficial owners of legal entities who are PEPs

Reporting organizations should identify when a PEP is a beneficial owner of a customer. It does not require that a legal entity should be treated as a PEP just because a PEP might be a beneficial owner.

Once a reporting organization is satisfied that a PEP is a beneficial owner then, in line with the risk-based approach, it should assess the risks posed by the involvement of that PEP and, after making this assessment, reporting organization should apply appropriate measures in accordance with this guidance. These could range from applying customer due diligence measures in cases where the PEP is just a figurehead for an organization (this will vary

according to the circumstances of each entity but could be the case even if they sit on the board, including as a non-executive director) through to applying EDD measures, according to the risk assessed in line with this guidance where it is apparent that the PEP has significant control or the ability to use their own funds in relation to the entity.

Where a PEP is a beneficial owner of a corporate customer, then a reporting organization should not automatically treat other beneficial owners/shareholders of the customer as a PEP or known close associate under the regulations, but may do so having assessed the relationship based on information available to the reporting organization.

6. Case Example:

6.1 A foreign national prosecuted in another country for bribery

An foreign suspect was convicted in the "Country U" for bribery offences which took place in a third country (Country A).

The suspect was employed in Country A by an inter-governmental organization which received more than USD 260 million of aid from the Country U's donor agency. The suspect's employer worked closely with both the "Country U" and "Country A" governments to construct hospitals, schools and other facilities.

It was alleged that over a three month period while in Country A, the suspect solicited a bribe for awarding sub-contracts funded by the Country U's donor agency. The suspect allegedly solicited a cash payment of USD 190,000 to allow a sub-contractor in Country A to continue working on projects. The suspect was arrested and charged with receiving a bribe as an agent of an organization which received Country U's government funds.

The suspect pleaded guilty to seeking USD 190,000 in bribes and sentenced to 22 months imprisonment.



Pleaded guilty to seeking USD190,000 in bribes



Sentenced to 22 months imprisonment

6.2 Proceed of corruption in one country traced as financial asset in another country.

A governor of a province in Country B was alleged to take approximately USD 1.5 million in bribes. The proceed of bribe were then used to purchase 17 (seventeen) properties in Country B and 6 (six) in Country C. The governor was subsequently removed from office following charges of corruption.



