



# Enhanced Due Diligence on PEPs

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Legal Affairs

The Revised FIAU Implementing Procedures Part I – 18 October 2019



## Overview of Session

- Introduction – Why is EDD mandatory when dealing with PEPs?
- Who is a PEP?
- How to identify a PEP
- Application of EDD – Can a Risk Based Approach be applied?



## PEPs

### ➤ Why is EDD mandatory when dealing with PEPs

- PEPs, their family members, and close associates are considered to pose a higher risk of ML/FT
- In view abuse of public functions for private gain or advantage, corrupt practices, accepting bribes or misappropriating public funds
- Risks associated with use of family members and close associates to conceal proceeds of corruption, bribery or abuse of power

## PEPs – Real Life Case

- Ukraine's former President Viktor Yanukovich
- Multimillion dollar 137-hectare estate
- Included a golf course, ostrich farm, private zoo and full-size Spanish galleon replica
- Former President Viktor Yanukovich and his associates allegedly made US\$40 billion in state assets disappear. So far, the Ukrainian government has recovered just US\$1.5 billion
- Used nominees as front men in a complex web of shell companies from Vienna to London to Lichtenstein, Yanukovich allegedly concealed his involvement while syphoning off Ukrainian public funds for personal benefit.

*Source – Transparency International*



## PEPs – Things to Keep in Mind

Majority of PEPs do not abuse their public function

Not all PEPs pose the same risk

Subject persons are not required to turnaway PEP clients

## PEPs – Who Qualifies as a PEP?

### ➤ Regulation 2(1)

*“Natural Persons who are or have been entrusted with prominent public functions, other than middle ranking or more junior officials”*

### ➤ Prominent Public Functions

- PMLFTR does not provide a definition of the term prominent public function
- PMLFTR provides an indicative list of prominent public functions
- The list is a non-exhaustive one and there may be other functions not listed which would render their holder a PEP
  - Allocation of government resources
  - Award of tenders and contracts
  - Imposition of penalties and fines
  - Granting or withdrawal of licenses and permits



## PEPs – Who Qualifies as a PEP?

### ➤ **Prominent Public Functions**

- No distinction between domestic or foreign PEP (including public function in international or supranational organisations)
- IPs interpret the indicative list in the local context and provide guidance on other positions that should be regarded as prominent public functions

### ➤ **Future Developments**

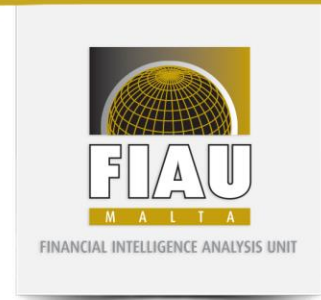
- Minister for Finance will be publishing a list of domestic prominent public functions
- Other EU Member States will also be listing their domestic prominent public functions

## PEPs – Who Qualifies as a PEP?

### ➤ Family Members and Close Associates of PEPs

- Family Members:
  - Spouses – or a person considered to be equivalent to a spouse
  - Children and their spouses – or persons considered to be equivalent to a spouse
  - Parents
  
- Close Associates:
  - A person known to have joint beneficial ownership of an entity or arrangement with a PEP
  - Any person who has close business relations with a PEP
  - Sole beneficial owner of an entity known to be setup for PEP





## PEPs – Determining that a person is a PEP?

- **Regulation 11(5)** - Subject person should ensure that they have procedures and processes in place that allow them to determine whether a customer or a beneficial owner is a PEP, a family member or a close associate
- Subject person should be able to identify persons who are PEPs at the outset of the relationship or occasional transaction and also those that become PEPs throughout a relationship



## PEPs – Determining that a person is a PEP?

### ➤ How to identify PEPs:

- Obtaining information directly from customers (customer due diligence information is a key source of information)
- Publicly available information (use of search engines & social media)
  - Using multiple and local search engines (e.g. Yandex, Baidu)
- Use commercial databases
  - Be aware of their limitations
- Registries of PEPs or Asset Declarations (e.g. [www.pep.org.ua/en/](http://www.pep.org.ua/en/))

**USE MULTIPLE SOURCES**

## PEPs – Application of EDD measures

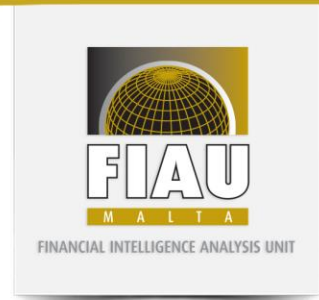
### ➤ Risk Assessments when dealing with PEPs

- Once a customer / beneficial owner is identified as a PEP – Assess the risk to determine the appropriate due diligence measures;
  - A business relationship / occasional transaction is not to be classified as a high risk one only on the basis that a customer is a PEP
  - Apply the customer risk assessment process to determine the overall risk of the business relationship / occasional transaction
    - What sort of product or service is being offered? (Is it a low risk product?)

## PEPs – Application of EDD measures

### ➤ Risk Assessments when dealing with PEPs

- Assess other aspects or particular aspects in more detail;
  - Understanding the public function assumed by the individual and the potential risks
  - Assessing whether the PEP is subject to disclosure requirements or rigorous ethical standards
  - Evaluating whether there is any known adverse media on the individual
  - Consider the vulnerability of the jurisdiction to corruption
  - The intention and purpose of opening the relationship (especially foreign PEPs)
  - Consider the amounts and source of wealth being processed or anticipated to be processed



## PEPs – A Risk Based Approach

### ➤ EDD Measures applicable:

- Obtaining Senior Management Approval
- Taking Adequate Measures to establish the source of wealth and funds
- Conducting Enhanced Monitoring of the business relationship

*EDD is mandatory for PEPs but the extent of each and every measure should be varied according to the risk identified*

## PEPs – Application of EDD measures

### ➤ Risk Based Approach to EDD for PEPs:

- **Senior Management Approval is mandatory but...** - The level of escalation may vary depending on the risk of the particular relationship or transaction
- **Establishing the source of wealth/ funds is mandatory but...** – The level of information or documentation that may be requested and the level of intrusiveness may vary
  - In low risk cases one may use information already available to the entity or publicly available information
- **Enhanced on-going monitoring is mandatory but** – The frequency and type of monitoring will vary depending on the risk of the relationships / transaction and the product or service being offered.

## PEPs – Application of EDD measures

- For how long should EDD measures be applied?:
  - Regulation 11(7) PMLFTR: *Without prejudice to the application of enhanced customer due diligence measures on a risk sensitive basis* where a politically exposed person is no longer entrusted with a prominent public function, subject persons shall be required to apply enhanced due diligence measures for *at least twelve months* after the date on which that person ceased to be entrusted with a prominent public function
  - EDD is mandatory for 12 months after cessation of public function. EDD may still be applicable thereafter if the business relationship is still considered as high risk



Strike the Right Balance

Apply a Risk-Based Approach

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