

# Guidance consultation

## Proposed amendments to FG17/6- Guidance on the treatment of politically exposed persons (PEPs) GC24/4

18 July 2024

### 1 Introduction

- 1.1 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('the Regulations') set out requirements that those subject to that legislation like banks and lenders need to follow. This includes applying 'enhanced customer due diligence' (EDD) when a customer is a politically exposed person (PEP) defined as someone holding a prominent public position entrusted with prominent public functions either in the UK or elsewhere in the world. The Regulations also require EDD to be applied to close family members or known close associates of a PEP.
- 1.2 The Regulations are legislative requirements that apply to organisations across sectors including, but not limited to, FCA regulated financial services firms. In July 2017, we published Guidance FG17/6 (our Guidance) to help the firms we supervise under the Regulations apply a proportionate and risk-based approach to PEPs. This Guidance makes clear that domestic PEPs, and their family members or known close associates, should be treated as 'lower risk', as long as there are not any other risk factors outside of their position as a PEP. Our Guidance clarifies expectations and provides an approach firms can take to meet the legislative requirements set out in the regulations; they do not establish rules for firms.

## Why we are consulting

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- 1.3 Section 78 of the Financial Services and Markets Act 2023 requires the FCA to review the way that firms are applying our Guidance and, following that assessment, to consider whether our Guidance in FG17/6 remains appropriate or requires amendment.
- 1.4 We have now published the outcomes of this review which sets out our findings. We conclude that, generally, our Guidance remains appropriate and have not identified significant changes needed to FG17/6. However, we have identified room for improvement in the way in which firms are putting our Guidance into practice.
- 1.5 We have identified some areas of our Guidance that need to be updated or amended as a result of changes in the legislative framework in the UK since the original Guidance was published. We have highlighted some areas where the Guidance could be clarified to facilitate effective compliance by firms.

## 2 Summary

### What we are consulting on

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- 2.1 We set out the proposed amendments to the Guidance in the Annex. There are four areas that we are seeking to make changes to the Guidance:
- 2.2 **Non-executive board members (NEBMs) of civil service departments** Non-executives are appointed to government departments from the public, private and voluntary sectors. Their role is to provide advice and bring an external perspective. As such these NEBMs do not have any executive authority. During the review we were made aware that some firms might be treating NEBMs as a PEP. We propose to clarify in our Guidance that these aren't roles, in the UK context, a firm should be treating as a PEP.
- 2.3 **Sign off for PEP relationships** The Regulations require that all PEP relationships are signed off by senior management. The Regulations require that our Guidance should interpret, for the financial sector, which appropriate functions should be considered as senior management. Our Guidance sets the expectation all PEP relationships to be signed off at a minimum by the Money Laundering Reporting Office (MLRO) with higher risk relationships potentially being signed off at higher level. Feedback from the industry is that this part of the Guidance causes concerns about the MLRO's independence. We propose to amend our Guidance to allow for alternative approaches provided the MLRO continues to have oversight of all PEP relationships within the firm.
- 2.4 **Reflecting changes to the Regulations** Our Guidance provides that firms should treat domestic PEPs as lower risk unless there are other risk factors apparent that are unrelated to their PEP status. In January 2024, the Government updated the Regulations to require that the starting point for a firm's risk assessment is that domestic PEPs are lower risk than foreign PEPs. We propose to make targeted amendments to reflect this legislative change within our Guidance.

- 2.5 **Minor additional changes** We have also taken the opportunity to review our Guidance. As a result of this review, we propose a small number of minor and mostly non-substantive changes to our Guidance. This includes removing outdated references to EU Guidance that no longer applies in UK law.
- 2.6 We would also welcome any comments on where our Guidance as a whole, within the confines of the requirements in the Regulations, might help firms apply a more effective risk-based approach to UK and Foreign PEPs.

## Who this applies to

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- 2.7 Our Guidance applies to firms that the FCA supervises under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the Regulations).
- 2.8 The CP may also be of interest to:
- Individuals and organisations working with firms subject to Regulations supervision.
  - Financial Services Sector Trade Associations.
  - Any other parties interested in FCA AML Supervision. This could include non-governmental organisations working on financial crime prevention or academics.
  - Customers who meet the definition of a PEP, close family member or known close associate in the UK or elsewhere.

## How this links to our objectives

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- 2.9 The consultation aligns with FCA's strategy (2022-2025) on reducing and preventing financial crime. It will help firms balance resources more effectively by acting proportionately towards lower risk customers so that there is a focus on areas of greatest money laundering risk. It also aligns with the expectations, set out in the PEPs Review terms of reference, that firms consider the Consumer Duty when dealing with any PEPs, family members of PEPs or known close associates.
- 2.10 The Secondary International Competitiveness and Growth Objective applies when we discharge our general functions, including the issuance of general Guidance.
- 2.11 We consider that the minor changes proposed to our Guidance on PEPs facilitate the secondary objective. It aims to support firms in taking a proportionate and risk-based approach, which will therefore drive less unnecessary expenditure on enhanced customer diligence. Although a cost benefit analysis is not required under FSMA for the updates proposed to our Guidance, we do not believe that the proposed changes should incur significant cost as they do not create any new requirements. Rather, they seek to clarify the existing Guidance to ensure there is a more consistent application of our Guidance and the Regulations (see below).

## Equality and diversity considerations

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- 2.12 We have considered the equality and diversity issues through the policy development. We do not consider that the proposed changes to our Guidance will adversely impact any of the groups with protected characteristics under the Equality Act 2010.

## Costs and Benefits of our proposal

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- 2.13 Under section 138I of FSMA, if the FCA wishes to make new rules, it must, subject to certain exceptions, publish a relevant cost benefit analysis along with the proposed rules, when publicly consulting on the latter.
- 2.14 In this CP, we are not proposing to make any new rules. Therefore, there is no relevant cost benefit analysis to be carried out. We consider that given the minor amendments proposed to our Guidance we do not expect this to create much additional cost for industry. We believe it will help firms in taking proportionate approaches to their PEP customers.

## How to respond and next steps

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- 2.15 We are seeking your views on the proposed amendments outlined above as well as general feedback on our Guidance:
- 2.16 **Question 1** Do you agree with our proposal and wording in Paragraph 2.16 to clarify that NEBMs of UK civil service departments are not PEPs? If you disagree please provide reasons for this.
- 2.17 **Question 2** Do you agree with our proposal and the wording in Paragraph 2.15 to allow more flexibility in signing off PEP relationships? Are there other approaches to senior management signing off PEP relationships that we haven't included?
- 2.18 **Question 3** Do you think our proposed wording in paragraphs 2.12, 2.15, 2.27, 2.29 and 2.35 is sufficient to reflect the changes to the MLRs in January 2024? If not, what additional wording is needed?
- 2.19 **Question 4** Do you agree with the minor amendments we propose to the Guidance? Are there other changes we should consider?
- 2.20 **Question 5** Based on our PEPs Review and the MLRs, is there additional Guidance that you think should be reflected in the update to the Guidance? If so, what specific Guidance should we consider and how do you think it would support firms' risk-based approach to EDD?
- 2.21 Please send us your comments on the questions above by 18/10/2024
- 2.22 Use the online response form or write to us at the address provided.
- 2.23 We will consider your comments and plan to publish feedback on this Guidance consultation along with the final amended text of our Guidance.
- 2.24 We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure. Despite this, we may

be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

## Annex 1 Draft amended Guidance on the treatment of politically exposed persons for anti-money laundering purposes

# 1. Executive Summary

## Legislative Background

- 1.1 The FCA has a duty under regulation 48(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('the Regulations') to issue Guidance about the enhanced customer due diligence measures (EDD) in respect of PEPs. This Guidance was first published on 6 July 2017 and has been updated to reflect the outcomes of the FCA's review required by section 78 of the Financial Services and Markets Act 2023 and the changes to the Regulations made on 10 January 2024.

## Summary of the Guidance

- 1.2 The FCA expects that firms take appropriate but proportionate measures in meeting their financial crime obligations. The Regulations set out that all firms must apply a risk sensitive approach to identifying PEPs and then applying enhanced due diligence measures. The Regulations and Guidance clarifies that a case-by-case basis is required with the risk assessed of individual PEPs rather than applying a generic approach to all PEPs.
- 1.3 The Guidance provides clarity on how firms should apply the definitions of a PEP in the Regulations in a UK context. This includes providing that firms should only treat those in the UK who hold truly prominent positions as PEPs and not to apply the definition to local government, more junior members of the senior civil service or anyone other than the most senior military officials. As such it is unlikely in practice that a large number of UK customers should be treated as PEPs.
- 1.4 Even where a UK customer does meet the definition of PEP because of the position they hold the Guidance and Regulations requires that a firm recognises the lower risk of such customers and should apply the Guidance on measures they can take in lower risk situations to meet their EDD obligations. The guidance also provides that lower levels of EDD can be taken for PEPs who are from another country assessed as having similarly transparent anti-corruption regimes.
- 1.5 The Guidance does, however, require firms to apply more stringent approaches where the customer is assessed as having a greater risk. In those circumstances firms will need to take further steps to verify information about the customer and the proposed business relationship. This is in line with the FCA's Financial Crime Guidance to date where the focus has been on managing higher risk PEP relationships.

## 2. Final Guidance

### Introduction

- 2.1 This Guidance is aimed at any institution that has its anti-money laundering systems and controls overseen by the FCA<sup>1</sup>. It discusses how they can meet their obligations when opening new relationships or monitoring existing relationships. It applies only to business relationships undertaken in the course of business in the UK.
- 2.2 The Financial Ombudsman Service will consider complaints from PEPs, their family members or close associates, and will take the guidance into account when deciding what is fair and reasonable in all the circumstances of a complaint.
- 2.3 This Guidance has not been approved by the Treasury under Regulation 35(4)(b) and sections 330 & 331 of the Proceeds of Crime Act. However, Regulation 35(4)(b)(i) states that firms may take into account any guidance that has been issued by the FCA.
- 2.4 In this guidance, where we are interpreting rather than restating legal obligations, this is shown in italics.
- 2.5 Firms should only take additional measures beyond this Guidance where:
  - this is justified on the basis of their risk assessment;
  - risk factors are associated with that customer unrelated to their position or connection to a PEP.

### **Why do PEPs, family members of PEPs or known close associates of PEPs pose a risk?**

- 2.6 Under the Money Laundering Regulations, which derive from the international standards set by the Financial Action Task Force (FATF), financial firms are required to do extra checks on political figures, their families and close associates. The reason for these global standards is the increased risk that PEPs, and those connected to them, may be targeted for bribery and corruption, with the financial system used to launder the associated proceeds. However, under both the law and in our expectations, domestic PEPs, their family members and close associates should be treated as lower risk, unless there is a reason otherwise. As FATF says 'these requirements are preventive (not criminal) in nature and should not be interpreted as stigmatising PEPs as such being involved in criminal activity'.<sup>2</sup>
- 2.7 It is because of their function that a person becomes a PEP and is required to be subject to enhanced scrutiny by firms.
- 2.8 Likewise, a PEP's family or close associates may also benefit from, or be used to facilitate, abuse of public funds by the PEP. It is as a result of this connection that family and known close associates are required to be subject to greater scrutiny.

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<sup>1</sup> Regulation 7(1)(a) of the Regulations sets out who we supervise

<sup>2</sup> <https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Fatfrecommendations/Peps-r12-r22.html>

Family and close associates are not themselves PEPs solely as a result of their connection to a PEP.

### **What are firms' obligations under the Regulations?**

- 2.9 The Regulations require firms 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 firm'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 (e.g. a solicitor acting in a property transaction). In these situations, and in line with FATF Guidance, we expect firms 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.*
- 2.10 The Regulations state<sup>3</sup> that in determining whether these systems and procedures are appropriate, a firm should refer to:
- Its own risk assessment of the money laundering/terrorist financing risks it is subject to. *The FCA's financial crime guide<sup>4</sup> contains Guidance on our expectations of risk assessments in relation to overall financial crime (Box 2.3) and specifically money laundering (Box 3.3).*
  - An assessment of the extent to which the risk would be increased by a business relationship with a PEP, family member or close associate. *The FCA 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.*
  - Any information provided by the FCA. This will include the FCA's publication 'Financial Crime: a guide for firms', thematic reviews, speeches on financial crime issues or enforcement action.
- 2.11 *The FCA expects firms 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 parliaments and governments, reliable news sources and work by reputable pressure groups focused on corruption risk such as Transparency International or Global Witness. Firms should use a variety of sources where possible.*
  - *Reliable Public Registers – in the UK this includes Companies House's register of companies and persons of significant control (PSC)<sup>5</sup> and those maintained by the Electoral Commission.<sup>6</sup>*
  - *In line with the nature and size of the firm, it may choose, but is not required, to use commercial databases that contain lists of PEPs, family members and known close associates. A firm 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.*
- 2.12 Where a firm 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),

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<sup>3</sup> Regulation 35(2)

<sup>4</sup> <https://www.handbook.fca.org.uk/handbook/FCG/>

<sup>5</sup> <https://find-and-update.company-information.service.gov.uk/>

<sup>6</sup> <https://search.electoralcommission.org.uk/>



a firm must<sup>7</sup> 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.<sup>8</sup> *The risk factors set out in this Guidance will help firms to consider relevant factors when meeting these obligations. A firm's assessment<sup>9</sup> and its decision to apply relevant enhanced due diligence measures<sup>10</sup> need to be clearly documented.*

Regulation 35(3A) sets out that the starting point for the risk assessment where a customer or potential customer who is entrusted with a prominent public function by the United Kingdom ('domestic PEPs') or their family members and known close associates is that they present a lower level of risk than a non-domestic PEP.

- 2.13 *The FCA expects that a firm will not decline or close a business relationship with a person merely because that person meets the definition of a PEP (or of a family member or known close associate of a PEP). A firm may, after collecting appropriate information<sup>11</sup> and completing its assessment,<sup>12</sup> conclude the risks posed by a customer are higher than they can effectively mitigate; only in such cases will it be appropriate to decline or close that relationship.*
- 2.14 *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 firm is unable to apply those measures, a firm needs to comply with the requirement<sup>13</sup> not to establish, or to terminate, a business relationship.*
- 2.15 Where a firm proposes to have, or to continue, a business relationship with a PEP, family member or known close associate of a PEP, they are required<sup>14</sup> to:
- Have approval from senior management for establishing or continuing the business relationship with that person. *For these purposes, senior management is to be, as a minimum, a person or a panel of persons who hold equivalent seniority (or higher) as the person holding the SMF17 Money Laundering Reporting Officer role in that firm. In any case identified as one where there is a high risk of money laundering or terrorist financing,<sup>15</sup> it may be appropriate to seek approval from the person with overall responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime; for firms subject to the Senior Management Regime, this will be the person with that prescribed responsibility. But firms should note that in lower risk situations sign-off may be at a lower level as set out further on in this Guidance. In any event the FCA would expect the SMF17 to be aware of any PEPs onboarded or rejected as part of their role of overseeing the operation of a firm's AML policies and procedures.*
  - Take adequate measures to establish the customer's source of wealth and source of funds relevant to the proposed business relationship or transaction. *Adequate measures will*

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<sup>7</sup> See Regulation 35(3)

<sup>8</sup> As set out in Regulation 33(4) and (5)

<sup>9</sup> See Regulation 35(3)(a)

<sup>10</sup> See Regulation 35(3)(b)

<sup>11</sup> In accordance with Regulation 35(3)(b)

<sup>12</sup> Under Regulation 35(3)(a)

<sup>13</sup> See Regulation 31(1)(b) and (c)

<sup>14</sup> See Regulation 35(5)

<sup>15</sup> Per the assessment in Regulation 35(3)(a)

*vary according to the risks assessed<sup>16</sup> depending on the nature of the relationship/transaction, with greater measures to clarify source of wealth and source of funds required for unusual or unexpected transactions, while for lower risk products or relationships, reliance might be placed on funds coming from credit or financial institution.<sup>17</sup> We set out our expectations further in this Guidance.*

- Once the business relationship is entered into, conducting enhanced ongoing monitoring of the business relationship with that person. *The nature and extent of this monitoring will depend on the risk assessment.<sup>18</sup>*
- The Regulations require that a group must make sure that the policies, controls and procedures referred to in Regulations 19(1) and 19A apply to all its subsidiary undertakings, including subsidiary undertakings located outside the United Kingdom and any branches it has established outside the United Kingdom. Regulation 20(3) states that the parent undertaking must ensure that those subsidiary undertakings and branches apply measures equivalent to those required by these Regulations, as far as permitted under the law of the third country. *As such, our expectation is that UK PEPs are treated as lower risk across a group unless that is not permitted by the local law in that jurisdiction.*

### **Who should be treated as a PEP?**

2.16 PEPs are defined<sup>19</sup> as individuals entrusted with prominent public functions, including:

- Heads of state, heads of government, ministers and deputy or assistant ministers.
- Members of parliament or of similar legislative bodies – *similar legislative bodies include regional governments in federalised systems and devolved administrations, including the Scottish Executive and Welsh Assembly, where such bodies have some form of executive decision-making powers. It does not include local government in the UK but it may, where higher risks are assessed, be appropriate to do so in other countries.*
- Members of the governing bodies of political parties – *the FCA considers that this only applies to political parties who have some representation in a national or supranational Parliament or similar legislative body as defined above. The extent of who should be considered a member of a governing body of a political party will vary according to the constitution of the parties, but will generally only apply to the national governing bodies where a member has significant executive power (e.g. over the selection of candidates or distribution of significant party funds).*
- 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 – *in the UK this means only judges of the Supreme Court; firms should not treat any other member of the judiciary as a PEP*

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<sup>16</sup> In accordance with Regulation 35(3)(a)

<sup>17</sup> Where this meets the requirements of Regulation 37(3)(a)(iii)

<sup>18</sup> Regulation 35(3)

<sup>19</sup> Regulation 35(12)(a)

*and only apply EDD measures where they have assessed additional risks.<sup>20</sup>*

- Members of courts of auditors or of the boards of central banks.
- Ambassadors, charges d'affaires and high-ranking officers in the armed forces – *the FCA considers this is only necessary where those holding these offices on behalf of the UK government are at Permanent Secretary/Deputy Permanent Secretary level, or hold the equivalent military rank (e.g. Vice Admiral, Lieutenant General, Air Marshal or senior).*
- Members of the administrative, management or supervisory bodies of State-owned enterprises – *the FCA considers that this only applies to for profit enterprises where the state has ownership of greater than 50% or where information reasonably available points to the state having control over the activities of such enterprises.*
- Directors, deputy directors and members of the board or equivalent function of an international organisation – *the FCA considers that international organisations only includes international public organisations such as the UN and NATO. The Government made clear in their consultation of 15 March 2017 that they do not intend this definition to extend to international sporting federations.*
- Non-executive board members of central government boards in the UK should not be treated as PEPs unless they already meet the definition of a PEP in respect of another capacity (e.g. a Member of the House of Lords).

2.17 *The definition of a 'prominent public function' will vary according to the nature of the function held by a person. The FCA would expect firms to understand the nature of the position held and whether the function gives rise to the risk of large-scale abuse of position and clearly document decisions to go beyond the functions set out in the Regulations and above. If a position is held in a country assessed as being at a lower risk of large-scale corruption (because of the system and checks and balances in place that reduce the threat) then only those with true executive power should be considered to hold a prominent public function. In the UK, it will not normally be necessary to treat public servants below Permanent or Deputy Permanent Secretary as having a prominent public function.*

2.18 *The Regulations exclude from the definition of a PEP those who are 'junior or mid-ranking'.<sup>21</sup> In those cases it will normally only be necessary to meet the obligations to undertake customer due diligence.<sup>22</sup> However, a firm should be alert to the potential that middle ranking and more junior officials could act on behalf of a PEP when assessing the overall risks a customer might present; where it assesses there might be a risk, a firm should consider what additional measures it needs to take.<sup>23</sup> This includes any transaction or business relationship established in a high-risk third country.<sup>24</sup>*

2.19 *If a person who is a PEP is no longer entrusted with a prominent public function, that person should continue to be subject to risk-based enhanced due diligence<sup>25</sup> for a period of at least 12 months after the date they ceased to be entrusted with that public function. Firms may apply measures for a longer period to address risks of*

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<sup>20</sup> In accordance with Regulation 33

<sup>21</sup> Regulation 35(12)(a)

<sup>22</sup> As required by Regulation 28

<sup>23</sup> Under Regulation 33(1)

<sup>24</sup> Regulation 33(1)(b)- 'high-risk third country' in this Guidance has the same meaning as in that regulation

<sup>25</sup> In accordance with the MLRs and this Guidance

money laundering or terrorist financing in relation to that person,<sup>26</sup> but the FCA consider this will only be necessary in the cases of PEPs where a firm has assessed that PEP as posing a higher risk.

- 2.20 Firms should note that the Regulations<sup>27</sup> explicitly state that they cannot apply these measures to those who were not a PEP under the Money Laundering Regulations 2007 (i.e. those who held a prominent public position in the UK (such as a former MP, retired member of the House of Lords or a former UK ambassador) where they ceased that office prior to 26 June 2017).

Where a person holds functions that meet the definition of both a domestic PEP and a foreign PEP a firm should treat them as a foreign PEP but use the Guidance to assess the risk of that customer and apply the appropriate measures outlined in the lower or higher risk measures sections in this Guidance.

### **Who should be considered a family member?**

- 2.21 Family members of a PEP are defined as including:<sup>28</sup>
- spouse, or civil partner
  - children and their spouses or civil partner
  - parents
- 2.22 This is not an exhaustive list. The FCA considers that this definition could also include brothers and sisters of a PEP.
- 2.23 Firms 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 their 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 firm has assessed a PEP to pose a higher risk. This would not apply in relation to lower risk PEPs. In low-risk situations, a firm should not apply any EDD measures to someone who is not within the definition above and should apply normal customer due diligence measures.<sup>29</sup> A family member of a PEP is not a PEP themselves purely as a consequence of being associated with a PEP.
- 2.24 A PEP must<sup>30</sup> be treated as a PEP after he or she leaves office for at least 12 months, depending on risk. This does not apply to family members, who should be treated as ordinary customers, subject to customer due diligence obligations<sup>31</sup> from the point that the PEP leaves office. The FCA considers a family member of a former PEP should not be subject to enhanced due diligence measures unless this is justified by the firm's assessment of other risks posed by that customer.

### **People who are 'known to be close associates' of a PEP**

- 2.25 A 'known close associate' of a PEP is defined<sup>32</sup> as including:
- an individual known to have joint beneficial ownership of a legal entity or a legal arrangement or any other close business relationship with a politically exposed person
  - 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

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<sup>26</sup> Regulation 35(9)(b)

<sup>27</sup> Regulation 35(10)

<sup>28</sup> Regulation 35(12)(b)

<sup>29</sup> Regulation 28

<sup>30</sup> Regulation 35(9)

<sup>31</sup> Regulation 28

<sup>32</sup> Regulation 35(12)(c)

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

### **Do all PEPs pose the same risk?**

2.27 *No – the risk of such corruption will differ between PEPs. We expect firms to take a differentiated approach that considers the risks an individual PEP poses based on an assessment of:*

- *the prominent public functions the PEP holds*
- *where that function is held - Regulation 35(3A) requires that the starting point is that a domestic PEP represents a lower level of risk compared to non-domestic PEPs*
- *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 firm has considered in its risk assessment.*<sup>33</sup>

2.28 *This Guidance discusses how firms may differentiate between PEPs. In this Guidance, we use the terms 'lower risk' and 'higher risk' to recognise that firms are required to apply EDD on a risk-sensitive basis.<sup>34</sup> 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. No one risk factor set out below means a customer should automatically be treated as posing a higher risk; it is necessary to consider all aspects.*

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

2.29 *In the FCA's view, the following indicators suggest a PEP poses a lower risk:*

#### *Lower risk indicators – product*

*The customer is seeking access to a product the firm has assessed to pose a lower risk. This will include products assessed as low risk by the firm to which it applies simplified due diligence measures.*<sup>35</sup>

#### *Lower risk indicators – geographical*

*As set out in paragraph [2.13] the Regulations require that firms should have the starting point that domestic PEPs as well as their family members and known close associates pose a lower risk than foreign PEPs unless enhanced risk factors are present. Regulation 18 and Regulation 18A set out factors that might point to potential higher risk.*

*A PEP may also pose a lower risk if they are entrusted with a prominent public function by a country where information available to the firm shows that it has the following characteristics:*

- *associated with low levels of corruption*
- *political stability, and free and fair elections*
- *strong state institutions*
- *credible anti-money laundering defences*
- *a free press with a track record for probing official misconduct*
- *an independent judiciary and a criminal justice system free from political interference*
- *a track record for investigating political corruption and taking action against wrongdoers*

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<sup>33</sup> Required by Regulation 18 and 18A

<sup>34</sup> Regulation 35

<sup>35</sup> Regulation 37

- strong traditions of audit within the public sector
- legal protections for whistleblowers
- well-developed registries for ownership of land, companies and equities

Lower risk indicators – personal and professional

A PEP may pose a lower risk if they:

- are subject to rigorous disclosure requirements (such as registers of interests, independent oversight of expenses)
- does not have executive decision-making responsibilities (e.g. an opposition MP or an MP of the party in government but with no ministerial office)

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

2.30 In the FCA's view, the following indicators suggest a PEP poses a higher risk:

Higher risk indicator – product

The firm's risk assessment finds the product or relationship a PEP is seeking is capable of being misused to launder the proceeds of large-scale corruption.

Higher risk indicators – geographical

A PEP may pose a greater risk if they are entrusted with a prominent public function in a country that is considered to have a higher risk of corruption. In coming to this conclusion, a firm 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 defences
- armed conflict
- non-democratic forms of government
- widespread organised 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

Higher risk indicators – personal and professional

The following characteristics might suggest a PEP is higher risk:

- personal wealth or lifestyle 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 (e.g. 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

- *is responsible for, or able to influence, allocation of scarce government licenses such as mineral extraction concessions or permission for significant construction projects.*

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

2.31 *A family member or close associate of a politically exposed person may pose a lower risk if the PEP themselves poses a lower risk. To clarify, the FCA expects family or known close associates of UK PEPs to be treated as lower risk unless there are circumstances to suggest otherwise.*

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

2.32 *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 privatisation 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*

**What measures should firms take when they identify a customer is a PEP, or a family member or known close associate of a PEP?**

2.33 *The following measures are to be taken where a customer meets the definition of a PEP, or a family member or known close associate of a PEP:<sup>36</sup>*

- *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*

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

**What measures may firms take in lower risk situations?**

2.35 *In the FCA's view, in lower risk situations a firm may take the following measures:*

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<sup>36</sup> See Regulation 35

- *Seek to make no enquiries of a PEP's family or known close associates except those necessary 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; for example, only use information already available to the institution (such as transaction records or publicly available information) and do not make further inquiries of the individual unless anomalies arise. 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, firms should minimise 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 level less senior than board of director level (see paragraph 2.16 for the definition of a senior manager).*
- *A business relationship with a PEP or a PEP's family and close associates is subject to less frequent formal review than if was considered high risk (for example, only where it is necessary to update customer due diligence information or where the customer requests a new service or product).*

*In line with Regulation 35(3A) firms must consider domestic PEPs as lower risk than foreign PEPs unless other risk factors are apparent. While the Regulations permit firms to apply a risk-based approach to foreign PEPs they must apply less intrusive steps to domestic PEPs than they apply to foreign PEPs who are classified as lower risk.*

### **What measures may firms take in higher risk situations?**

2.36 *In the FCA's view, in higher risk situations a firm 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 more 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*

### **Long-term insurance contracts**

2.37 Firms that provide a customer with a contract of long-term insurance are required to have reasonable measures to determine whether the beneficiaries of the insurance policy or the beneficial owner of a beneficiary of such an insurance policy are a PEP or family members/known close associates of a PEP. This needs to be done before any payment is made under the insurance policy whether the benefit of the insurance policy is assigned in whole or in part from a PEP or a family member or known close associate of a PEP to another person (and vice versa).<sup>37</sup>

2.38 *As with other measures, the nature and extent of the reasonable measures a firm should take will be driven by the overall money laundering or terrorist financing risks*

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<sup>37</sup> See Regulation 35(6) and (7)



*a firm who offers this type of product has assessed in its risk assessment<sup>38</sup> and the extent to which a PEP or known close associate/family using such a product raises the risk. Information on the nature of ML/TF risk is available via the UK's National Risk Assessment, ESA guidelines and other information sources. It will also depend on the nature of the life insurance product (for example, the cost of the premiums for the product, or if it can be redeemed or cashed out).*

### **Beneficial owners of legal entities who are PEPs**

- 2.39 *Firms should identify when a PEP is a beneficial owner<sup>39</sup> 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.*
- 2.40 *Once a firm is satisfied that a PEP is a beneficial owner then, in line with the risk-based approach, they should assess the risks posed by the involvement of that PEP and, after making this assessment, firms 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 organisation (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 the PEP has significant control or the ability to use their own funds in relation to the entity.*
- 2.41 *Where a PEP is a beneficial owner of a corporate customer, then a firm 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 firm.*

END

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<sup>38</sup> Required by Regulation 18 and 18A

<sup>39</sup> 'beneficial owner' has the meaning set out in Regulation 5(1)