Revised Implementing Procedures Part 1 – Section 4.9.2.2 - PEPs

FIAU Training Event
18/19 December 2018

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Overview of Session

- Introduction – Why is EDD mandatory when dealing with PEPs?
- Who is a PEP?
- How to identify a PEP
- EDD Measures that are required to be applied
PEPs

Why is EDD mandatory when dealing with PEPs

- PEPs are considered to pose a higher risk of ML/FT, similarly family members and close associates

- In view of the positions they occupy and the influence they exercise

- Risks associated with abuse of functions for private gain, corrupt practices, accepting bribes or misappropriating public funds

- These crimes generate funds / gain which could be laundered
PEPs – Things to Keep in Mind

- EDD does not equal connection to ML/FT
- Not all PEPs pose the same risk – RISK BASED APPROACH
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
  - 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
PEPs – Who Qualifies as a PEP?

- **Prominent Public Functions – Local Context**
  - Heads of State, Heads of Government, Ministers, Deputy or Assistant Ministers and Parliamentary Secretaries – *the President of the Republic of Malta, the Prime Minister and all ministers and parliamentary secretaries*
  
  - Members of Parliament or similar legislative bodies – *The Speaker and all Members of the House of Representatives of the Republic of Malta*
  
  - Members of the governing bodies of political parties – *the term ‘political parties’ should be limited to those political parties which are represented in the House of Representatives. Persons falling within this category would include individuals entrusted with the management and administration of such a political party and does not include paid up members or regional or town representatives*
PEPs – Who Qualifies as a PEP?

- Prominent Public Functions – Local Context

  - Members of the superior, supreme, and constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances – *all Judges and Magistrates of the Courts of Malta and Gozo*

  - Members of courts of auditors, or of the boards of the central banks – *the Auditor General, the Deputy Auditor General, the Governor and Deputy Governor of the Central Bank of Malta*
PEPs – Who Qualifies as a PEP?

- Prominent Public Functions – Local Context

- Ambassadors, charge d’affaires and high ranking officers in the armed forces – *all ambassadors and charges d’affaires of foreign jurisdictions in Malta as well as all Maltese ambassadors and charges d’affaires abroad. Honorary Consuls are not to be considered as PEPs. The Commander and Deputy Commander of the Armed Forces of Malta also fall within this category*;

- Members of the administrative, management or supervisory boards of state-owned enterprises – *means members of the administrative, management or supervisory boards of commercial entities and companies in which the Government of Malta has an ownership interest or control of more than 50%.*
PEPs – Who Qualifies as a PEP?

Prominent Public Functions – Local Context

- Prominent Public Functions within international or supranational bodies – Maltese EU Commissioner, Maltese MEPs, Maltese Members of the European Court of Auditors and the European Court of Justice

- Other public positions that in the FIAU’s view should be considered as prominent and hence PEPs:
  - Permanent Secretaries within Government Ministries
  - Chiefs of Staff within Government Ministries
  - Commissioner and Deputy Commissioners of Police
  - Other functions – Case by case assessment is needed (5th AMLD will induce more clarity)
PEPs – Who Qualifies as a PEP?

- **Family Members and Close Associates of PEPs**

  - **Family Members:**
    - Spouses – or any persons considered to be the equivalent of a spouse
    - Children and their spouses – or persons considered to be equivalent of 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 owners is a PEP, a family member or a close associate.

- Subject person should be able to identity 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 (which source is used and whether multiple sources are used to be determine on the basis of risk)
  - Publicly available information
  - Registries of PEPs (e.g. www.pep.org.ua/en/)
  - Obtaining information directly from customers
  - Use commercial databases (understand what information is recorded by such systems)
PEPs – Application of EDD measures

EDA Measures applicable:

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

➤ **Risk Based Approach to the application of EDD Measures:**

- EDD is mandatory for PEPs but...
- Their extent may vary on the basis of the risk posed by the business relationship or occasional transaction established with or carried out for the PEP (Customer Risk Assessment)
- If a business relationship or occasional transaction is considered to be low risk (still EDD has to be carried out but a lighter level EDD)
- IPs provide a list of factors to consider when assessing the risk of business relationships or occasional transactions involving PEPs (some factors are specific to PEP scenarios)
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.
  
  - **Enhanced on-going monitoring is mandatory but** – The frequency and type of monitoring will vary 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.