National Legal Profession Anti-Money Laundering & Counter-Terrorism Financing Guidance

Guidance Note No 10 – How Do I Check Whether Someone is a PEP?

28 June 2024

Law Council OF AUSTRALIA

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How Do I Check Whether Someone is a PEP?

The suggestions and recommendations in this Guidance Note do not reflect or express legally binding obligations upon legal practitioners. Their adoption is voluntary and they are to be applied at the discretion of the individual legal practice.

A politically exposed person (**PEP**) is an individual who holds a public position of prominence, or a role in a government body or an international agency, or a member of the immediate family or close associate of such a person, whether in Australia or an international jurisdiction.

Why Should I be Alert to the Possibility of Acting for a PEP?

Corruption can result in senior public officials seeking safe places to hide illicit funds. The conduct that precedes money laundering by a PEP can include the misappropriation of public funds, receipt of bribes and the avoidance of international or 'autonomous' sanctions. Prominent cases of money laundering in the past have involved heads of state, their relatives and associates, officials and former officials and their families.

What is a PEP?

The term 'PEP' was coined by the global anti-money laundering and counter-terrorism financing watchdog, the Financial Action Task Force (**FATF**). PEP is a term defined in the Anti-Money Laundering and Counter Terrorism Financing Rules Instrument 2007 (No 1) (Cth) (**AML/CTF Rules**).[1] Although the AML/CTF Rules are **not** legally binding upon legal practitioners, you may find it useful to review the definition to better familiarise yourself with the concept. These definitions are merely illustrative; it is the exposure and access to illicit funds that characterises the risk. Having said this, according to the AML/CTF Rules, a PEP means an individual:

1. who holds a prominent public position or function in a government body or an international organisation, including:
    a. Head of State or head of a country or government; or
    b. government minister or equivalent senior politician; or
    c. senior government official; or
    d. Judge of the High Court of Australia, the Federal Court of Australia or a Supreme Court of a State or Territory, or a Judge of a court of equivalent seniority in a foreign country or international organisation; or
    e. governor of a central bank or any other position that has comparable influence to the Governor of the Reserve Bank of Australia; or
2. who is an immediate family member of a person referred to in paragraph (1), including:
    a. a spouse; or
    b. a de facto partner; or

   c. a child and a child's spouse or de facto partner; or
   d. a parent; and
3. who is a close associate of a person referred to in paragraph (1), which means any individual who is known (having regard to information that is public or readily available) to have:
   a. joint beneficial ownership of a legal entity or legal arrangement with a person referred to in paragraph (1); or
   b. sole beneficial ownership of a legal entity or legal arrangement that is known to exist for the benefit of a person described in paragraph (1).

In addition to the above, the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) gives examples of PEPs including: 'high-ranking members of the armed forces' and 'board chairs, chief executives or chief financial officers in State enterprises or international organisations.'[2] FATF clarifies that the concept of a PEP is not intended to capture middle-ranking officials.

How Will I Know if Someone is a PEP?

You will have read *Guidance Note No 8 – How Do I Undertake Client Due Diligence?* and you now understand the different types of PEPs from the definitions above. It may be that the process of identifying a client or prospective client reveals that your client or a beneficial owner of your client is a PEP. This should place your matter (and this client) into a category of higher risk that the proposed transaction or activity may involve money laundering or terrorism financing.

You should also be alert to the fact that the person for whom you are acting may be an intermediary for a PEP. Your client due diligence should aim to identify, through the questions that you ask, whether the client is acting on behalf of someone else, or another entity. If the person is acting on behalf of another then you should identify and verify the identity of that other person or entity before continuing or agreeing to act. A PEP who is involved in money laundering or terrorism financing may use an intermediary to mask their identity. This may include a professional adviser acting as an intermediary.

What Should I Do if I Detect a PEP?

You do not need to cease to or decline to act just because a PEP may be involved in the transaction. However, it is prudent to apply heightened measures of scrutiny and vigilance, especially at the client intake stage, and in particular, for international PEPs.[3] This is warranted due to the higher risk of unwitting involvement in money laundering or terrorism financing that a PEP may pose to your practice.

Your aim will be to obtain a high level of satisfaction that the source of the wealth of the PEP is legitimate and consistent with the source of the funds proposed to be supplied for the transaction or activity, and to ask questions if there are any other concerns that are raised by the information provided to you in response to your enquiries.

AUSTRAC publishes a quick guide and provides more information at: https://www.austrac.gov.au/business/how-comply-and-report-guidance-and-resources/customer-identification-and-verification/politically-exposed-persons-peps. AUSTRAC's guide has been produced for 'reporting entities' under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). This does not include legal practitioners, and the guide is referred to for information only.

Corruption is more prevalent in some countries than others, and you should be sensitive to these differences when you identify and verify the identity of your client. Transparency International periodically updates its reputable Corruption Perceptions Index : https://www.transparency.org/en. Consider consulting the Index to help determine the corruption risk posed by a foreign PEP.

At the time of publication, Australia ranks 14 in the world (as least corrupt) with a relatively high score of 75/100 where the world median score is 43/100. Notwithstanding this, it is still prudent to be alert to Australian PEPs and their (independent) source of wealth or source of funds for a transaction.

If there is a discrepancy between the volume or source of funds for a transaction and a public salary, for example, it is justifiable and prudent to satisfy yourself as to the legitimacy of the funds being provided for a transaction, regardless of nationality.

See Guidance Note No 9 – How Do I Ascertain Source of Funds?

References

1. AML/CTF Rules, Ch 1 Pt 1.2.
2. AUSTRAC, *Politically Exposed Persons, Corruption and Foreign Bribery: Strategic Analysis Brief* at https://www.austrac.gov.au/business/core-guidance/customer-identification-and-verification/politically-exposed-persons-peps.
3. See guidance on increased due diligence in *Guidance Note No 8 – How Do I Undertake Client Due Diligence?.*

This Guidance Note was produced on 28 June 2024 and is current at the time of publication.