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**GUIDANCE NOTE NO. 01 OF 2019**

**GUIDANCE ON DUE DILLIGENCE FOR  
POLITICALLY EXPOSED PERSONS**

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## Table of Contents

1. BACKGROUND .....	4
2. DEFINING A PEP .....	5
3. THIS GUIDANCE IS AIMED AT ADDRESSING THE FOLLOWING .....	6
3.1 What do AIs and RIs need to do? .....	6
3.2 Why do PEPs, their close family members and associates pose a risk? .....	7
3.3 Do all PEPs Client Relationships with AI and RIs pose the same level of risk? ..	8
3.4 Should AIs apply the same measures to all relationships with PEPs? .....	9
3.5 Who are the “family members” of a PEP? .....	9
3.6 Who are people regarded as “close associates” of a PEP? .....	9
3.7 Does the FIC provide a PEPs list? .....	10
3.8 What are some indicators that a PEP poses a lower risk? .....	10
3.9 What are some indicators that a PEP poses a higher risk? .....	11
3.10 What are some indicators that a PEP’s family members or known close associates pose a lower risk? .....	12
3.11 What are some indicators that a PEP’s family or known close associates pose a higher risk? .....	13
3.12 What measures should the AI take when it identifies a customer as a PEP, or a family member or known close associate of a PEP? .....	13
3.13 To what extent may public information be taken into account? .....	14
3.14 What measures may AIs take in lower-risk situations? .....	14
3.15 Risk mitigation: What measures may AIs take in higher-risk situations? .....	15
3.16 Until when does a PEP remain high risk or prominent and influential? .....	16
4. TARGETED FINANCIAL SANCTIONS (TFS) .....	17
5. REPORTING INSTITUTIONS (RIs) .....	17

6. COMMENCEMENT .....18

7. GENERAL .....18

8. NON-COMPLIANCE WITH THIS GUIDANCE.....18



## 1. BACKGROUND

This Guidance Note is issued in terms of Section 9(1)(h) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended (hereinafter referred to as the FIA). This document avails guidance on identification considerations pertaining to Politically Exposed Persons (PEPs) in terms of section 23 read with Regulations 6, 12 and 15 of the FIA.

A PEP is defined by the Financial Action Task Force (FATF) as an individual who is or has been entrusted with a prominent public function. Due to their position and influence, it is recognised that many PEPs are in positions that potentially can be abused for the purpose of committing Money Laundering (ML) offences and related predicate offences, including corruption and bribery, as well as conducting activities related to Terrorist Financing (TF) and Proliferation Financing (PF). Section 23 of the FIA prescribes obligations with regards to the treatment of “Risk clients”. Where a client or beneficial owner has been identified through risk management mechanisms to be a high risk for ML, TF and PF employees of AIs must apply enhanced due diligence measures. Owing to their standing in society, it is internationally recognised and accepted that PEPs are inherently high risk clients. At the time of revising this Guidance (March 2023), the FIA is undergoing amendments which will include defining Prominent Influential Persons (PIPs)<sup>1</sup>. PEPs will fall under the broader category of such PIPs. To enhance risk management in practice, the revision of this guidance expands the PEP definition to incorporate considerations from Namibia’s Mutual Evaluation<sup>2</sup> observations.

To address these risks, the FIA, amongst others, requires Accountable Institutions (AIs) to implement measures that prevent the misuse of the financial systems by PEPs. This includes detecting and reporting potential suspicious transactions to the FIC.

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<sup>1</sup> Means a person in a prominent public position or function domestically or in a foreign country, including persons who previously occupied prominent public positions but have since vacated such positions or functions. This also includes persons who are or have been entrusted with a prominent function by an international organization.

<sup>2</sup> See Namibia’s Mutual Evaluation Report adopted in September 2022. Paragraph 319, page 99.

## 2. DEFINING A PEP

A PEP is meant to have the same meaning as the words “persons in prominent public positions or functions” including persons who previously occupied prominent public positions but have since vacated such positions or functions.

Below is a list of persons who meet the description of a PEP, amongst others:

- a) heads of state, heads of government, ministers and deputies, assistant ministers or senior politicians;
- b) members of parliament or of similar legislative bodies;
- c) secretary to cabinet or those holding such similar position;
- d) members of the governing bodies of political parties;
- e) significant, senior or important political party officials;
- f) executive directors and their deputies (former Permanent Secretaries);
- g) directors and their deputies in line ministries;
- h) regional authority councillors as well as directors and their deputies;
- i) local authority councillors as well as the executive management of local authorities;
- j) senior executives of state-owned entities;
- k) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;
- l) members of the boards of domestic or international banks and central banks;
- m) ambassadors and members of management of embassies or similar bodies;
- n) high-ranking officers in the armed forces and law enforcement, including prosecutorial services;
- o) members of the management of supervisory bodies; and
- p) directors, deputy directors and members of boards or equivalent function of an international organisation.

In particular, the following definitions, which do not cover middle ranking or junior staff in public functions, applies to this guidance paper:

- i. **Foreign PEPs:** individuals who are or have been entrusted with prominent public functions by a foreign country;
- ii. **Domestic PEPs:** individuals who are or have been entrusted domestically with prominent public functions;
- iii. **International organisation PEPs:** persons who are or have been entrusted with a prominent function by an international organisation;
- iv. **Family members<sup>3</sup>:** individuals who are related to a PEP either directly or through marriage or similar (civil) forms of partnership; and
- v. **Close associates<sup>4</sup>:** individuals who are closely connected to a PEP, either socially or professionally. Close associates of PEPs means individuals who are closely connected to a PEP, either socially or professionally, and include but not limited to: individuals known to have any close business relationships with a PEP, such as the PEP's business partners or identified as the owners and/or beneficial owners of a legal person or legal arrangement which is associated with a PEP.

The difference between a foreign PEP and a domestic PEP is the country which has entrusted the individual with a prominent public function.

Keep in mind that sections 3.5 and 3.6 of this document explains criteria of persons who are family members or close associates of PEPs.

### **3. THIS GUIDANCE IS AIMED AT ADDRESSING THE FOLLOWING**

#### **3.1 What do AIs and RIs need to do?**

AIs are obliged in terms of section 23 to 24 of the FIA and Regulation 15 to 16 to have appropriate risk-management systems and procedures to identify when their customer

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<sup>3</sup> Refer to Paragraph 3.5

<sup>4</sup> Refer to Paragraph 3.6

(or the beneficial owner of a customer) is a high risk or PEP and to manage the inherently high risks arising from having a business relationship with such customer.

Business relationships with the family members and known close associates of a PEP should also be subjected to enhanced scrutiny. This guidance note discusses this further.

In meeting obligations of the FIA, it is expected that a Risk-Based Approach (RBA) be followed. This means, the nature and extent of due diligence measures that a client ought to be subjected to is dependent on the level of risk such client presents. Equally, the nature of products a client wants to use, or has access to, should be considered in arriving at the risk level that an Accountable Institution would be exposed to.

International standards issued by the Financial Action Taskforce (FATF) recognise that PEPs may be in a position to abuse their public office for private gain. These measures are preventative in nature, with a view to reducing risk exposure and should not be interpreted to imply that PEPs are necessarily involved in criminal activity.

### **3.2 Why do PEPs, their close family members and associates pose a risk?**

PEPs, by virtue of the positions they occupy are exposed to functions that may lead to abuse of office for personal gain or other interests. A PEP may use the financial system to launder the proceeds through abuse of office. It is by virtue of their roles that persons become PEPs and hence are required to be subjected to enhanced due diligence by AIs. Likewise, a PEP's family members and close associates may also benefit from, or be used to facilitate, abuse of public office by the PEP. It is as a result of this connection that family members and known close associates are required to be subject to scrutiny equivalent to such of a PEP. Amongst a host of FIC publications, section 4.2 of Directive 01 of 2021, amongst others, directs how institutions should conduct risk assessments as a means to identifying risk profiles of clients in an effort to adopting risk responsive measures.

### 3.3 Do all PEPs Client Relationships with AIs and RIs pose the same level of risk?

No. The risk of the client relationship between the AI and PEP differs depending on the circumstances of the relationship. This guidance note discusses how AIs and RIs may differentiate between PEP client relationships that represent a lower risk and those that represent a higher risk. Various factors need to be considered to arrive at a reasonable risk rating for any type of client relationship including PEPs.

**Example 1:**

***Inherently high risk client, but risk reduced due to type of product and payment channel of such product***

*A Minister may inherently present a high ML risk to insurance or investment service providers in general. But if such a Minister invests in funeral cover, with minimum premiums and such premiums are being paid directly from his or her state remuneration (salary), then such product and the manner in which payments are being made reduces the inherently high risk presented.*

**Example 2:**

***Inherently high risk client investing in products that are vulnerable for ML***

*Unit Trust products are investments which earn an investor interest. One can thus place funds in a unit trust and such investment would grow with interest earnings. Unit Trust products differ in nature.*

*A minister chooses to invest in Unit Trust products with a local insurance service provider. The Unit Trust product invested operates by clients making payments, not only from salaries but from any other source, into such investments. The minister, who, for arguments sake earns a net income of NAD 40,000.00 monthly suddenly makes an additional investment of NAD 700,000.00. In terms of the FIA, the AI would be expected to satisfy itself that such funds are not from illicit activities. This is easier determined by understanding the sources of such funds. It may be that such funds are from legitimate sources but the service provider has to conduct the necessary due diligence to understand such.*

*Another example could be a high risk client investing in a Unit Trusts or similar long term investment product. That is, investing NAD 1,000,000.00 in a product that only matures (or pays out) after five years. Within a short period after investing, such client cancels the investment and the proceeds*



*are transferred to his or her bank account. To those laundering, the penalty fees for cancellation are negligible as the bulk of the funds are released/layered. The banks receiving such funds would not readily find same suspicious as such could be interpreted as proceeds from an investment product.*

### **3.4 Should AIs apply the same measures to all relationships with PEPs?**

No. When conducting transactions or business with PEPs, AIs should take a proportionate, risk-based and differentiated approach based on the individual risks presented by PEPs, as well as persons / entities affiliated to a PEP. This means that PEPs, their family members and close associates that pose a lower risk should be subjected to minimum due diligence or less scrutiny than those who present a higher risk.

### **3.5 Who are the “family members” of a PEP?**

Family members of a PEP include the following:

- a) a spouse or partner of the PEP: ‘spouse’ means by civil or customary marriage concluded in Namibia or elsewhere. On the other hand, ‘partner’ means by civil partnership in Namibia or elsewhere, or in a cohabitating relationship;
- b) children of the PEP and their spouses or partners: ‘children’ means both biological and lawfully adopted sons and daughters, or step-sons and step-daughters (of any age); and
- c) parents of the PEP: ‘parent’ means the biological or adoptive mother or father, stepfather or stepmother.

### **3.6 Who are people regarded as “close associates” of a PEP?**

Known close associates of a PEP include, but are not limited to the following:

- a) individuals known to have joint beneficial ownership of a legal entity or a legal arrangement or any other close business relationship with a PEP. For example, a PEP's business partners;
- b) individuals who have sole beneficial ownership of a legal entity or a legal arrangement which is known to have been set up for the benefit of a PEP; and
- c) Known close friends of the PEP.

*A known close associate of a PEP is not a PEP themselves but are deemed inherently of a higher risk purely as a consequence of being associated with a PEP.*

Als need to understand the nature of relationships of high risk clients and determine the extent of potential risk exposure. There is no "one size fits all" approach to determining circumstances which present high risks.

### **3.7 Does the FIC provide a PEPs list?**

No. The FIC gives guidance on characteristics that would qualify a client to fall within the definition of a PEP. Equally, the FIC avails guidance on the necessary due diligence measures to be applied to PEPs, as per the FIA. With such guidance, Institutions should be in a position to design control systems that identify a client who is a PEP and relevant risk management measures each individual PEP presents. For example, section 2 of this document (and any other reliable public source) sets the criteria which would render a client a PEP.

### **3.8 What are some indicators that a PEP poses a lower risk?**

*Lower risk indicators - geographical*

A PEP may pose a lower risk if he/she solely operates in a country that has the following characteristics:

- a) associated with low levels of corruption;
- b) political stability and free and fair elections;

- c) strong state institutions;
- d) credible anti-money laundering framework;
- e) a free press with a track record for probing official misconduct;
- f) an independent judiciary and a criminal justice system free from political interference;
- g) a track record for investigating political corruption and taking action against wrongdoers;
- h) strong traditions of audit within the public sector;
- i) legal protection for whistle-blowers; and
- j) well-developed registries for ownership of land, companies and equities.

*Lower risk indicators – personal and professional*

A PEP may pose a lower risk if he/she has some of the following characteristics:

- i. is subject to rigorous disclosure requirements;
- ii. does not have executive decision-making responsibilities; and
- iii. his or her financial transactions are in line with the established financial profile;

### **3.9 What are some indicators that a PEP poses a higher risk?**

*Higher risk indicators - geographical*

A PEP may pose a greater risk if she/he is from, or closely connected to a country with some of the following characteristics:

- a) associated with high levels of corruption;
- b) political instability;
- c) ineffective state institutions;
- d) ineffective anti-money laundering framework;
- e) armed conflict;
- f) non-democratic forms of government;
- g) widespread organised criminality;
- h) a political economy dominated by persons with close links to the state;

- i) lacking a free press on legal or other means of investigation;
- j) a criminal justice system vulnerable to political interference;
- k) lacking expertise and skills related to bookkeeping, accountancy and audit, particularly in the public sector;
- l) law and culture unfriendly to the interests of whistle-blowers; and
- m) weaknesses in the transparency of registries of ownership for companies, land and equities.

*Higher risk indicators – personal and professional*

A PEP may pose a higher risk if she/he has any of the following characteristics:

- a) hold or held a very high ranking political position;
- b) personal wealth or lifestyle inconsistent with known legitimate sources of income or wealth;
- c) subject to credible allegations of financial misconduct;
- d) there is evidence they have sought to disguise the nature of their financial circumstances;
- e) is responsible for, or able to influence, large public procurement exercises, particularly where procurement is not subject to competitive tender, or otherwise lacks transparency; and
- f) is responsible for, or able to influence allocation of scarce government licenses/permits such as mineral extraction concessions or permission for significant construction projects.

*This is not an exhaustive list. AIs should consider the profile or information relating to PEPs, and who they are doing business with.*

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

A family member or close associate of a politically exposed person may pose a lower risk if they have the following characteristics:

- a) He or she is a family member or close associate with a PEP who themselves poses a lower risk;
- b) He or she is a family member or close associate with a PEP who is no longer in office; and
- c) He or she is under 18 years of age and the PEP is not acting on their behalf.

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

The family and close associates of a PEP may pose a higher risk if they have any of the following characteristics:

- a) Wealth derived from the granting of government licences;
- b) Wealth derived from granting of government tenders and access to the privatisation of former state assets;
- c) Wealth derived from commerce in industry or sectors associated with high-barriers to entry or a lack of competition, particularly where these barriers stem from law, regulation or other government policy;
- d) Wealth or lifestyle inconsistent with known legitimate sources of income or wealth;
- e) Subject to credible allegations of financial misconduct;
- f) Appointment to a public office that appears inconsistent with personal merit; and
- g) The PEP is acting on behalf of the family member or close associate.

*This is not an exhaustive list. AIs should consider the profile or information relating to PEPs, and who they are doing business with.*

### **3.12 What measures should the AI take when it identifies a customer as a PEP, or a family member or known close associate of a PEP?**

The FIA and its Regulations require that enhanced customer due diligence measures are taken to manage and mitigate the risks posed by PEPs and their families and close associates, who are considered to pose a high risk of ML, TF or PF. This includes

appropriate risk management systems/mechanisms to determine whether the customer, or the beneficial owner of the customer, is a PEP, or a family or known close associate of a PEP.

Section 23 of the FIA requires that AIs:

- a) have *approval from senior management* for establishing or continuing business relationships with such persons;
- b) *take adequate measures to establish the source of wealth and source of funds* that are involved in business relationships or transactions with such persons; and
- c) *conduct enhanced, ongoing monitoring of those business relationships*. Such could entail keeping an eye on the transacting behaviour of all high risk clients (including PEPs so identified). If any transacting behaviour is not in line with the expected norm, such should be reviewed in order to determine if it is suspicious.

### **3.13 To what extent may public information be taken into account?**

When deciding whether a person is a known close associate of a PEP, AIs only need to have regard for information that is already in their possession or credible information that is publicly known. AIs should make use of credible public information when establishing source of wealth and source of funds. This could include information from public registers, such as beneficial ownership registers and other credible databases. AIs and RIs should take account of the information on these types of registers or databases to minimise the burden on customers and avoid duplication with other regimes where appropriate.

If any, the extent to which media reports and other information in the public domain are to be relied on is dependent on the AIs' evaluation of such information.

### **3.14 What measures may AIs take in lower-risk situations?**

The following measures can be appropriate in lower-risk situations:

- a) Undertaking customer due diligence to establish whether the customer is a family member or has a close relationship with a PEP;
- b) Taking less intrusive and less exhaustive (Simplified or Basic Due Diligence) steps to establish the source of wealth and source of funds of 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;
- c) Oversight and approval of the relationship takes place at a less senior level of management; and
- d) A business relationship with a PEP or a PEP's family and close associates is subject to less frequent formal review.

### **3.15 Risk mitigation: What measures may AIs take in higher-risk situations?**

Each circumstance or customer presents a unique set of facts which may have a bearing on risk exposure. For example, a PEP who is involved in certain types of business ventures may present a different risk to a PEP whose only source of income is a monthly salary, but he is in a position to influence awarding of tenders etc. Such unique circumstances of each PEP thus call for unique or tailored approach in due diligence, depending on the control framework of an AI. It is thus quite challenging to prescribe a "one size fits all approach".

What is helpful is to categorize customers who share commonalities in terms of their risk profiles. Each category is then accorded certain control measures relevant to its risk exposure. The PEP category will naturally attract enhanced due diligence as per the FIA. When customers are engaged, they are simply subjected to due diligence measures as per such risk categorization. The following measures can be amongst key considerations appropriate for PEPs and their associates:

- a) Effective risk mitigation starts with implementation of measures to identify a client who meets the definition of a PEP (or their associates);

- b) When a PEP or their associate is identified, take more intrusive and exhaustive steps to establish the source of wealth and source of funds (per identified transaction) of the PEP, family members or known close associates;
- c) Oversight and approval of the relationship takes place at a more senior level of management. Before providing any services to a PEP or their associates, such need prior approval by relevant senior management; and
- d) A business relationship with a PEP or a PEP's family and close associates is subjected to more frequent and thorough reviews to determine potential red flags or suspicious transactions which should be reported to the FIC.

### **3.16 Until when does a PEP remain high risk or prominent and influential?**

The easy answer would be to set a timeframe of say 3 or 5 years after leaving influential office. There are indications that this position is prudent and effective. It amounts to over-simplifying a rather complex matter, which is best addressed in the day-to-day risk management activities of institutions, as per sections 21 to 24 and 39 of the FIA. Combatting ML, TF and PF risks is not a straightforward activity.

It is a given that there is no single position or answer that would speak to all potential circumstances of PEPs. Some PEPs still maintain influence or beneficial relationships with their former offices and/or acquaintances. It is not uncommon that patronage networks largely remain in existence, especially in as far as corruption is concerned. It is also notable that some PEPs cease to have any such influence when they are out of office almost immediately while others possibly lose such influence gradually or over time. It would therefore not be prudent to set a fixed period (e.g 3 years after office) for reduced risk for all PEPs after vacating influential positions. As part of an AI's internal risk management framework, as per sections 23 and 39, controls have to be designed to assess each PEP on their individual merits. Using open source information which may speak to the influence or prominence of such PEP is a helpful exercise. Considering the PEP's involvement in business activities, directly or indirectly could also help understand changes in the risk profile of a PEP after vacating office. Socio-



economic activities of the PEP's associates and/or family members can also shed light on the risk profile of the PEP, emanating from their possible influence.

#### **4. TARGETED FINANCIAL SANCTIONS (TFS)**

Accountable and Reporting Institutions need to ensure all PEPs, like all other clients are duly subjected to TFS measures as per the FIA and PACOTPAA. Guidance Note 07 of 2023 avails guidance on practical implementation of TFS.

#### **5. REPORTING INSTITUTIONS (RIs)**

To the extent possible, RIs need to have certain measures in place to mitigate abuse from high risk circumstances. This section gives context to such.

Section 39(3) requires of RIs (similar to Accountable Institutions) to develop, adopt and implement customer acceptance policies, internal rules, programmes, policies, procedures and controls as prescribed to effectively manage and mitigate risks of ML, TF and PF activities. Although Sections 23 and 24 do not explicitly refer to RIs, section 39(3) requires RIs' policies and risk management frameworks to identify and duly mitigate or respond to high risk clients and circumstances as they may arise. It is in this same vein that RIs are required to detect risks that PEPs may present and thus adopt effective risk mitigation measures.

The object of the law is to not overburden RIs but still require of them to understand when a high risk client or situation arises (given its individual risk exposure) in order to contribute to national combatting measures (detect and report same to the FIC). It is for this reason that RIs are equally required to comply with FIA section 33. The FIC will therefore at all times need to gain assurance that RIs have demonstrable measures that can identify and enable effective responses to high risks as per FIA section 39(3), at an individual entity level.

## **6. COMMENCEMENT**

This Revised Guidance Note comes into effect on **17 April 2023**.

## **7. GENERAL**

This document may contain statements of policy which reflect the FIC's administration of the legislation in carrying out its statutory functions. This Guidance is issued without prejudice to the FIA and its complementing Regulations. The information contained in this document is intended only to provide a summary on these matters and is not intended to be comprehensive, nor replace the law.

## **8. NON-COMPLIANCE WITH THIS GUIDANCE**

This document is a guide. Effective implementation is the sole responsibility of Accountable and Reporting Institutions. Should an institution fail to adhere to the guidance provided herein, it will be such institution's responsibility to demonstrate alternative risk management controls implemented which are effective.

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