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1

# Introduction to Anti-Money Laundering (AML) and Funding of Terrorism and understanding the impact of non- compliance

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2

## Agenda

- PEPs
- Measures Applied to PEPs
- Non- Reputable Jurisdictions & High Risk Jurisdictions and Group-Wide Policies & Procedures
- Case Studies
- Questions

## POLITICALLY EXPOSED PERSONS (PEPs)

# Politically Exposed Persons (PEPs)

PEPs pose a high risk of ML/FT due to the position they occupy and the influence they exercise. PEPs may abuse of their prominent public functions for private gain, namely through corrupt practices, accepting bribes or abusing/misappropriating public funds.



# Definition of a PEP

**A natural person who are or have been entrusted with prominent public functions in or outside Malta, other than middle ranking or more junior officials.**

Although middle ranking or more junior officials = not considered to hold prominent public functions and therefore are not considered to require the application of EDD measures (article 11(5) and (6)), this does not exclude the possibility that EDD measures may still have to be applied when it is determined that a high risk of ML/FT subsists.

# Who is a PEP?

Public functions which are considered as prominent public functions and would therefore render the holder thereof a PEP include:

- Heads of State, Heads of Government, Ministers, Deputy or Assistant Ministers, and Parliamentary Secretaries;
- Members of Parliament or similar legislative bodies;
- Members of the governing bodies of political parties;
- 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, including Magistrates;
- Members of courts of auditors, or of the boards of central banks;
- Ambassadors, charge d'affaires and other high ranking officers in the armed forces;
- Members of the administrative, management or supervisory boards of state-owned enterprises;
- The Attorney General;
- Permanent secretaries within all the Government ministries;
- Chiefs of staff within all the Government Ministries;
- The Commissioner and Deputy Commissioners of Police;
- Anyone exercising a function equivalent to those set out above within an institution of the European Union or any other international body.

Both domestic and foreign PEPs are to be considered as PEPs and EDD measures on a risk-sensitive basis must be applied

# Who is a PEP?

In the Maltese context, the prominent public functions indicated in the PMLFTR that would render their holder a PEP should be understood as follows:

<b>Heads of State, Heads of Government, Ministers, Deputy or Assistant Ministers, and Parliamentary Secretaries</b>	President of the Republic of Malta, the Prime Minister and all ministers and parliamentary secretaries
<b>Members of Parliament or similar legislative bodies</b>	Speaker and all Members of the House of Representatives
<b>Members of the governing bodies of political parties</b>	the term 'political parties' should be limited to those political parties represented in the House of Representatives. Persons falling within this category would include individuals entrusted with the management and administration of that political party and does not include paid-up members or regional or town representatives.
<b>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</b>	All judges of the Courts of Malta and Gozo.
<b>Members of courts of auditors, or of the boards of central banks</b>	The Auditor General, the Deputy Auditor General and the Governor and Deputy Governor/s of the Central Bank of Malta.
<b>Ambassadors, charge d'affaires and other high ranking officers in the armed forces</b>	Charge 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.
<b>Members of the administrative, management or supervisory boards of state-owned enterprises</b>	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%.

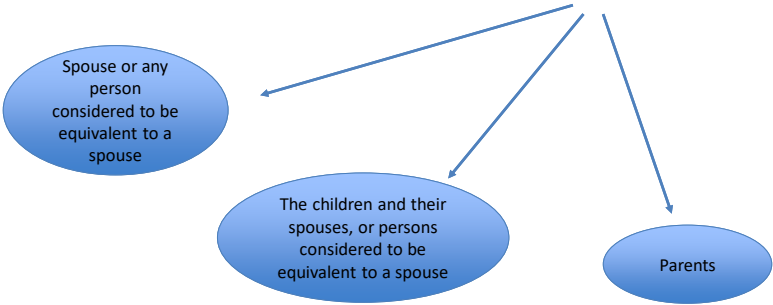
# Who is a PEP?

- 1. Family members
- 2. Close Associates
- 3. Customer or a Beneficial owner

9

# Family Members

Family members of PEPs must also be treated as PEPs – these include:



Non-exhaustive

10

# Close Associates

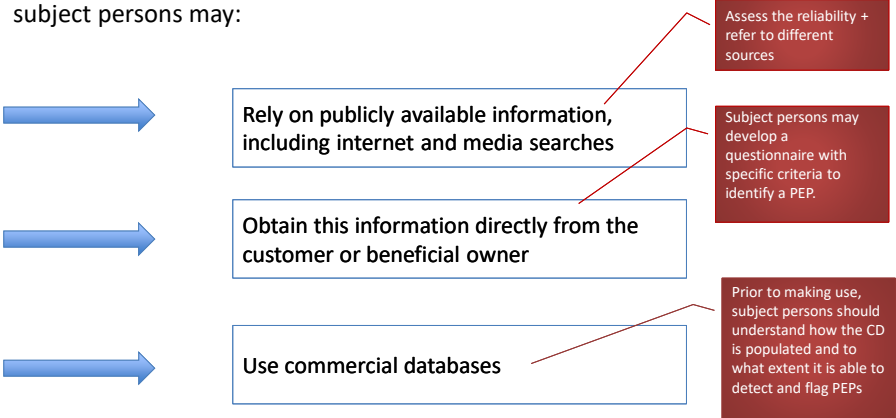
Persons known to be close associates also classify as PEPs and include:

- a natural person known to have:
  - (1) joint beneficial ownership of a body corporate or any other form of legal arrangement;
  - (2) or any other close business relations, with that PEP; and
- a natural person who has sole beneficial ownership of a body corporate or any other form of legal arrangement that is known to have been established for the benefit of that PEP.

In the case of personal relationships, the social, economic and cultural context may also play a role in determining how close those relationships generally are.

# Customer or a Beneficial owner

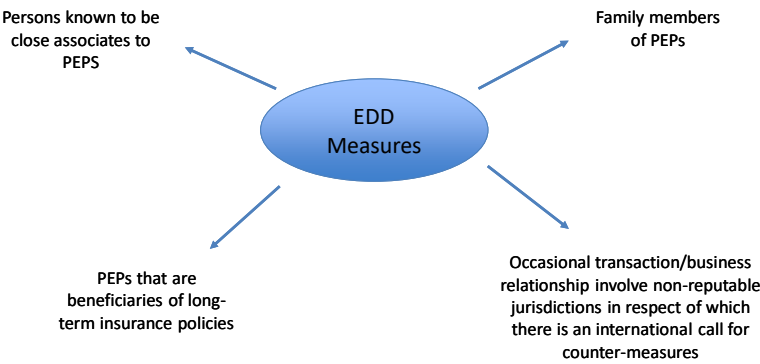
In determining whether the customer or a beneficial owner is a PEP, subject persons may:



# MEASURES APPLIED TO PEPs

13

## Application of EDD Measures



14

## Application of EDD Measures

Article 11(5) and (8) of the PMLFTR require subject persons to apply specific EDD measures in relation to PEPs, their family members and persons known to be close associates.

Subject persons should assess the different types of risks it is exposed to, namely:

- Geographical
- Product/service/transaction
- Customer
- Delivery/distribution channel

Based on the CRA, subject persons are to determine the level of EDD measures required.

## When to say no?

If after having:

- ✓ Collected all necessary information and documentation on the prospective customer, customer or its beneficial owner; and
- ✓ Undergone a customer risk assessment

the subject person determines that the prospective business relationship or occasional transaction falls outside its risk appetite (risks posed are higher than it can effectively mitigate)





## PEP poses a higher risk

- a) when the customer is seeking to have access to a product, service or transaction that is capable of being misused to launder the proceeds of corruption or bribery;
- b) personal wealth or lifestyle is inconsistent with known legitimate sources of income or wealth;
- c) credible allegations of financial misconduct; and
- d) the PEP is entrusted with a prominent public function in a jurisdiction where there is a higher risk of corruption and where information available indicates that the jurisdiction shows the following characteristics (therefore, the subject person should assess the jurisdiction separately):
  - high levels of corruption;
  - political instability;
  - weak state institutions;
  - weak AML/CFT defences;
  - armed conflict;
  - non-democratic forms of government;
  - widespread organised criminality;
  - political economy dominated by a small number of people or entities with close links to the state;
  - lack of a free press where journalistic investigation is constrained;
  - a judicial and criminal justice system vulnerable to political interference;

## Family member/close associate of a PEP 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 or other 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); or
- appointment to a public office that appears inconsistent with personal merit.

# Long-term insurance business

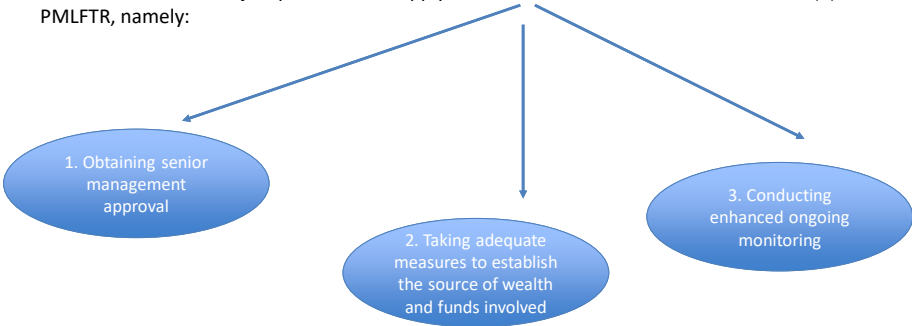
Subject persons should take reasonable measures to determine whether the beneficiaries of a policy and beneficial owner of that beneficiary (where applicable) are PEPs, their family members or known close associates, and such measures should be taken no later than:

- The time of pay-out
- The time of the assignment

Subject persons must check the relationship with the policyholder to ensure that the policy would not have been misused to channel funds to the PEP.

# Additional CDD Measures

When undertaking additional CDD measures on PEPs, their family members of persons known as close associates, subject persons must apply **all the EDD measures** set out in Article 11(5) PMLFTR, namely:



## 1. Obtaining senior management approval

- Approval of a senior management officer of the subject person with sufficient knowledge of the subject person's ML/FT risk exposure
- Sufficient seniority to take decisions affecting its risk exposure
- Approval should be clearly documented
- Approval will ensure subject persons that they are not entering into a business relationship without applying the necessary controls
- When seeking approval of a PEP relationship, senior management should base their decision on the level of MT/FT risk that the subject person would be exposed to and how equipped it is to manage such risk.

## 2. Taking adequate measures to establish the source of wealth and funds involved

### Why?

- To be satisfied that it does not handle proceeds derived from corruption or criminal activity associated with PEPs.
- The extent of information/documentation will vary depending on the risk posed by the customer.
  - In lower risk – less intrusive and exhaustive steps to establish source of wealth and funds of the PEP and therefore may use information already available (transaction records or publicly available information)
  - In higher risk – more intrusive and rigorous and subject persons should not rely on information provided by the customer but must refer to multiple resources of information (asset and income declarations)

### 3. Conducting enhanced ongoing monitoring

For **low risk customers**, subject person is required to:

- Undertake less frequent reviews
- Periodically review the CDD measures and update the CDD documentation/info
- Review and update CDD documentation/info obtained at the commencement of the business relationship when a new product/service/transaction is requested
- Less monitoring of regularity and extent of transaction

For **high risk customers**, subject person is required to:

- Conduct ongoing monitoring more regularly and thoroughly
- Closer analysis on the transaction and its origin
- Regularly consider whether the business with such customers should be maintained

In **both** cases, subject persons should:

- Identify suspicious or unusual transactions and ensure any new information affecting CRA is identified
- Appropriate methods/systems to detect when existing customers become PEPs

Automated system of checks against publicly available information or specialist PEP databases for CSPs

## Non- Reputable Jurisdictions & High Risk Jurisdictions and Group- Wide Policies & Procedures

# Scope

Article 2(2)

Under the PMLFTR, subject persons are to assess whether the jurisdictions they are dealing with are non-reputable jurisdictions or high-risk jurisdictions. When assessing, one should take into account the following:

- Any declaration/public statement/ report issued by an international organisation
- Risks concerning deficiencies in national AML/CFT regime of the jurisdiction
- Inappropriate and ineffective measures for prevention of ML/FT of the jurisdiction
- Consideration of a number of risk factors relating to geographical/jurisdictional risk

When assessing whether a jurisdiction is to be considered as high risk, subject persons are required to conduct a wider assessment than simply assessing the jurisdiction issues and shortcomings but also other factors.

25

# Non- Reputable Jurisdictions

When determining whether a jurisdiction is reputable or not, subject persons are required to take into consideration the following:

- ✓ Financial Action Task Force (FATF) Public Documents
- ✓ Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016  
Identifying high-risk third countries with strategic deficiencies
- ✓ Statements and/or Declaration issued by the FATF or by an FATF-Style Regional Body

**Non-Reputable Jurisdiction (Article 2(1))** = "any jurisdiction having deficiencies in its national anti-money laundering and counter funding of terrorism regime or having inappropriate and ineffective measures for the prevention of money laundering and the funding of terrorism, taking into account any accreditation, declaration, public statement or report issued by an international organization which lays down internationally accepted standards for the prevention of money laundering and for combating the funding of terrorism or which monitors adherence thereto, or is a jurisdiction identified by the European Commission in accordance with Article 9 of Directive (EU) 2015/849"

26

# Categories Identified by FATF

Category 1	Jurisdictions that have strategic AML/CFT deficiencies and to which countermeasures apply
Category 2	Jurisdictions with strategic AML/CFT deficiencies that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies
Category 3	Jurisdictions with strategic AML/CFT deficiencies that have developed an action plan with the FATF and have made a high-level political commitment to address their AML/CFT deficiencies

27

Jurisdictions with strategic deficiencies	Jurisdictions no longer subject to monitoring
Albania	Trinidad and Tobago
The Bahamas	Iceland
Barbados	
Botswana	
Cambodia	
Ghana	
<del>Iceland</del>	
Jamaica	
Mauritius	
Mongolia	
Myanmar	
Nicaragua	
Pakistan	
Panama	
Syria	
Uganda	
Yemen	
Zimbabwe	

28

## Commission Delegated Regulations Identifying high-risk third countries with strategic deficiencies

Category 1	High-risk third countries which have provided a written high-level political commitment to address the identified deficiencies and have developed an action plan with FATF.
Category 2	High-risk third countries which have provided a high-level political commitment to address the identified deficiencies, and have decided to seek technical assistance in the implementation of the FATF Action Plan, which are identified by an FATF Public Statement.
Category 3	High-risk third countries which present ongoing and substantial money-laundering and terrorist-financing risks, having repeatedly failed to address the identified deficiencies and which are identified by an FATF Public Statement.

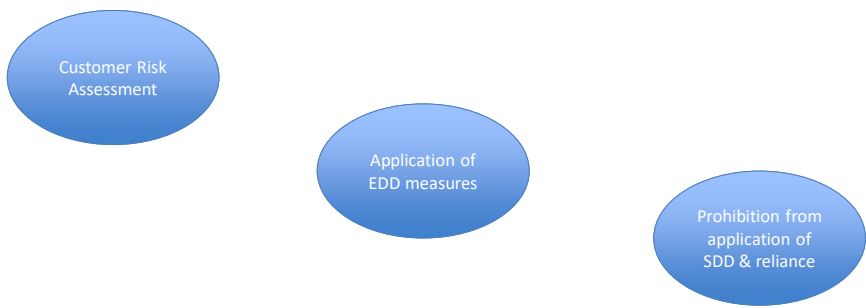
## High-Risk Jurisdictions

The concept of high-risk jurisdictions goes beyond that of non-reputable jurisdictions as it extends to other risk factors beyond AML/CFT issues, such as:

- Level of Transparency & Rule of Law (e.g., of source/s include *World Justice Project Rule of Law Index*, *Freedom in the World* and *Freedom of the Press*, issued by Freedom House;
- Level of Corruption (e.g., of source/s include *Corruption index*, issued by Transparency International);
- War-torn countries/Civil unrest (e.g., of source/s include *UN list of Embargoed Countries*);
- Significant level/s & type/s of crime/s (jurisdictions known for high level of different types of crimes, including drug trafficking, arms trafficking, human trafficking, jurisdictions known to be a hub for terrorist groups);
- Significant level of terror threat (e.g., of source/s include the *Global Terrorism Index*, issued by the Institute for Economics and Peace);
- Mutual Evaluation Report (MERs) issued by the FATF or any FSRB; and
- Other notable sources (e.g., of source/s include the *Basel AML Index*, issued by the International Centre for Asset Recovery).

# How to assess risk from non-reputable jurisdictions/high-risk jurisdictions?

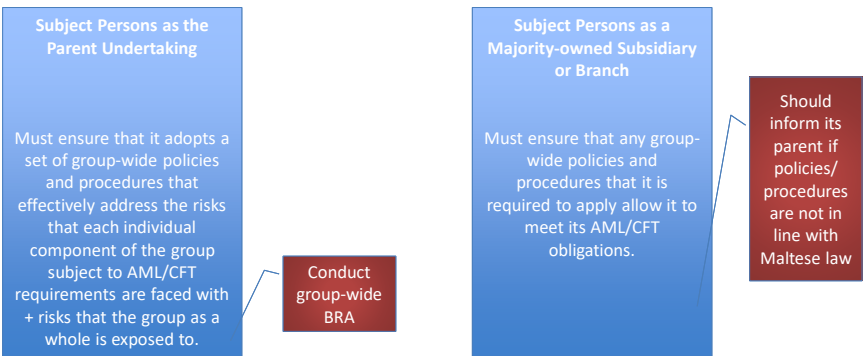
3 things for subject persons to keep in mind:



31

# Group-wide Policies and Procedures

Article 6 of the PMLFTR requires a subject person that forms part of a group to implement effective group-wide AML/CFT policies and procedures.



32



# Use and Sharing of Information

When collecting information for policies and procedures, subject persons must take into consideration:

- Data protection
  - Sharing of information for AML/CFT purposes ONLY
- } Non-disclosure obligation (Article 16 PMLFTR)

**EXCEPTION:**  
Entities delegated with the implementation of AML/CFT measures, policies, controls and procedures of the group are allowed since they are given this task.

## CASE STUDIES

## Case Study 1: application of SDD

- ABC plc is listed on the London Stock Exchange. It is a large manufacturer and supplier of motorcycle engine parts operating in England. It also exports parts to other European countries and has sales offices in Western Europe. ABC plc has been exploring the possibilities of opening sales offices in the Balkans, including Macedonia, Montenegro, Serbia and Bosnia.
- ABC plc has been a customer of CSP X for a number of years and was on-boarded during the period that the 3AMLD was in force. SDD, under the previous legislation was applied in respect of ABC plc at the time of on-boarding.
- ABC plc is now due for a periodic review. It is known that ABC plc is shortly to take on a Member of Parliament as a non-executive director. Further, expansion plans are well-underway and sales offices have now been opened in the Balkans.

## Case Study 1

1. Is the application of SDD now, under the 4AMLD, still appropriate?
2. If not, what factors will you take into account in your revised customer risk assessment?

## Case study 2

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- \_ Trustee A was approached by a bank to set up a scheme for one its clients for the purpose of the development and construction of real estate, based on small investors who injected capital.
- \_ The TCSP set up a real estate trust to receive money and assets that come from the business of the settlor and the investor.
- \_ The scheme involved a BVI company with nominee directors, ultimately controlled by a PEP, who was a client of the bank
- \_ The ultimate beneficial owner of the real estate project was the son of the PEP

## Case study 2

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1. *Would you carry out DD separately or would you rely on that carried out by the bank?*
2. *What sort of additional checks would you carry out?*
3. *What concerns would you have with this type of structure?*

QUESTIONS



Thank you for your attention



