**Applications for bank accounts in the UK by non-bank Payment Service Providers**

**Establishing the Ultimate Beneficial Ownership of a non-bank PSP, and dealing with requirements around Politically Exposed Persons, during Stages 1 and 2 of the application process for bank accounts**

**Introduction**

The Association of UK Payment Institutions has formulated a new approach for applications for bank accounts in the UK by three types of non-bank Payment Service Provider (non-bank PSP).

This guidance supports both Stages 1 (Pre-clearance) and Stage 2 (Due Diligence) as regards dealing with the issues of Ultimate Beneficial Ownership and Politically Exposed Persons.

**Background**

A bank will want to know, during its onboarding process, who the PSP’s Ultimate Beneficial Owner(s) is/are (the UBO check), and whether there are any Politically Exposed Persons connected to the PSP (PEPs).

These requirements are connected, and derive from the original 40 recommendations of the Financial Action Taskforce, formulated to detect Money Laundering (AML) and to combat the financing of terrorism (CFT). The 40 recommendations were revised in 2012: FATF Recommendations 2012.pdf

The recommendations important to the UBO and PEP topics are:

* UBO:
  + 24 on “Transparency and beneficial ownership of legal persons”
  + 25 on “Transparency and beneficial ownership of legal arrangements”
* PEPs:
  + 12 on “Politically Exposed Persons”

These other ones are relevant to how the UBO and PEP topics are considered in the case of PSPs:

* 1 on “Assessing risks and applying a risk-based approach”:
  + FATF have issued a specific guidance paper on how to apply a risk-based approach to what they term “money or value transfer services” or “MVTS”, into which category many UK non-bank PSPs would fall. The paper is: FATF Guidance on Risk-Based Approach to money value transfer services 2016.pdf
* 10 on “Customer due diligence”:
  + The measures a bank would implement to perform KYC and KYB
* 13 on “Correspondent banking”:
  + What a correspondent bank should do to look through their financial institution customer to the customers that the financial institution is serving
* 14 on “Money or value transfer services”:
  + The need for licensing, registration, monitoring and compliance by any organisation offering such services

There are also 9 FATF Special Recommendations, revised in 2008: FATF 9 Special Recommendations 2008.pdf

The only one of these that bears on the non-bank PSP sector is 6 on “Alternative Remittance”, underlining the original Recommendation 14 on “Money or value transfer services”, that all such services should fall within the scope of regulation.

**Rationale for these topics to be addressed at all**

The UBO and PEP topics are connected in the FATF system.

The rationale behind the PEP topic is that PEPs will have access to public budgets and funds, and that these could be exploited for private benefit, that bribes might be accepted, and that the money flows of these PEPs would therefore contain illegal funds, the handling of which constitutes money laundering.

The rationale behind the UBO topic is that those handling illicit funds will make use of corporate identities, often layered, to convert the funds - e.g. from cash to a bank balance, from onshore to offshore, from initial illicit receipt to expenditure on investments or on apparently legitimate business ventures. This conversion is the money laundering process.

**How these topics are addressed within AML/CFT regulation**

1. **UBO**

A bank is obliged, within its onboarding process, to take reasonable measures to identify the Ultimate Beneficial Owner of an account applicant that is a non-natural legal person. The UBO is a natural person at the end of the chain of ownership, however many non-natural persons are placed between the account applicant and that UBO.

Having identified who the UBO(s) is/are, the bank is then obliged to perform its customary identification check on that person or those persons (via passport, bank statement, utility bill etc.).

The account applicant is well-advised to already have the documentation to hand to demonstrate their UBO, starting with an organigramme, with suitable referencing to databases and sources of third-party, independent verification. If this is done properly and comprehensively by the applicant, and if the data has been re-validated within the preceding 3 months, the bank will normally view it as “reasonable measures” on their side to verify what the applicant has supplied.

Two key points are:

1. That the concept of UBO goes beyond straightforward ownership of shares, and is defined by other measures of control as well: this is explained in our guide;
2. what percentage of Ultimate Beneficial Ownership a person has to have in order to need to be identified.

The percentage specified by FATF is 25% or above, but is better for PSPs to consider 10% or above as being the threshold appropriate to them, and to work on that basis.

This is because banks – even those who specify 25% in their normal Customer Due Diligence procedures – may well class a PSP as requiring Enhanced Customer Due Diligence and for a number of reasons which we need not go into here.

This requirement to identify and document UBO from a 10% threshold upwards is likely to be so common that it makes no sense for PSPs to embark on the application process with UBO documentation based on the 25% threshold. The 10% threshold is PSPs’ default marker point.

We have a guide in the form of a Powerpoint deck as to how to establish and document UBO and it is available here: embed link to Powerpoint deck called: AUKPI - Stage 1 - Determining Ultimate Beneficial Ownership.pptx

Full guidance from FATF on UBO has been issued in this document: FATF Best Practices Beneficial Ownership of Non-Natural Legal Persons 2019.pdf

1. **PEP**

A bank is obliged, within its onboarding process, to take reasonable measures to identify PEPs connected to the account applicant – but there is one big difference between how this plays out in practice and the UBO check.

This difference is that the bank must screen everyone connected to the account applicant for PEP status, whatever information the applicant itself supplies, and also whatever lists may have been issued by countries containing either (i) lists of positions in their country, the occupier of which would be considered as a PEP; (ii) specific lists of persons; or (iii) lists of persons with their positions.

Such lists risk being out-of-date, and may not include family members, friends or associates of a holder of a public office: family members, friends and associates are themselves considered as PEPs.

Several further complications intervene, for example in the difference between a “Foreign PEP” and a “Domestic PEP”. Dealings by a bank with a “Foreign PEP” are deemed to be of a higher risk than dealings with a “Domestic PEP”, on the basis that the “Foreign PEP” (e.g. a PEP from Canada applying for a bank account in France) is considered more likely to use a foreign bank account than a domestic one for illicit dealings: the Canadian PEP would in other words be less likely to want to receive the proceeds of those dealings into an account in Canada.

Another issue is the relative degree of exposure implicit in different levels of public office in a given country.

That issue comes down to the degree to which - according to studies and lists from FATF, Moneyval or similar organisations - the public processes in a given country are susceptible to bribery, corruption and other aberrations.

Then on top of that one has certain industry segments – identified by FATF, Moneyval or similar organisations - whose processes demonstrate a raised level of bribery, corruption and other aberrations. FATF documents refer to industries like defence procurement, oil&gas, and other primary resources.

The identification of a PEP will then lead on to a classification by degree of risk, denoted by the seniority of the public office involved, the country classification, the industry classification, and a measure of the perceived nearness of the public office to the factors of concern e.g. a regional official in a region in which primary resources are found might score as a higher risk than a senior government minister in the same country but whose portfolio was tourism or health.

However, that analysis might be overridden where the country involved had a known system (sometimes referred to as a consortium system) whereby any major project would have an identified corps of support drawn from across government circles, whatever the individual ministerial portfolios of the members of the consortium might be, and indeed whether or not they were at the time holders of ministerial office, or family members, or associates, or holders of other offices. The implication of a consortium system is that every member of it will receive recompense under-the-counter for their support, in whatever form, and the further implication of that is that the total circle of PEPs in that country will be very wide, and will be impenetrable to anyone lacking recent and detailed knowledge of that country.

The PEP identification and classification process does not lend itself easily to automation within a bank, and can result in the business of the account applicant – if accepted in the first place – being subjected to unique controls as regards degree, frequency and seniority of oversight within the bank.

Against this, the best that an applicant can manage is to list those persons connected with its organisation that the applicant believes might be classified as a PEP and why. The applicant would be well-advised to maintain a register of PEPs, drawn from a comprehensive register of all the natural persons connected with their organisation, and to have had each one complete a PEP form on themselves, an example of which is: Example PEP questionnaire.jpeg

Full guidance from FATF on PEP has been issued in this document: FATF Guidance on Politically Exposed Persons 2013

**What to do**

1. **UBO**

UBO identification **is** an exact science, and account applicants would be well-advised to have their UBO statements complete and ready before approaching any bank.

The advisory Powerpoint deck as to how to establish and document UBO is available here: embed link to Powerpoint deck called: AUKPI - Stage 1 - Determining Ultimate Beneficial Ownership.pptx

1. **PEP**

PEP identification **is not** an exact science. Account applicants can communicate to the bank who they believe, of all the natural persons connected to their business, would rank as PEPs but banks will do their own searches and applicants need to be prepared for the bank to question what the applicant has presented and to supply extra information.

It would be good practice for PSPs to already be in a position to assist the process by maintaining and doing the following:

* Maintain a register of all the natural legal persons connected to the PSP:
  + Ultimate Beneficial Owners
  + Shareholders – direct and indirect
  + Directors and principals – the people who make decisions about the business
  + Mandators – people who have delegated authority to deal with third-parties e.g. to give instructions to banks
  + Signatories – people who will be named on bank account mandates
  + Other employees
  + Others of importance to the business e.g. consultants, agents
* Have each one of them complete a PEP questionnaire: Example PEP questionnaire.jpeg
* Follow up, document and file any example of a Yes response
* Communicate the identity of all of the natural persons who gave a Yes response to the bank in the Pre-clearance letter
* Be prepared for the bank to ask for their own PEP questionnaire to be completed by these persons
* Be prepared for the bank to have identified further persons connected to the business as potential PEPs
* Ask those persons to complete the bank’s PEP questionnaire, and to update/validate the PEP questionnaire they completed for the business
* Each PEP will then need to undergo the bank’s personal identification check (via passport, bank statement, utility bill etc.). This should not need to then be repeated for the persons who need to be identified for the purposes of operating the bank account.

**Types of PEP**

No listing from any third-party will be completely comprehensive, up-to-date, or water-tight. The example PEP questionnaire referred to above lists types of PEP with a pronounced UK perspective, and without clearly distinguishing between a “Foreign PEP” and a “Domestic PEP”.

Creditsafe define a PEP as “someone who is a prominent public figure and carries out a function in which they are trusted by the public[[1]](#footnote-1).

The definition of a PEP can change, the criteria could vary from country to country or even company to company. Its seen as quite a broad phrase but some examples include:

* Senior political figures
* Senior executives within a government owned commercial company
* Senior government officials
* Senior members of law enforcement agencies
* Senior members of religious organisations.”

ComplyAdvantage provide greater depth as to how PEPs may be defined.[[2]](#footnote-2)

They state that “financial institutions may categorize PEPs as:

* **Government Officials:** Current or former officials appointed to domestic government positions, or positions in a foreign government. This may include heads of state or individuals working in executive, legislative, administrative, military, or judicial branches, in elected and unelected roles.
* **Political Party Officials:** Senior officials appointed to roles in major political parties at home or in foreign countries.
* **Senior Executives:** Individuals serving in senior executive roles, such as directors or board members, in government-owned commercial enterprises or international organizations – that is corporations, businesses, or other entities formed by or for the benefit of any such individuals.
* **Family Members:** An immediate family member of a government or political official, or senior executive – meaning spouses, parents, siblings, children, and spouses’ parents and siblings.”

ComplyAdvantage then go on to categorise the types of positions into the degrees of risk – although our own statements above are relevant, that such categorisations need to take account of the country involved and the degree of nearness to funds and budgets:

|  |  |
| --- | --- |
| **High Risk: Level 1 PEPs** | **Medium Risk: Level 2 PEPs** |
| * Heads of state and government * Members of government (national and regional) * Members of parliament (national and regional) * Heads of military, judiciary, law enforcement and board of central bank * Top-ranking officials of political parties | * Senior officials of military, judiciary, law enforcement and board of central bank * Senior officials of other state agencies and bodies and high-raking civil servants * Senior members of religious groups * Ambassadors, consuls, high commissioners |
| **Medium Risk: Level 3 PEPs** | **Low Risk: Level 4 PEPs** |
| * Senior management and board of directors of state-owned businesses and organisations | * Mayors and members of local, country, city and district assemblies * Senior officials and functionaries of international or supranational organisations |

These different definitions underscore that PEP identification **is not** an exact science. Nevertheless it is to the advantage of PSPs themselves to us their best efforts to identify PEPs connected to their organisation, since doing this will put them in a better position to identify PEPs to third-parties and will demonstrate awareness of the issue and its implications.

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1. <https://www.creditsafe.com/gb/en/blog/compliance/guide-to-politically-exposed-persons-peps.html> accessed on 7/2/20 [↑](#footnote-ref-1)
2. <https://complyadvantage.com/knowledgebase/politically-exposed-persons/> accessed on 7/2/20 [↑](#footnote-ref-2)