

The Anguilla Financial Services Commission ('the Commission')

"Politically Exposed Persons" ("PEPs")

Guidelines issued under Section 48 of the Financial Services Commission Act R.S.A.c. F28 (the "FSC Act")

1. Section 48 of the Financial Services Commission Act R.S.A.c. F28 provides for the Commission to issue Guidelines with respect to procedures to be followed by and the conduct expected of licence holders in the operation of their licensed businesses and with respect to any other matter concerning the Act. The functions of the Commission include not only supervision and regulation in accordance with the FSC Act and with other regulatory guidelines but also the monitoring of compliance by licensed persons with other relevant Acts, including notably the Proceeds of Crime Act 2009 (as amended) and related Anti-Money Laundering and Prevention of Terrorist Financing Regulations 2009 (the "Regulations") and the Anti-Money Laundering and Prevention of Terrorist Financing Code 2009 (collectively, "the POCA regime").

2. The POCA regime introduces the concept of 'Politically Exposed Persons' ('PEPs'). The following Guideline is intended to assist persons licensed by the Commission and other relevant persons who are subject to the requirements set down in the POCA regime and therefore subject to review by the Commission, to achieve compliance with the requirements that relate to PEPs.

3. The relevant international standard requires **all PEPs to be regarded as high risk customers**. PEPs present a high risk to financial businesses because their position makes them vulnerable to corruption and corruption is almost invariably associated with money laundering. The risk is particularly high where the PEP has connections with countries or businesses where corruption is generally regarded as prevalent. An indication of which countries pose a risk of corruption can be freely obtained from public sources, such as Transparency International and from reports published by Governments or other non-Governmental organisations.

4. All licence holders and other relevant persons must ensure that they are able to identify any **natural person** that is a PEP with whom a business relationship is proposed or established, for example as a client or an account-holder. All licence holders and other relevant persons should also ensure that they can identify any PEP who is an **owner**, whether wholly or a part-owner, **or beneficial owner or controller**, whether directly or indirectly, of a **company or other legal arrangement** with which a business relationship has been proposed or established.

PEPs: Identification

5. A PEP is defined in Section 12 (5) (vii) of the AML/CFT Code as **an individual who is or has been, entrusted with prominent public functions in a country other than Anguilla engaged together with their immediate family members and their close associates**. Examples would include Heads of State or Government, senior politicians, senior government, judicial or military officials, senior executives of state owned

corporations, and important political party officials. However, the definition does not include middle ranking or more junior individuals in the above categories. There is no fixed, formal list of persons falling within the definition of PEP in each jurisdiction. Consequently, it is for each institution or person subject to the AML requirements set down in the POCA regime in relation to their business, to take adequate and appropriate steps **to identify the existence of PEPs** within their **existing client base** as well as to identify when **potential new clients** are PEPs.

6. This is an onerous responsibility and it will be necessary for all licence holders and other relevant persons to put in place processes and procedures within their client vetting arrangements sufficient to provide reasonable assurance that PEPs can be properly identified. There are a number of commercially available databases that may assist in this process. Moreover, the responsibility goes further, since there is a corresponding requirement to **identify business relationships** with **family members** and **close associates** of PEPs, where an equivalent compliance risk may attach to doing business with them.

7. It remains a matter for each licence holder or other relevant person to determine whether or not they are willing to enter into a business relationship and provide services to PEPs, their close family and associates. The Commission will, in the course of its compliance monitoring and testing programs pay particular attention to the adequacy of the arrangements in place for identifying and monitoring persons who fall into this category. A failure to provide satisfactory evidence of an adequate system for identifying and monitoring PEPs may give rise to enforcement action by the Commission.

PEPs: Enhanced Due Diligence

8. The POCA regime requires a licence holder and other relevant persons to adopt a detailed **risk-based process** surrounding the **identification and monitoring of all clients**. A licence holder's detailed risk-based process should include an appropriate **risk management system** that will ensure the initial identification of a customer or potential customer who is a PEP or an associate of a PEP and the subsequent **enhanced monitoring** of their activity. So, for example, where a licence holder or other relevant person has decided to enter into or already maintains a business relationship with PEPs, their close family or associates, the POCA regime requires that they should put in place **additional measures** that are designed to counter the **added risk** to which such relationships may expose them - for example, if it should later become apparent that the individual has abused their position of trust and improperly taken control of public funds. Such additional measures should include the following -

- **Approval** for the opening of new business relationships with such customers must be given exclusively **at Board or senior management level**. The same applies to a decision to retain an existing relationship subsequently identified as falling into the PEP category;
- Reasonable steps must be taken in the due diligence process to establish **the source of wealth and of funds**. Having regard to the enhanced risk, these steps must go beyond those normally applied to the generality of clients in respect of the firm's business acceptance procedures;

- Steps must be taken to establish the **rationale** for the business relationship, which should be reasonable and plausible. This might include information on the expected account activity, frequency of deposits or withdrawals;
- **Enhanced monitoring** must be conducted of the **ongoing business relationship**. Again, such monitoring must go beyond the level applied to the generality of customers and would include, for example, more frequent reviews of a PEP's business transactions and relationships; a lower monitoring threshold; due regard to the frequency and size of deposits and transfers and the source and destination of transfers;
- As with other customers, it is also important for **regular re-verification** of client due diligence information. It is possible that persons not previously identified as PEPs may become PEPs or subsequently become associated with them. Standard due diligence requirements dictate that all licence holders and other relevant persons should have in place an effective process to verify the accuracy of information that they have obtained in their **initial due diligence** process. In the case of the PEP risk management process, it is particularly important that client due diligence information is **periodically re-verified** in order to ensure its accuracy and to establish the current status of the individual. A re-verification process may, for example, involve obtaining reports from **independent experts** on the accuracy of due diligence information held by the licence holder or other relevant person.

9. The Commission regards it as important that all licence holders and other relevant persons should give early attention to the requirements of the POCA regime and to ensure that they are well-placed to demonstrate a good standard of compliance to the Commission when it undertakes its supervisory inspections.

10. The Commission is willing to give general guidance on systems and procedures as businesses review the steps that are necessary. Where businesses are uncertain whether a particular client may be a PEP or associated with a PEP, they may also approach the Commission for advice or guidance. But this will not diminish or over-ride a licence holder's ultimate responsibility for risk management. In addition, whilst the Commission may be prepared to offer its own views, it must be recognized that it cannot provide a definitive interpretation of the legal provisions, which will ultimately be the province of the Courts.

Financial Services Commission

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