



Questions raised at the Authority's PEP Thematic report Webinar – 17 May 2023

This document relates to questions raised by participants attending the Authority's PEP Thematic report webinar. Please watch the webinar recording and read the published PEP thematic report in conjunction with reading this Questions document.

PEP Thematic Scope

The thematic exercise looked at a range of Regulated and designated businesses and sample tested their foreign PEP customers. The PEP Thematic report issued by the Authority highlights a summary of the findings across the 29 firms inspected.

This particular thematic exercise was driven by the risk to the Island posed by foreign PEP customers within the islands customer base and the purpose of the exercise was to evaluate the scope of the risks faced by relevant entities in the IOM, to consider how the firms had considered the risk in this area and subsequently what preventative measures and controls were in place.

Screening

Participants were interested in customer screening requirements and asked:

The report mentions TCSPs should be screening the entities as well as the underlying PEPs – is it necessary to screen the entity if the entity is fully managed by the TCSP (i.e. all directors/trustees etc. are internal) as all transactions are under our control. I would have thought screening of the entity would only be needed in those situations where the TCSP is not actively managing the entity e.g. Registered Agent/Office only type business. What is the rationale for screening all entities with underlying PEP relationships?

When on-site, we saw a number of TCSPs who had chosen not to screen customer entities when the TCSP fully manages the entity. While we do appreciate the rationale for not doing so there are obligations under paragraph 4 to determine whether a customer is on a sanctions list, and paragraph 14 in relation to determining if a customer is a PEP. A customer would include where legal structures services are provided.

If a decision is made to not fully screen fully managed customer entities this should be clearly articulated and explained in the TCSP's BRA.

We also saw cases on the flip side where the TCSP had carried out risking and screening on the client entity as a customer, (e.g. low risk as 'we have control over the company as its directors') but did not cover the fact that the client company was operated for a high risk UBO. In one case the client entity had additional bank accounts and agreements in other jurisdictions (established at the request of the UBO/UBO intermediaries) which were unknown and outside the control of the IOM directors (directors provided by a TCSP), and the entity name appeared to be used more widely in other jurisdictions, looking like it was the client entity, even when not actually the client entity.



This is why considering a holistic approach to risk and screening is recommended to consider what may be risks of operating the client entity, the UBO for whom the client company is established, the reasons why the UBO needs such an entity in the IOM, and the structures around the UBO. (On-going screening to see if the entity is being 'used' elsewhere beyond the control of the TCSP directors).

Determination/Identification of PEP status

Participants wanted to understand the percentage figures detailed within the report in relation to PEP identification/determination and asked:

There are a range of tools to monitor customers on an ongoing basis and the responsibility to determine PEP status is on the firm rather than the client. I noted:

- "33% don't ask if the customer is a PEP" and;
- "60% don't have it in their TOB that a customer must inform the business if they become a PEP".

Was it that this population had no PEP screening requirements at on-boarding/ongoing, or that they didn't specifically ask if the client is a PEP and that they must report if they think they have become one?

The point being made in relation to asking whether a customer is a PEP is that this can be a helpful starting point in relation to assisting a firm determine whether a customer is indeed a PEP. It wasn't that they didn't have screening in place but suggesting this could be a question on an application form.

Should a customer be classified as high risk if their family member is classified as a PEP?

No. There is no automatic requirement to classify a PEP or PEP family members as high risk, but there is a requirement to treat family members as PEPs (PEP associates) and apply the same risking, screening and customer due diligence as is required for PEPs, as they may similarly be higher risk. The AML CFT handbook at 3.8.8. gives an example -

Family members and close associates of PEPs may also pose a higher risk as PEPs may use family members and/or close associates to hide any misappropriated funds or assets gained through abuses of power, bribery or corruption.

The individual should be considered as possibly higher risk once the PEP status has been determined or the connection to a PEP is identified. It would then be the responsibility of the business, to consider and assess the associated risks posed by the individual and determine whether or not the risks can be mitigated. Any consideration and decisions on risking the family member linked to a PEP should be clearly documented and retained on the customer file. Sections 3.8.10 and 3.8.10.1 provide further guidance in relation to PEP requirements and the determination of PEP status.



Participants were interested to understand if there was a specific industry that had attracted over 1,500 Argentinian PEPs.

Yes, the Argentinian concentration are customers involved in the Life sector.

‘Breach’ Vs ‘Contravention’

Participants were keen to understand the difference between differing terminology used and asked:

When the IOMFSA uses the term ‘breach’ and ‘contravention’ are they used interchangeably or do they have distinct meanings?

The term contravention is used to describe a finding in relation to the AML/CFT Code, whereas breach is used more commonly used in relation to findings associated with the Financial Services Rule Book.

Training

Participants were interested to know if there was going to be any training following the exercise and asked:

Where there are material findings from thematic reviews will the IOMFSA be working with the ACSP to identify relevant training that can be provided to improve standards?

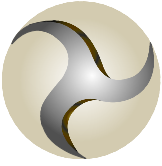
Firms have legal responsibilities under Paragraph 32 of the Code to ensure their people are trained and keep up to date with trends in Money Laundering and Terrorist Financing, as well as the AML CFT legislation. Firms should consider their own training needs as part of their review of the findings and indications from the PEP report. The Authority has issued the report (and delivered the webinar) partly to inform the wider population of areas they may need to consider and review in their own businesses to try to ensure they are effective in preventing money laundering (or worse) in or through their businesses. However, the Authority is not responsible for such training.

The Authority will engage with the ACSP and other industry bodies in due course. Feedback is always welcomed in relation to both legislation and guidance if there are areas where it is not clear, and the Authority review and consider all such feedback.

Further to the questions raised during the webinar, questions raised at other recent events included:

With so many businesses in the sample having contraventions, is this an issue with the Code or Guidance?

No we don't think so. The Code reflects the standards agreed and employed by the more than 200 countries affiliated with FATF as necessary to protect firms, their staff and their countries from the destructive effects of Money Laundering and Terrorist Financing. The guidance which has all been refreshed since July 2021 is there to help, but it is still the responsibility of firms to make sure they know and understand the risks they face in ML and TF, including where foreign PEPs are involved, and to have documented evidence of their knowledge, the risks, how they are considered, and how they



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are mitigated or controlled. The contraventions identified in the thematic project were against the Code requirements.