

## Once a PEP, not always a PEP?

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Jersey has aligned with international best practice in providing the ability to declassify politically exposed persons.

### Politically exposed person

In Jersey, a politically exposed person (**PEP**) is an individual who is any of the following (within the meaning of Article 15A of the Money Laundering (Jersey) Order 2008 (**MLO**)):

- A domestic PEP
- A foreign PEP
- A prominent person
- An immediate family member or close associate of the above

The Financial Action Task Force (**FATF**) Recommendations define a PEP as being someone who has been (but may no longer be) entrusted with a prominent public function. FATF guidance confirms this as an open-ended approach (that is to say, "once a PEP - *could* always remain a PEP"), and indicates that declassification should be based on an assessment of risk and not solely on prescribed time limits. The approach to PEP declassification varies by jurisdiction.

### Circumstances for declassification in Jersey

From 1 September 2023, amendments to the MLO<sup>[1]</sup> allow for declassification of a PEP if all of the following circumstances are met:

1. **Time**- It's been over a minimum number of years (two for domestic and five for foreign PEPs or prominent persons) since the person ceased to be entrusted with a prominent public function <sup>[2]</sup>

2. **Risk-** It is considered that the person does not present a higher risk of money laundering

3. **Reason-** There is no reason to continue to treat the person as a PEP

The first one is easy, but the other two will need some careful thought.

## Risks associated with PEPs

PEPs are recognised to represent a higher risk as they may abuse their influential positions to commit money laundering offences and related predicate offences (such as corruption and bribery). They can also be involved in terrorist financing and proliferation financing activities.

Even if a person has not been in a position for some time, they may still have the proceeds of crime from holding the position as part of their wealth or funds, and / or they could still be "exposed" through continued influence in other ways, meaning that they could still present a higher risk of money laundering.

Should your business handle the proceeds of crime, there could be criminal and / or regulatory sanctions. Given the high profiles of PEPs, these things tend to end up all over the news and cause significant reputational damage to both the business and the jurisdiction. So there are also compliance, legal, financial and reputational risks to consider.

This means that businesses will need to carefully consider the approach they wish to take, considering the risks in relation to their business and how best to manage them. Should the business allow for PEP declassification, effective systems and controls will need to be implemented, and employee training delivered, to ensure risks are mitigated effectively.

## Factors to be considered when declassifying

When determining if there is a reason to continue to treat the person as a PEP, and whether the person presents a higher risk of money laundering, here are some factors you could consider.

### Link to relationship / transaction

- What is their involvement in the business relationship (**relationship**) / one-off transaction (**transaction**)?
- Have funds been / will funds be received from the person?
- Do they have any control over the relationship?

### Position held

- How long did they hold the position?
- What level of influence did they have?
- Was the position susceptible to corruption or misappropriation of state funds / assets?
- Were they a key decision maker?
- Were they involved in financial transactions / dealings?

## Continued connections

- Is the person who held the position still alive?
- Are they still linked in any way to the past position?
- Are they close to the person who took over the position?
- How likely is it that they will hold a position again in future?
- Do they still deal with any substantive matters?
- Do they have business interests related to the public functions?
- If you are dealing with an immediate family member or close associate of the person who held the position, what is the connection and how close were / are they?

## Country

- Is the country vulnerable to corruption (for example, those with poor ratings on Transparency International's Corruption Perception Index)?
- Is the country politically unstable (for example, those highlighted as a concern by the Worldwide Governance Indicators)?
- Is the country's government ineffective (for example, those considered to be a "failed state" in the Failed State Index)?
- Has FATF identified the country as having strategic deficiencies in their AML / CFT / CPF regimes?

## Industry

- Does the person have links to industries vulnerable to corruption (for example, extractive industries like oil, gas and mining)?

## Source of funds

- What activity/ies generated the funds being used in the relationship / transaction?
- Is it linked to the position held?
- Could it have been tainted by corruption?

## Source of wealth

- What is the source of their wealth?
- Was it acquired while they held the position?
- Could it have been tainted by corruption?
- How plausible is the customers net worth based on their profile?

## Behavioural indicators

- Has the person been transparent when providing information?
- What is their reputation like from available sources?
- Is there any relevant adverse media involving the person?
- Does the purpose and intended nature of the relationship / transaction make sense?

Ensure that you document the rationale as to why declassification is considered to be appropriate, obtain senior management approval and maintain adequate records on the customer file.

## Do you need support?

If you need any support with your risk management considerations, design and implementation of systems and controls, and/or delivery of employee training following this change, please get in touch with us at [regulatoryconsulting@ogier.com](mailto:regulatoryconsulting@ogier.com) and we would be happy to help.

Find out more about the services Ogier Regulatory Consulting can provide on our [service page](#).

## Sources

[FATF Guidance - Politically Exposed Persons \(Recommendations 12 and 22\) June 2013](#)

[Wolfsberg Group Guidance on PEPs May 2017](#)

[Money Laundering \(Amendment No. 12\) \(Jersey\) Order 2023 \(jerseylaw.je\)](#)

[Changes to the Money Laundering Order \(gov.je\)](#)

[AML/CFT/CPF Handbook – Jersey Financial Services Commission \(jerseyfsc.org\)](#)

[Feedback Paper on Consultation Paper No. 5 2023 \(jerseyfsc.org\)](#)

[Extractive industries - Our priorities - Transparency.org](#)

[1] The Money Laundering (Amendment No. 12) (Jersey) Order 2023, Article 8 amends Article 15A (enhanced customer due diligence measures in relation to politically exposed persons).

[2] As defined in the Money Laundering (Jersey) Order 2008 and amended by the Money Laundering (Amendment No. 12) (Jersey) Order 2023.

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