



Guernsey Financial  
Services Commission

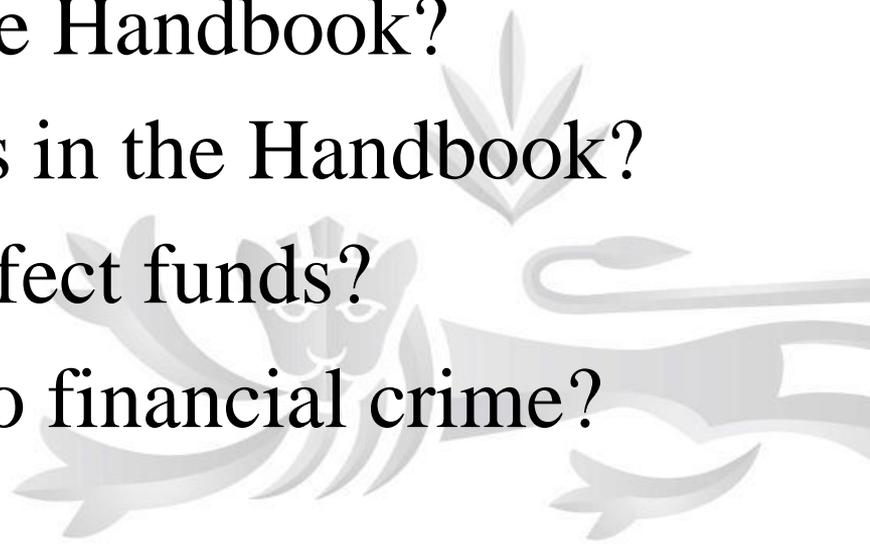
# **Financial Crime Supervision of the Fund Sector**

Financial Crime Division

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# Key Topics

- What is the FATF and Moneyval?
  - How have international standards and mutual evaluations influenced the Handbook?
  - What are the key changes in the Handbook?
  - How do those changes affect funds?
  - How are funds exposed to financial crime?
- 

# Financial Action Task Force (“FATF”)



38 Members, 9 Associate  
Members & 23 Observers

# FATF – Why take part?



- Stay abreast of emerging AML/CFT issues on the international stage
- Shape international AML/CFT guidance
- Ensure interests of small jurisdictions are represented

# Moneyval Membership



Albania



Andorra



Armenia



Azerbaijan



Bosnia and Herzegovina



Bulgaria



Croatia



Cyprus



Czech Republic



Estonia



Georgia



Hungary



Holy See



Israel



Latvia



Liechtenstein



Lithuania



Malta



Moldova



Monaco



Montenegro



Poland



Romania



Russian Federation



San Marino



Serbia



Slovak Republic



Slovenia



"The former Yugoslav Republic of Macedonia"



Ukraine

# Evaluations

- 2012 Recommendations – 2013 Methodology
- 11 Immediate Outcomes

- High Effectiveness
- Substantial Effectiveness
- Moderate Effectiveness
- Low Effectiveness

Good Ratings

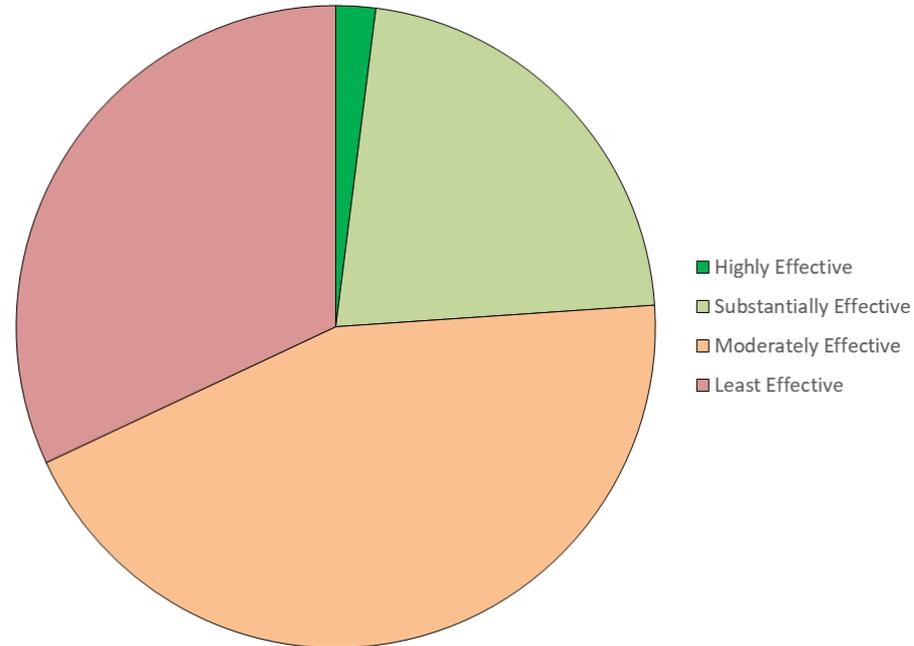
Poor Ratings



# Evaluations

- 68 Jurisdictions Assessed To Date Under 2013 Methodology  
(68 Assessments x 11 Immediate Outcomes = 748 Ratings):

High Effectiveness	15 (2%)
Substantial Effectiveness	164 (22%)
Moderate Effectiveness	330 (44%)
Low Effectiveness	239 (32%)



# Evaluations

- Isle of Man – Assessed in 2015

IO1	IO2	IO3	IO4	IO5	IO6	IO7	IO8	IO9	IO10	IO11
SE	SE	ME	ME	ME	LE	LE	LE	ME	ME	ME

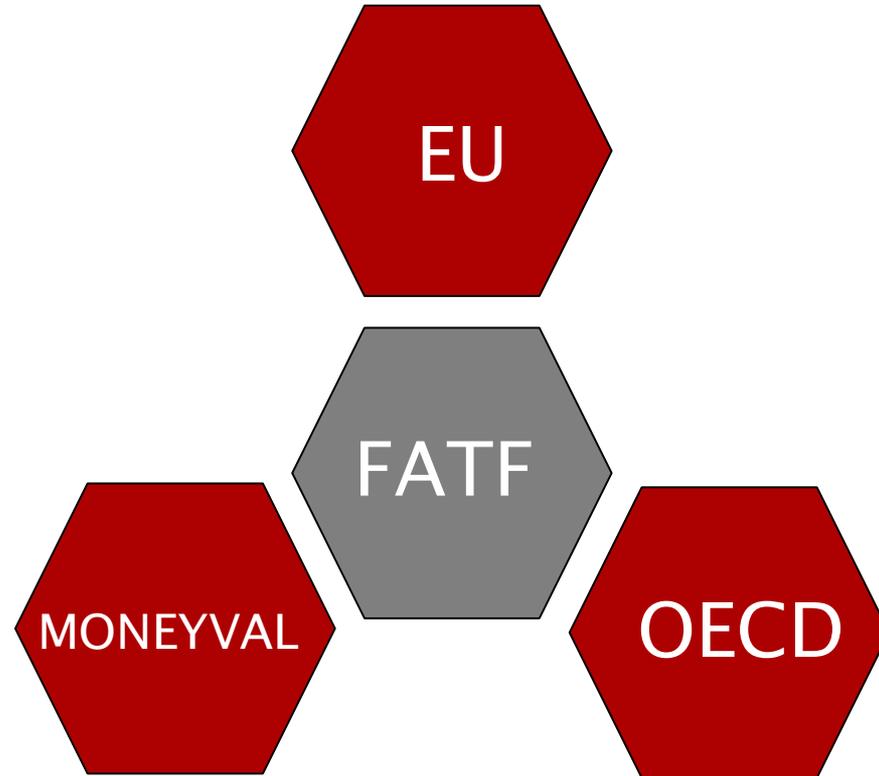
- United Kingdom – Assessed in 2018

IO1	IO2	IO3	IO4	IO5	IO6	IO7	IO8	IO9	IO10	IO11
HE	SE	ME	ME	SE	ME	SE	SE	HE	HE	HE

- United States – Assessed in 2016

IO1	IO2	IO3	IO4	IO5	IO6	IO7	IO8	IO9	IO10	IO11
SE	SE	ME	ME	LE	SE	SE	HE	HE	HE	HE

# Transparency of Beneficial Ownership



# Moneyval Evaluation – September 2015

- Rated compliant or largely compliant, but one partially compliant rating as assessed that GFSC sanctions were not dissuasive or proportionate
- *“the list of factors of to which EDD must be applied omits some higher risk categories”* Also raised by IMF in 2010
- *“Where a regulated or authorised collective investment scheme has only a very limited number of investors this discretion within the FSB regulations and handbook should not be available”* (Intermediary Provisions)

# OECD's Global Forum – July 2018

- Rated overall as compliant. **Focus on beneficial ownership**
- 1 largely compliant for availability of ownership and identity information
- *“Guernsey heavily relies on the anti-money laundering (AML) framework and the service providers obligated under the AML framework to maintain beneficial ownership information...”*



# FATF Methodology – R.10 Excerpt

The principle that financial institutions should conduct CDD should be set out in law. Each country may determine how it imposes specific CDD obligations, either through law or enforceable means.

The CDD measures to be taken are as follows:

- (a) Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information.
- (b) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer.
- (c) Understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship.
- (d) Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.

# Handbook Format

Schedule 3 Requirements - Blue Boxes

Commission Rules - Red Boxes

Guidance - Not Coloured/Boxed

- Cross References:

*Commission Rule* 7.23. = Chapter 7  
Chapter Paragraph Paragraph 23

- *Italicised Terms* Defined in Appendix A

# Key Changes in the Handbook

- Risk Assessment
- MLRO/MLCO
- Enhanced Measures
- Nominated Firm for Investor CDD
- Intermediary provisions
- Who is a PEP?
- 3 Tier Test for Beneficial Ownership



# Risk

- General Duty to Understand, Assess and Mitigate ML and FT Risk
- Separate ML and FT Business Risk Assessments  
(Can Both be Contained in One Over-Arching Document)
- National Risk Assessment
- Relationship Risk Assessment



# Risk Appetite and Mitigation

- Determine the overall ML/TF risk
- Appropriate level of mitigation
- Determine type and extent of risk that a firm is willing to accept to achieve its strategic objectives
- Must feed into relationship risk assessments



# Key Personnel

- Money Laundering Reporting Officer
- Money Laundering Compliance Officer



*“2.63...the same individual can be appointed to the positions of MLRO and MLCO...”*

*Rule 2.25 – “The board ... must retain responsibility for the review of overall compliance with the AML/CFT requirements of Schedule 3, this Handbook...”*



# Enhanced Measures



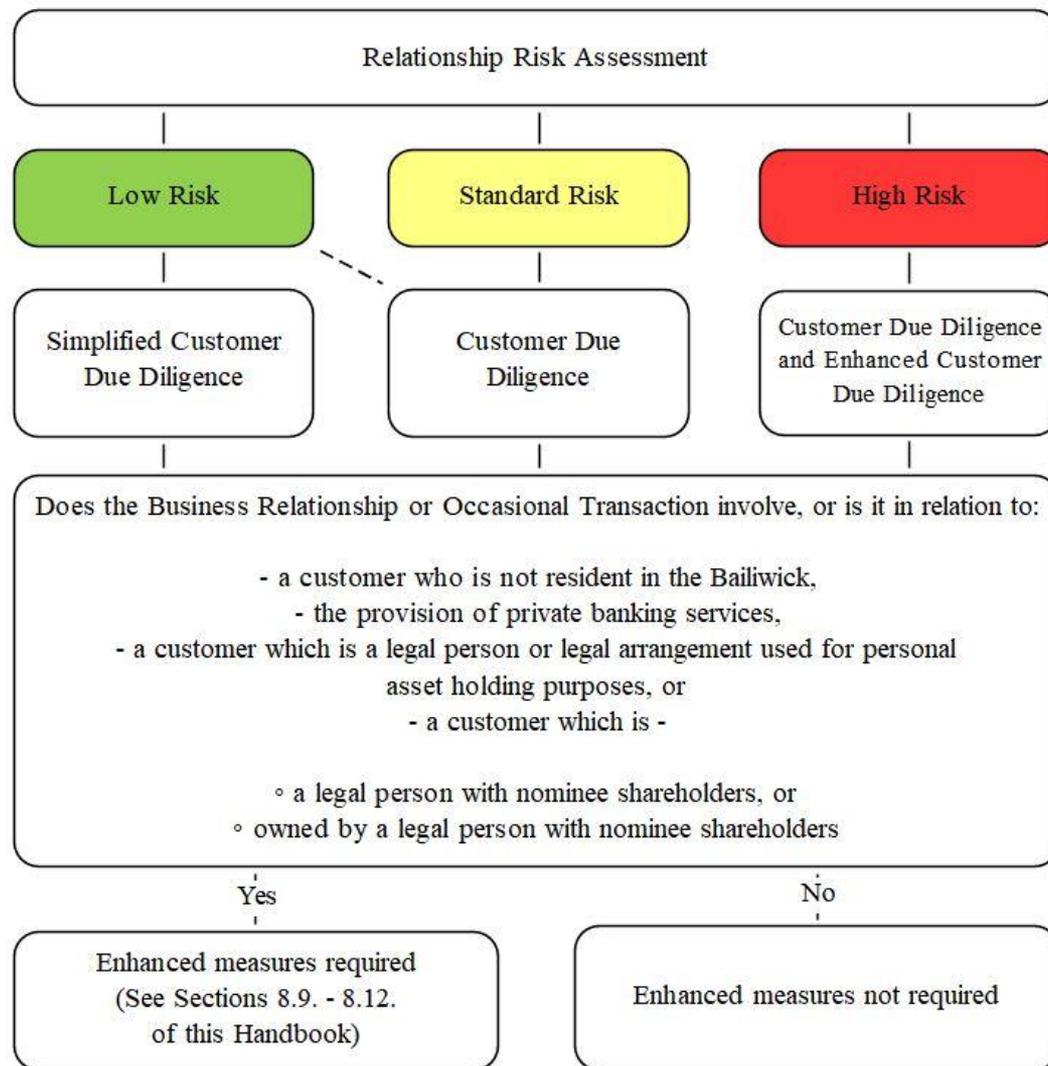
- Moneyval Finding:

*“the list of factors of to which ECDD must be applied omits some higher risk categories.”*

- Enhanced Measures to Mitigate and Manage Risk

- Customer Not Resident in the Bailiwick
- Customer Provided with Private Banking Services – N/A for funds
- Customer is Used for Personal Asset Holding Purposes
- Customer has Nominee Shareholders, or is Owned by a Legal Person with Nominee Shareholders

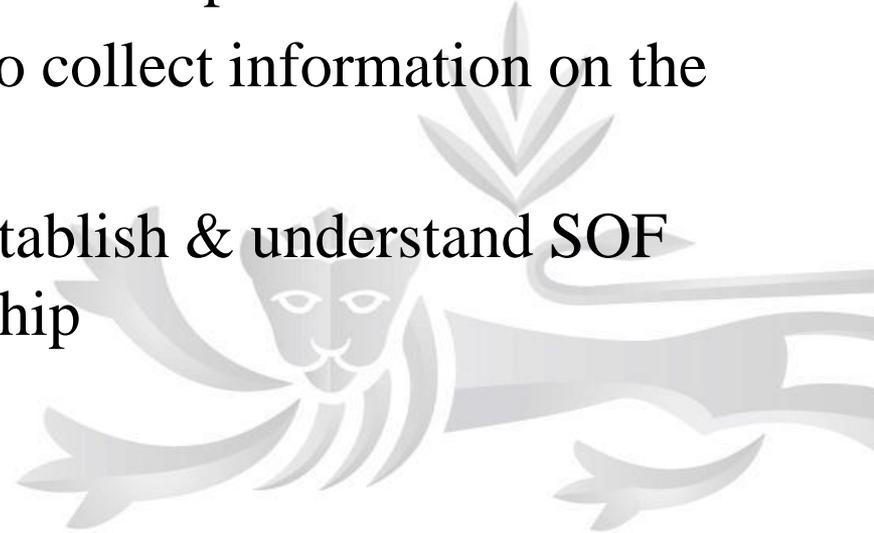




# Enhanced Measures – Non Residents

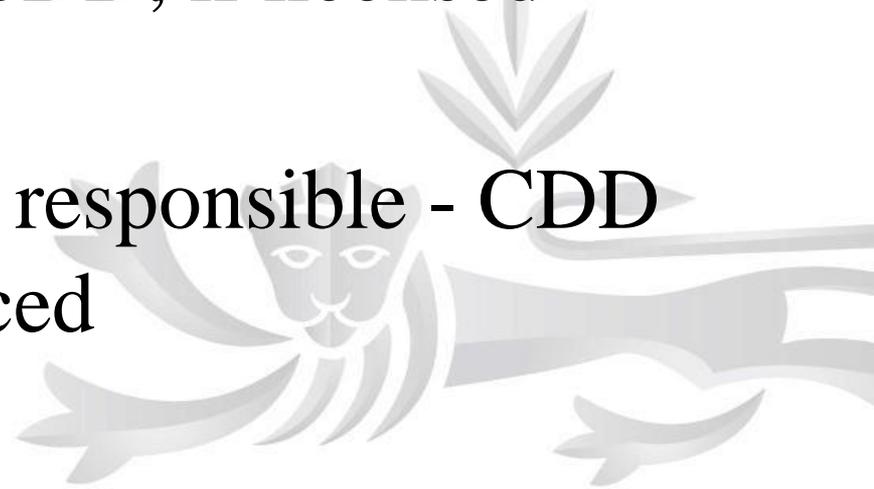
## Examples of enhanced measures:

- Taking steps to understand the reason(s) behind the customer seeking to establish a business relationship
- The use of external data sources to collect information on the customer
- Taking reasonable measures to establish & understand SOF used within the business relationship



# Nominated Firm for Investor CDD

- Traditionally been the Fund Administrator
- Provides flexibility for the Fund Manger to be responsible for investor CDD, if licensed under the POI Law
- Whilst nominated firm is responsible - CDD measures can be outsourced



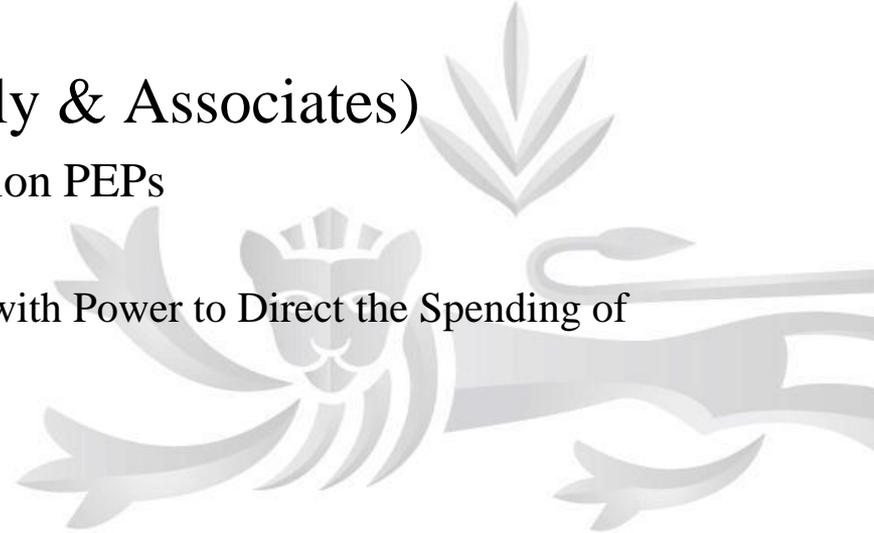
# Intermediaries

*“Where a regulated or authorised collective investment scheme has only a very limited number of investors this discretion [to place reliance upon an intermediary] within the FSB regulations and handbook should not be available”*

- Intermediary provisions remain within ‘Simplified Customer Due Diligence’ chapter of the Handbook
- Focus on assessing the risk of a CIS being used by a very limited number of investors as a personal asset holding vehicle

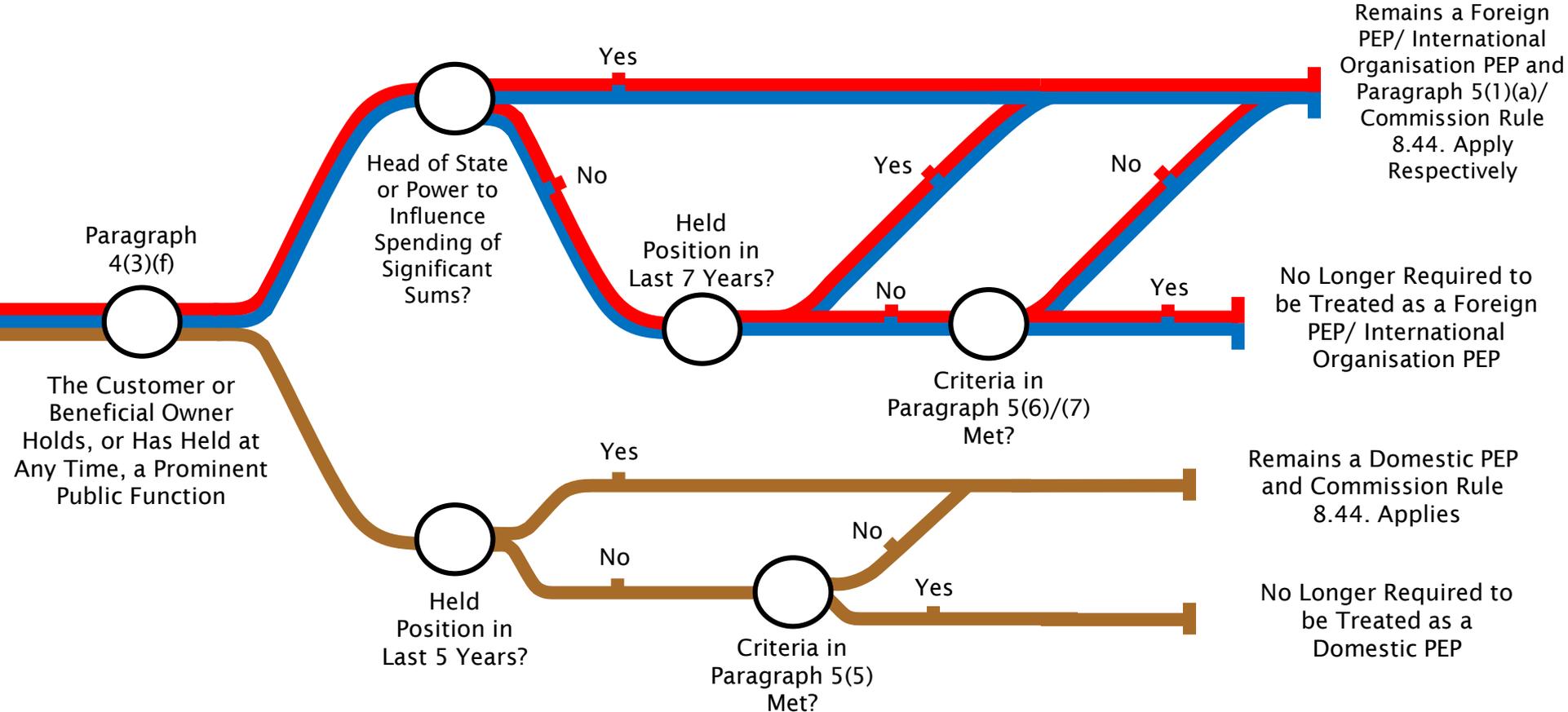
# Politically Exposed Persons

- Domestic PEPs
  - Appendix E
  - Applies to Existing Relationships
- International Organisation PEPs
- Declassification of PEPs (+ Family & Associates)
  - Foreign PEPs & International Organisation PEPs
    - Declassification After 7 Years
    - Exceptions – Heads of State & Persons with Power to Direct the Spending of Significant Sums
  - Domestic PEPs
    - Declassification After 5 Years for All

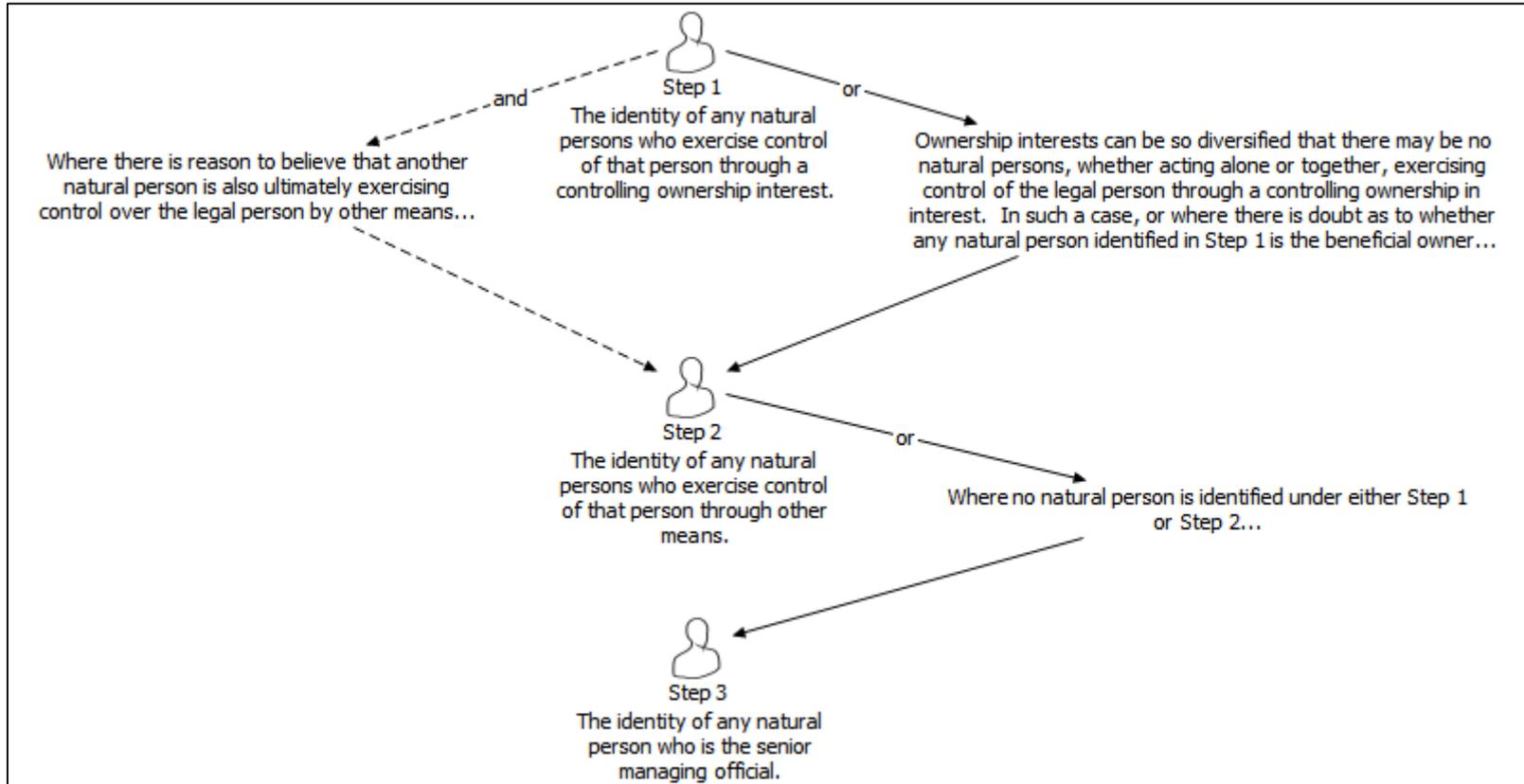


# Politically Exposed Persons

- Foreign PEP
- International Organisation PEP
- Domestic PEP



# Three Step Test of Beneficial Ownership



# Timing

- New regime effective 31 March 2019
- But subject to transitional provisions
  - MLCO Appointed by **31 March 2019** & Commission Advised
  - Business Risk Assessment Reviewed & Approved by Board by **31 July 2019\***
  - Policies, Procedures and Controls Reviewed & Approved by **31 October 2019\***
  - Nominated Firm for Collective Investment Scheme Investor CDD by **31 May 2019**
  - All High Risk Existing Customers Reviewed by **31 December 2020**
  - All Other Customers Reviewed by **31 December 2021**

\* or 4 and 7 months respectively from the date of the NRA's publication if later than 31 March 2019

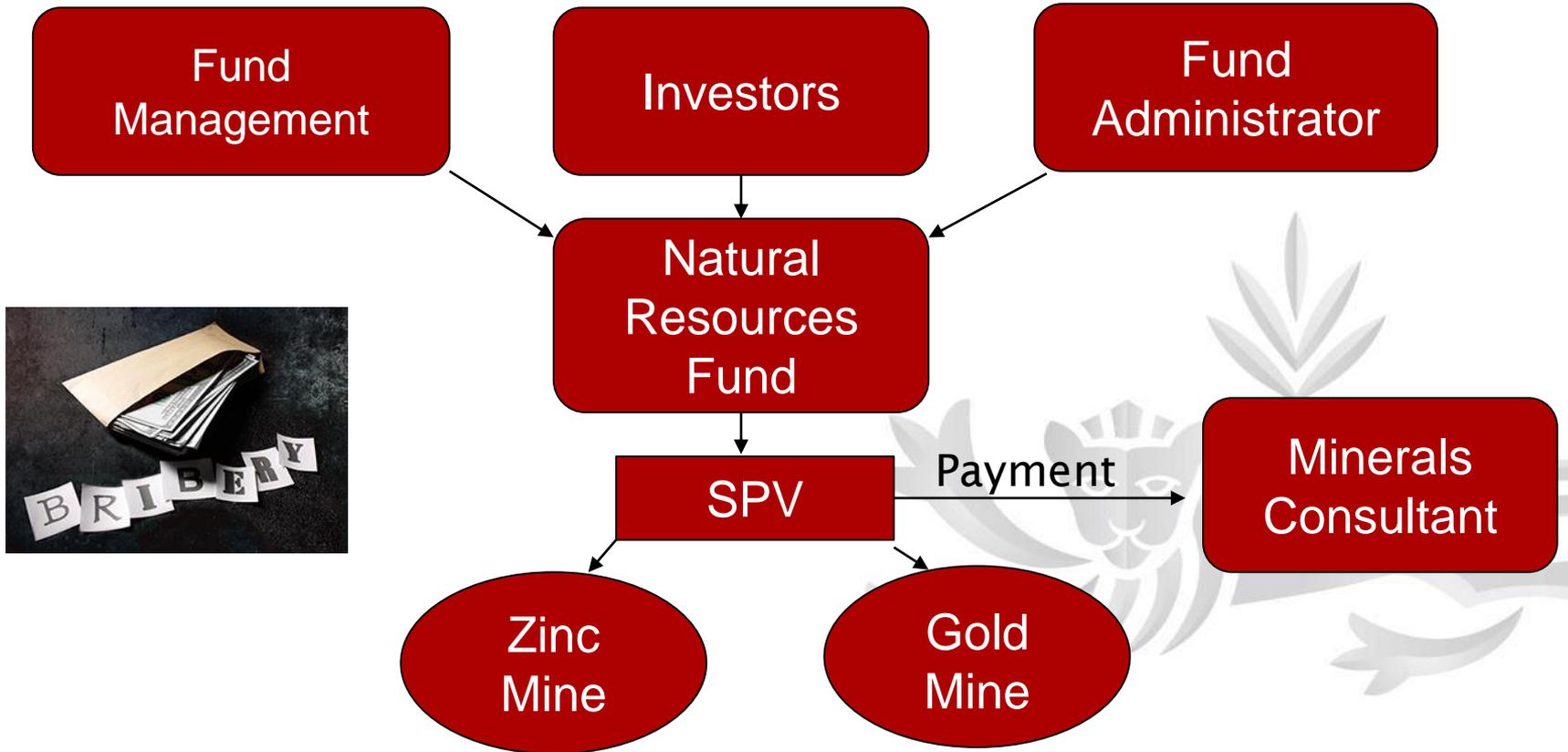


# Funds - Exposure to Financial Crime

- Fund Administrators are vulnerable to financial crime through their customers:
  - 1) The fund;
  - 2) Parties in control of the fund; and
  - 3) Investors in the fund.



# Vulnerabilities of Funds



# Vulnerabilities of Investors

- Less sophisticated and mid-level criminals may look to invest their ill-gotten gains
- Take reasonable measures to establish and understand source of funds and source of wealth

