



Guernsey Financial  
Services Commission

# **The Handbook on Countering Financial Crime & Terrorist Financing**

Regulatory Self-Assurance Workshop  
Lawyers & Accountants - March 2019

Financial Crime Division

# Agenda

- Introduction & Icebreaker
- Enhanced Measures
- Beneficial Ownership
- Politically Exposed Persons
- Use of Technology
- Questions



# Enhanced Measures



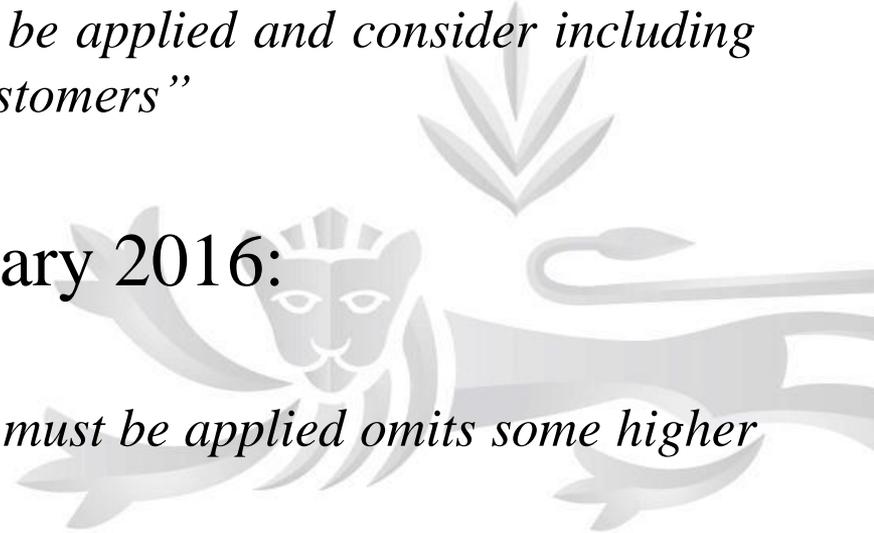
# Enhanced Measures

- IMF Report – January 2011:

*“The authorities should expand the list of higher-risk customers to which enhanced due diligence must be applied and consider including private banking and non-resident customers”*

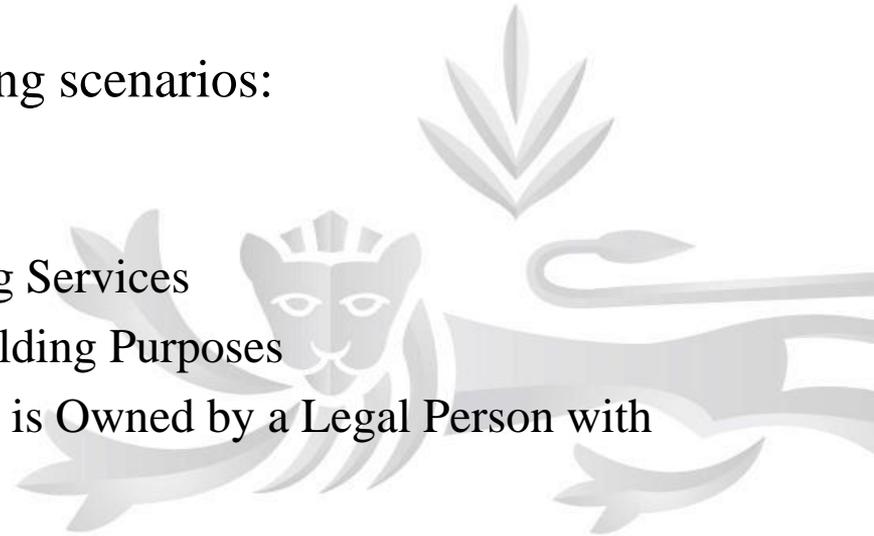
- MONEYVAL Report – January 2016:

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



# Enhanced Measures

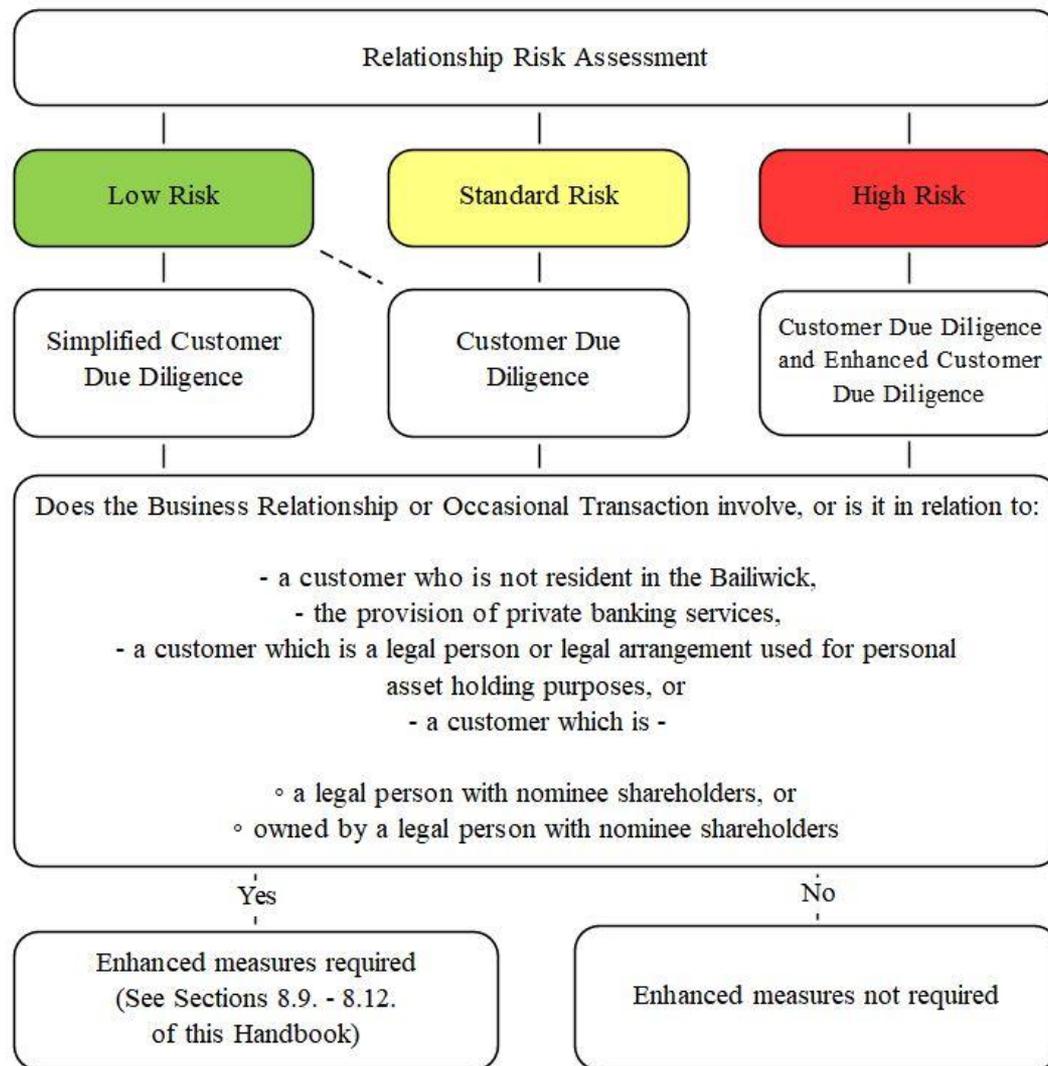
- The application of enhanced measures to a business relationship or occasional transaction serves to mitigate the risk associated with particular higher risk factors identified by the FATF.
- Enhanced measures apply in the following scenarios:
  - Customer Not Resident in the Bailiwick
  - Customer Provided with Private Banking Services
  - Customer is Used for Personal Asset Holding Purposes
  - Customer has Nominee Shareholders, or is Owned by a Legal Person with Nominee Shareholders



# Enhanced Measures

- What enhanced measures could be applied?
- How do I record the enhanced measures applied?
- Existing Customers





# Enhanced Measures – Example 1

- You work for a law firm and have been approached to provide advice in relation to the purchase of an Open Market property. The client, a natural person, is based in the United Kingdom and their offer of £2.5m for the property has been accepted by the Vendor.



Customer Not Resident in the Bailiwick



Customer Provided with Private Banking Services



Customer is Used for Personal Asset Holding Purposes



Customer has Nominee Shareholders, or is Owned by a Legal Person with Nominee Shareholders

- What enhanced measure(s) could you apply?



# Enhanced Measures – Example 2

- Your firm has been approached by a local trust and corporate service provider to provide tax advice in respect of the disposal of two properties in Germany on behalf of a trust for which the TCSP acts as trustee. The settlor and beneficiaries of the trust are all based in Australia.



Customer Not Resident in the Bailiwick



Customer Provided with Private Banking Services

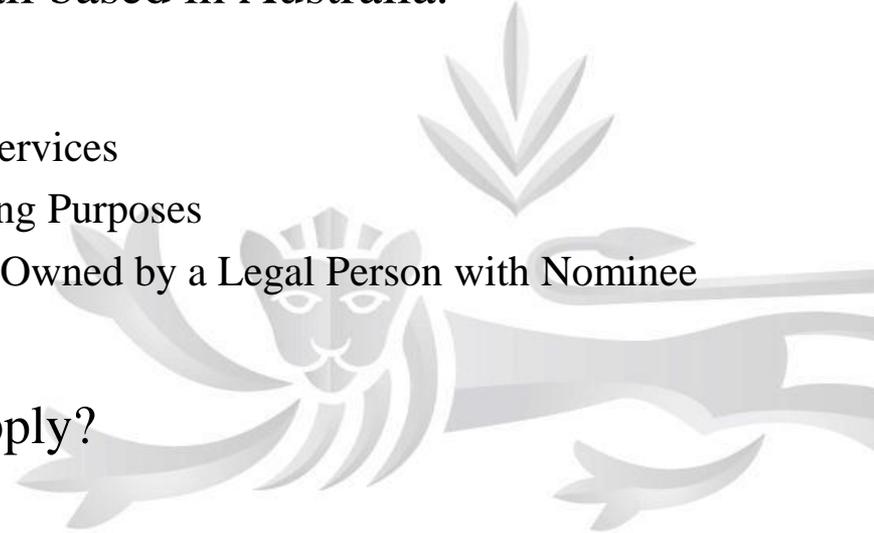


Customer is Used for Personal Asset Holding Purposes



Customer has Nominee Shareholders, or is Owned by a Legal Person with Nominee Shareholders

- What enhanced measure(s) could you apply?



# Enhanced Measures – Example 3

- You have been approached, as an accountancy business, to provide services to a client (a company) registered in the British Virgin Islands. The company is 100% owned by A Nominees Limited, a subsidiary entity of a law firm domiciled in the Democratic Republic of the Congo (“DRC”). The shares are being held on behalf of three underlying DRC citizens. The company was established for the purpose of holding mining interests in the DRC and surrounding countries. You have assessed the relationship as being high risk.



Customer Not Resident in the Bailiwick



Customer Provided with Private Banking Services

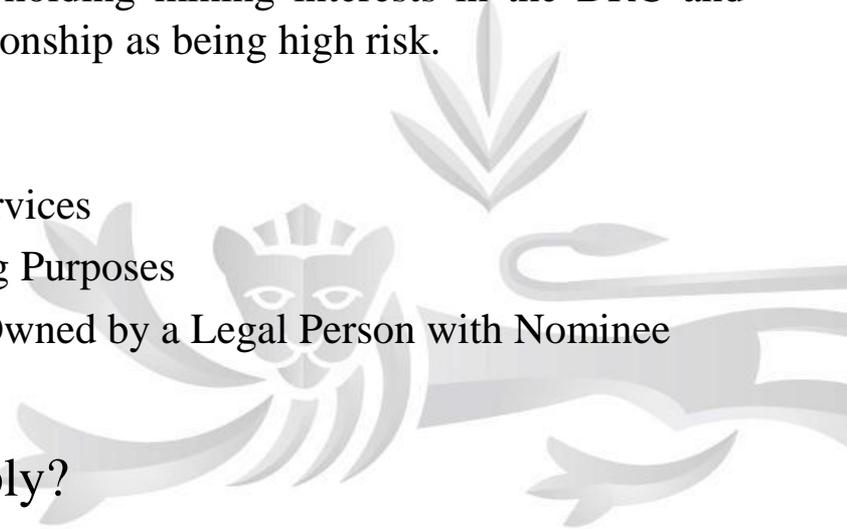


Customer is Used for Personal Asset Holding Purposes



Customer has Nominee Shareholders, or is Owned by a Legal Person with Nominee Shareholders

- What enhanced measure(s) could you apply?

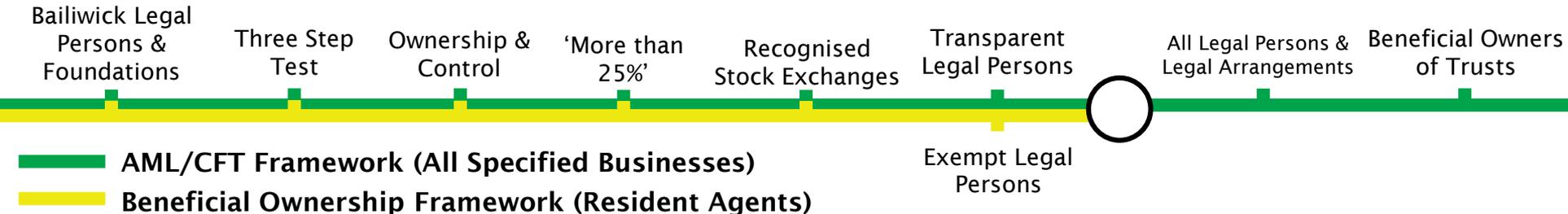


# Beneficial Ownership

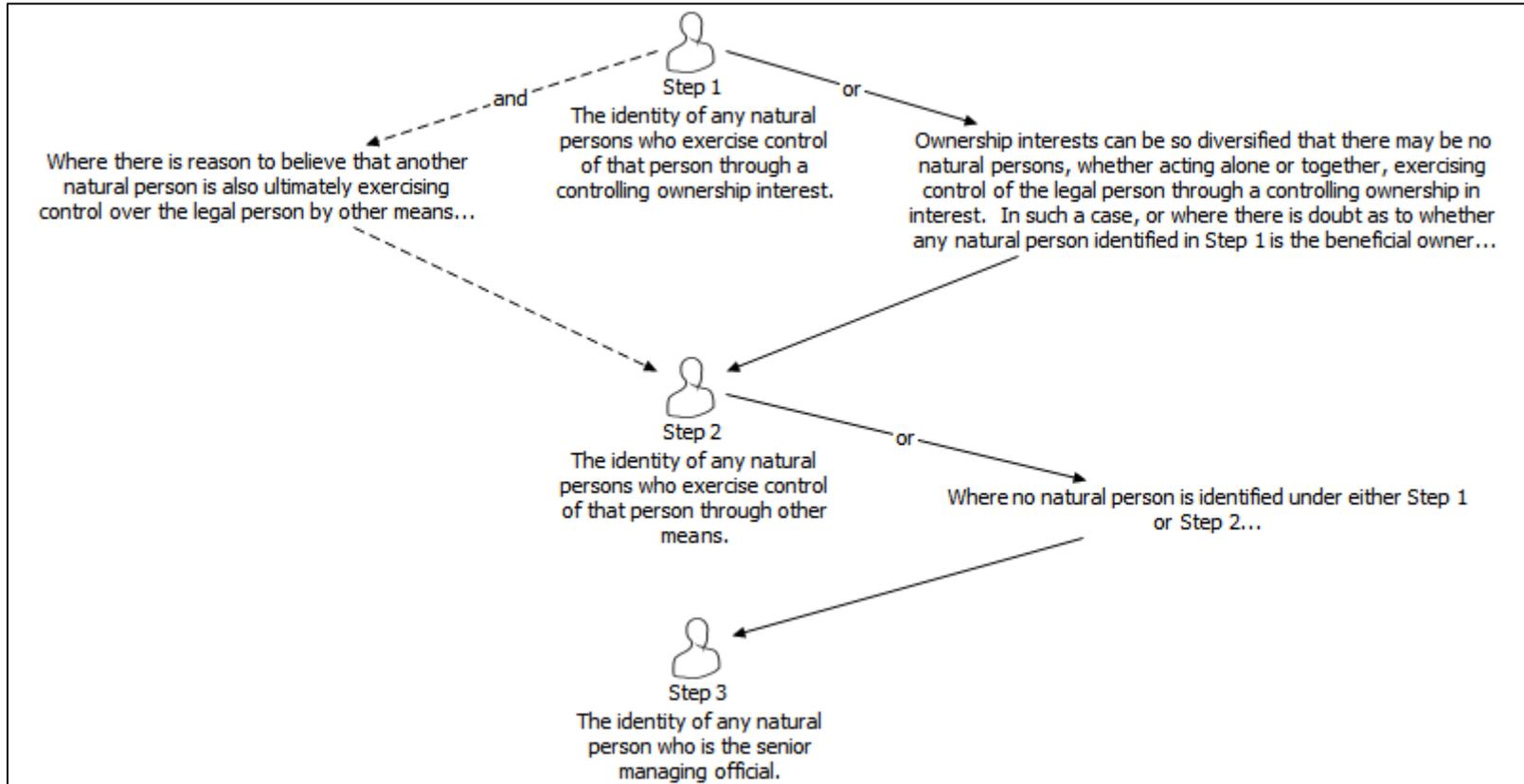


# Beneficial Ownership

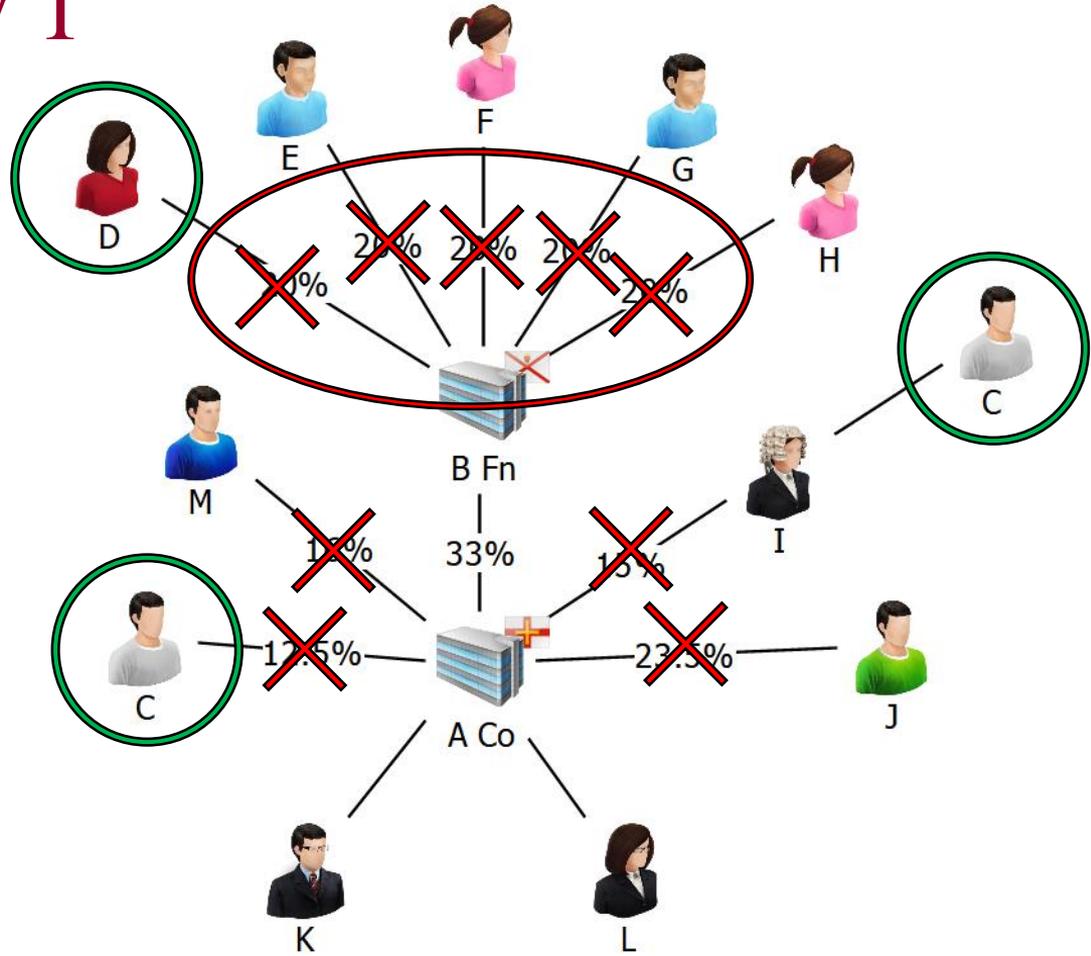
- Beneficial Ownership (Definition) Regulations
  - ‘Beneficial Owner’ – Covers Ownership & Control
- Beneficiaries of Trusts and Legal Arrangements
- Transparent Legal Persons



# Three Step Test of Beneficial Ownership



# Case Study 1

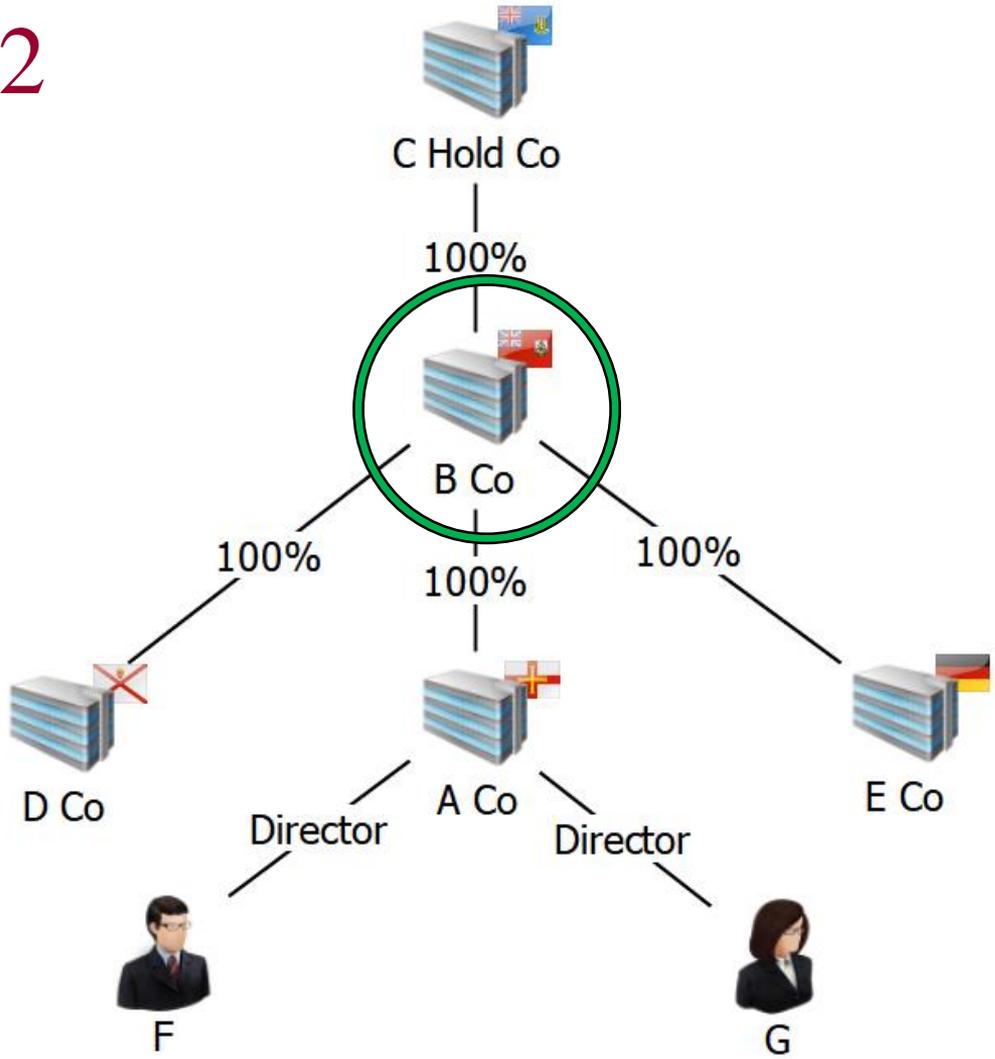


~~Step 1~~  
Step 2

# Transparent Legal Person

- Paragraph 22(5) of Schedule 3:
  - ‘In any case where a transparent legal person has control of a legal person through ownership, that transparent legal person shall be treated as a natural person...and therefore (for the avoidance of doubt) as the beneficial owner’
- Paragraph 22(10) Defines ‘Transparent Legal Person’ as:
  - a company that is listed on a recognised stock exchange, or a majority owned subsidiary of such a company;
  - a States trading company within the meaning of the States Trading Companies (Bailiwick of Guernsey) Law, 2001;
  - a legal person controlled by the States of Alderney through ownership; or
  - a regulated person within the meaning of Section 41(2) of the Beneficial Ownership Law.

# Case Study 2

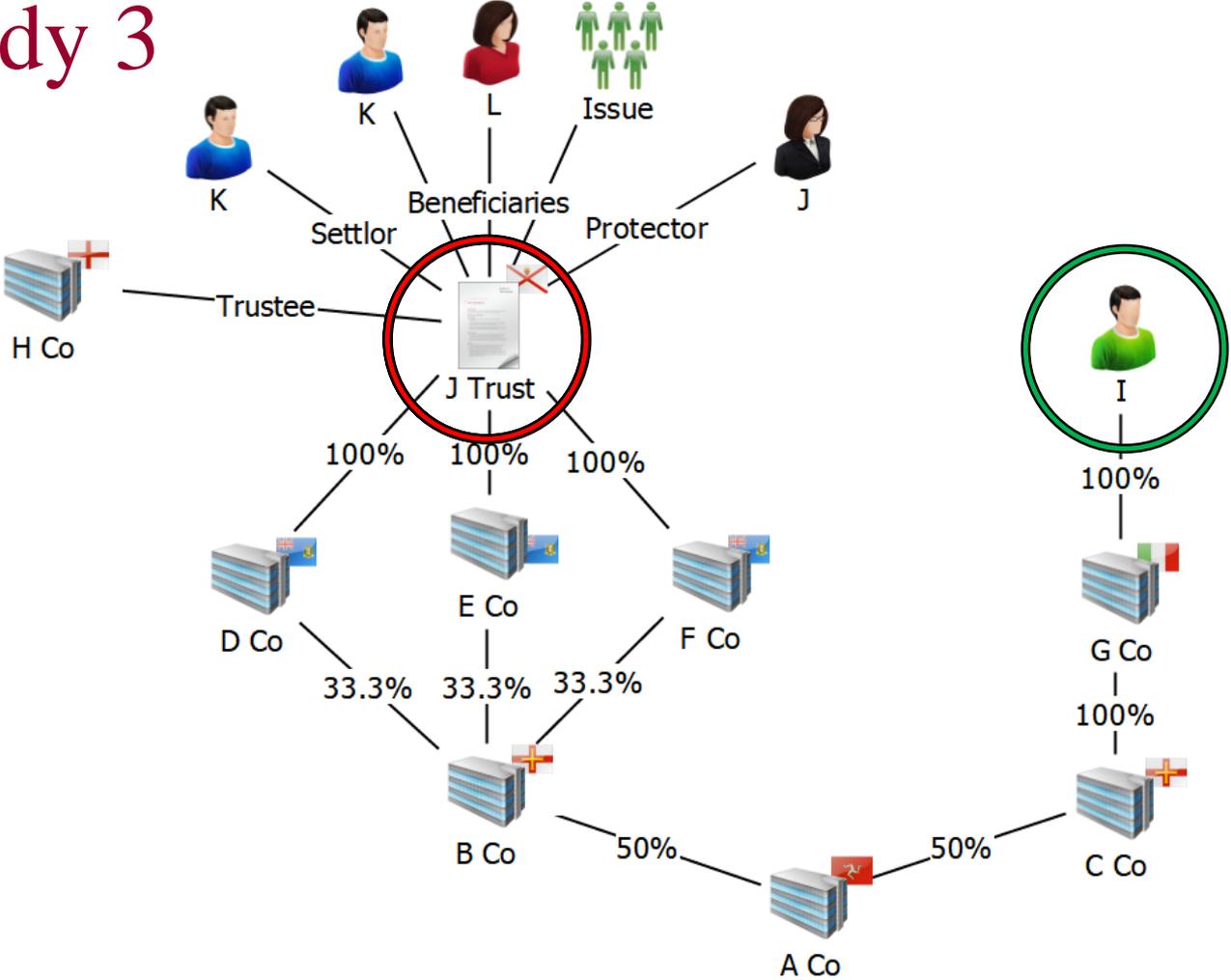


Step 1

# Trusts

- Paragraph 22(4) of Schedule 3:
  - ‘In any case where a trust or other legal arrangement controls a legal person through ownership, the beneficial owners of that legal person are the beneficial owners of that trust or legal arrangement’.
- Paragraph 22(8) of Schedule 3:
  - In relation to a trust, "beneficial owner" includes (amongst others) –
    - any beneficiary who is a natural person, whether his or her interest under the trust is vested, contingent or discretionary...
    - any trustee, settlor, protector or enforcer of the trust who is a natural person or that is a transparent legal person, or if they are a legal person (other than a transparent legal person), or a legal arrangement, any natural person who is the beneficial owner of that legal person or legal arrangement...

# Case Study 3

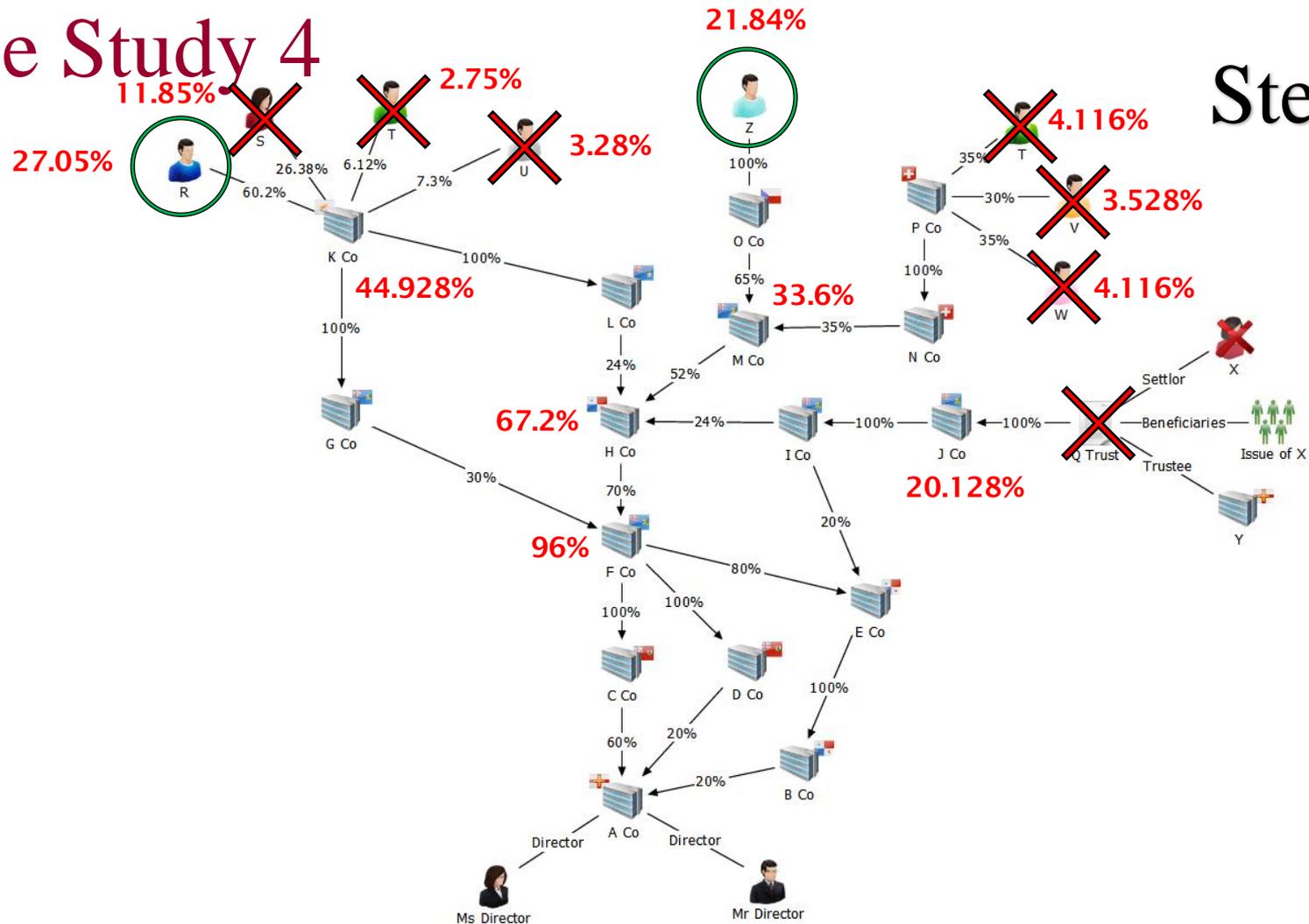


# Indirect Ownership

- Handbook, Paragraph 7.53.
  - An indirect holding within a chain of ownership may arise in one of two ways:
    - The first is when an entity holds more than 25% of the shares or rights in the legal person and an individual has a majority stake (i.e. a greater than 50% shareholding or similar) in that entity so can control those shares or rights. The majority stake may be held directly, but it may also be held through a chain of ownership with the individual holding a majority stake in each intervening entity.
    - The second is where the overall value of an individual's holding in shares or rights in the legal person, when quantified back through the ownership chain, amounts to more than 25%. An individual who has indirect ownership in either or both of these ways is a beneficial owner of the legal person.

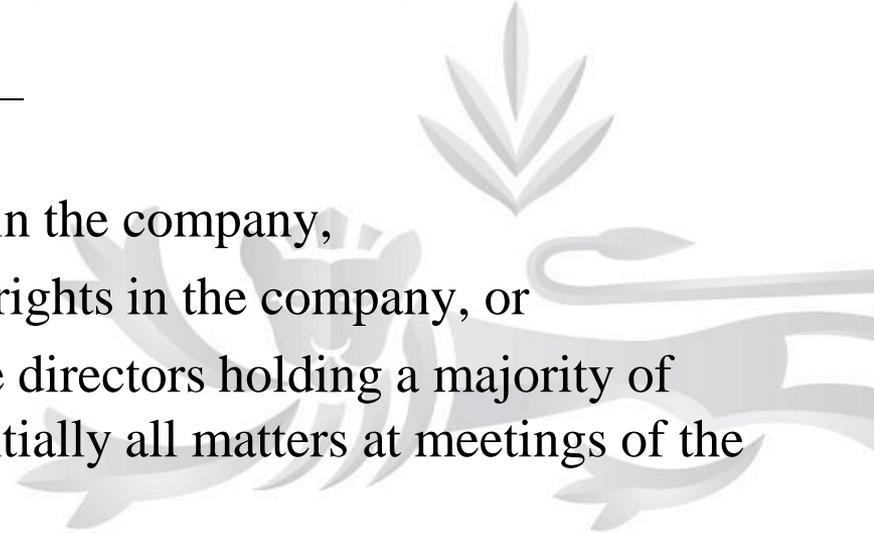
# Case Study 4

# Step 1

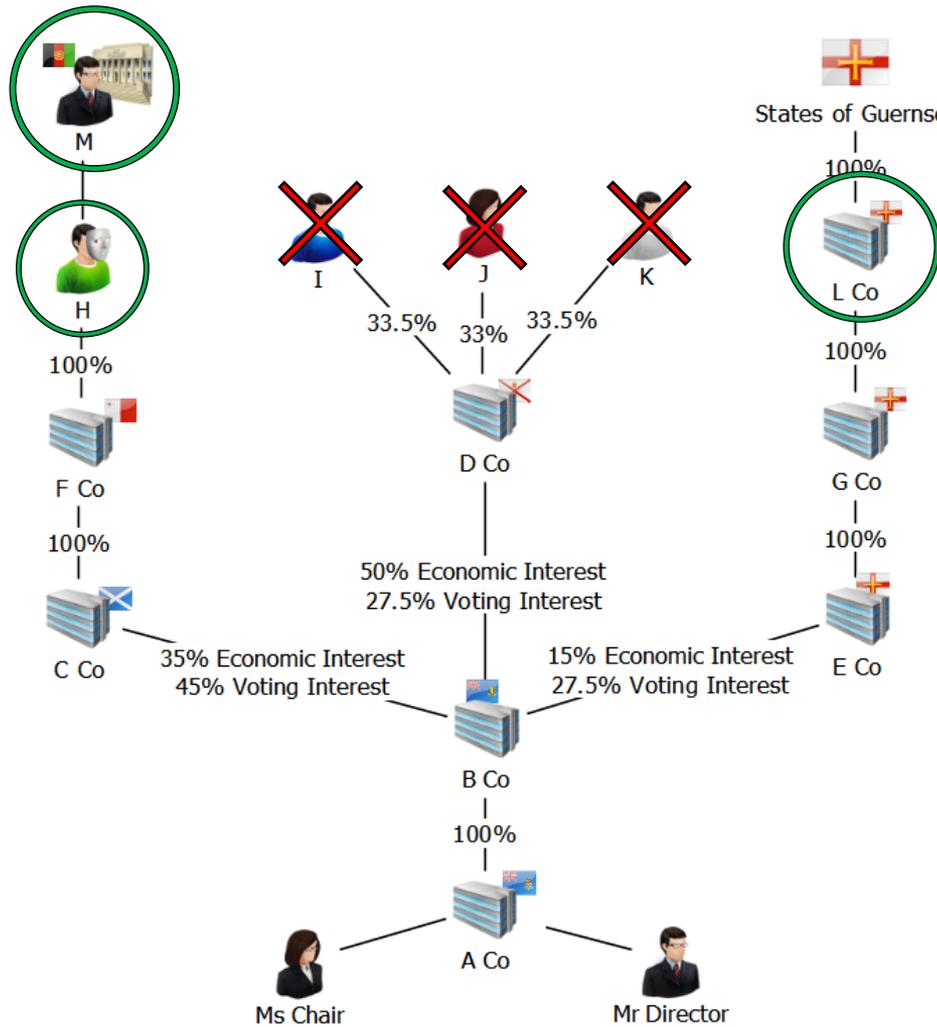


# Control Through Ownership

- Paragraph 22(6) of Schedule 3:
  - ‘A person has control of a legal person through ownership if that person holds, directly or indirectly, any of the following –
    - a) if the legal person is a company –
      - i. more than 25% of the shares in the company,
      - ii. more than 25% of the voting rights in the company, or
      - iii. the right to appoint or remove directors holding a majority of voting rights on all or substantially all matters at meetings of the board...



# Case Study 5



Step 1

Step 2

**COFFEE BREAK**



# Handbook Cross-References

*Commission Rule 7.23.* = Chapter 7  
Paragraph 23

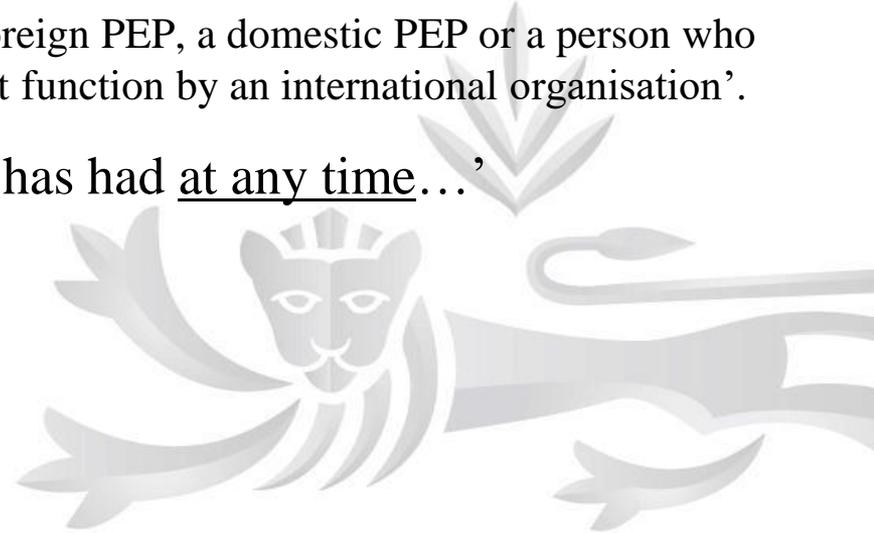
Chapter Paragraph

# Politically Exposed Persons



# Politically Exposed Persons

- ‘Once a PEP, Always a PEP’
  - Paragraph 4(3)(f) of Schedule 3:
    - ‘a determination shall be made as to whether the customer or beneficial owner is a PEP, and, if so, whether he or she is a foreign PEP, a domestic PEP or a person who is or has been entrusted with a prominent function by an international organisation’.
  - PEP = ‘a natural person who has, or has had at any time...’
  - Domestic PEPs
    - Appendix E



# Politically Exposed Persons

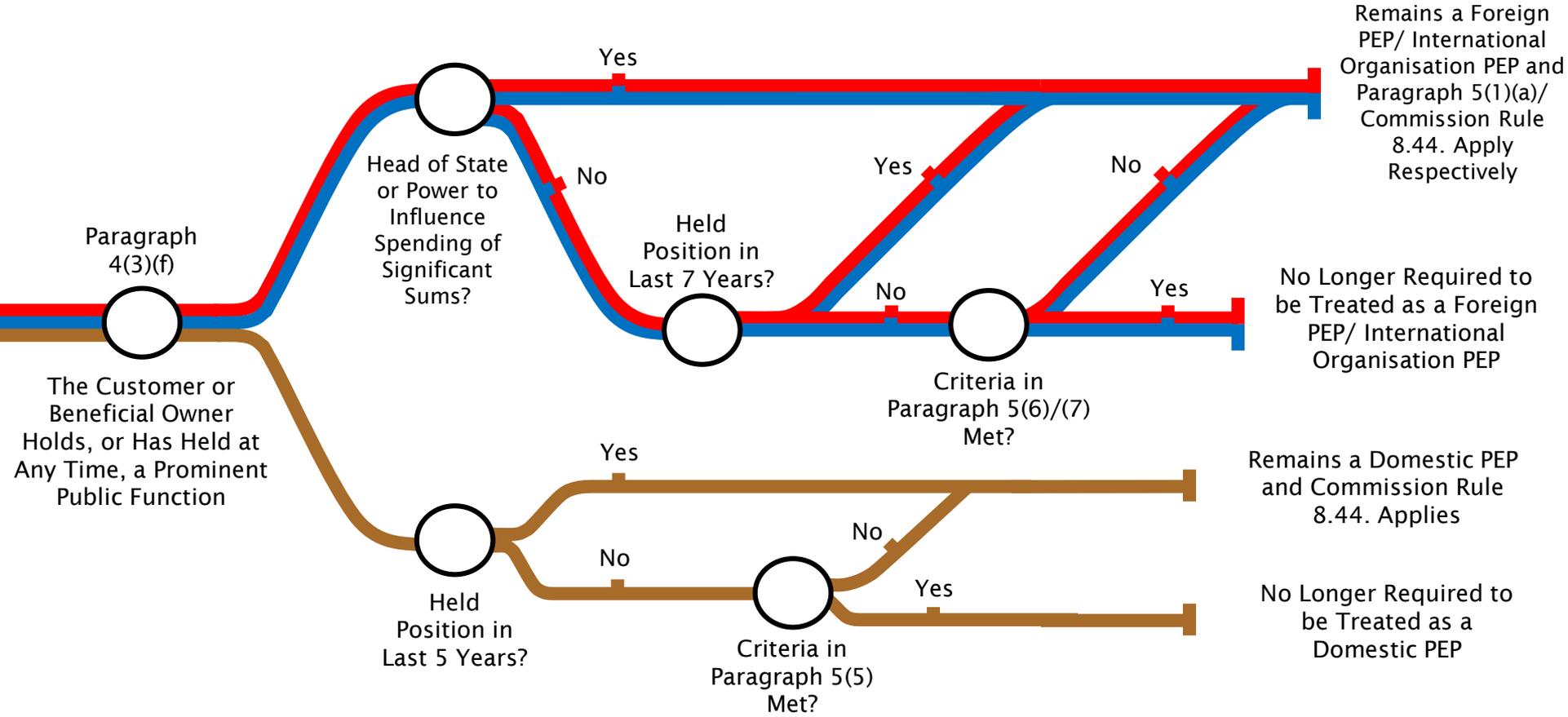
- ‘Prominent Public Function’ / ‘Prominent Function’
  - Paragraph 5(4) of Schedule 3
    - ‘A natural person who has, or has had at any time, a prominent public function, or who has been elected or appointed to such a function’. Includes, without limitation:
      - (ii) Senior politicians and other important officials of political parties
      - (iii) Senior government officials
  - Paragraph 8.38. of the Handbook
    - ‘When seeking to establish whether a natural person falls within the definition of a PEP, ‘prominent’ should be interpreted as relating only to those persons in positions of seniority in the areas covered by [Paragraph 5(4) of Schedule 3]. Middle ranking or more junior individuals in the foregoing categories are explicitly excluded from the definition.’
  - FCA Guidance – July 2017
    - ‘...firms should only treat those in the UK who hold truly prominent positions as PEPs and not...apply the definition to local government, more junior members of the senior civil service or anyone other than the most senior military officials.’

# Politically Exposed Persons

- Declassification of PEPs (+ Family & Associates)
  - Foreign PEPs & International Organisation PEPs
    - Declassification After 7 Years
    - Exceptions:
      - Heads of State/Organisation; and
      - Persons with Power to Direct the Spending of Significant Sums
  - Domestic PEPs
    - Declassification After 5 Years for All



- █ Foreign PEP
- █ International Organisation PEP
- █ Domestic PEP



# Use of Technology



# Use of Technology

Captured Within Handbook:

- Credit Reference Data
- CDD Utilities
- Mobile Verification Applications

For Consideration:

- Video Identification (Use of Webcams)



# Credit Reference Data

8. Subject to Section 9.3. of this *Handbook*, the firm must verify a natural person's identity using *identification data*, the extent of which is to be determined based on the conclusion of the *relationship risk assessment*. As a minimum, the firm must verify:

For all natural persons:

- (a) legal name;
- (b) date of birth; and
- (c) residential address.

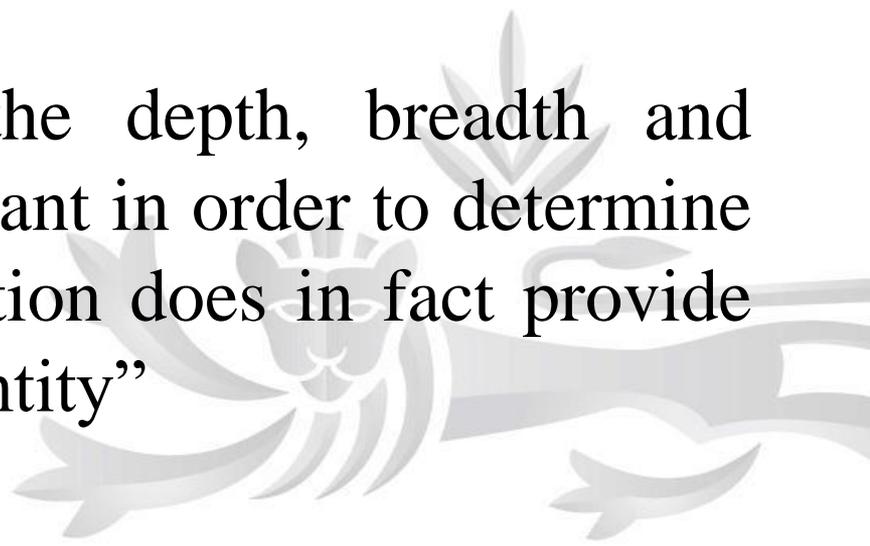
For natural persons connected with *business relationships* or *occasional transactions* which are other than low *risk*, additionally:

- (d) place of birth; and
- (e) nationality (including all nationalities where the individual holds more than one).

# CDD Utilities

- Section Removed from the Revised Handbook
- Section 5.7. – Independent Data Sources

“...an understanding of the depth, breadth and quality of the data is important in order to determine that the method of verification does in fact provide satisfactory evidence of identity”



# Mobile Verification Applications

- Handbook, Section 5.6. – Electronic Verification

‘...the use of an electronic method or system to verify, in whole or in part, the identity of a natural person...’

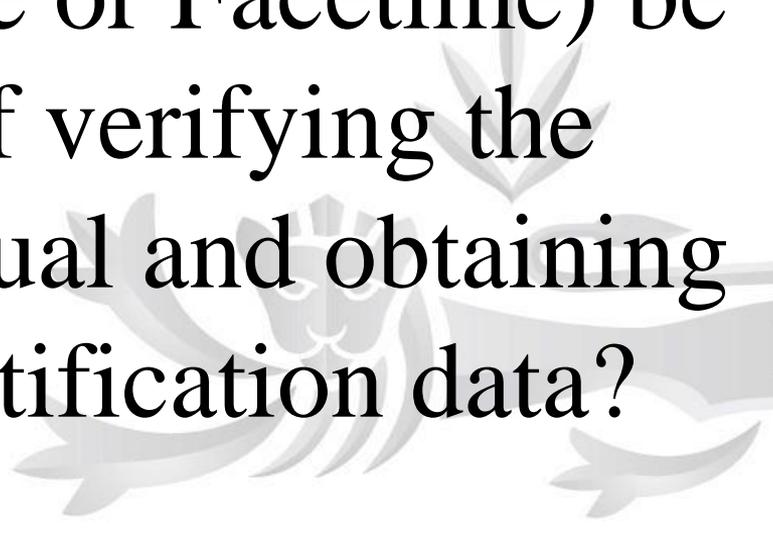
- Handbook, Section 6.5. – Certification

## Requirements for Electronic System Certifiers

‘As technology has evolved and software enhanced, greater controls have been incorporated into the validation process which have effectively negated the need for natural person certification...’

# Video Identification

Could a camera or webcam (for example, using Skype or Facetime) be used as a means of verifying the identity of an individual and obtaining copies of their identification data?





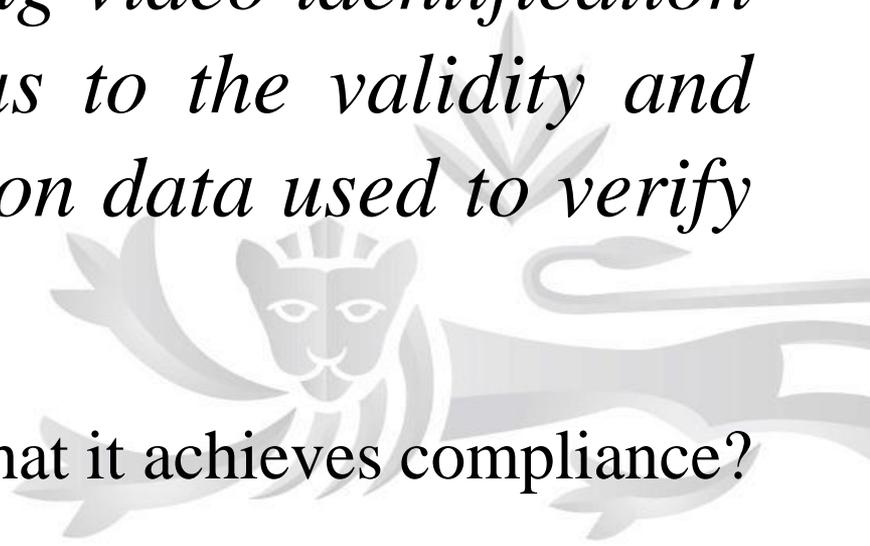
# Establish Legal & Regulatory Obligations

- Schedule 3
  - Paragraph 4 – Customer Due Diligence
  - Paragraph 14 – Record Keeping
- Handbook
  - Chapter 5 – Identification & Verification of the Identity of Natural People
  - Commission Rule 5.11. – ‘Firm Must be Satisfied as to the Validity and Veracity of the Identification Data Used to Verify the Identity of a Person’
  - Commission Rule 4.31. – ‘Where the Firm Does Not Receive, or Have Sight of, the Original Physical Documentation Used to Verify Identity...the Firm Must Ensure that the Copy Documentation Has Been Certified by a Suitable Third Party’

## Acceptable Under the Framework? – The Challenge

*“Can my firm be satisfied that an individual is who they say they are using video identification and can it satisfy itself as to the validity and veracity of the identification data used to verify that person’s identity?”*

- How can a firm demonstrate that it achieves compliance?



## Acceptable Under the Framework? – Research

- Identify the Specific Risks and Weaknesses, and Develop Appropriate Mitigants
- Clear Written Procedures on the Use of Video Identification, and the Management and Retention of Audio-Visual Recordings
- Incorporate into Compliance Monitoring Programme
- Receive Careful Board Consideration and Approval to the Use of Video Identification

ALL CLEARLY DOCUMENTED

# Acceptable Under the Framework? – Procedures

- Procedures to Cover:
  - Staff Training
  - Consent Issues
  - The Conduct of Video Meetings and Areas to be Covered
  - The Quality of Audio and Visual Technology Required
  - The Retention, Storage and Retrieval of Records Captured



# Approach in Other Jurisdictions

- Germany - BaFin Approach:

“The BMF's interpretation is that, in cases of video identification, regardless of the physical separation, sensory perception of the (natural) persons participating in the identification process is possible, since the person who is to be identified and the employee sit opposite one another "face to face" through the video transmission and communicate with one another”

[https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Rundschreiben/2017/rs\\_1703\\_gw\\_vid\\_eident\\_en.html](https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Rundschreiben/2017/rs_1703_gw_vid_eident_en.html)

# Approach in Other Jurisdictions

- Malta – FIAU 2018 Consultation:
  - ‘Use of Video Conferencing Tools’

“Subject persons may also remotely verify the identity details of a customer through video conference facilities. A video call may be carried out subsequent to the customer submitting copies of the identification or other verification documents...(e.g. by email) or by making such documentation visible in the course of the video conference call”

# Timing

- Amendment Ordinance and Handbook Effective 31 March 2019
- Transitional Provisions
  - MLCO Appointed by **31 March 2019** & Commission Advised by **14 April 2019**
  - 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