



Guernsey Financial
Services Commission

The Handbook on Countering Financial Crime & Terrorist Financing

Regulatory Self-Assurance Workshop

Estate Agents

March 2019

Agenda

- Introduction
- Enhanced Measures
- Beneficial Ownership
- Politically Exposed Persons
- Questions



Enhanced Measures



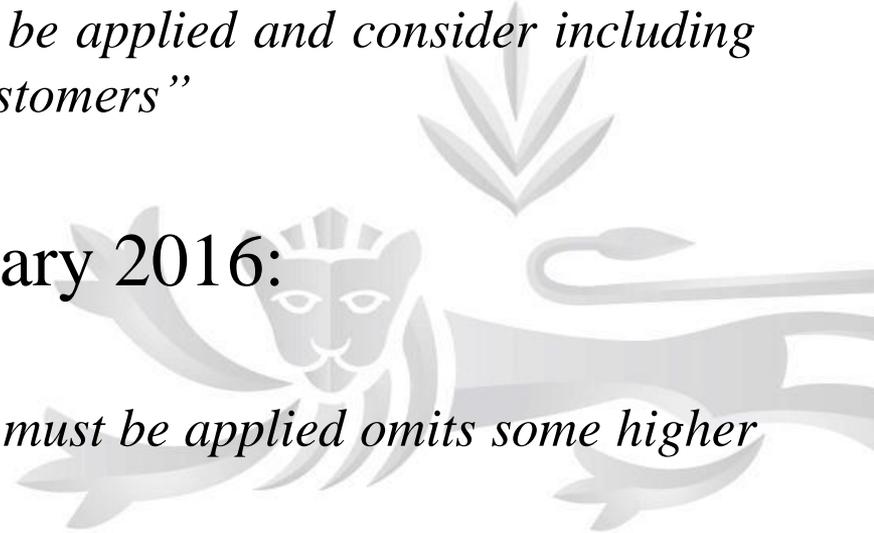
Enhanced Measures

- 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”

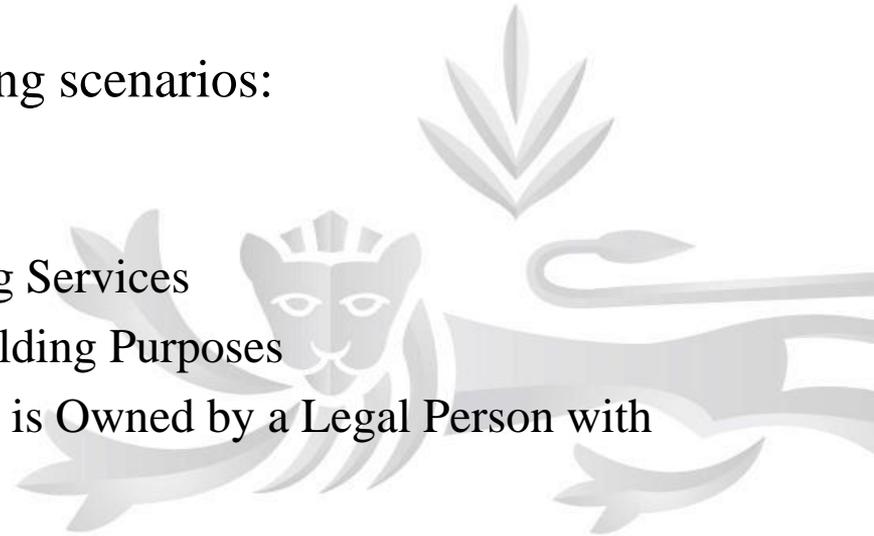
- MONEYVAL Report – January 2016:

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



Enhanced Measures

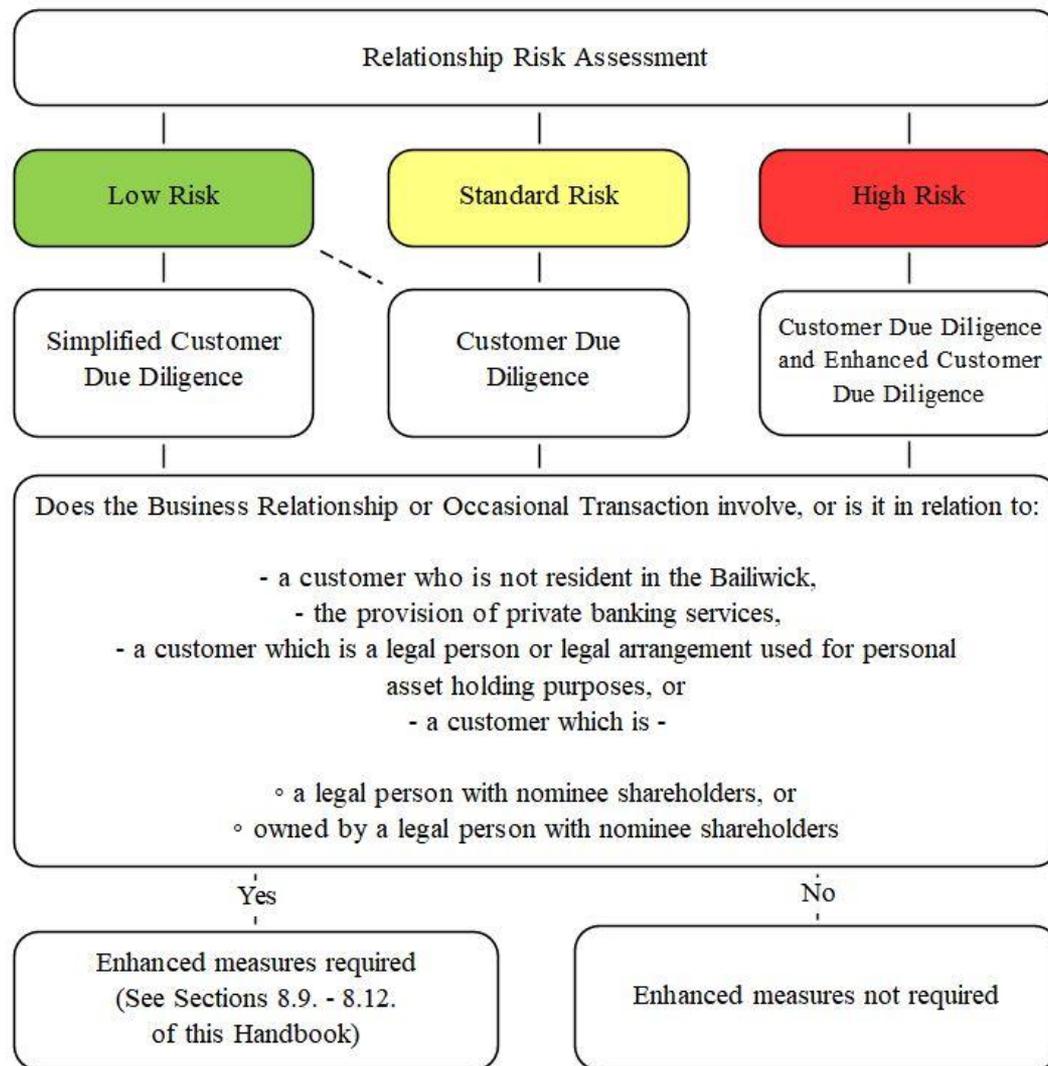
- The application of enhanced measures to a business relationship or occasional transaction serves to mitigate the risk associated with particular higher risk factors identified by the FATF.
- Enhanced measures apply in the following scenarios:
 - Customer Not Resident in the Bailiwick
 - Customer Provided 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

- An offer of £2.5m from a natural person based in the United Kingdom for an Open Market property for which you are the agent has been accepted by the Vendor. The property will be purchased in cash (without a mortgage).



Customer Not Resident in the Bailiwick



Customer Provided with Private Banking Services

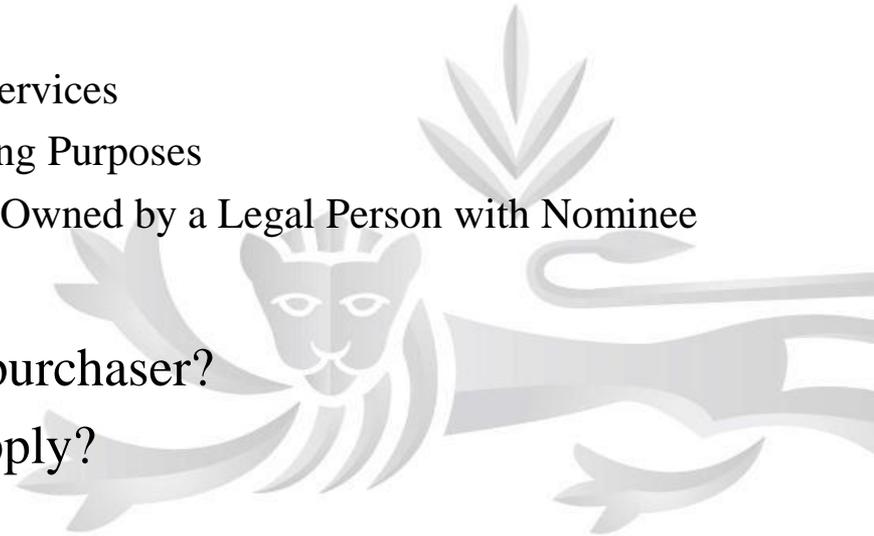


Customer is Used for Personal Asset Holding Purposes



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

- Which of the above would apply to the purchaser?
- What enhanced measure(s) could you apply?



Enhanced Measures – Example 2

- You are currently negotiating the sale of a flat in St Peter Port for £220k which is being purchased by a Retirement Annuity Scheme as part of the diversification of its investment portfolio. Following the purchase the property will be let on the local market.



Customer Not Resident in the Bailiwick



Customer Provided with Private Banking Services

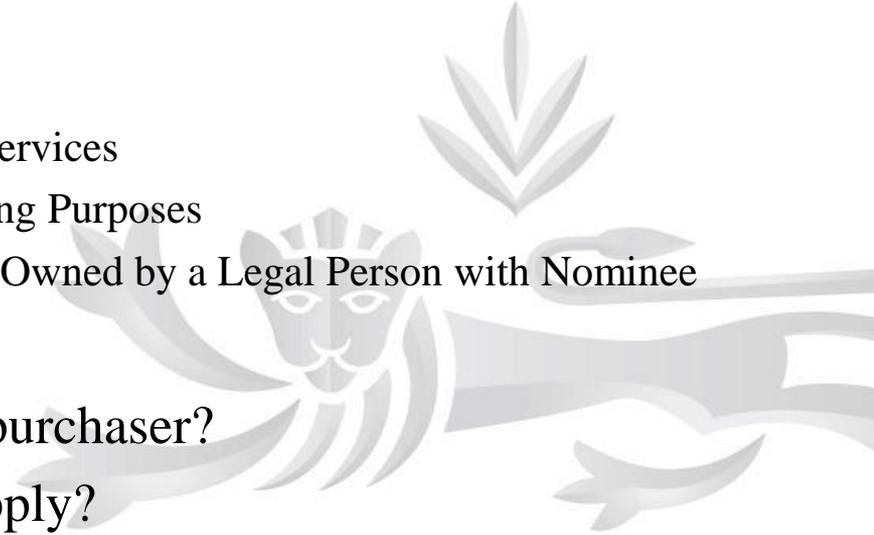


Customer is Used for Personal Asset Holding Purposes



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

- Which of the above would apply to the purchaser?
- What enhanced measure(s) could you apply?



Enhanced Measures – Example 3

- The Vendor of a commercial property you are currently listing has accepted an offer of £12m from a company based in Jersey. The Jersey company is 100% owned by a Jersey Unit Trust regulated as a closed-ended collective investment scheme and shares of the company are held equally by two subsidiary vehicles of the Jersey-based trustee, A Nominees Limited and B Nominees Limited.



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

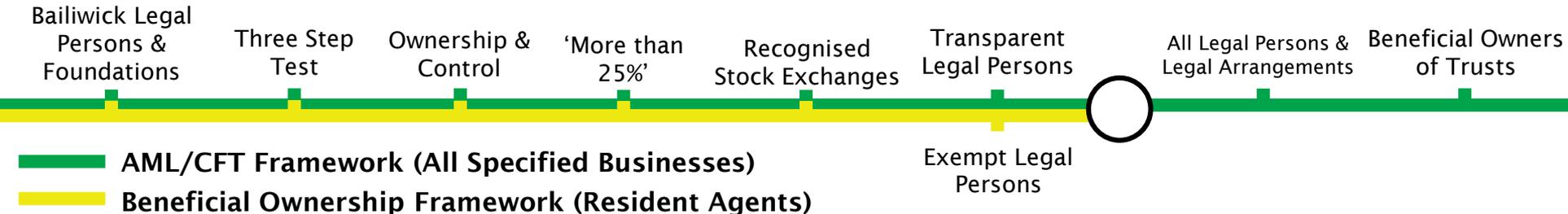
- Which of the above would apply to the purchaser?
- What enhanced measure(s) could you apply?

Beneficial Ownership

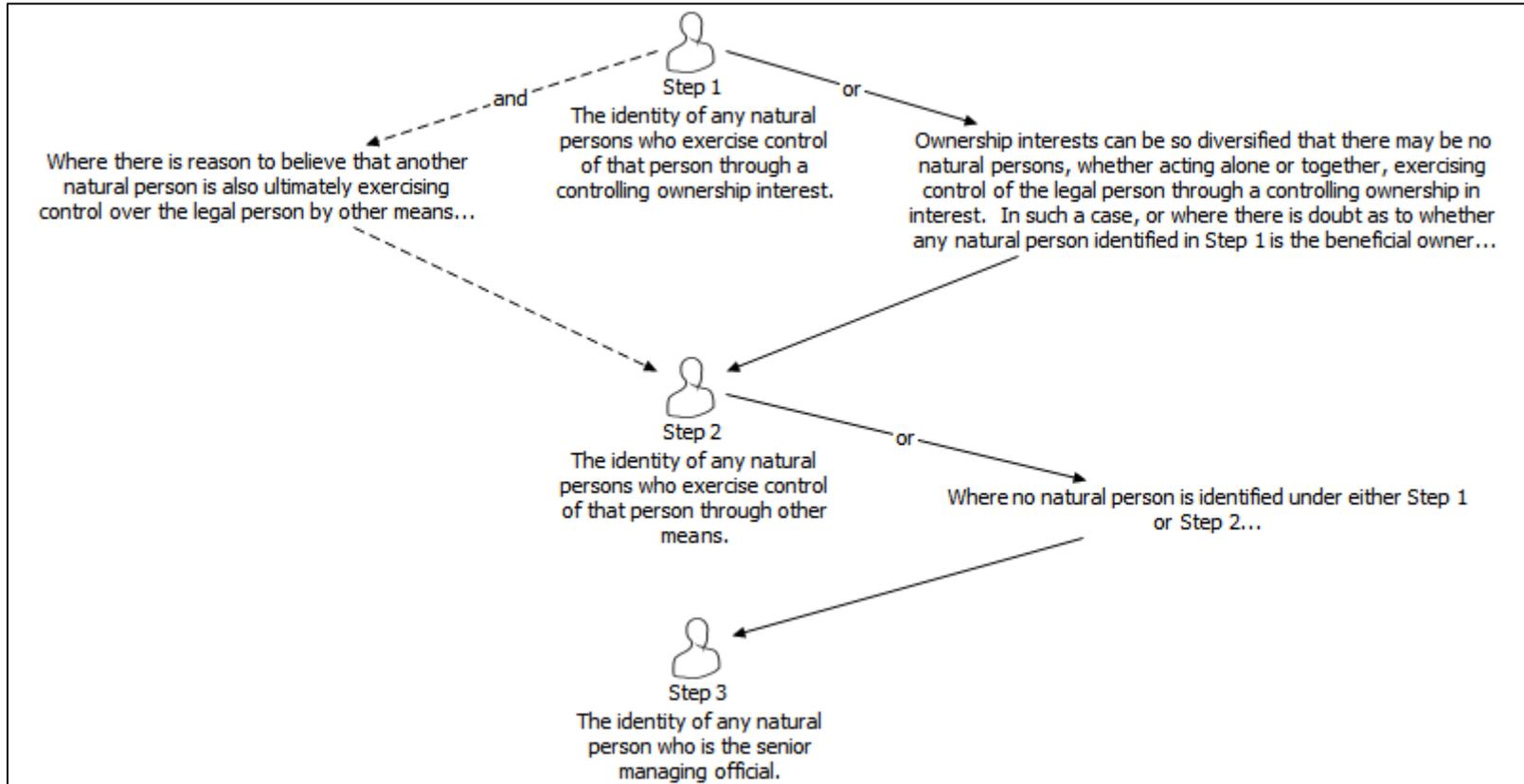


Beneficial Ownership

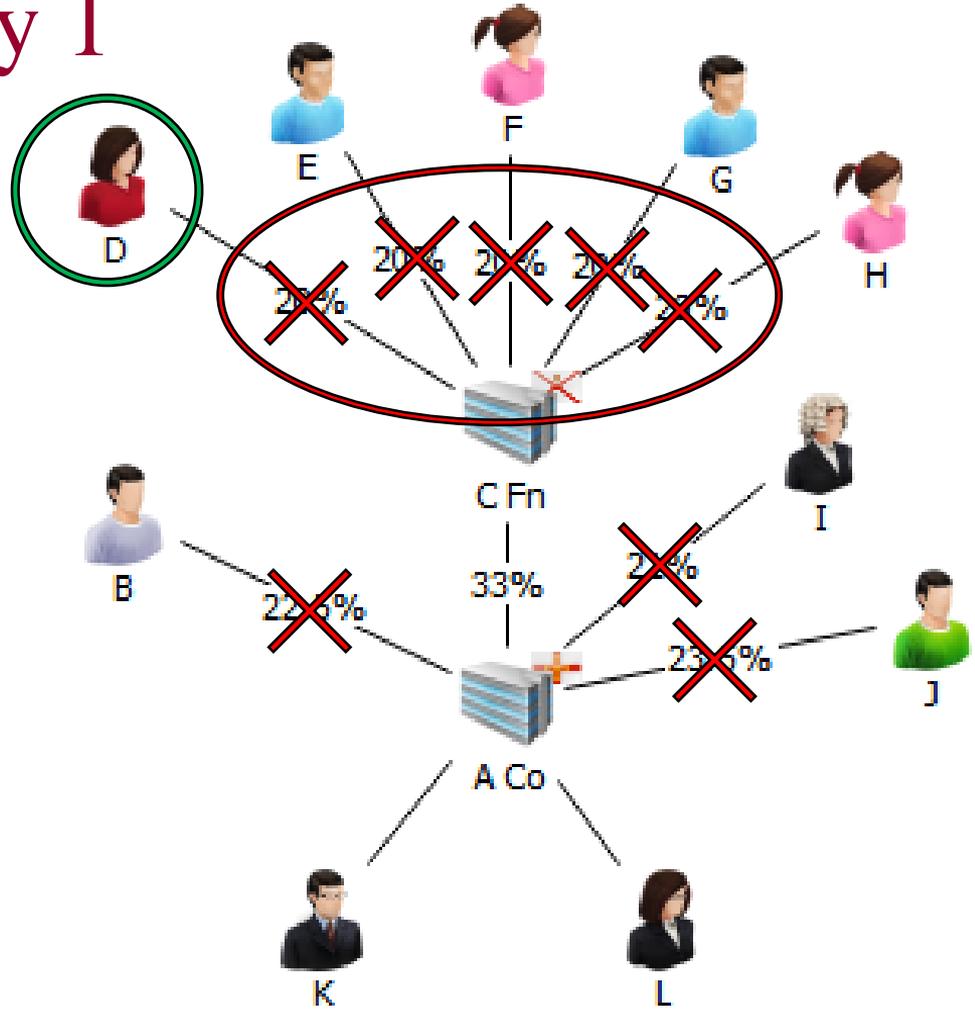
- Beneficial Ownership (Definition) Regulations
 - ‘Beneficial Owner’ – Covers Ownership & Control
- Beneficiaries of Trusts and Legal Arrangements
- Transparent Legal Persons



Three Step Test of Beneficial Ownership



Case Study 1



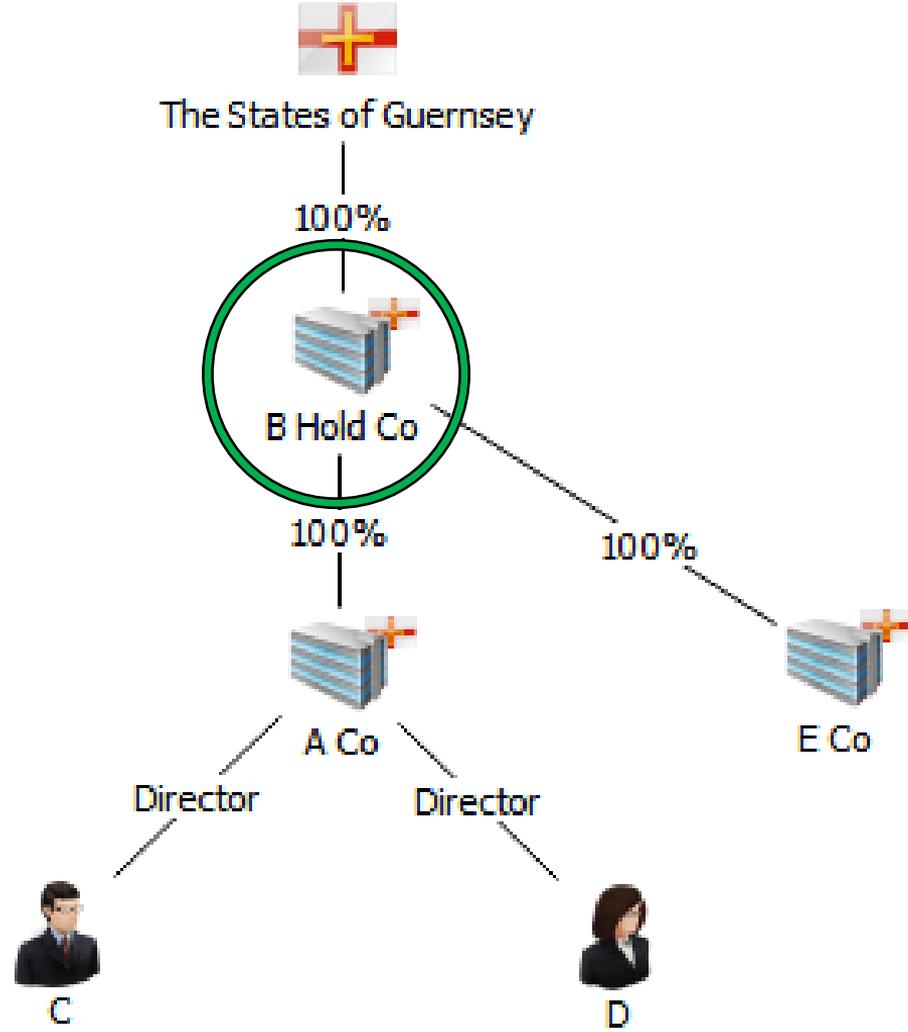
~~Step 1~~

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

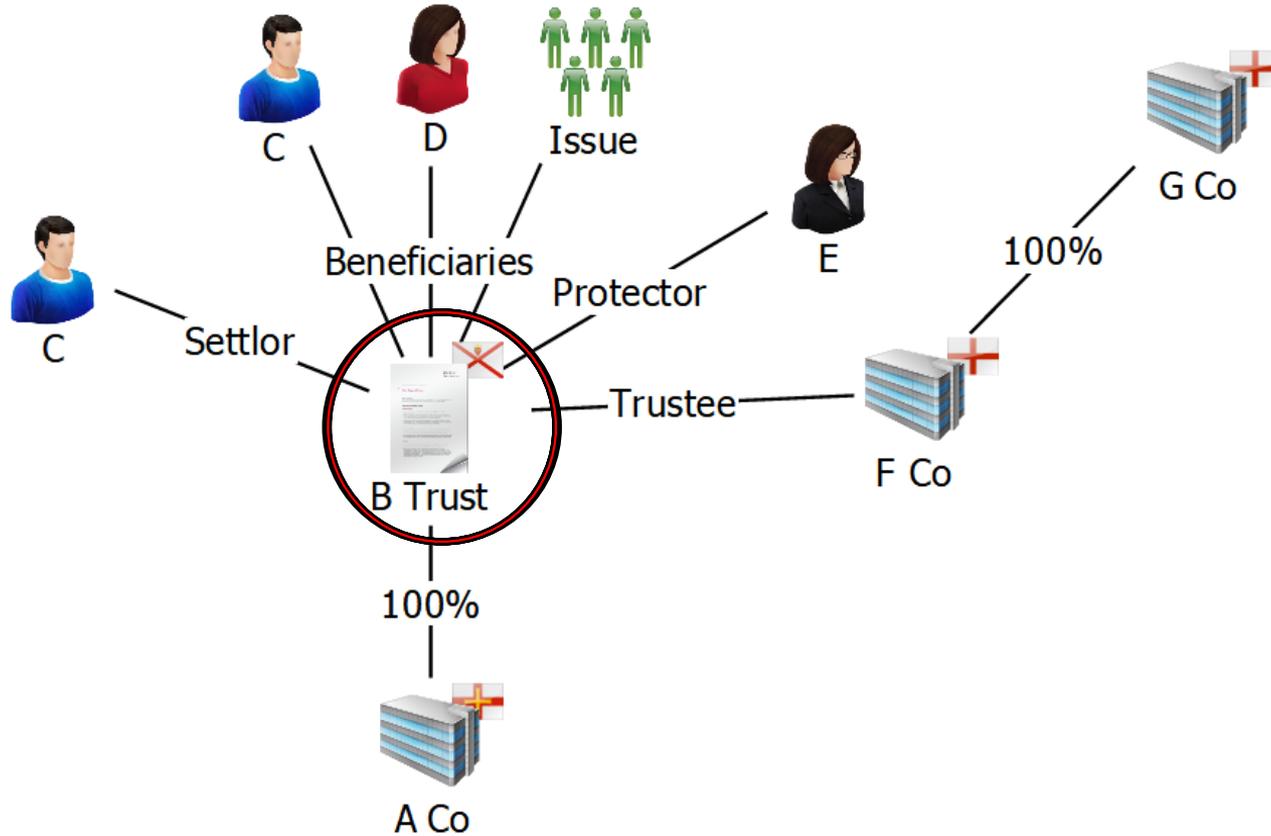


Step 1

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



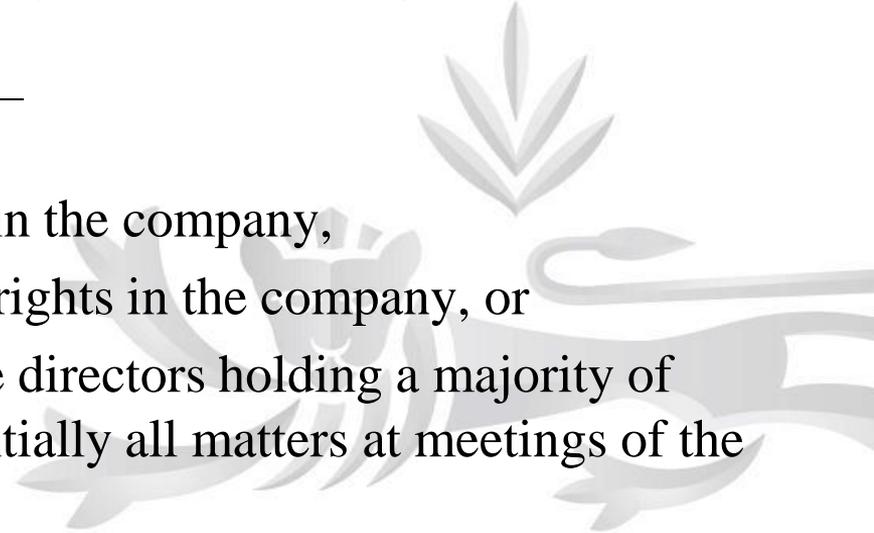
Step 1

Indirect Ownership

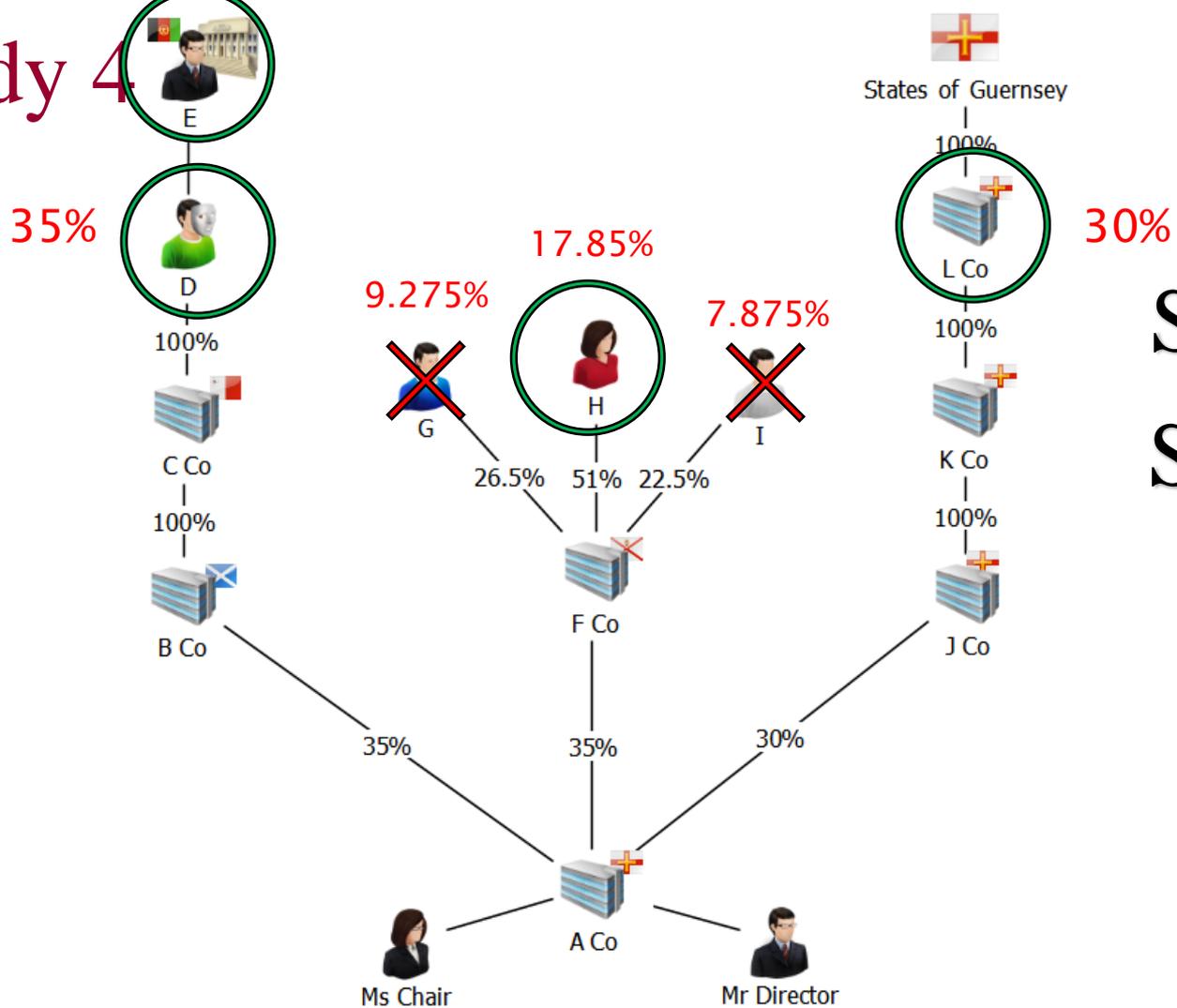
- Handbook, Paragraph 7.53.
 - An indirect holding within a chain of ownership may arise in one of two ways:
 - The first is when an entity holds more than 25% of the shares or rights in the legal person and an individual has a majority stake (i.e. a greater than 50% shareholding or similar) in that 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.

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 4



Step 1
Step 2

COFFEE BREAK



Handbook Cross-References

Commission Rule 7.23. = Chapter 7
Paragraph 23

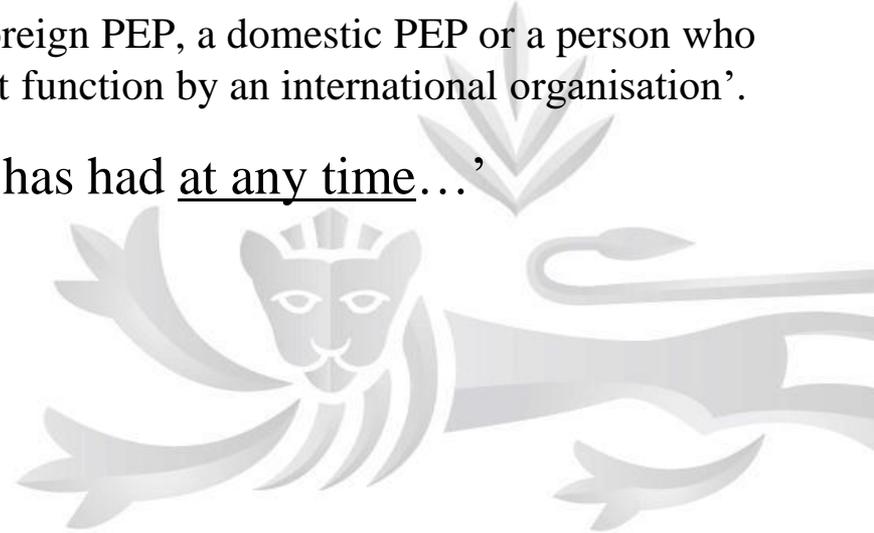
Chapter Paragraph

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
 - Not Retrospective



Politically Exposed Persons

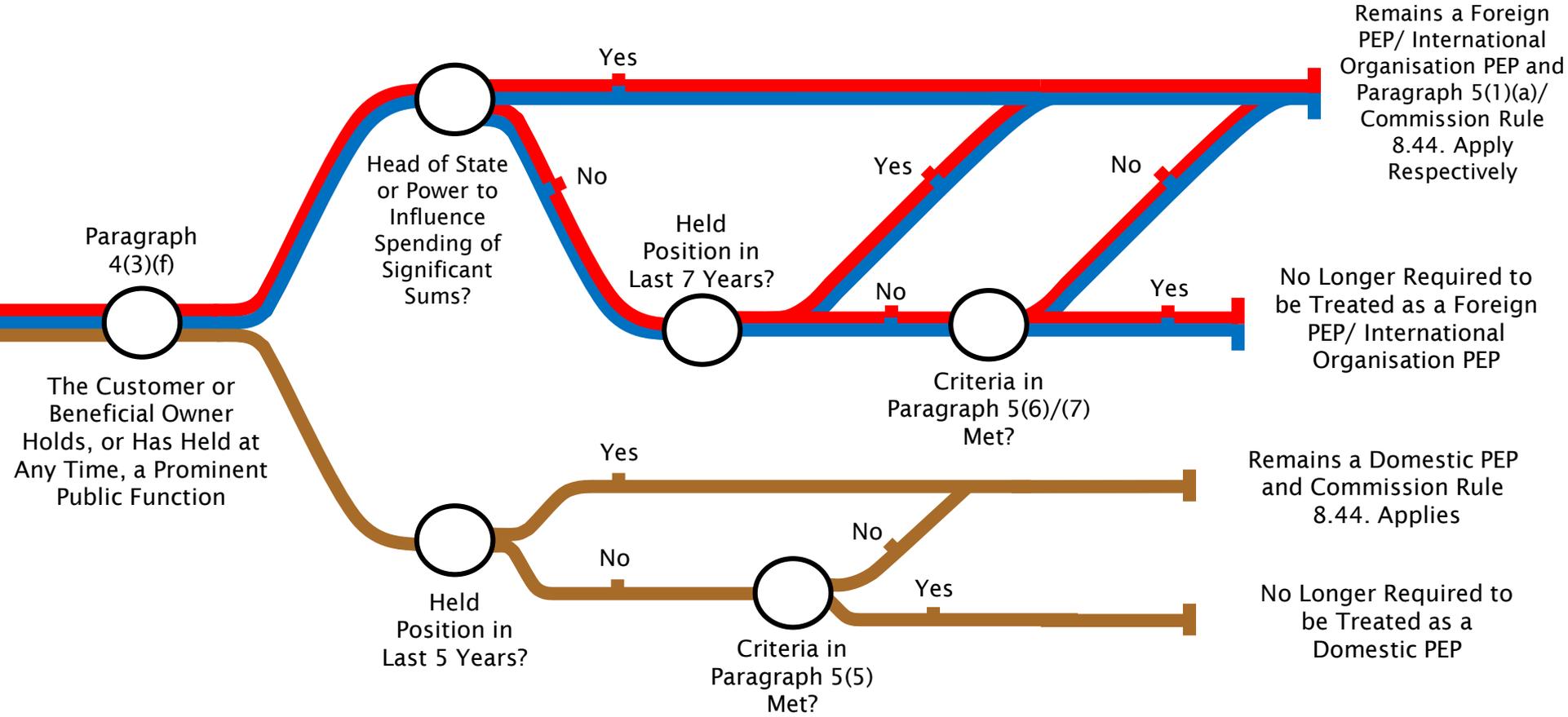
- ‘Prominent Public Function’ / ‘Prominent Function’
 - Paragraph 5(4) of Schedule 3
 - ‘A natural person who has, or has had at any time, a prominent public function, or who has been elected or appointed to such a function’. Includes, without limitation:
 - (ii) Senior politicians and other important 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



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