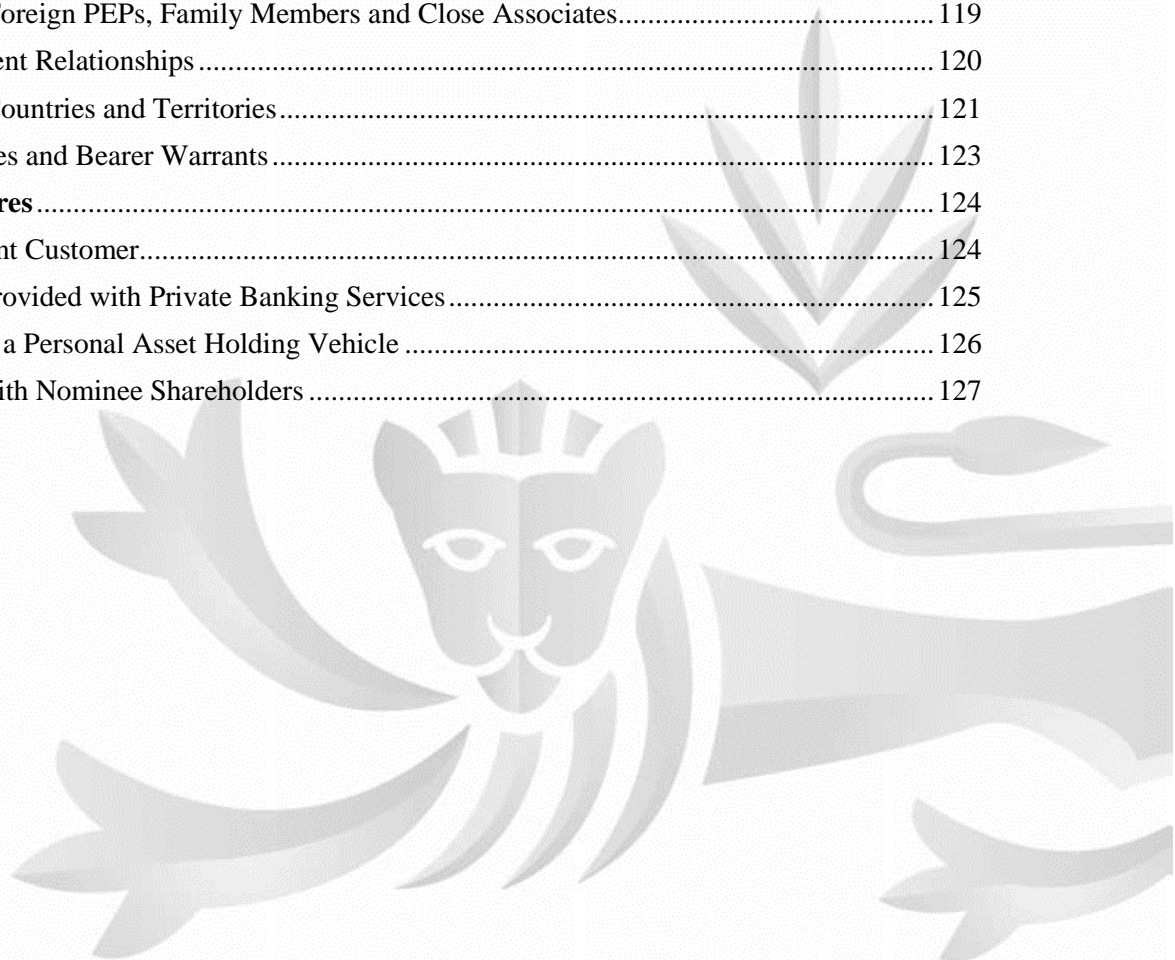


# Chapter 8

## Enhanced Customer Due Diligence

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## 8.1. Objectives

1. This Chapter relates to *business relationships* and *occasional transactions* which have been assessed by the firm as:

- (a) presenting a high *risk* of *ML* and/or *FT* taking into account the requirements of Paragraph 5(1) of *Schedule 3*; and/or
- (b) involving one or more of the higher *risk* factors set out in Paragraphs 5(2)(a)-(d) of *Schedule 3*

and should be read in conjunction with Chapter 3 of this *Handbook* which provides *Commission Rules* and *guidance* on the assessment of *risk* and Chapters 4 to 7 of this *Handbook* which set out the *CDD* measures to be applied.

2. In accordance with Paragraph 5(1) of *Schedule 3*, where the firm is required to carry out *CDD*, it shall also carry out *ECDD* in relation to high *risk business relationships* and *occasional transactions*, including, without limitation -

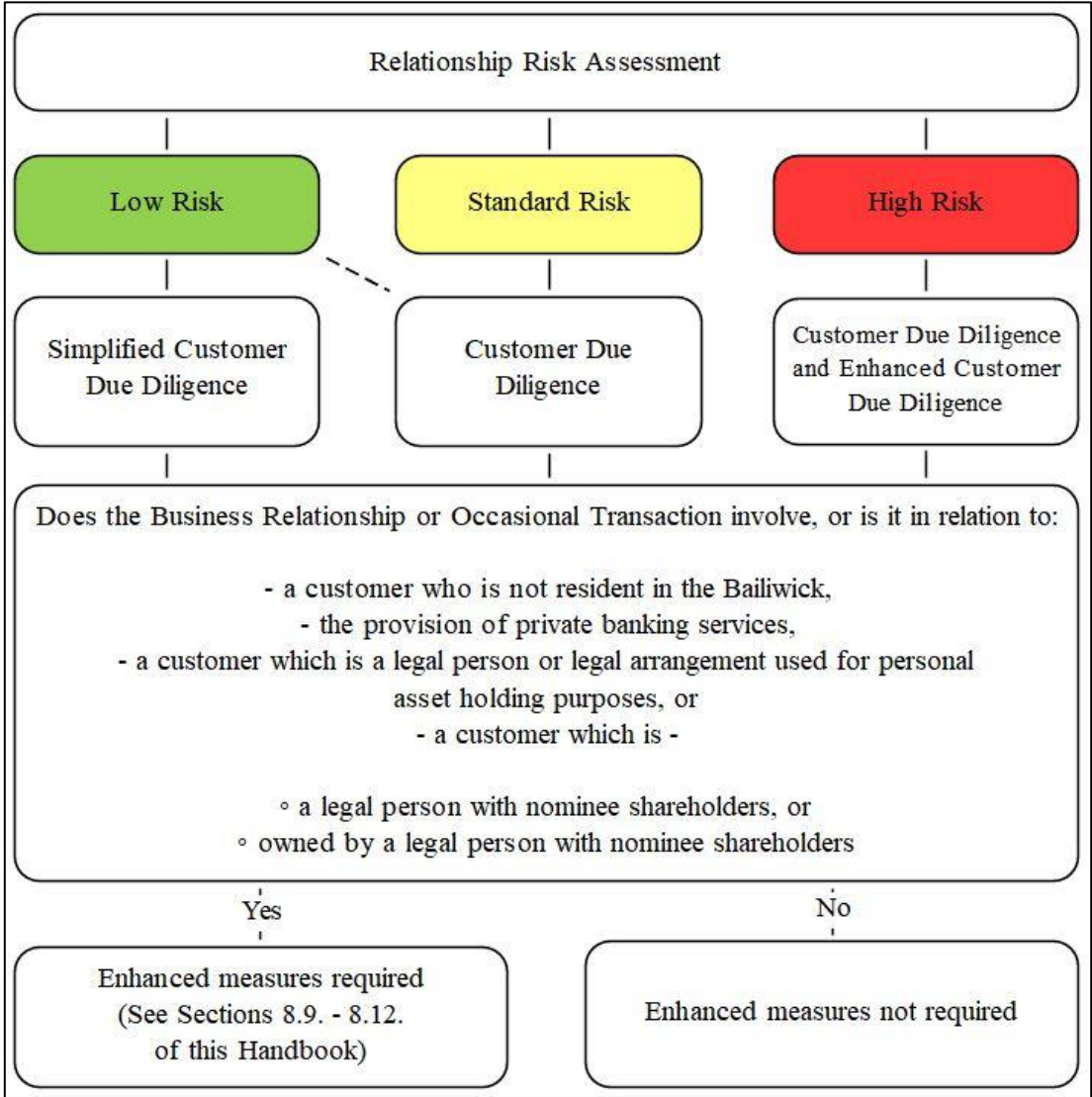
- (a) a *business relationship* or *occasional transaction* in which the *customer* or any *beneficial owner* is a *foreign PEP* (see Section 8.5. of this *Handbook*),
- (b) where the firm is an *FSB*, a *business relationship* which is -
  - (i) a *correspondent banking relationship*, or
  - (ii) similar to such a relationship in that it involves the provision of services, which themselves amount to financial services business or facilitate the carrying on of such business, by one *FSB* to another (see Section 8.6. of this *Handbook*),
- (c) a *business relationship* or *occasional transaction* -
  - (i) where the *customer* or *beneficial owner* has a *relevant connection* with a country or territory that -
    - (A) provides funding or support for terrorist activities, or does not apply (or insufficiently applies) *the FATF Recommendations*, or
    - (B) is a country otherwise identified by the FATF as a country for which such measures are appropriate (see Section 8.7. of this *Handbook*),
  - (ii) which the firm considers to be a *high risk relationship*, taking into account any notices, instructions or warnings issued from time to time by *the Commission* and having regard to the *NRA*,
- (d) a *business relationship* or an *occasional transaction* which has been assessed as a *high risk relationship*, and
- (e) a *business relationship* or an *occasional transaction* in which the *customer*, the *beneficial owner* of the *customer*, or any other *legal person* in the ownership or control structure of the *customer*, is a *legal person* that has *bearer shares* or *bearer warrants* (see Section 8.8. of this *Handbook*).

3. In accordance with Paragraph 5(2) of *Schedule 3*, the firm shall also carry out *enhanced measures* in relation to *business relationships* and *occasional transactions*, whether otherwise high *risk* or not, which involve or are in relation to -

- (a) a *customer* who is not resident in *the Bailiwick* (see Section 8.9. of this *Handbook*);
- (b) the provision of private banking services (see Section 8.10. of this *Handbook*);

- (c) a customer which is a legal person or legal arrangement used for personal asset holding purposes (see Section 8.11. of this Handbook); or
- (d) a customer which is –
  - (i) a legal person with nominee shareholders, or
  - (ii) owned by a legal person with nominee shareholders (see Section 8.12. of this Handbook).

4. Paragraphs 5(1) and 5(2) of Schedule 3 are distinct from one another. Paragraph 5(1) requires that ECDD measures are applied to all high risk relationships. The requirement to apply enhanced measures to mitigate particular higher risk factors as set out in Paragraph 5(2) of Schedule 3 can apply to business relationships and occasional transactions across the risk spectrum from low to high risk.
5. The presence of one or more of the higher risk factors set out in Paragraph 5(2) of Schedule 3 may not necessarily equate to the overall risk of the business relationship or occasional transaction being high. However, in accordance with Commission Rule 3.19., the firm must have regard to the cumulative effect that one or more of these factors could have on the overall risk of the business relationship or occasional transaction when conducting a relationship risk assessment.



**Fig. 10 – Enhanced Measures Flowchart**

| Nature of <i>Business Relationship</i> or <i>Occasional Transaction</i>  | Measures to be Applied   |
|--|--|
| <i>Low risk relationship</i> exhibiting one or more of the higher risk factors set out in Paragraph 5(2) of <i>Schedule 3</i> .  | <i>SCDD</i> or <i>CDD</i> measures, together with <i>enhanced measures</i> appropriate to the higher risk factor(s) present.   |
| Standard risk <i>business relationship</i> or <i>occasional transaction</i> exhibiting one or more of the higher risk factors set out in Paragraph 5(2) of <i>Schedule 3</i> .   | <i>CDD</i> measures, together with <i>enhanced measures</i> appropriate to the higher risk factor(s) present   |
| <i>High risk relationship</i> which meets one or more of the criteria in Paragraph 5(1) of <i>Schedule 3</i> .   | <i>CDD</i> measures, together with <i>ECDD</i> measures as set out in Section 8.2.1. of this <i>Handbook</i>   |
| <i>High risk relationship</i> which meets one or more of the criteria in Paragraph 5(1) of <i>Schedule 3</i> <u>and</u> exhibits one or more of the higher risk factors set out in Paragraph 5(2) of <i>Schedule 3</i> . | <i>CDD</i> measures and <i>ECDD</i> measures as set out in Section 8.2.1. of this <i>Handbook</i> , together with <i>enhanced measures</i> appropriate to the higher risk factor(s) present. |

**Fig. 11 – Application of Due Diligence and Enhanced Measures Depending on Risk**

## 8.2. Policies, Procedures and Controls

### 8.2.1. ECDD Measures (High Risk Relationships)

6. The firm must ensure that its policies, procedures and controls require the application of *ECDD* measures where the firm has determined, taking into account the circumstances set out in Paragraph 5(1) of *Schedule 3* and the risk factors provided in Chapter 3 of this *Handbook*, that a *business relationship* or *occasional transaction* is high risk.

7. In accordance with Paragraph 5(3)(a) of *Schedule 3*, references to *ECDD* shall mean -

- (i) obtaining senior management approval for establishing a *business relationship* or undertaking an *occasional transaction*,
- (ii) obtaining senior management approval for, in the case of an existing *business relationship* with a *foreign PEP*, continuing that *business relationship*,
- (iii) taking reasonable measures to establish and understand the source of any *funds* and of the wealth of –
  - (A) the *customer*, and
  - (B) the *beneficial owner*, where the *beneficial owner* is a *PEP*,
- (iv) carrying out more frequent and more extensive ongoing monitoring, including increasing the number and timing of controls applied and selecting patterns of activity or transactions that need further examination in accordance with Paragraph 11 of *Schedule 3* (see Chapter 11 of this *Handbook*), and
- (v) taking one or more of the following steps as would be appropriate to the particular *business relationship* or *occasional transaction*,
  - (A) obtaining additional information about the *customer*, such as the type, volume and value of the *customer's* assets and additional information about the *customer's beneficial owners*,
  - (B) verifying additional aspects of the *customer's* identity,
  - (C) obtaining additional information to understand the purpose and intended nature of each *business relationship* and *occasional transaction*, and
  - (D) taking reasonable measures to establish and understand the source of wealth of *beneficial owners* not falling within Paragraph 5(3)(iii).



8. Examples of steps the firm could take in accordance with Paragraphs 5(3)(v)(A)-(D) of Schedule 3 could include:
  - (a) supplementing the firm's understanding of the purpose and intended nature of the *business relationship* by obtaining information on the reasons for intended or performed transactions;
  - (b) commissioning independent research by a specialist firm or consultant pertaining to the purpose and objective of the *business relationship* or *occasional transaction* and evidencing information in relation to the *customer* and/or the *beneficial owner*;
  - (c) where the *customer* is a *legal person*, identifying, and verifying the identity of, other directors (or equivalent) of the *customer* in addition to those senior managing officials identified as *beneficial owners* in accordance with Step 3 of Paragraph 7.37. of this *Handbook* and/or those natural persons acting on behalf of the *customer* captured by Section 4.3.2.; and/or
  - (d) obtaining internal information from group representatives or offices based in a jurisdiction where the *customer* has a connection.
  
9. In addition to the requirements of Paragraph 5(3) of *Schedule 3* as set out above, listed below are examples of further steps the firm could take as part of its *ECDD* measures to address specific *risks* arising from a *high risk relationship*:
  - (a) in the case of an existing *business relationship* which has, following a *relationship risk assessment*, been assessed as *high risk* not involving a *foreign PEP*, obtaining senior management approval for continuing that relationship; and/or
  - (b) requiring the first payment be carried out through an *account* in the *customer's* name with an *Appendix C business*.

#### 8.2.2. Enhanced Measures (Higher Risk Factors)

10. In accordance with Paragraph 5(2) of *Schedule 3*, the firm's policies, procedures and controls must require the application of *enhanced measures* as detailed in Sections 8.9. - 8.12. of this *Handbook* to *business relationships* and *occasional transactions* involving or in relation to one or more of the *higher risk* factors in Paragraph 5(2)(a)-(d) of *Schedule 3*.

11. There may be a *business relationship* or *occasional transaction* which involves or is in relation to more than one of the *higher risk* factors set out in Paragraph 5(2)(a)-(d) of *Schedule 3* (for example, a non-resident *customer* using private banking services). In such cases, the firm must apply *enhanced measures* sufficient to mitigate each of the *higher risk* factors present within the *business relationship* or *occasional transaction*.

#### 8.2.3. ECDD and Enhanced Measures (High Risk Relationships with Higher Risk Factors)

12. There may also be circumstances in which a *high risk relationship* involves or is in relation to one or more of the *higher risk* factors in Paragraph 5(2)(a)-(d) of *Schedule 3*. In such cases the firm must apply *ECDD* measures as well as applying sufficient *enhanced measures* to mitigate the particular *higher risk* factor(s) present.

13. In accordance with *Commission Rule* 8.12. above, the *enhanced measures* applied by the firm should be specific to the particular *higher risk* factor(s) present in a *business relationship* or *occasional transaction*. However, there may be situations where an *enhanced measure* taken by the firm addresses more than one *higher risk* factor, or where the *ECDD* measures applied by the firm to a *high risk relationship* also mitigate one or more *higher risk* factor(s).

14. For example, it may be that the firm is providing private banking services to a *customer* who is a *foreign PEP* and the firm is *satisfied* that the *ECDD* measures applied to address the fact that the *customer* is a *PEP* equally mitigate the higher *risk* associated with the provision of private banking services (for example, by taking reasonable measures to establish the source of *funds* and the source of the *customer's* wealth).
15. The policies, procedures and controls of the firm should allow for it to determine, based upon the specific higher *risk* factors present in a *business relationship* or *occasional transaction* and its assessment of the overall *risk* of that relationship, which and how many *enhanced measures* it would be appropriate to apply to mitigate the specific *risks* identified.

### 8.3. Source of Funds and Source of Wealth

16. In accordance with Paragraph 5(3)(a)(iii) of *Schedule 3*, as part of its *ECDD* measures the firm shall take reasonable measures to establish and understand the source of any *funds* and of the wealth of –

- (A) the *customer*, and
- (B) the *beneficial owner*, where the *beneficial owner* is a *PEP*.

17. The taking of reasonable measures to establish and understand a *customer's* source of wealth (and that of any *beneficial owner* who is a *PEP*), together with measures to establish and understand the source of any *funds* used in a *business relationship* or *occasional transaction*, are important aspects of the due diligence process. These steps serve to assist the firm in *satisfying* itself that such wealth and *funds* are not the *proceeds* of criminal activity and are consistent with the firm's knowledge of the *customer* and *beneficial owner*, and the nature of the *business relationship* or *occasional transaction*.
18. In addition to taking reasonable measures to establish the source of any *funds* and of the wealth of the *customer/beneficial owner* for *high risk relationships* as part of *ECDD* measures, the firm may also determine that it would be appropriate to apply the measures in Paragraph 5(3)(a)(iii) of *Schedule 3* as an *enhanced measure* to apply to a *business relationship* or *occasional transaction* involving or in relation to one or more of the higher *risk* factors in Paragraph 5(2) of *Schedule 3* but where the overall *risk* of the *business relationship* or *occasional transaction* is other than high.
19. The source of *funds* refers to the activity which generated the particular *funds* for a *business relationship* or *occasional transaction*. Source of wealth is distinct from source of *funds* and describes the activities which have generated the total net worth of the *customer* or *beneficial owner* both within and outside a *business relationship*, i.e. those activities which have generated a *customer's* or *beneficial owner's* net assets and property.

20. The firm must, in taking reasonable measures to establish the source of any *funds* and wealth, document and evidence consideration of the *risk* implications of the source of the *funds* and wealth and the geographical sphere of the activities in which they have been generated.

21. In determining what constitutes 'reasonable measures' to establish the source of *funds* and wealth, i.e. show them to be true, the firm should have regard to the particular *risk* factors present in a *business relationship* or *occasional transaction*, together with its overall assessed *risk*. Such *risk* factors include, inter alia, the value of the *customer's* or *beneficial owner's* assets, together with the value of the *funds* involved in the *business relationship* or *occasional transaction*, the type and complexity of the *customer* or *beneficial owner*, the *customer's* or *beneficial owner's* economic activity and employment, and the nature of the services provided by the firm.

22. Information on the source of *funds* and wealth will generally be obtained from the *customer* or *beneficial owner* in the first instance and the extent to which this is corroborated through additional information or documentation should be commensurate with the *risk*. The firm may have a *business relationship* where it can establish to its satisfaction the source of *funds* and source of wealth from the *customer* or *beneficial owner* without seeking to corroborate that information because it is consistent with the knowledge the firm holds about the *business relationship* or *occasional transaction* and because the values involved are relatively low and commensurate with the type of product or service being provided by the firm.
23. For example, the firm may have a natural person *customer* located in a [higher risk](#) jurisdiction ~~on the Business from Sensitive Sources Notices~~ utilising its products or services for a relatively small amount of *funds* and where the only factor making it a *high risk relationship* is geographic *risk*. In such a case placing reliance upon the information provided by the *customer* on the source of *funds* and wealth as part of the firm's *ECDD* measures could be considered 'reasonable' because it is consistent with the information and knowledge it has built up about the *customer* through *CDD* measures, together with the other elements of its *ECDD* measures and the *enhanced measures* applied because the *customer* is not resident in *the Bailiwick*.
24. On the other hand, 'reasonable measures' will require corroborating information where the *customer* or *beneficial owner* is from a [higher risk](#) country or territory, where the values involved in the *business relationship* or *occasional transaction* are large and where the sources of *funds* and wealth are not easily discernible from the *customer's* or *beneficial owner's* disclosed income and business interests.
25. The extent to which the firm corroborates the information provided by the *customer* or *beneficial owner* on the source of *funds* and wealth is a function of *risk* and not a 'one size fits all' approach. Where corroboration of the information provided by the *customer* or *beneficial owner* is required, the firm could consider one or more of the means set out in the following non-exhaustive list:
  - (a) commissioning an independent and reliable report from a specialist agency;
  - (b) obtaining certified copies of corroborating documentation such as contracts of sale, property deeds, salary slips, etc.;
  - (c) where the firm is part of a group, obtaining reliable information from another member of the group with which the *customer* or *beneficial owner* has a connection;
  - (d) obtaining information from a reliable third party (for example, a professionally qualified solicitor, accountant or tax advisor) who has an office in a country or territory connected with the *customer* or *beneficial owner*;
  - (e) where the *customer* has been introduced to the firm, obtaining information from the *introducer*;
  - (f) where information is publicly available or available through subscription databases, obtaining information from a reliable public or private third party source; or
  - (g) obtaining information from financial statements that have been prepared and audited in accordance with generally accepted accounting principles.
26. It would not be considered sufficient for the firm to accept a *customer's* or *beneficial owner's* responses on an application form at face value, particularly where vague answers are given (for example, 'employment' or 'salary') without further clarification. As noted previously, the firm should seek to corroborate the source of *funds* and source of wealth, particularly where the value of *funds*, or the *risk* of the *business relationship* or *occasional transaction*, is high, for example, by taking steps to understand where the *customer* or *beneficial owner* was employed and his or her actual level of income.
27. Similarly, establishing the source of *funds* involved in a *business relationship* or *occasional transaction* should not be limited to knowing from which financial institution the *funds* may

have been transferred. The steps taken by the firm should be substantive and seek to establish the provenance of the *funds* or the reason for the *funds* having been acquired.

28. The obligation to take reasonable measures to establish the source of *funds* extends beyond those *funds* present at the commencement of a *business relationship*. In this respect, the firm's monitoring arrangements should include assessing, on an ongoing basis, whether the transactional activity of a *business relationship* is consistent with the *risk* profile of that relationship, the nature of the product provided and the firm's understanding of the *customer's* and *beneficial owner's* source of wealth.

#### 8.4. Interplay Between SCDD and Enhanced Measures

29. It may be possible to apply *SCDD* measures as specified in Chapter 9 of this *Handbook* to a *business relationship* or *occasional transaction* involving or in relation to one or more of the higher *risk* factors set out in Paragraph 5(2) of *Schedule 3*, provided that *enhanced measures* are applied to address the particular higher *risk* factors present.
30. By way of example, it may be possible, where the firm has assessed the *ML* and *FT risk* of a *business relationship* or *occasional transaction* to be low, to apply the *SCDD* measures set out in Section 9.3. of this *Handbook* to a natural person resident in *the Bailiwick* using a personal asset holding vehicle, provided the firm also applies an *enhanced measure* to satisfy itself that the use of such a personal asset holding vehicle is genuine and legitimate.
31. Similarly it may be possible, where the firm has assessed the *ML* and *FT risk* as low, to apply the *SCDD* measures set out in Section 9.6. of this *Handbook* to a non-resident *Appendix C business*, provided that an *enhanced measure* is also applied to mitigate the *risk* associated with a non-resident *customer*, for example, to determine and understand why the *Appendix C business* is obtaining the services in *the Bailiwick* and not in its home jurisdiction.

### ECDD Measures

#### 8.5. Politically Exposed Persons

##### 8.5.1. Introduction

32. Due to their position and influence, *PEPs* may have the potential to abuse their positions for the purpose of committing *ML* and related predicate offences, including bribery and corruption, as well as conducting activity related to *FT*. Where a *PEP* also has connections to countries or business sectors where corruption is widespread, the *risk* is further increased.
33. *PEP* status itself does not incriminate individuals or their associates and connected entities. However, it will mean that a *customer* or *beneficial owner* who is a *foreign PEP* is subject to *ECDD* measures and that a *domestic PEP* or *international organisation PEP* may, on the basis of *risk*, be subject to *ECDD* measures.
34. There is no 'one-size fits all' approach to applying *ECDD* measures for *PEPs*. The nature of the measures applied will be commensurate with the type of *PEP*, the specific *risks* that are identified and the nature of the *PEP's* position and ability to influence.

##### 8.5.2. Identification of PEPs

35. In accordance with Paragraph 4(3)(f) of *Schedule 3*, as part of its *CDD* measures the firm shall make a determination 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 an *international organisation PEP*.



36. As referenced above, Paragraph 5(4) of *Schedule 3* defines three categories of *PEP*, referred to as follows for the purpose of this *Handbook*:
- (a) “*foreign PEP*” – 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, in a country or territory other than *the Bailiwick*;
  - (b) “*domestic PEP*” – 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, within *the Bailiwick*; and
  - (c) “*international organisation PEP*” – a natural person who is, or has been at any time, entrusted with a prominent function by an *international organisation*.

37. In accordance with the definition of *PEP* contained within Paragraph 5(4) of *Schedule 3*, prominent public function includes, without limitation -
- (i) heads of state or heads of government;
  - (ii) senior politicians and other important officials of political parties;
  - (iii) senior government officials;
  - (iv) senior members of the judiciary;
  - (v) senior military officers; and
  - (vi) senior executives of state owned body corporates.

38. 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 8.37. above. Middle ranking or more junior individuals in the foregoing categories are explicitly excluded from the definition.

39. Notwithstanding the above, the term ‘prominent’ is not defined either in *Schedule 3* or this *Handbook* as the precise level of seniority which triggers the requirement to treat an individual as a *PEP* will depend upon a range of factors, including the role held by the individual, the particular organisational framework of the government or *international organisation* concerned, and the powers, responsibilities and influence associated with particular public functions.

40. In accordance with Paragraph 5(5A) of *Schedule 3*, a person is not a *PEP* for the purposes of *Schedule 3* if that person –
- (a) was not a *PEP* within the meaning of Regulation 5(2)(b) of *the FSB Regulations* or Regulation 5(2)(b) of *the PB Regulations*, when those regulations were in force, and
  - (b) ceased to be entrusted with a prominent public function in respect of *the Bailiwick* before 31 March 2019.

41. To assist in the identification of natural persons falling within the definition of *domestic PEP*, Appendix E to this *Handbook* lists those positions in Guernsey, Alderney and Sark deemed to fall within the categories listed in Paragraph 8.37. above. Where an individual ceased to hold a prominent public function listed in Appendix E prior to 31 March 2019, in accordance with Paragraph 5(5A) of *Schedule 3* there is no requirement for the individual to be identified as a *PEP*, or to consider as part of its *relationship risk assessment* the implication of the person having held a prominent public function in *the Bailiwick*.

42. Authorities in other jurisdictions may publish lists, similar to Appendix E to this *Handbook*, of those natural persons considered to fall within the definition of a *PEP* within their jurisdiction. These could be helpful for the firm in determining whether to treat an individual as a *PEP*. However, the firm should be mindful that these classifications will be based upon perceptions of *risk* applicable within other jurisdictions and that these may not necessarily be appropriate perceptions from the perspective of the firm.

43. In determining whether a *customer* or *beneficial owner* is a *PEP*, the firm could consider:
- (a) using sources such as the UN, the European Parliament, the UK Foreign and Commonwealth Office and the Group of States Against Corruption to establish, as far as is reasonably possible, whether or not a *customer* or *beneficial owner*, is a natural person who is the current or former holder of a prominent public function in a foreign country or territory, or for an *international organisation*;
  - (b) using sources such as the States of Guernsey, States of Alderney and Chief Pleas of Sark to establish, as far as is reasonably possible, whether or not a *customer* or *beneficial owner* is a natural person who is the current or former holder of a prominent public function within *the Bailiwick*;
  - (c) seeking confirmation from a *customer* or *beneficial owner*, for example through a question within an application form, as to whether they hold, or have held, a prominent public function either within *the Bailiwick* or beyond, or for an *international organisation*; or
  - (d) using commercially available databases to identify such persons.

44. In accordance with Paragraph 5(1)(a) of *Schedule 3*, where the firm determines that an individual who is the *customer* or *beneficial owner* to a *business relationship* or *occasional transaction* is a *foreign PEP*, it shall carry out *ECDD* in relation to that *business relationship* or *occasional transaction*.

45. Where the firm identifies that a *customer* or *beneficial owner* is a *domestic PEP* or *international organisation PEP*, it must gather sufficient information to understand the particular characteristics of the public function that the natural person has been entrusted with and factor this information into the *relationship risk assessment* conducted in accordance with Paragraph 3 of *Schedule 3* and Chapter 3 of this *Handbook*.

46. Where, having conducted a *relationship risk assessment*, the firm concludes that the *business relationship* or *occasional transaction* involving a *domestic PEP* or *international organisation PEP* is high risk, the firm must apply *ECDD* measures in accordance with Paragraph 5(3)(a) of *Schedule 3* and Section 8.2.1. of this *Handbook*.

47. Where the firm concludes that the *business relationship* or *occasional transaction* with the *domestic PEP* or *international organisation PEP* does not present a high level of risk, it is not necessary to apply *ECDD* measures, provided that the firm has applied *SCDD* or *CDD* measures and any *enhanced measures* necessary in accordance with Paragraph 5(2) of *Schedule 3*.

48. Where the firm identifies that a *foreign PEP* is a director (or equivalent) of a *customer*, or a person acting or purporting to act for a *customer*, but where the *PEP* does not fall within the definition of *beneficial owner* and where no *funds* or assets of that *PEP* are handled in the particular *business relationship* or *occasional transaction*, the firm should include as part of its *relationship risk assessment* consideration of the nature of the *PEP's* role and the reason why the *PEP* holds such a role.

49. Where the firm has determined as part of its *relationship risk assessment* that, but for the function held by the *PEP* in the circumstances in Paragraph 8.48. above, the *business relationship* or *occasional transaction* would be other than high risk, it could decide to apply, based on risk, *CDD* measures appropriate to the form of the *customer* in accordance with Chapters 4 to 9 of this *Handbook*, including *enhanced measures* as applicable.

50. One such example would be a *foreign* public sector pension scheme investing into a CIS. In such a case there may be members of the pension committee who are *PEPs*, holding their position on the committee by virtue of their political position and with no ability to exercise

ultimate effective control over the pension scheme. Such persons have no economic interest in the *funds* involved in the *business relationship* or *occasional transaction* (beyond potentially any pension rights as a resident of that country or organisation) and the *risk* of the relationship being used as a vehicle for the laundering of any *funds* or assets personally held by the *PEP* or the financing of terrorism is low.

### 8.5.3. International Organisation PEPs

51. In accordance with Paragraph 5(4)(b) of *Schedule 3*, the definition of a *PEP* includes a natural person who is, or has been, entrusted with a prominent public function by an *international organisation*. This includes members of senior management or individuals who have been entrusted with equivalent functions, for example, directors, councillors and members of the board or equivalent of an *international organisation*.

52. Paragraph 21 of *Schedule 3* defines an *international organisation* as an entity:

- (a) which was established by a formal political agreement between its member states that has the status of an international treaty;
- (b) the existence of which is recognised by law in its member states; and
- (c) which is not treated as a resident institutional unit of the country in which it is located.

53. Examples of *international organisations* covered by *Schedule 3* and this *Handbook* include the UN, the World Bank and the North Atlantic Treaty Organization (“NATO”).

54. There may be other examples of *international organisations*, for example, international sporting federations, which do not fall within the *Schedule 3* definition, but where the firm considers that *ECDD* measures should be applied to a *business relationship* or *occasional transaction*. There are no prescribed requirements in this regard and any decision taken should be based on the firm’s assessment of *risk*.

### 8.5.4. Immediate Family Members

55. In addition to the specific *risks* posed by *PEPs*, the firm should be alive to the potential for the abuse of a *business relationship* or *occasional transaction* with or by a family member of a *PEP*. This abuse could be for the purpose of moving the *proceeds* of crime or facilitating the placement and concealment of such *proceeds* without specific connection to the *PEP* themselves.

56. In accordance with Paragraph 5(4)(c) of *Schedule 3*, an immediate family member of a *PEP* shall include, without limitation:

- (a) a spouse;
- (b) a partner, being a person who is considered by the law of the country or territory in which the relevant public function is held as being equivalent to a spouse;
- (c) a parent;
- (d) a child;
- (e) a sibling;
- (f) a parent-in-law; and
- (g) a grandchild.

57. The list of immediate family members included within Paragraph 5(4)(c) of *Schedule 3* as set out above is without limitation and the firm should take a proportionate, *risk*-based approach to the treatment of wider family members. This determination will depend on the social, economic and cultural structure of the country of the *PEP*. It should also be noted that the number of persons who qualify as immediate family members is fluid and may change over time.

58. In deciding whether a member of a wider family unit would be considered as an immediate family member of a *PEP*, the firm should determine the extent of the influence that a particular *PEP* relationship or association has and assess the level of *risk* that exists through the particular connection with a *PEP*.
59. This determination will include such relevant factors as the influence that particular types of family members generally have and how broad the circle of close family members and dependents tends to be. In some cultures the number of family members who are considered to be close or who have influence may be quite small, while in others the circle of family members may be broader and extend to cousins or even clans.

#### 8.5.5. Close Associates

60. In accordance with Paragraph 5(4)(d) of *Schedule 3*, a close associate of a person referred to in Paragraphs 5(4)(a) or (b) shall include, without limitation -

- (i) a person who is widely known to maintain a close business relationship with such a person, or
- (ii) a person who is in a position to conduct substantial financial transactions on behalf such a person.

61. Those persons considered to be close associates could include known partners outside the family unit who would not qualify as immediate family members (for example, girlfriends, boyfriends and extra-marital partners), prominent members of the same political party, civil organisation, labour or employee union as the *PEP*, and business partners or associates, especially those that share beneficial ownership of a *legal person* or *legal arrangement* with the *PEP*, or who are otherwise connected (for example, through joint membership of a company board where the *PEP* and/or close associate is a *beneficial owner*).
62. As with an immediate family member, the interpretation of whether an individual should be considered to be a close associate will depend upon the social, economic and cultural context of the relationship.
63. Where the firm determines that a natural person who is the *customer* or *beneficial owner* to a *business relationship* or *occasional transaction* is an immediate family member or close associate of a *domestic PEP* or *international organisation PEP*, the firm should treat that person in accordance with the requirements set out in *Schedule 3* and this *Handbook* for the category of *PEP* to which they are connected. For example, the child of a *domestic PEP* should be treated in accordance with the provisions for *domestic PEPs*.

#### 8.5.6. Former PEPs

64. On the basis of the potential for *PEPs* to abuse their prominent positions for the purpose of committing various financial crimes, the default position on the treatment of *PEPs* in the *FATF Recommendations* is that once you are a *foreign PEP*, or a family member or close associate of such a person, the relationship should always be subject to *ECDD* measures.
65. Notwithstanding the above, there may be situations where a *business relationship* or *occasional transaction* involves persons who have held prominent public positions historically but who would otherwise not be considered to be high *risk*.
66. Accordingly, Paragraph 5 of *Schedule 3* provides flexibility in respect of the timeframe within which certain natural persons are to be classified as *PEPs*. Details of these timeframes are included within Sections 8.5.6.1. to 8.5.6.3. of this *Handbook* below and differ depending on the type of *PEP* and the position that the *PEP* holds.

| Category of PEP                       | Role of PEP   | Time Period for Declassification |
|---------------------------------------|---|----------------------------------|
| <i>Foreign PEP</i>                    | A head of state or head of government (or an immediate family member or close associate of such a person).                              | Never                            |
|                                       | A person with the power to direct the spending of significant sums (or an immediate family member or close associate of such a person). | Never                            |
|                                       | All other <i>foreign PEPs</i> (including immediate family members and close associates thereof).  | 7 years from cessation of role   |
| <i>International Organisation PEP</i> | A head of an <i>international organisation</i> (or an immediate family member or close associate of such a person).                     | Never                            |
|                                       | A person with the power to direct the spending of significant sums (or an immediate family member or close associate of such a person). | Never                            |
|                                       | All other <i>international organisation PEPs</i> (including immediate family members and close associates thereof).                     | 7 years from cessation of role   |
| <i>Domestic PEP</i>                   | All <i>domestic PEPs</i> (including immediate family members and close associates thereof).   | 5 years from cessation of role   |

**Fig. 12 - Timescales for Declassification PEPs**

67. Details on the requirements of *Schedule 3*, together with additional *guidance*, are provided within the following sections setting out the steps to be taken by the firm when it is looking to establish a *business relationship* or undertake an *occasional transaction* within which the *customer* or *beneficial owner* is a former *PEP*.

68. In accordance with Paragraph 5(8) of *Schedule 3* (and as reflected in Fig. 12 above), the measures set out in Sections 8.5.6.1. - 8.5.6.3. below apply in respect of persons falling within Paragraphs 5(4)(c)-(d) of *Schedule 3* (immediate family members and close associates) in respect of the person in question as they do in respect of that person.

#### 8.5.6.1. Domestic PEPs, Family Members and Close Associates

69. In accordance with Paragraph 5(5) of *Schedule 3*, the firm may treat a *domestic PEP* as not being a PEP five years after the person ceased to be entrusted with a public function (for the purposes of this *Handbook*, a “former *domestic PEP*”) if the senior management of the firm has documented that the firm is satisfied that –

- (a) it understands the source of the *funds* within the *business relationship* or *occasional transaction*, and
- (b) there is no reason to continue to treat the person as a *PEP*.

70. For any natural person falling within Paragraph 5(5) of *Schedule 3*, the firm can make a decision to declassify that person as a *domestic PEP* following a period of five years, such period commencing on the date that they, or the associated *domestic PEP* in the case of an immediate family member or close associate, ceased to be entrusted with any prominent public function within *the Bailiwick*.

71. Where, during the course of a *business relationship* (or in the case of a prospective *business relationship* or *occasional transaction*, prior to the firm being engaged), the *customer* or *beneficial owner* becomes a former *domestic PEP*, consideration of their previous function as part of a *relationship risk assessment* in accordance with *Commission Rule 8.45*. is not required, provided that the criteria in Paragraph 8.69. above are met.



72. Where the firm identifies, in accordance with Paragraph 4(3)(f) of *Schedule 3*, that the *customer* to a prospective *business relationship* or *occasional transaction*, or any *beneficial owner* of such, has held a prominent public function within *the Bailiwick* within the past five years, the firm should consider this as a factor when undertaking its *relationship risk assessment* in accordance with *Commission Rule 8.45*. above.

#### 8.5.6.2. International Organisation PEPs, Family Members and Close Associates

73. In accordance with Paragraph 5(6) of *Schedule 3*, subject to Paragraph 5(9), the firm may treat an *international organisation PEP* as not being such a *PEP* seven years after the person ceased to be entrusted with a prominent function by an *international organisation* if the senior management of the firm has documented that the firm is satisfied that -
- (a) it understands the source of the *funds* within the *business relationship* or *occasional transaction*, and
  - (b) there is no reason to continue to treat the person as a *PEP*.

74. In accordance with Paragraph 5(9) of *Schedule 3*, the provisions set out in Paragraph 8.73. above do not apply in respect of -
- (a) a head of an *international organisation*,
  - (b) a person with the power to direct the spending of significant sums, or
  - (c) persons falling within Paragraphs 5(4)(c)-(d) of *Schedule 3* (immediate family members and close associates) in respect of such persons.

75. In determining whether an *international organisation PEP* falls within Paragraph 8.74.(b) above, the firm should consider whether:
- (a) the *international organisation PEP* has/had authority over, or access to, significant assets and *funds*, policies and/or operations of the *international organisation*;
  - (b) the *international organisation PEP* has/had access to, or control or influence over, the *accounts* of the *international organisation*; and
  - (c) the *international organisation PEP* has/had control over the awarding of contracts or similar by the *international organisation*.
76. For any other natural person falling within Paragraph 5(4)(b) of *Schedule 3*, the firm can make a decision to declassify that person as an *international organisation PEP* following a period of seven years, such period commencing on the date that they, or the associated *international organisation PEP* in the case of an immediate family member or close associate, ceased to be entrusted with any prominent public function (a “former *international organisation PEP*”).
77. Where, during the course of a *business relationship* (or in the case of a prospective *business relationship* or *occasional transaction*, prior to the firm being engaged) the *customer* or *beneficial owner* becomes a former *international organisation PEP*, consideration of their previous function as part of a *relationship risk assessment* in accordance with *Commission Rule 8.45*. is not required, provided that the criteria in Paragraph 5(6) of *Schedule 3* are met.
78. Where the firm identifies, in accordance with Paragraph 4(3)(f) of *Schedule 3*, that the *customer* or *beneficial owner* to a prospective *business relationship* or *occasional transaction* has held a prominent public function with an *international organisation* within the past seven years, the firm should consider this as a factor when undertaking its *relationship risk assessment* in accordance with *Commission Rule 8.45*. above.

### 8.5.6.3. Foreign PEPs, Family Members and Close Associates

79. In accordance with Paragraph 5(7) of *Schedule 3*, subject to Paragraph 5(9), the firm may treat any *foreign PEP* as not being a *PEP* seven years after the person ceased to be entrusted with a public function if the senior management of the firm has documented that the firm is satisfied that -

- (a) it has established and understands the source of the person's wealth, and that of the *funds* within the *business relationship* or *occasional transaction*, and
- (b) there is no reason to continue to treat the person as a *PEP*.

80. In accordance with Paragraph 5(9) of *Schedule 3*, the provisions set out in Paragraph 8.79. above do not apply in respect of -

- (a) a head of state or head of government,
- (b) a person with the power to direct the spending of significant sums, or
- (c) persons falling within Paragraphs 5(4)(c)-(d) of *Schedule 3* (immediate family members and close associates) in respect of such persons.

81. In determining whether a *foreign PEP* falls within Paragraph 8.80.(b) above, the firm should consider whether:

- (a) the *foreign PEP* has/had access to, or authority, control or influence over, significant state assets and *funds*, policies and/or operations;
- (b) the *foreign PEP* has/had control over regulatory approvals, including awarding licences and concessions;
- (c) the *foreign PEP* has/had the formal or informal ability to control mechanisms established to prevent and detect *ML* and/or *FT* (for example, control over law enforcement or other public sector investigative agencies); and
- (d) the *foreign PEP* has/had access to, or authority, control or influence over, the assets of state owned enterprises.

82. For all other *foreign PEPs* falling within Paragraph 5(4)(a) of *Schedule 3*, the firm could decide to declassify a natural person as a *foreign PEP* following a period of seven years, such period commencing on the date that they, or the associated *foreign PEP* in the case of an immediate family member or close associate, ceased to be entrusted with any prominent public function (a "former *foreign PEP*").

83. Where, during the course of a *business relationship* (or in the case of a prospective *business relationship* or *occasional transaction*, prior to the firm being engaged) the *customer* or *beneficial owner* becomes a former *foreign PEP*, the firm is not required to apply the measures set out in Paragraph 8.44. of this *Handbook* for that natural person provided that the criteria in Paragraph 5(7) of *Schedule 3* are met.

84. Where the firm identifies, in accordance with Paragraph 4(3)(f) of *Schedule 3*, that the *customer* or *beneficial owner* to a prospective *business relationship* or *occasional transaction* has held a prominent public function outside *the Bailiwick* within the past seven years, it should continue to treat that individual as a *foreign PEP* in accordance with the requirements of Paragraph 5 of *Schedule 3* and Section 8.5.2. of this *Handbook*.

## 8.6. Correspondent Relationships

85. Correspondent banking is the provision of banking services by one *bank* to another *bank* (“the respondent *bank*”). Used by *banks* throughout the world, correspondent *accounts* enable *banks* to conduct business and provide services that they do not offer directly. There are also similar relationships in other areas of *financial services business*.

86. In accordance with Paragraph 5(1)(b) of *Schedule 3*, the firm shall apply *ECDD* measures in relation to a *business relationship* or *occasional transaction* which is a *correspondent banking relationship*, or similar to such a relationship in that it involves the provision of services, which themselves amount to *financial services business* or facilitate the carrying on of such business, by one *financial services business* to another.

87. Additionally, in accordance with Paragraph 8(2) of *Schedule 3*, the firm shall:

- (a) not enter into, or continue, a *correspondent banking relationship* with a *shell bank*; and
- (b) take appropriate measures to ensure that it does not enter into, or continue, a *correspondent banking relationship* where the respondent *bank* is known to permit its *accounts* to be used by a *shell bank*.

88. In relation to *correspondent banking relationships* and similar correspondent relationships established for securities transactions or *funds* transfers, whether for the firm as principal or for its *customers*, the firm must apply the measures set out in (a) to (e) below and, where relevant, those in *Commission Rule 8.89*. below:

- (a) gather sufficient information about a respondent institution to understand fully the nature of the respondent institution’s business;
- (b) determine from publicly available information the reputation of the respondent institution and the quality of supervision, including whether it has been subject to an *ML* or *FT* investigation or regulatory action;
- (c) assess the respondent institution’s AML and CFT policies, procedures and controls and ascertain that they are adequate, appropriate and effective;
- (d) obtain *board* approval before establishing new correspondent relationships; and
- (e) clearly understand and *document* the respective AML and CFT responsibilities of each institution.

89. Where a correspondent relationship involves the maintenance of ‘payable-through *accounts*’, the firm must also take steps in order to *satisfy* itself that:

- (a) the *customer* (the respondent institution) has complied with all of the required *CDD* measures set out in *Schedule 3* and this *Handbook* on those of its *customers* with direct access to the *accounts* of the correspondent institution; and
- (b) the respondent institution is able to provide relevant *customer identification data* upon request to the correspondent institution.

90. The firm must ensure that appropriate and effective policies, procedures and controls are in place when establishing a correspondent relationship with a foreign *bank* or other *financial services business*.

91. Additionally, the firm must have appropriate and effective policies, procedures and controls in place to ensure compliance with the requirements of Paragraph 8 of *Schedule 3* in respect of *shell banks*.

## 8.7. High Risk Countries and Territories

92. In accordance with Paragraph 5(1)(c)(i) of *Schedule 3*, the firm shall apply *ECDD* measures to a *business relationship* or *occasional transaction* where the *customer* or *beneficial owner* has a *relevant connection* with a country or territory that -

- (A) provides funding or support for terrorist activities, or does not apply (or insufficiently applies) *the FATF Recommendations*, or
- (B) is a country otherwise identified by the FATF as a country for which such measures are appropriate.

93. For the purposes of Paragraph 5(1)(c), Paragraph 5(10) of *Schedule 3* defines that a *customer* or *beneficial owner* has a '*relevant connection*' with a country or territory if the *customer* or *beneficial owner* -

- (a) is the government, or a public authority, of the country or territory,
- (b) is a *PEP* within the meaning of Paragraph 5(4) of *Schedule 3* in respect of the country or territory,
- (c) is resident in the country or territory,
- (d) has a business address in the country or territory,
- (e) derives *funds* from -
  - (i) assets held by the *customer* or *beneficial owner*, or on behalf of the *customer* or *beneficial owner*, in the country or territory, or
  - (ii) income arising in the country or territory, or
- (f) has any other connection with the country or territory which the firm considers, in light of the firm's duties under *Schedule 3* (including but not limited to its duties under Paragraph 2 of *Schedule 3*), to be a *relevant connection* for those purposes.

94. [The FATF has identified a number of countries and territories with significant strategic deficiencies in their regimes to counter ML, FT and financing of proliferation for which it has called for the application of countermeasures. For the purposes of applying Paragraph 5\(1\)\(c\)\(i\)\(B\) of Schedule 3, Appendix H to this Handbook identifies those countries and territories in relation to which the FATF has called for the application of countermeasures.](#)

95. The firm must have policies, procedures and controls in place which enable it to determine those countries or territories falling within Paragraph 5(1)(c)(i) of *Schedule 3*.

96. In establishing whether a country or territory provides funding or support for terrorist activities for the purposes of Paragraph 5(1)(c)(i)(A) of *Schedule 3*, the firm should consider [the risk of countries or territories that fall into one or more of the following categories:](#)

- [\(a\) countries that present active terrorism or FT threats because there are areas of conflict within their borders;](#)
- [\(b\) countries that border or have other strong geographical links to countries that have an active terrorism or FT threat;](#)
- [\(c\) countries with a section of the population that is actively targeted by terrorist organisations for support and cover because it may be sympathetic to regional or terrorist actors \(whether because of diaspora links or otherwise\);](#)
- [\(d\) countries that are involved in state-sponsored terrorism; and](#)
- [\(e\) countries with a secondary terrorism or FT threat, i.e. where there may not be an active terrorism or FT threat but where there is a heightened threat of crimes whose proceeds are typically used by organised criminal groups to fund terrorism.](#)

96. if there are reports from credible sources indicating a country or territory is providing state level financing or other forms of material support for terrorist activities or to terrorist organisations.
97. Appendix I to this Handbook lists a number of countries and territories that are identified by reliable and independent external sources as presenting a higher risk of FT. In addition to these sources, which are not exhaustive, the firm should consider other publicly available information to check whether it should treat a particular country involved in a business relationship or transaction as a country presenting a higher risk of FT. For convenience these are referred to in the NRA as focus countries.
98. A further point to be aware of is that involvement for these purposes extends not only to the jurisdiction of residence, incorporation or nationality as the case may be of customers, or of the officials or beneficial owners of legal persons or legal arrangements involved in a business relationship. It also extends to less obvious links between these parties and focus countries, including but not limited to a customer or beneficial owner having a relevant connection with a focus country, as defined in Paragraph 5(10) of Schedule 3. These less obvious links may arise for example where the customer, official or beneficial owner in question conducts business or owns property in a focus country, where they have a close relative or associate who is from or who resides in a focus country, where they jointly own property with a person from a focus country, where a business relationship involves an entity that is directly or indirectly controlled by a party linked to a focus country or where third party payments are made to or received from a focus country.

~~In addition to those countries and territories falling within Paragraph 8.93. above, in accordance with Paragraph 5(1)(c)(ii) of Schedule 3 the firm shall have regard to the NRA when undertaking relationship risk assessments, which includes details on those countries and territories deemed to pose an increased risk to the Bailiwick.~~

97-99. As part of its policies, procedures and controls, the firm must:

- (a) be aware of concerns about weaknesses in the AML and CFT systems of other countries or territories; and
- (b) consider any updates to Appendix H and I to this Handbook and Business from Sensitive Sources Notices, and Instructions and Warnings issued from time to time by *the Commission*.

98,100. In determining, for the purposes of its policies, procedures and controls, those countries and territories falling within Paragraph 5(1)(c)(i) of Schedule 3, the firm should consider:

- (a) Appendix H to this Handbook which identifies those countries and territories in relation to which the FATF has called for the application of countermeasures; findings of reports issued by the FATF, FATF style regional bodies and FATF associate members (for example, MONEYVAL, the Asia/Pacific Group on Money Laundering, the IMF and the World Bank (see Appendix B of this Handbook));
- (b) Appendix I to this Handbook which lists a number of countries and territories that are identified by reliable and independent external sources as presenting a higher risk of ML and/or FT. This includes those subject to a “call for action” and those “under increased monitoring” by the FATF. In assessing country risk, it will be relevant to take account of the number of occasions that a particular country or territory is listed by different external sources and the rationale for those listings. Where a country or territory is identified as presenting a higher risk by four, or five or more, separate external sources, it is more prominently highlighted in the appendix.
- (a)(c) findings of reports issued by credible sources such as governments, government bodies and other independent organisations (for example, Transparency International, the National Crime Agency, the Financial Crimes Enforcement Network and the US Department of State (see Appendix B of this Handbook));



- ~~(b)~~(d) situations where a country or territory has not been the subject of an AML and CFT assessment; and
- ~~(e)~~(e) its own experience, or the experience of other group entities where part of a multinational group, which may indicate weaknesses in the *ML* or *FT* framework of a country or territory or wider concerns (for example, the prevalence of drug or human trafficking or political corruption).

101. Internationally, it is recognised that *ML* often involves using the financial systems of a number of jurisdictions. Analysis was undertaken as part of the *NRA* as to how the *Bailiwick* typically fits into this pattern. The findings from this analysis were that in the majority of cases the *Bailiwick's* involvement is distant or peripheral from the criminal enterprises. This indicates in turn that in most cases involving foreign criminal proceeds, the *Bailiwick* is likely to be some way removed from the criminality itself and to come a considerable distance down the chain of laundering activity, therefore, the firm should consider country risk in the round, where risk are higher ensuring it fully understands the source of those funds.

### 8.8. Bearer Shares and Bearer Warrants

102. In accordance with Paragraph 5(1)(e) of *Schedule 3*, the firm shall apply *ECDD* measures to a *business relationship* or *occasional transaction* in which the *customer*, the *beneficial owner* of the *customer*, or any other *legal person* in the ownership and control structure of the *customer*, is a *legal person* that has *bearer shares* or *bearer warrants*.

103. A *bearer share* is a share that is owned by, and gives all associated rights to, the person who is in control or possession of the share. The *bearer share* is not recorded by indefeasible title (for example, on a register) and transfer of the ownership of the share does not need to go through a register to be effected. As there are no records as to the holder, it is often difficult to identify the true or ultimate *beneficial owner* of a *bearer share*, or more broadly, *bearer share* companies.

104. Where the firm's *risk appetite* allows for a *customer*, the *beneficial owner* of a *customer*, or any other *legal person* in the ownership and control structure of the *customer* to have *bearer shares* and/or *bearer warrants*, the firm must have appropriate and effective policies, procedures and controls in place to mitigate the *risk* posed by their use.

105. Where the firm establishes or maintains a *business relationship* or undertakes an *occasional transaction* falling within Paragraph 5(1)(e) of *Schedule 3*, the firm must apply both of the following measures in respect of that *business relationship* or *occasional transaction*, together with the *ECDD* measures set out in Paragraph 5(1) of *Schedule 3*:

- (a) determine and satisfy itself as to the reasons why the *customer*, the *beneficial owner* of the *customer*, or other *legal person* in the ownership and control structure of the *customer* has *bearer shares* and/or *bearer warrants*; and
- (b) have custody of the *bearer shares* and/or *bearer warrants*, or be satisfied as to their location and immobilisation. This should include confirming the number and location of the *bearer shares* and/or *bearer warrants* on a periodic basis, or alternatively, receiving a written undertaking from the custodian of those *bearer shares* and/or *bearer warrants* that the firm will be notified of any changes to records relating to them and their custodian.

106. The firm must apply the above policies, procedures and controls to a *business relationship* or *occasional transaction* irrespective of whether the identified *bearer share* or *bearer warrant* represents an amount below the relevant threshold for ownership or control of the *legal person*.

## Enhanced Measures

107. In accordance with Paragraph 5(2) of *Schedule 3*, the firm shall carry out *enhanced measures* in relation to *business relationships* and *occasional transactions*, whether otherwise high *risk* or not, which involve or are in relation to -

- (a) a *customer* who is not resident in *the Bailiwick*;
- (b) the provision of private banking services;
- (c) a *customer* which is a *legal person* or *legal arrangement* used for personal asset holding purposes; or
- (d) a *customer* which is –
  - (i) a *legal person* with *nominee shareholders*, or
  - (ii) owned by a *legal person* with *nominee shareholders*.

108. Paragraph 5(3)(b) of *Schedule 3* defines *enhanced measures* as being the carrying out of appropriate and adequate enhanced measures in relation to a *business relationship* or *occasional transaction*, to mitigate and manage the specific higher *risk* of *ML* and *FT* resulting from the matters listed in Paragraph 5(2) of *Schedule 3* that are relevant to that relationship or transaction.

109. For a number of *business relationships* or *occasional transactions* there is likely to be more than one *specified business* involved and the firm should be aware that the *enhanced measures* it applies may be different to those applied by another *specified business* to mitigate differing higher *risk* factors.

110. By way of example, a fiduciary establishes a trust for a non-resident *customer* to whom it applies *enhanced measures* as set out in Section 8.9. below. The fiduciary then acts as the *customer* in a *business relationship* with another *specified business* where, acting as trustee, it opens a *bank account* on behalf of the trust with a private *bank*. The *bank* will apply *enhanced measures* to mitigate the higher *risks* associated with its *customer* being a personal asset holding vehicle and the provision of private banking services as detailed in Sections 8.10. and 8.11., which may be different to those applied by the fiduciary.

### 8.9. Non-Resident Customer

111. *Customers* who are not resident in a country or territory but who nevertheless seek to form a *business relationship* or conduct an *occasional transaction* with a business in that country or territory will generally have legitimate reasons for doing so. However, some such *customers* may present a higher *risk* of *ML* and/or *FT*, for example, by attempting to move illicit *funds* away from their country or territory of residence or attempting to further conceal the source of *funds* from that country or territory.

112. For the purposes of Paragraph 5(2)(a) of *Schedule 3*, examples of *enhanced measures* the firm could apply in respect of a *business relationship* or *occasional transaction* involving or in relation to a *customer* who is not resident in *the Bailiwick* could include:

- (a) taking steps to understand the reason(s) behind the *customer* seeking to establish a *business relationship* or carry out an *occasional transaction* with the firm;
- (b) the use of external data sources to collect information on the *customer* and the particular country *risk* in order to build a *customer* business and *risk* profile similar to that available for a resident *customer*;

- (c) taking reasonable measures to establish and understand the source of the *funds* used within the *business relationship* or *occasional transaction* and considering whether this is consistent with the firm's understanding of the *customer* and the rationale for the *business relationship* or *occasional transaction* (see Section 8.3. of this *Handbook*).

- 113. For the purposes of Paragraph 8.1~~1209~~(a), when determining the reasons for establishing a *business relationship* or undertaking an *occasional transaction*, the firm should *document* its determination. The reasons given should be more detailed and substantive than merely 'tax planning', 'asset protection' or similar.
- 114. Where the firm determines that the rationale for the *customer* establishing a *business relationship* or undertaking an *occasional transaction* with the firm is tax planning or tax mitigation, the firm should seek to understand the underlying tax rationale for the *business relationship* or *occasional transaction*. Where concerns are raised about this rationale, the firm could consider requesting a copy of the tax opinion or tax advice to support its understanding of the *customer's* arrangements.
- 115. With regard to Paragraph 8.1~~1209~~(c) above, when seeking to establish the source of any *funds*, the firm should consider both the activities which generated those *funds* in order to understand the provenance of the *funds* and any potential implications to those *funds* being moved to the *Bailiwick*. For example, is the *customer* seeking to circumvent capital controls by moving the *funds* to the firm.

#### 8.10. Customer Provided with Private Banking Services

- 116. Private banking is generally understood to be the provision of personalised banking and/or investment services to high-net-worth *customers* in a closely managed relationship. It may involve complex, bespoke arrangements and high value transactions across multiple countries and territories. Such *customers* may therefore present a higher *risk* of *ML* and/or *FT*.
- 117. For the purposes of this Section a service is regarded as a private banking service if it meets all four of the following criteria:
  - (a) is offered or proposed to personal, private client, *customers* (either directly or through a *legal person* or *legal arrangement*) identified by the firm as being eligible for the service on the basis of their net worth;
  - (b) involves high value investment;
  - (c) is non-standardised; and
  - (d) is tailored to the *customer's* needs.
- 118. For the avoidance of doubt, private banking services are not considered to be solely the preserve of a *bank* (with the exception of accepting deposits) but could feasibly be offered by a firm licensed under *the POI Law*. A business licensed under *the Fiduciaries Law* who facilitates private banking services as part of its duties as a trustee is not considered to be providing private banking services.
- 119. For the purposes of Paragraph 5(2)(b) of *Schedule 3*, examples of *enhanced measures* the firm could apply in respect of a *business relationship* or *occasional transaction* involving or in relation to the provision of private banking services could include:
  - (a) reviewing the *business relationship* more frequently, including all *documents*, data and information obtained as part of the firm's *CDD* measures in order to ensure that they continue to be appropriate and relevant;
  - (b) where transaction monitoring thresholds are used, ensuring that these are appropriate for the circumstances of the *business relationship* and considering whether they should be

- reduced to provide greater oversight of transactions connected with the *business relationship*;
- (c) taking reasonable measures to establish and understand the source of any *funds* and of the wealth of the *customer* and *beneficial owner* (see Section 8.3. of this *Handbook*).
120. Where the firm offers private banking services alongside other corporate or retail services, it should consider on a case by case basis whether a *customer* utilises such private banking services, taking into account Paragraph 8.11<sup>47</sup>. above, or whether the products and/or services provided to the *customer* fall within more traditional retail banking services. If the latter, there is no requirement to apply the *enhanced measures* set out above.

#### 8.11. Customer is a Personal Asset Holding Vehicle

121. Personal asset holding vehicles are *legal persons* or *legal arrangements* established by natural persons for the specific purpose of holding assets for investment. Whilst there are some perfectly legitimate reasons for establishing a personal asset holding vehicle, the use of such, either a *legal person* or *legal arrangement*, can serve to conceal the true source of wealth and *funds*, or the identity of the ultimate *beneficial owner* of the investment. The use of personal asset holding vehicles therefore presents a higher *risk*, making it more difficult for the firm to establish the true beneficial ownership of a *customer*.
122. Notwithstanding the above, the extent of the *risk* associated with the personal asset holding vehicle could vary depending upon whether a regulated trust and corporate service provider is providing corporate services to the personal asset holding vehicle. This will in turn determine the extent of the *enhanced measures* to be applied by the firm to the *customer*.
123. For the purposes of Paragraph 5(2)(c) of *Schedule 3*, examples of *enhanced measures* the firm could apply in respect of a *business relationship* or *occasional transaction* involving or in relation to a *customer* which is a *legal person* or *legal arrangement* used for personal asset holding purposes could include:
- (a) determining the purpose and rationale for making use of a personal asset holding vehicle rather than a *beneficial owner* holding assets in their own name and *satisfying* itself that the use of such a vehicle has a genuine and legitimate purpose;
  - (b) taking reasonable measures to establish and understand the source of any *funds* and of the wealth of the *customer* and *beneficial owner* (see Section 8.3. of this *Handbook*).
124. Paragraph 5(2)(c) applies where the personal asset holding vehicle is the *customer* or the third party where the *customer* is a trustee or general partner acting on behalf of a personal asset holding vehicle.
125. For the purposes of Paragraph 8.12<sup>48</sup>(a) above, when determining the purpose and rationale for the use of an asset holding vehicle, the firm should *document* its determination. The reasons given should be more detailed and substantive than merely ‘tax planning’, ‘asset protection’ or similar.
126. Where the firm determines that the rationale for the *customer* making use of a personal asset holding vehicle is tax planning or tax mitigation, the firm should seek to understand the underlying tax rationale. Where concerns are raised about this rationale, the firm could consider requesting a copy of the tax opinion or tax advice to support its understanding of the *customer’s* arrangements.

## 8.12. Customer with Nominee Shareholders

127. There may be sound commercial reasons for a *customer* using *nominee shareholders*, for example, to ease administration and reduce costs by tasking the nominee to undertake essential corporate actions in the administration of the structure.
128. Notwithstanding the above, as detailed in Section 7.3. of this *Handbook*, the use of *nominee shareholders* can provide a *customer* with the means to obscure true ownership and control by separating legal and beneficial ownership. The use of *nominee shareholders* therefore presents a higher *risk*, making it more difficult for the firm to establish the true beneficial ownership of a *customer*.
129. For the purposes of Paragraph 5(2)(d) of *Schedule 3*, examples of *enhanced measures* the firm could apply in respect of a *business relationship* or *occasional transaction* involving or in relation to a *customer* which is a *legal person* with *nominee shareholders*, or owned by a *legal person* with *nominee shareholders*, could include:
- (a) determining and satisfying itself as to the reasons why the *customer*, or a *legal person* which owns the *customer*, is making use of *nominee shareholders*;
  - (b) using external data sources to collect information on the fitness and propriety of the *nominee shareholder* (such as their regulated status and reputation) and the particular *country risk*;
  - (c) where nominees are used in *intermediary relationships* falling within Section 9.8. of this *Handbook*, the measures the firm must take in accordance with the *Commission Rules* in Section 9.8.2.
130. Where the firm enters into a *business relationship* or undertakes an *occasional transaction* with a CIS which is authorised or registered by *the Commission* and has not been nominated as the party responsible for applying *CDD* measures to investors in that CIS in accordance with Section 4.8.1. of this *Handbook*, it is not required to apply *enhanced measures* in respect of that CIS where the CIS has *nominee shareholders*, for example, an *intermediary* investing into the CIS on behalf its own customers.