



ANTI-BRIBERY AND CORRUPTION COMPLIANCE DEFINITION OF PUBLIC OFFICIALS

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1. Introduction

All forms of bribery are wrong but it is widely recognised that bribery of public officials is particularly damaging, with consequences including the distortion of fair competition, diversion of funds away from vital public services, corrosion of the rule of law and the undermining of national security. In response, international legal conventions specifically prohibit the bribery of public officials and many business standards provide especially strict requirements for companies interacting with public officials.

However, the application of this global norm is complicated by high-level international legal definitions of 'public official', as well as varied national legislation and guidance. Interpretation of these definitions is further complicated by the international diversity of government structures and public service delivery. The border between the public and private sectors also frequently shifts through privatisation and nationalisation, outsourcing of public services to private sector contractors and government involvement in commercial activity through hybrid structures such as State-Owned Enterprises and Sovereign Wealth Funds.

Through our work with members to identify best practice and benchmark procedures, UK Finance has seen how this ambiguity adds costs and delay to corporate anti-bribery and corruption efforts and can reduce appetite for doing business with new markets. Varied interpretations in company policies can also hold back collective action and collaborative work, adding complexity to efforts to share risk intelligence on official corruption and to support public integrity initiatives.

We have therefore worked with our members to develop a practical and risk-based definition of public officials for the purposes of anti-bribery and corruption compliance. The following paper sets out the technical approach and recommended guidance to help industry work to a consistent definition. While we recognise that each firm will need to apply its own risk appetite, this guidance proposes a broad approach building on both international legal analysis and recent case law, including on borderline cases such as public contractors and State-Owned Enterprises.

We hope that this guidance will contribute to wider anti-corruption efforts and provide a stimulus to future updates of existing definitions and due diligence tools.

2. Purpose of Paper

The purpose of this paper is to establish practical and risk-based guidance on the definition of public officials for purposes of anti-bribery and corruption (ABC) compliance.

The paper has been written with a UK legislative lens but is not limited to public officials in the UK, and also considers complementary global ABC legislation to inform the guidance. This includes consideration of anti-money laundering and counter-terrorist financing (AML/CFT) definitions of 'politically exposed persons', but the paper does not provide guidance for these separate requirements.

This paper sets out a recommended approach to this definition and illustrative guidance of specific examples for inclusion and exclusion, to help firms with setting their individual ABC risk appetites for identifying and dealing with public officials. It also seeks to input to future updates of existing definitions (e.g. Wolfsberg Group - Anti-Bribery and Corruption Compliance Programme Guidance 2017).

This paper has been developed and agreed by the UK Finance Anti-Bribery and Corruption Panel. We hope that this paper will support wider efforts to drive consistency in the identification of public officials across all industries /sectors. Greater consistency could allow firms to overlay their risk appetite thresholds and support due diligence procedures for third parties and transactions.

We also hope that this approach will encourage ABC compliance service providers (e.g. including but not limited to World-Check/Dow Jones/etc.) to review their approach to sourcing and consolidating their data for due diligence screening /checks for public officials. Currently, the approach of these service providers is more focused on Politically Exposed Persons (PEPs) for AML/CFT compliance purposes.

3. Approach

The current legal and regulatory definition of public officials is wide ranging and this paper seeks to summarise the current objective position as to who are deemed public officials for ABC compliance purposes (hereafter, 'Public Officials'). The elements within this paper are taken from legislation, prosecutorial and regulatory guidance, speeches and statements, enforcement actions and US Opinion releases.

An analysis has been undertaken regarding current definitions defined by different legislation, regulation and industry bodies. (see Appendix1). The intention of this paper is to help firms with defining who is and who is not a public official, building on the UK Bribery Act (UKBA) definition to provide a practical risk-based approach. An inclusion / exclusion list has been developed using this approach, to help firms apply a consistent approach to identifying a public official, but the list is not exhaustive and should be considered as illustrative guidance to support risk appetite decisions.

It should be noted that ABC compliance is not limited to interactions with public officials, and the UKBA, financial sector regulation and other foreign legislation also prohibit bribery to private sector companies and individuals. However, absent indications that a private sector party is acting as an intermediary or nominee for a public official, firms' policies and procedures for the heightened risks of public sector interactions would typically not apply.

4. Background to the definition of a public official

A Public Official is an objective test and does not vary depending on the capacity in which you interact with them.¹ While some elements of anti-bribery legislation depend on whether a firm is seeking to influence a public official to act in their official capacity, other elements apply to attempts to induce other acts (e.g. use of their influence). This paper aims to support a consistent definition of whether an individual is a public official, leaving questions such as the intended outcome of an interaction for firms to address through their individual risk appetites, policies and procedures.

Whether an individual is a public official or not has a significant impact on the ABC risk they pose, and therefore affects firms' ABC compliance. Firms typically check for public official interactions as part of their risk assessment and selection of mitigating controls across a range of activity, including:

- Engagement of third parties
- Donations
- Sponsorships
- Gifts and entertainment
- Referral employment opportunities
- Mergers, acquisitions, disposals, other investments
- Public affairs – lobbying, governmental / local government interactions
- Legal
- Reinsurance
- High value business opportunities, including:
 - Large scale infrastructure financing in conjunction with government projects
 - High value contract bidding for mandates or tenders.

The predominantly widest definition derives from the UKBA which provides the following definition of 'foreign public officials', supported by specific Ministry of Justice and UK Prosecutorial guidance:

UKBA Section 6(5) definition:¹

- *an individual holding legislative, administrative or judicial posts or*
- *anyone carrying out a public function for a foreign country or the country's public agencies or an official or agent of a public international organisation*

Previous discussions in the UK Finance ABC Panel assessed this definition as being very wide reaching and generic, leaving considerable ambiguity for firms seeking to define their risk appetite and refine their monitoring and controls. In addition, enforcement actions in the US and UK are regularly providing additional interpretation, which provide additional criteria beyond the original UKBA terms; e.g. regarding state-owned enterprises .

Other significant definitions of public officials have been identified and reviewed (see Appendix 2). While these other definitions include additional examples of public officials, the clear majority still are contained within this high-level UKBA definition. The minority of other definitions that go beyond the UKBA are incorporated in the considerations and lists provided.

UKBA and FCPA definitions are focused on foreign Public Officials and do not give a definition for identifying domestic Public Officials. However, international organisation with subsidiaries in various jurisdictions may find that this is a distinction without a difference, as every Public Official they interact with is both a domestic and foreign one due to their organisation's international footprint.

5. Recommendations

This paper sets out to review and provide support for a practical and risk-based definition of public officials that the wider financial services community (and others) can use to support their own risk appetite and ABC procedures.

This paper proposes a broad, overarching approach to defining Public Officials. Firms should remain focused on the particular definitions in the different legal regimes, even if they employ the approach set out in this paper more generally. Based on our review of current definitions, we decided to **build on the UKBA** definition and have developed a three-step approach:

1. Focusing on employees or officials of relevant bodies, whether employed, elected or appointed;
2. Further defining relevant bodies by adopting an approach from the second limb of the UKBA definition, '*carrying out a public function for a foreign country or the country's public*', using key criteria including government ownership or effective control;
3. Including known exceptions to the first two steps where sufficiently clear and material to ABC risk.

Using this approach, we have developed **key decision-making** criteria for whether an individual is an employee or official of a relevant body, and for whether an organisation is a relevant body, including on whether an organisation is owned or effectively controlled by the government.

We have also used this approach to develop **an inclusion/exclusion list** of relevant bodies and their employees or officials, as well as known exceptions that we have judged to be worth including.

Firms will need to overlay their own risk appetite and treatment standards of ABC procedures to this wider Public Official definition.

6. Key criteria for employee or official of a relevant body

We consider that the assessment of whether an individual is a public official essentially depends on their employment or appointment. While there are a small number of public officials that are not employed, elected or appointed by a relevant body, we consider that these are exceptions and have only added them to our Inclusion / Exclusion List if judged sufficiently clear and material to ABC risk. For example, Notary Publics are individuals who carry out a public function with a clear and material ABC risk. (Self-employed consultants could be treated similar to public notaries)

The AML/CFT category of PEPs is a much smaller group than Public Officials. Many Public Officials are not PEPs but some are, depending on whether they are sufficiently senior ('prominent public function'). Regardless of whether an individual is a PEP, any public official, once out of office, will no longer be designated as a public official as primarily that status relies on the nature of their employment or appointment. This differs from AML/CFT requirements, as if a Public Official is identified as a PEP they may still be designated as one, even after leaving official office.

Whether or not an individual considers themselves as a Public Official is irrelevant for ABC compliance purposes, as whether the individual should be treated as a Public Official is an objective test that will be decided by the state / courts.

Other relevant factors for decision-making include, but are not limited to:

- Being an employee at any level. At any level includes any officer or any employee, no matter how senior or junior;
- Whether hired, appointed or elected;
- Current employees and appointees only; and
- Can include candidates for elected office (e.g. seeking political office).

7. Key criteria for relevant bodies

We consider that, when defining public official, the question of whether an organisation is carrying out a public function can be decided with reference to two main criteria.

1. Whether the organisation is owned or controlled by the government. This can include part ownership and even minority ownership, as long as the government has effective control over the organisation (refer to section 7, below)
2. Whether the organisation is not owned or controlled by the government but where it is delivering a monopoly service or public function under the terms of a commercial government contract or a government grant. Monopoly services and functions are, generally speaking, more closely associated with the role of government, e.g. monopoly provision of telecommunication services (see the Esquenazi FCPA enforcement case, discussed further at section 7, below). They also typically pose higher ABC risks due to the greater risk of public harm and the greater potential for extortion and solicitation of bribes.

Other relevant factors for decision-making include, but are not limited to:

- Legislative, administrative or judicial bodies at national, regional or local level (i.e. not just central government departments);
- Involvement of military, public security and policing bodies;
- Involvement of formal political organisations, as recognised by electoral and political party funding law. This includes political parties in opposition or in government, as well as politicians at national, regional or local legislatures (e.g. local councillors). This does not include those political parties with no legislative representation at any level (e.g. the Monster Raving Looney Party);
- Involvement of bodies who manage public funds;
- Involvement of other relevant bodies that deliver public services or other functions of the state, either where majority owned or controlled by the government, or where sub-contracted on a commercial or grant basis to deliver a monopoly service or function e.g. HK Monetary Authority; and
- International development organisations such as the IMF etc.

To note for consideration - The government can have 'effective control' of a private company or civil society without holding majority ownership (refer to section 8, below).

8. Further considerations for whether the government has ‘effective control’:

Where an entity is owned by a government at a level equal to or below 50 per cent of shares, employees may still be public officials for ABC compliance purposes, if the government is in a position to exert influence over that entity such that it is effectively ‘State-controlled’. A number of factors should be examined when determining whether an entity is effectively controlled by the government and the actual percentage share of ownership is often the least relevant factor.

In some cases, the government may have limited ownership but still exert considerable influence over the organisation, which would potentially still make the employees public officials for the purposes of ABC compliance

Relevant factors to be considered on government ownership and control include, but are not limited to:

- Do government officials sit on the board or serve in executive positions at the entity?
- Does the government directly or indirectly have the ability to appoint or dismiss members of the board or senior management?
- Does the government have substantial voting rights in the entity?
- Is the government the main consumer of the services provided by the entity?
- Does the entity effectively perform a function of the state (a similar test is applicable when determining whether an individual is exercising a public function)?
- Whether the entity receives state funding and to what degree?

End Notes

1 UKBA Section 6(54) definition: means an individual who:

(a) Holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom (or any subdivision of such a country or territory)

(b) Exercises a public function –

(i) For or on behalf of a country or territory outside the United Kingdom (or any subdivision of such a country or territory), or

(ii) For any public agency or public enterprise of that country or territory, or

(iii) is an official or agent of a public international organisation

2 Further defining relevant bodies for the second limb of the UKBA definition, ‘exercise[ing] a public function [...] for any public agency or public enterprise’ of a foreign country’

9. Public Official Inclusion / Exclusion List

Caveat - This list is non-exhaustive, and firms need to apply their own ABC risk appetite and treatment standards.

Inclusion List	Exclusion List
<p>National, regional, local or municipal governmental bodies; e.g.</p> <ul style="list-style-type: none"> Executive; e.g. Companies House Administrative Legislative Judiciary Embassy / High Commission staff Other diplomatic service staff; e.g. delegations to NATO, UN, etc Armed forces / defence Police and other criminal law enforcement agencies Ports – air, land, sea Border Control Prisons Inter-developmental organisations 	<ul style="list-style-type: none"> Prison contractors where not delivering a public function (e.g. catering, laundry, maintenance, work schemes) Other advocacy and public policy pressure groups
<p>State owned / state-controlled companies; e.g.</p> <ul style="list-style-type: none"> Firms to define own risk appetite ownership percentage; e.g. ownership above 50% or the state has below 50% and also has: <ul style="list-style-type: none"> Effective control Voting control Board control Undertake a function of the state or Other indicia; e.g. golden share / government demonstration of control 	
Central banks	
State Pension Funds	Private pension providers
Sovereign Wealth Funds & Sovereign Development Funds	
<p>Sector and Thematic Regulators; e.g.</p> <ul style="list-style-type: none"> FCA PRA US SEC OFGEM OFWAT Competition Regulators Health and Safety, Weights and Measures, etc 	

<p>International organisations; e.g.</p> <ul style="list-style-type: none"> • United Nations • EU • World Bank • IMF • NATO • Mixed private / public entities • World Trade Organisation 	<ul style="list-style-type: none"> • International sporting federations (IOC, UEFA, etc) • Non-Government Organisations (NGOs) • Charities
<p>Certain roles and functions of Royal Families</p> <ul style="list-style-type: none"> • connection to executive, legislative or judicial decisions (not purely ceremonial) • connection to other government decisions 	
<p>Contractors / consultants / senior advisers</p> <ul style="list-style-type: none"> • may be a Public Official depending on the role and activity they are undertaking and the level of connectivity to the organisation they are working for at the time. 	
<p>Individuals with special status</p> <ul style="list-style-type: none"> • Notaries • Self-employed consultants; e.g. environmental public specialists, depending on their role, activity and connectivity 	
<p>Political Parties, party officials and any level of political office including tribal authorities</p>	<ul style="list-style-type: none"> • Supporters of political parties; e.g. volunteer workers • Trade unions / labour organisations
<p>State funded / supported medical institutions; e.g.</p> <ul style="list-style-type: none"> • NHS (e.g. state funded health services) • Pharmaceutical and life sciences where contracted to provide monopoly public functions 	<ul style="list-style-type: none"> • Private Hospitals
<p>State funded / supported education; e.g.</p> <ul style="list-style-type: none"> • Schools • Colleges • Universities 	<ul style="list-style-type: none"> • Private schools • Private Colleges • Private Universities
<p>State funded / supported, monopoly or exercising function of the state; e.g.</p> <ul style="list-style-type: none"> • Extractives - mining / gems / resources • Transport – airlines, shipping, Transport for London (TFL) • Energy - Oil / Gas / wind / water • Defence • Telecommunications • Car industry • Housing – housing associations • Post – e.g. Royal Mail • Construction / real estate • Cultural establishments- museums 	<p>Private individual organisations that are not in a monopoly situation</p> <p>Credit agencies; e.g.</p> <ul style="list-style-type: none"> • Standards & Poors • Moody's • Private house trusts / associations • Private museums • Religious groups

Appendix 1 – Gap analysis of UK Bribery Act to other key definitions

Summary of gap analysis:

- The UKBA definition is less specific but potentially wider than other definitions (listed below approximately in order of width of coverage).
- The OECD Anti-Bribery Convention is almost as wide (limits to public employees or officials) and provides specific criteria for State-Owned Enterprises (SOEs) / Sovereign Wealth Funds (SWFs).
- The FATF / FCA discussion of PEPs is narrower (omits delivery of public functions) but explicitly includes political party officials and SWFs and provides more specific criteria for SOEs.
- The FCPA is narrower (omits delivery of public functions) but includes 'instrumentalities' with jurisprudence providing more specific criteria for SOEs / SWFs (bringing the delivery of public functions back in as a criterion).
- The Wolfsberg Group ABC guidance is narrower (omits delivery of public functions) but explicitly includes political party officials and royal families, with more specific criteria for SOEs (no specific reference to SWFs).
- The Transparency International definition is narrower (omits delivery of public functions) but makes a specific reference to SOEs.
- The outlier is the Misconduct in Public Office definition, which is both limited to UK officials and is even less specific than the UKBA definition (focused on function not status, with case law both excluding paramedics as not providing a public function of sufficiently general public interest, and including non-employee and unpaid appointees to independent monitoring boards of prisons and immigration detention centres, and only including contractors when they are delivering certain public functions).

Key: IN / DEPENDS / UNCLEAR	UKBA	FCPA	Wolfsberg Group ABC guidance	OECD Anti-Bribery Convention	Transparency International (Oxford Uni guide)	Misconduct in Public Office (UK criminal offence)	FAFT / FCA (PEPs and more junior public officials)
Criteria							
1. Legislative, administrative, judicial post	Explicitly in scope	Explicitly in scope	Explicitly in scope	Explicitly in scope	Explicitly in scope	Case law criterion (public function)	Explicitly in scope
- 1a: Posts limited to public employees or officials?	Not limited ('position of any kind, whether elected or appointed')	Limited	Not limited	Limited (but includes 'whether elected or appointed')	Not limited	Not limited	Not limited (prominent public positions can include politicians)
2. Gvt owned or controlled	Not referenced	Case law criterion (instrumentality)	Specific criterion (SOEs)	Specific example (of public function; includes public enterprises)	Not referenced	Not referenced	Specific criterion (SOEs)
3. Delivering a public function	Explicitly in scope	Case law criterion (instrumentality)	Not referenced	Explicitly in scope	Not referenced	Explicitly in scope (UK case law)	Not referenced
4. Publicly funded	Not referenced	Case law criterion (instrumentality)	Not referenced	Specific criterion (public enterprise)	Not referenced	Case law criterion (public function)	Not referenced
Examples							
Public international	Explicitly in scope	Explicitly in scope	Explicitly in scope	Explicitly in scope	Specifically mentioned	N/A (UK public offices only)	Explicitly in scope
Political party/official	Not referenced	Explicitly in scope (including candidates for office)	Specifically referenced	Specific reference to one-party states	Not referenced	Not referenced	Explicitly in scope
SOE	Not referenced	Could be Instrumentality	Specifically referenced, with criteria	Could be public enterprise	Specifically referenced	Not referenced	Specifically referenced, with criteria
Central Bank / SWF	Not referenced	Typically Instrumentality	Not referenced	Typically public function/enterprise	Could be 'quango'	Not referenced	Explicitly in scope
Trades union/official	Not referenced	Not referenced	Not referenced	Not referenced	Not referenced	Not referenced	Not referenced
Public contractor	Not referenced	Not referenced	Not referenced	Not referenced	Not referenced	Could be public function (case law)	Not referenced
Grant funded charity/CSO	Not referenced	Not referenced	Not referenced	Not referenced	Not referenced	Could be public function (case law)	Not referenced
Royal families	Not referenced	Where acting as a state actor (Opinion Procedure 12-01)	Specifically referenced	Not referenced	Not referenced	Not referenced	Not referenced

Appendix 2 – Relevant ABC definitions of Public Officials

Below are the most relevant definitions for ABC purposes that have been identified and reviewed.

UK Bribery Act 2010

A foreign public official is defined, under Section 6(5), as “an individual who—

- (a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom (or any subdivision of such a country or territory),*
- (b) exercises a public function—*
 - (i) for or on behalf of a country or territory outside the United Kingdom (or any subdivision of such a country or territory), or*
 - (ii) for any public agency or public enterprise of that country or territory (or subdivision),*
- (c) is an official or agent of a public international organisation.”*

The Section 6 offence requires an intention to influence a foreign public official in their official capacity in order to obtain or retain business or an advantage in business. However, the general Section 1 offence can also apply to attempts to induce improper performance by a foreign public official, which is not limited to conduct in their official capacity or related to the obtaining or retaining of business.

FCPA - Foreign Corrupt Practices Act 1977

Any officer or employee of a foreign government or any department, agency or instrumentality thereof, or of a public international organisation, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for on behalf of any such public international organisation.

FCPA prohibitions go beyond influencing the decisions of foreign officials in their official capacity and include inducing foreign officials to use their influence or otherwise secure an improper advantage in order to obtain or retain business. Recent US jurisprudence has rejected attempts to limit the FCPA prohibition to ‘official acts’ (United States v. Ng Lap Seng, No. 18-1725 (2d Cir. 2019)).

Transparency International – Glossary of Terms

An officer or employee of a government, public department or public international organisation. Definitions in anti-bribery laws vary and may include employees of state-owned enterprises and other government funded or owned entities.

Transparency International – University of Oxford Compliance

Who are public officials?

A public official is anyone in a position of official authority that is conferred by a state, i.e. someone who holds a legislative, administrative, or judicial position of any kind, whether appointed or elected.

Common examples include:

- government ministers and civil servants;
- local government members and officials;
- the police and other security agencies, such as immigration and border control;
- the armed forces; etc.

The definition also extends to include officials or agents of public international organisations and in some cases will also cover individuals who at first sight do not appear to fall within the definition or who do not necessarily consider themselves to be public officials. Generally, the following should be treated as public bodies and their staff, therefore, as public officials:

- 'QUANGOS' (the Law Commission, British Library, Civil Aviation Authority, etc.)
- world bodies (the World Bank, Red Cross and International Standards Organization)
- commercial and other bodies in countries where enterprise is largely state-owned, most notably China
- universities and research institutes in countries where these organisations are considered to be state bodies

If there is any doubt, then it is always safer to treat individuals and organisations as though they were public officials.

OECD – 2009 Anti-Bribery Recommendation & The Good Practice Guidance Glossary

A public official is anyone who holds a legislative, administrative or judicial office (either appointed or elected); any person exercising a public function, including for a public agency or a public enterprise (e.g. a state owned enterprise), any official or agent of a public international organisation.

Wolfsberg Group - Anti-Bribery and Corruption (ABC) Compliance Programme Guidance 2017

6.3 Public Officials

ABC laws generally treat public officials (see proposed definition below), whether domestic or foreign, as well as their representatives/agents, as presenting higher corruption risks for companies seeking to obtain or retain government business or to obtain or influence government action (e.g. legislative action, regulatory approvals or licensing).

FIs should ensure that their policies identify the heightened risk of interaction with public officials and provide a clear definition of the term to assist employees in identifying the associated risks. Such definition may include the degree of state ownership, control or influence of an entity that would cause the FI to treat employees of that entity as public officials.

ABC laws on the whole define public officials broadly. Therefore, FIs should consider defining public officials as individuals at any rank or level at the following types of organisations:

- National, regional, local or municipal governmental bodies (e.g. executive, legislative, judiciary)
- State-owned or state-controlled companies. Generally, an entity would be deemed state-controlled where a government body has at least one of the following attributes:
 - More than 50 per cent ownership
 - Voting control
 - Board control or
 - Other indicia of control (e.g. golden share, government demonstration of control)
- Central banks
- Sovereign wealth funds
- International organisations, development banks and public health agencies (e.g., the United Nations, EU, World Bank or IMF), as well as mixed private-public entities
- Royal families
- Political parties, party officials, and candidates for any level of political office

Appendix 3 – AML/CFT guidance on grand corruption risks for senior public officials

This guidance does not provide a definition for separate AML/CFT requirements. There is a clear distinction between the definitions of Politically Exposed Persons (PEP) and those of public officials. The latter is generally considered as wider ranging and specifically covers individuals in junior roles. However, for consistency this appendix considers common PEP considerations.

FATF – International Standards on Combating Money laundering and the financing of Terrorism & Proliferation 2012

FATF Recommendations talk to PEPs and PEP screening:

Recommendation 6: Financial service providers must put in place appropriate risk management systems to determine whether a (potential) customer or the individual who ultimately owns or controls the customer is a **politically exposed person** (PEP). When doing business with a PEP, financial service providers must take reasonable measures to determine the PEP's source of wealth and funds. Such measures increase the possibility of detecting instances where public officials and other persons who are (or have been) entrusted with prominent public functions in a foreign country — such as Heads of State, senior politicians, senior government judicial or military officials, senior executives of state-owned corporations and important political party officials—are abusing their positions for private gain (Recommendation 6). FATF glossary commentary:

36. The Glossary definition of politically exposed person provides some examples of the types of prominent public functions that an individual may be or may have been entrusted with by a foreign or domestic government (e.g., Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials) or by an international organisation (e.g., directors, deputy directors and members of the board or equivalent function).

37. Middle ranking or more junior individuals in the foregoing categories are explicitly excluded from the Glossary definition of politically exposed person. However, there should be awareness that middle ranking and more junior officials could act on behalf of a PEP to circumvent AML/CFT controls. These less prominent public functions could be appropriately taken into account as customer risk factors in the framework of the overall assessment of risks associated with the business relationship in accordance with Recommendation 10 when they are acting on behalf of a PEP.

38. Although the Glossary definition includes some examples of what is meant by prominent public function, the precise level of seniority which triggers the PEPs requirements is not specified, and the list of examples provided is not exhaustive. This is because what constitutes a prominent public function domestically depends on the size (e.g. number of inhabitants, size of the budget), particular organisational framework of government or international organisation concerned, and the powers and responsibilities associated with particular public functions and other factors that are considered as part of the risk assessment under Recommendation 1. For example, prominent public functions may exist at the federal, state or provincial, and/or municipal levels. Jurisdictions may use the risk assessment in Recommendation 1 to identify the specific levels and types of PEPs which pose a higher risk.

39. It is a good practice for countries to provide guidance to financial institutions and DNFBPs concerning what constitutes a prominent public function for both domestic and foreign PEPs. The starting point is the FATF Recommendations, with the specific guidance to be informed by the risk assessment. The absence of guidance can create or perpetuate unintended determinations by financial institutions and DNFBPs on who is (and is not) a PEP. Not only will this make monitoring compliance more difficult for supervisory agencies, but it may lead to case-by-case PEP decisions by reporting institutions that are influenced by the political preferences or business interests of senior management.

40. A number of approaches are possible. In some cases, it may be best practice for such guidance to specify a baseline list of particular positions within government which are sufficiently prominent so as to qualify as a PEP (e.g., president, minister, deputy minister, etcetera), and to make the list publicly available (for example on the internet). Another possible method would be to use asset disclosures of public officials who are required to disclose their assets. In these instances, domestic and foreign financial institutions and DNFBPs could potentially access such information. This is particularly important for foreign financial institutions and DNFBPs, as corrupt officials will tend to hide proceeds of corruption abroad, yet it is extremely difficult for financial institutions and DNFBPs to determine which customers would be considered PEPs in a foreign country.

41. Another approach would be to describe generally the types of responsibilities that are sufficiently prominent (e.g., final approval over government procurement processes, responsibility for budgetary spending over a certain amount, decision making powers over government subsidies and grants). It should be made clear that any list cannot be relied on as the sole source of information and does not override financial institutions' and DNFBPs' assessment of risk of the business relationship and the client in other ways.

FCA – Guidance on the treatment of Politically Exposed Persons (PEPs)

FCA guidance includes risk assessment of PEPs according to their exposure to opportunities for grand corruption (e.g. type of role, home government's reputation for integrity and governance, etc).

- 2.17 The definition of a 'prominent public function' will vary according to the nature of the function held by a person. The FCA would expect firms to understand the nature of the position held and whether the function gives rise to the risk of large-scale abuse of position. If a position is held in a country assessed as being at a lower risk of large-scale corruption (because of the system and checks and balances in place that reduce the threat) then only those with true executive power should be considered to hold a prominent public function. In the UK, it will not normally be necessary to treat public servants below Permanent or Deputy Permanent Secretary as having a prominent public function.
- 2.18 The regulations exclude from the definition of a PEP those who are 'junior or mid-ranking'. In those cases it will normally only be necessary to meet the obligations to undertake customer due diligence. However, a firm should be alive to the potential that middle ranking and more junior officials could act on behalf of a PEP when assessing the overall risks a customer might present; where it assesses there might be a risk, a firm should consider what additional measures it needs to take. This includes any transaction or business relationship established in a high-risk third country.

FCA guidance on risk assessment factors for PEPs:

A PEP may also pose a lower risk if they are entrusted with a prominent public function by a country where information available to the firm shows that it has the following characteristics:

- Associated with low levels of corruption;
- Political stability, and free and fair elections;
- Strong state institutions;
- Credible anti-money laundering defences;
- A free press with a track record for probing official misconduct;
- An independent judiciary and a criminal justice system free from political interference;
- A track record for investigating political corruption and taking action against wrongdoers;
- Strong traditions of audit within the public sector;
- Legal protections for whistleblowers;
- Well-developed registries for ownership of land, companies and equities; and
- Lower risk indicators – personal and professional

A PEP may pose a lower risk if they:

- Are subject to rigorous disclosures requirements (such as registers of interests, independent oversight of expenses); and
- Do not have executive decision-making responsibilities (e.g. an opposition MP or an MP of the party in government but with no ministerial office)

A PEP may pose a greater risk if they are entrusted with a prominent public function in a country that is considered to have a higher risk of corruption. In coming to this conclusion, a firm should have regard to whether, based on information available, the country has the following characteristics:

- Associated with high levels of corruption;
- Political instability;
- Weak state institutions;
- Weak anti-money laundering defences;
- Armed conflict;
- Non-democratic forms of government;
- Widespread organised criminality;
- A political economy dominated by a small number of people/entities with close links to the state;
- Lacking a free press and where legal or other measures constrain journalistic investigation;
- A criminal justice system vulnerable to political interference;
- Lacking expertise and skills related to book-keeping, accountancy and audit, particularly in the public sector;
- Law and culture antagonistic to the interests of whistleblowers;
- Weaknesses in the transparency of registries of ownership for companies, land and equities; and
- Human rights abuses

Higher risk indicators – personal and professional

The following characteristics might suggest a PEP is higher risk:

- Personal wealth or lifestyle inconsistent with known legitimate sources of income or wealth; if a country has laws that do not generally permit the holding of a foreign bank account, a bank should satisfy itself that the customer has authority to do so before opening an account;
- Credible allegations of financial misconduct (eg facilitated, made, or accepted bribes);
- Responsibility for, or able to influence, large public procurement exercises, particularly where procurement is not subject to competitive tender, or otherwise lacks transparency; and
- Is responsible for, or able to influence, allocation of scarce government licenses such as mineral extraction concessions or permission for significant construction projects.

FCA commentary on the regulatory definition of PEPs (emphasis showing commentary):

- Heads of state, heads of government, ministers and deputy or assistant ministers.
- Members of parliament or of similar legislative bodies – similar legislative bodies include regional governments in federalised systems and devolved administrations, including the Scottish Executive and Welsh Assembly, where such bodies have some form of executive decision-making powers. It does not include local government in the UK but it may, where higher risks are assessed, be appropriate to do so in other countries.

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- Members of the governing bodies of political parties – the FCA considers that this only applies to political parties who have some representation in a national or supranational Parliament or similar legislative body as defined above. The extent of who should be considered a member of a governing body of a political party will vary according to the constitution of the parties, but will generally only apply to the national governing bodies where a member has significant executive power (e.g. over the selection of candidates or distribution of significant party funds).
 - Members of supreme courts, of constitutional courts or of any judicial body the decisions of which are not subject to further appeal except in exceptional circumstances – in the UK this means only judges of the Supreme Court; firms should not treat any other member of the judiciary as a PEP and only apply EDD measures where they have assessed additional risks.
 - Members of courts of auditors or of the boards of central banks
 - Ambassadors, charges d'affaires and high-ranking officers in the armed forces –the FCA considers this is only necessary where those holding these offices on behalf of the UK government are at Permanent Secretary/Deputy Permanent Secretary level, or hold the equivalent military rank (e.g. Vice Admiral, Lieutenant General, Air Marshal or senior)
 - Members of the administrative, management or supervisory bodies of State-owned enterprises – the FCA considers that this only applies to for profit enterprises where the state has ownership of greater than 50 per cent or where information reasonably available points to the state having control over the activities of such enterprises
 - Directors, deputy directors and members of the board or equivalent function of an international organisation – the FCA considers that international organisations only includes international public organisations such as the UN and NATO. The government made clear in its consultation of 15 March 2017 that it does not intend this definition to extend to international sporting federations.

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