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Money Laundering (Politically Exposed Persons) Guidelines, 2015

In exercise of the powers conferred upon the Financial Intelligence Unit by section 15(2)(e) of the Money Laundering and Proceeds of Crime Act 2008¹, I,

PALESA KHABELE

Director of the Financial Intelligence Unit, issue the following guidelines:

Citation and commencement

1. These guidelines may be cited as the Money Laundering (Politically Exposed Persons) Guidelines, 2015 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. In these guidelines, unless the context otherwise requires, words and expressions used shall have the same meaning respectively assigned to them in the Money Laundering and Proceeds of Crime Act 2008, and the following words shall have the meaning ascribed to them:

“Act” means the Money Laundering and Proceeds of Crime Act 2008;

“AML” means anti-money laundering;

“AU” means the African Union;

“beneficial owner” means a natural person who ultimately owns or controls a customer or a natural person on whose behalf a transaction is being conducted and also includes a person who exercises ultimate effective control over a legal person or arrangement. For purposes of these guidelines, “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership or control is exercised through a chain ownership or by means of control other than direct control;

“CDD” means customer due diligence;

“**CFT**” means combating the financing of terrorism;

“**close associates**” are individuals who are closely connected to a PEP, either socially or professionally;

“**domestic PEP**” is a person who is or has been entrusted domestically with prominent public function, among others: Head of Government, a minister or deputy minister in the Government, a holder of a statutory position, a chief accounting officer in the Government, a holder of an executive post in a political party, senior officer of the disciplined forces and services, a judge and a senior official in the Judiciary, a chief executive or director of a state owned corporation or institution;

“**IMF**” means the International Monetary Fund;

“**family members**” means individuals who are related to a PEP either directly (consanguinity) or through marriage or similar (civil) forms of partnerships;

“**FATF**” means the Financial Action Task Force;

“**financial institution**” means a financial institution as defined under the Financial Institution Act, 2012²;

“**FIU**” means the Financial Intelligence Unit;

“**foreign PEP**” is a person who is or has been entrusted with prominent public function by a foreign country, among others: a foreign head of government or state, a minister or deputy minister, a politician, a senior government official, judicial or military officials, a senior executive of a state owned corporation, an important political party official;

“**Government**” means the Government of Lesotho;

“**international organization PEPs**” means a person who is or has been entrusted with a prominent function by an international organisation who serves as a member of senior management, among others: a director, deputy director, or a member of a board or equivalent function;

“**ML**” means money laundering;

“NGO” means a non-governmental organisation;

“PEP” means a politically exposed person;

“reasonable measures” means appropriate measures which are commensurate with the money laundering or terrorist financing risks;

“SADC” means the Southern African Development Community; and

“TF” means terrorist financing.

Domestic PEP and foreign PEP

3. (1) A domestic PEP is distinguished from a foreign PEP by the country which has entrusted a person with a prominent public function.

(2) The county of domicile or nationality of a person is not relevant in determining the type of PEP, but may be relevant in determining the level of risk of a specific domestic PEP.

Customer Due Diligence for PEPs

4. (1) An accountable institution shall apply CDD and risk based approach measures to any type of customer, whether being a PEP or not.

(2) Where an accountable institution is provided with information which clearly indicates a PEP status of an occasional customer, the accountable institution shall apply the following enhanced due diligence requirements:

- (a) have appropriate risk-management systems to determine whether the customer or beneficial owner is a PEP;
- (b) obtain written senior management approval for establishing a business relationship or continuing (for existing customer) with such business relationship;
- (c) take reasonable measures to establish the source of funds and source of wealth; and

- (d) conduct enhanced ongoing monitoring of the business relationship.

(3) An accountable institution which is a financial institution shall take reasonable measures to determine, during a pay-out, whether the beneficial owner or beneficiary of a life policy is a PEP.

(4) If the accountable institution which is a financial institution determine that there is a higher risk by virtue of the beneficial owner or beneficiary of the life policy being a PEP, the financial institution shall:

- (a) inform senior management before the pay-out of the policy proceeds; and
- (b) conduct enhanced scrutiny on the whole business relationship with the policy-holder, and consider making a suspicious transaction report where necessary.

(5) An accountable institution shall, periodically, monitor its existing client base against changes in the PEP status and not only at the time of establishing the relationship.

Determine if a customer is a domestic PEP

5. (1) An accountable institution shall take reasonable measures, based on the assessment of the level of risk, to determine whether a customer is a domestic PEP by reviewing, in accordance with the relevant risk factor, CDD data collected when:

- (a) establishing a business relationship;
- (b) carrying out occasional transactions above the threshold designated by the Commissioner;
- (c) carrying out occasional cross-border and domestic wire transfer transactions above the designated threshold, including serial payments, and cover payments;
- (d) there is a suspicion of money laundering or terrorist financing; or

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- (e) an accountable institution has doubts about the accuracy or adequacy of previously obtained customer identification data.
- (2) In the event of low risk cases, no further steps are required to determine if a customer is a PEP.
- (3) In cases of higher risk business relationship with a PEP, an accountable institution shall apply the following enhanced risk mitigation measures:
- (a) obtain additional information on the customer such as volume of assets;
 - (b) update more regularly the identification data of the customer and beneficial owner;
 - (c) obtain additional information on the intended nature of the business relationship;
 - (d) obtain information on the source of funds or source of wealth;
 - (e) obtain information on the reasons for intended or performed transactions;
 - (f) obtain the approval of senior management to commence or continue the business relationship; or
 - (g) conduct enhanced monitoring of the business relationship by increasing the number and timing of controls applied; and selecting patterns of transactions that need further examination.

Determine if a customer is a foreign PEP

6. (1) An accountable institution shall take appropriate risk management systems, as part of its internal rules, to determine whether a customer or beneficial owner is a foreign PEP by taking proactive steps such as:

- (a) assessing customers on the basis of risk criteria, risk profiles, and the business model;
 - (b) verifying the CDD information; and
 - (c) undertaking an accountable institution's own research on the customer.
- (2) Guideline 5(3) shall apply to a foreign PEP.

Determine if a customer is an international organisation PEP

7. (1) An accountable institution shall apply the criteria for a domestic PEP to determine whether a customer is an international organisation PEP.

(2) The requirements for a domestic PEP shall apply to an international organisation PEP.

Establishing or continuing a business relationship with a PEP

8. (1) When considering whether to establish or continue with a business relationship, an accountable institution shall:

- (a) determine the level of money laundering or terrorist financing risk associated with the particular PEP; and
- (b) consider whether the accountable institution has adequate controls in place to mitigate money laundering or terrorist financing risk.

(2) The decision whether to establish or continue with the business relationship shall be taken at the level of senior management.

(3) An accountable institution shall increase the level of monitoring of the business relationship in order to determine whether transactions or activities under the business relationship appear unusual or suspicious.

Reporting

9. (1) Where an accountable institution suspects or has reasonable

grounds to suspect that funds of a PEP are the proceeds of a criminal activity, the accountable institution shall file a suspicious transaction report with the FIU.

(2) The reporting of a suspicious transaction shall be in accordance with the prescription period under the Money Laundering (Prescription of Reporting Period) Notice, 2015³.

Risk assessment of the PEP's business relationship

10. (1) In assessing risk of a PEP's business relationship, an accountable institution shall gather sufficient information to understand the particular characteristics of the public function that the PEP has been entrusted with.

(2) In the case of an international organisation PEP, an accountable institution shall gather sufficient information to understand the business model of that organisation.

(3) The assessment of the business relationship may take into account:

- (a) customer risk factors;
- (b) country risk factors;
- (c) product, service, transaction or delivery channel risks;
or
- (d) nature of the prominent public function that the PEP has or hold, such as his or her level of seniority, access to or control over public funds and the nature of the position held.

(4) Potential risk situations, which are not intended to be exhaustive, are set out in the Schedule.

Beneficial owners

11. (1) An accountable institution shall, when conducting CDD, identify the beneficial owner and shall take reasonable measures to verify the identity of the beneficial owner.

(2) If there are reasonable grounds to believe that a beneficial owner is a PEP, an accountable institution shall verify if the beneficial owner is a PEP.

(3) An accountable institution shall inquire the reason for a person purporting to act on behalf of a beneficial owner in order to determine whether the beneficial owner of the customer or client is a PEP.

(4) If a person who is acting on behalf of a PEP, or if a customer or beneficial owner is identified as a family member or close associate of a PEP, an accountable institution shall apply all the requirements for a PEP.

(5) An accountable institution that processes payments purporting to be from life insurance policy pay-outs shall apply risk-based monitoring of such payments to determine if the recipient of the funds is a PEP.

Prominent public function

12. (1) An accountable institution shall take special attention that what constitutes prominent public function depends on the size, including but not limited to, the number of inhabitants and size of the budget, of a particular organisational framework of government or international organisation concerned.

(2) In determining what constitutes prominent public function, an accountable institution shall undertake a risk assessment by considering factors such as the powers and responsibilities associated with particular public functions.

Time limits of PEP status

13. (1) An accountable institution shall ensure that the handling of a customer or client who is no longer entrusted with a prominent public function is based on an assessment of risk and not on prescribed time limits.

(2) In assessing the money laundering or terrorist financing risk of a PEP who is no longer entrusted with prominent public function, an accountable institution shall consider, amongst others, the following possible risk factors:

- (a) the level of (informal) influence that the individual could still exercise;

- (b) the seniority of the position that the individual held as a PEP; or
- (c) whether the individual's previous and current function are linked in any way, including but not limited to, formally by appointment of the PEP's successor, or informally by the fact that the PEP continues to deal with the same substantive matters.

Family members and close associates

14. (1) An accountable institution shall apply the requirements for all types of PEPs to family members and close associates of a PEP.

(2) In establishing whether a person is a family member of a PEP, an accountable institution shall consider the level of influence that person have, and how broad the circle of close family members and dependents tends to be.

(3) In establishing whether a person is a close associate of a PEP, an accountable institution shall examine the relationship established between such person and the PEP which may include, among others:

- (a) prominent members of the same political party, civil organisation, employee union or employers association as the PEP;
- (b) business partners or associates, especially those that share beneficial ownership of legal entities with the PEP, or who are otherwise connected through joint membership of a company board or otherwise; or
- (c) known sexual partners outside the family unit, including but not limited to, boyfriends, girlfriends or mistresses, in which case an accountable institution should further consider the social, economic, and cultural context to determine how close the relationship generally is.

(4) For the assessment of risk, an accountable institution shall establish the links between the close associate or family member with the

PEP to determine the level of risk.

(5) The period for which the requirements for all types of PEPs should apply to a close associate or family member of a PEP who is no longer entrusted with a prominent public function should be determined in accordance with the assessment of the risk for the PEP.

Sources of information for PEPs

15. (1) An accountable institution shall continuously conduct CDD as a source of information for the purpose of determining that a client or customer is a PEP.

(2) When conducting CDD, an accountable institution shall identify the client's or customer's principal occupation or employment or line of business.

(3) Without derogating from the provisions of sub-guideline (1), an accountable institution may source information from AML-specific websites, international instruments, FATF, FATF-style regional bodies, AU, SADC, IMF, World Bank and NGO reports and assessments, whether mutual evaluations or assessments, and analyses of AML or CFT compliance, governance, revenue management and transparency.

Change in PEP status

16. (1) An accountable institution shall monitor non-PEP relationships for a change in a PEP status, client or customer profile or transaction activity to determine if existing clients or customers have become PEPs after establishing a business relationship with the accountable institution.

(2) An accountable institution shall update client or customer information regularly and ensure that such ongoing monitoring is based on assessment of risk.

Internal control policies

17. (1) An accountable institution shall establish and maintain internal control policies that include ongoing employee training programmes.

(2) The training programmes shall be designed to address effective ways of determining whether a client or customer is a PEP and to understand, assess and handle the potential risks associated with PEPs.

(3) An accountable institution shall ensure that the training programmes are updated by using real life case studies and examples, thus not using only automated software programmes for detecting and handling the risks associated with PEPs.

Information sharing

18. (1) Accountable institutions within international sectors may share information amongst themselves on PEPs for AML purposes.

(2) In line with secrecy obligations under the Act, accountable institutions shall share information to determine whether a PEP is engaged in money laundering activity notwithstanding any obligation as to secrecy or other restriction on disclosure of information imposed by law.

Senior management

19. (1) Consistent with the requirement for an accountable institution to obtain senior management approval for establishing or continuing a business relationship with a PEP, an accountable institution shall determine what constitutes senior management within the accountable institution.

(2) What will constitute senior management shall depend on the size, structure, and nature of the accountable institution involved.

(3) An accountable institution shall ensure that senior management are aware of relationships with PEPs and in no circumstances the accountable institution shall undertake business relationships with PEPs in the absence of adequate controls by senior management.

(4) In assessing whether an accountable institution should undertake a business relationship with a PEP, senior management involved shall:

- (a) have full knowledge and understanding of the accountable institution's AML or CFT internal control programmes;

- (b) have a strong understanding of the potential or existing client's or customer's ML or TF risk profile; and
- (c) have active involvement in the approval process of the accountable institution's AML or CFT policies and procedures.

(5) Without limiting the determination or otherwise of an accountable institution in assessing what constitutes senior management, an accountable institution may establish monitoring committees, or comparable decision making structures that:

- (a) review establishment of business relationships with PEPs at the acceptance stage and on an on-going basis;
- (b) ensure that all relevant internal information is carefully considered in specific cases;
- (c) manage the termination of a business relationship with a PEP in appropriate circumstances; and
- (d) ensure that appropriate information, which include internal policies, procedures, and controls regarding PEPs, is available within the accountable institution when and where necessary.

(6) Decision making structures referred to herein may include AML or CFT head, a person responsible for ensuring compliance by employees with the Act and any law relating to AML or CFT, and client or customer service representatives.

Sources of funds and wealth

20. (1) An accountable institution shall take reasonable measures to establish the source of funds of a PEP.

(2) The source of funds, for purposes of these guidelines, shall refer to the origin of the particular funds or other assets which are the subject of the business relationship between an accountable institution and a PEP, amongst others: the amount being invested, deposited, or wired as part of the business

relationship.

(3) An accountable institution shall take reasonable measures to establish the source of wealth of a PEP.

(4) The source of wealth, for purposes of these guidelines, shall refer to the origin of a PEP's volume of wealth or total assets which shall include information on how much wealth a PEP would be expected to have accumulated, and how the PEP acquired such wealth.

(5) An accountable institution shall conduct ongoing CDD measures on the business relationship with a PEP to ensure that the level and type of transactions are consistent with the accountable institution's knowledge of the PEP's sources of funds and sources of wealth.

(6) When conducting ongoing CDD, an accountable institution shall take the following factors into account to ensure that the business relationship is commensurate with what could be reasonably expected from a PEP in particular circumstances:

- (a) the current income of a PEP;
- (b) sources of funds;
- (c) sources of wealth;
- (d) business undertaking; and
- (e) family businesses.

(7) Where the level or type of activity in the business relationship is different from what can be reasonably explained, given the knowledge of a PEP's sources of funds and sources of wealth, an accountable institution shall undertake a further assessment on the business relationship to establish whether to:

- (a) continue with or terminate the business relationship; or
- (b) file a suspicious transaction report to the FIU.

- (8) An accountable institution may use different sources of information for verifying the accuracy of a PEP's sources of funds and sources of wealth, which may include but not limited to; public property registers, land registers, asset disclosure registers, past transactions, or information about legal and beneficial ownership where available.
- (9) When establishing the source of funds and the source of wealth of a PEP, an accountable institution shall focus on what can be reasonably explained, as opposed to what might be expected.

PALESA KHABELE
DIRECTOR, FINANCIAL INTELLIGENCE UNIT

Guideline 10(4)

SCHEDULE**Non-exhaustive Potential Risk Situations****1. Customer risk factors**

- (a) the business relationship is conducted in unusual circumstances (e.g. significant unexplained geographic distance between an accountable institution and the PEP);
- (b) non-resident PEP;
- (c) PEP establishing a legal person or arrangements that are personal asset-holding vehicles;
- (d) PEP having control in companies that have nominee shareholders or shares in bearer form;
- (e) use of intermediaries when this does not match with normal business practices or when this seems to be used to shield identity of a PEP;
- (f) use of family members or close associates as legal owner;
- (g) PEP involved in business that is cash-intensive;
- (h) PEP making inquiries about the institution's AML policy or PEP policy;
- (i) PEP being uncomfortable with information about sources of funds and sources of wealth;
- (j) information provided by a PEP being inconsistent with other publicly available information;
- (k) PEP moving funds repeatedly from and to countries to which the PEP does not seem to have ties with;

- (l) PEP from a country that prohibits or restricts its citizens to hold accounts or own property in a foreign country;
- (m) PEP providing inaccurate or incomplete information;
- (n) PEP having substantial authority over or access to state assets and funds;
- (o) PEP having control over regulatory approvals, including awarding of licenses and concessions;
- (p) PEP downplaying importance of his or her public function;
- (q) PEP having access to, control or influence over government or corporate accounts; or
- (r) the ownership structure of the company associated with a PEP appears unusually or excessively complex given the nature of the company's business.

2. Country risk factors

- (a) PEP from a country identified by credible sources, such as mutual evaluation or detailed assessment reports or published follow-up reports or FATF website, as having inadequate anti-money laundering and counter the financing of terrorism systems;
- (b) PEP from a country subject to sanctions, embargos or similar measures issued out;
- (c) PEP from a country identified by credible sources as having significant levels of corruption, drug or human trafficking or other criminal activities;
- (d) PEP from a high risk country having control or influence over decisions that would effectively address identified shortcomings in the AML/CFT system;
- (e) PEP from a country that have not signed or ratified or sufficiently implemented relevant anti-corruption conventions;

- (f) PEP from a country that is dependent on the export of illicit goods such as drugs;
- (g) PEP from a country with a political system that is based on personal rule, autocratic regime, or a country known to enrich those in power and with high level of patronage appointments;
- (h) PEP from a country with poor governance and accountability principles; or
- (i) PEP from a country or geographical area identified by credible sources as providing funding or support for terrorist activities, or having designated terrorist organisations operating within such country.

3. Product, service, transaction or delivery channel risk factors

- (a) PEP engaged in private banking;
- (b) anonymous transactions (which may include cash) with a PEP;
- (c) non-face-to-face business relationships or transactions with a PEP;
- (d) PEP engaged in arms trade;
- (e) business involved in government procurement;
- (f) construction and large infrastructure;
- (g) PEP engaged in extraction and mining;
- (h) multiple suspicious transaction reports submitted on a PEP;
- (i) consistent use of rounded amounts where this cannot be explained by the expected business;
- (j) personal and business related money flows are difficult to distinguish from each other;
- (k) financial activity is inconsistent with legitimate or expected ac-

tivity, funds are moved from and to an account or between accountable institutions without a business rationale;

- (l) an account shows substantial activity after a dormant period or over a relatively short time, or shortly after commencing business;
- (m) PEP receiving large international funds transfers to a gaming account. The PEP withdraws a small amount for gaming purposes and withdraws the balance by way of cheque;
- (n) PEP using multiple bank accounts for no apparent commercial or other reason;
- (o) wire transfers from and to a PEP account that cannot be economically explained, or that lack relevant originator or beneficiary information;
- (p) PEP dealing in precious metals and stones;
- (q) PEP dealing in luxurious transport services including motor vehicles, helicopters or planes; or
- (r) payment received from unknown or un-associated third parties with a PEP.

NOTE

- 1. Act No. 4 of 2008
- 2. L.N. No. 3 of 2012
- 3. L.N. No. 22 of 2015