



GUIDANCE NOTE ON PROMINENT INFLUENTIAL PERSONS:

**NON BANK FINANCIAL INSTITUTIONS
AML/CFT & P GUIDANCE NOTE NO.3 OF 2020**

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GUIDANCE NOTE ON PROMINENT INFLUENTIAL PERSONS (“PIPs”)

Definition

“SP” (“Specified Parties”) refers to a person listed in schedule I of the Financial Intelligence Act, 2019 (“FI Act”)

“PIP” refers to Prominent Influential Person

“ML” refers to Money Laundering

“TF” refers to Terrorism Financing

“PF” refers to Proliferation Financing

“CDD” refers to Customer Due Diligence

1. Introduction

This document serves to avail guidance on identification considerations pertaining to Prominent Influential Persons (“PIPs”), as per Section 44 (1)(b) of the Financial Intelligence Act, 2019 (“FI Act”).

Due to their position and influence, it is recognized that many PIPs are in positions that potentially can be abused for the purpose of committing Money Laundering (“ML”) offences and related predicate offences, as well as conducting activities related to Terrorism Financing (“TF”) and Proliferation Financing (“PF”).

Section 18 of the FI Act prescribes obligations with regards to the treatment of “Risk clients”. Where a client or beneficial owner has been identified through risk management mechanisms to be a high risk for ML, TF and PF, employees of Specified Parties (“SPs”) must apply enhanced due diligence measures. Owing to their standing in society, it is internationally recognized and accepted that PIPs are inherently high-risk clients.

To address these risks, the FI Act, amongst others, requires Specified Parties to implement measures that prevent the misuse of the financial systems by PIPs. This includes detecting and reporting potential suspicious transactions to the Financial Intelligence Agency (“FIA”).

2. Defining a PIP

As per Section 2 of the FI act a “prominent influential person” means a person who is entrusted with public functions within Botswana or by a foreign country, his or her close associates or immediate member of the family or an international organization and includes —

- (a) a President;
- (b) a Vice-President;
- (c) a Cabinet Minister;
- (d) a Speaker of the National Assembly;
- (e) a Deputy Speaker of the National Assembly;
- (f) a member of the National Assembly;
- (g) a Councilor;
- (h) a senior government official;
- (i) a judicial officer;
- (j) a *Kgosi*;
- (k) a senior executive of a private entity;
- (l) a senior executive of a public body;
- (m) a senior executive of a political party;
- (n) religious leaders;
- (o) senior executives of international organizations operating in Botswana;
- (p) a person who has in the last five years held any of the positions referred to in paragraphs (a) to (o); or
- (q) such person as may be prescribed;

3. This guidance note is aimed at addressing the following:

3.1. What do Specified Parties need to do?

- SPs are obliged in terms of section 17 to 18 of the FI Act to have appropriate risk-management systems and procedures to identify when their customer (or the beneficial owner of a customer) is a high risk or PIP and to manage the inherently high risks arising from having a business relationship with such customer.
- Business relationships with the family members and known close associates of a PIP should also be subjected to enhanced scrutiny. This guidance note discusses this further.
- In meeting obligations of the FI Act, it is expected that this is done on a Risk-Based Approach (“RBA”). This literally means, the level of enhanced due diligence measures should be subjected to the level of risk such client presents. Equally so, the nature of products should be considered on the level of risk exposure.

3.2. Why do PIPs, their close family members and associates pose a risk?

- PIPs, by virtue of the positions they occupy and are exposed to functions that may lead to abuse of office for personal gain or other interests. A PIP may use the financial system to launder the proceeds through abuse of office. It is by virtue of their roles that if a person becomes and or is identified as a PIPs are required to be subjected to enhanced due diligence by SPs.
- A PIP's family members and close associates may also benefit from, or be used to facilitate, abuse of public office by the PIP. It is as a result of this connection that family members and known close associates are required to be subject to scrutiny equivalent to such of a PIP.
- Family members and close associates are not themselves PIPs but solely as a result of their connection to a PIP which are deemed to inherently be of a higher risk makes them to be categorized as PIPs.

3.3. Do PIPs Client Relationships with SPs pose the same level of risk?

SPs should have appropriate risk management systems to determine whether the customer or beneficial owner is a PIP.

This means that proactive steps must be taken, such as assessing customers on the basis of risk criteria, risk profiles, the business model, verification of CDD information, and the institution's own research, to determine whether a customer or a beneficial owner is a PIP. This should be followed by enhanced due diligence on the client.

Relationships with PIPs may represent increased risks due to the possibility that individuals holding such positions may misuse their power and influence for personal gain or advantage, or for the personal gain or advantage of close family members and close associates. Such individuals may also use their families or close associates to conceal funds or assets that have been misappropriated as a result of abuse of their official position or resulting from bribery and corruption. In addition, they may also seek to use their power and influence to gain representation and/or access to, or control of, legal entities for similar purposes. It is important to understand, however, that the majority of PIPs are neither in a position to, nor do, abuse their position through grand corruption and therefore will not represent any undue additional risk to a SP solely by virtue of their categorization as a PIP.

Example 1: Inherently high-risk client investing in products that are vulnerable for ML

- Unit Trust products are investments which earn an investor interest. One can thus place funds in a unit trust and such investment would grow with interest earnings. Unit Trust products differ in nature.

A minister chooses to invest in Unit Trust products with a local insurance service provider. The Unit Trust product invested operates by clients making payments, not only from salaries but from any other source, into such investments. The minister, who, for arguments sake earns a net income of BWP 40,000.00 monthly suddenly makes an additional investment of BWP 700,000.00. In terms of the FI Act, the AI would be expected to satisfy itself that such funds are not from illicit activities. This is easier determined by understanding the sources of such funds. It may be that such funds are from legitimate sources, but the service provider has to conduct the necessary due diligence to understand such.

Another example could be a high-risk client investing in a Unit Trusts or similar long-term investment product. That is, investing BWP 1,000,000.00 in a product that only matures (or pays out) after five years. Within a short period after investing, such client cancels the investment and the proceeds are transferred to his or her bank account. To those laundering, the penalty fees for cancellation are negligible as the bulk of the funds are released/layered. The banks receiving such funds would not readily find same suspicious as such could be interpreted as proceeds from an investment product.

3.4. Key components of the PIP Risk Management Framework

A wide range of controls may be considered for the identification and management of PIP relationships but not all will be appropriate for application across SPs s entire range of business.

Identification – New Customers: SPs should have risk based procedures to determine whether a customer is a PIP, either before the relationship is established or, where permitted under applicable law, shortly thereafter. Once a new customer is determined to be a PIP the SPs should risk assess the customer and apply appropriate due diligence measures in a timely manner.

Identification – Existing Customers: where SPs becomes aware that an individual has become a PIP it should apply risk based due diligence and controls.

Customer Risk Assessment: Once it has been determined that a new or existing customer is a PIP, SPs should undertake a risk assessment to determine both the level of financial crime risk posed by that customer and the proportionate levels of due diligence and monitoring that are required. The SPs should use its customer risk assessment process, taking into account risk factors such as geography, product, business type and delivery channel. For geographic risk, the SPs should consider information available from reliable and independent sources as to the levels of systemic corruption in the country of political exposure.

Due Diligence: Once the PIP has been subject to risk assessment, firms should apply risk based due diligence procedures, which may include:

- Understanding and documenting the length of time, the title or position and country in which the PIP holds, or held, political exposure. If the individual customer is a close family member or close associate, the relationship of the person to the PIP must be documented
- Understanding and documenting the nature and intended purpose of the relationship/account, the source of the initial funds (where appropriate) and the anticipated levels of account activity
- Understanding and documenting the customer's source of funds and source of wealth (e.g. salary and compensation from official duties and wealth derived from other sources). Where the financial crime risks are high or there are doubts as to the veracity of the information provided by the customer, SPs should validate this information using independent and reliable sources. SPs may use internet and media searches to determine and/or validate this information, having considered the potential limitations of such sources
- Conduct Negative News/Adverse Media screening on the customer and evaluate any positive hits
- Where the specified party in accordance with its risk assessment determines that a prospective customer is a prominent influential person, the specified party must obtain senior management approval before establishing the business relationship.' And once the business relationship has been established, the specified party must conduct enhanced monitoring of the business relationship as per section 18(2) of the FI Act.

3.5. Who are the "family members" of a PIP?

Family members of a PIP include the following:

- a) a spouse or partner of the PIP;
- b) children of the PIP and their spouses or partners; and
- c) parents of the PIP.

3.6. Who are the people regarded as "close associates" of a PIP?

A Close associate is a person who is closely connected to another person socially, professionally or through business interests or activities.

Known close associates of a PIP may include the following:

- a) individuals known to have joint beneficial ownership of a legal entity or a legal arrangement or any other close business relationship with a PIP. For example, a PIP's business partners; and

b) individuals who has sole beneficial ownership of a legal entity or a legal arrangement which is known to have been set up for the benefit of a PIP.

- A known close associate of a PIP is not a PIP themselves but are deemed inherently of a higher risk purely as a consequence of being associated with a PIP.
- SPs need to understand the nature of relationships of high-risk clients and determine the extent of potential risk exposure. There is no “one size fits all” approach to determining circumstances which present high risks.

3.7. Does NBFIRA provide a PIPs list?

No. NBFIRA gives guidance on characteristics that would qualify a client to fall within the definition of a PIP. Equally, NBFIRA avails guidance on the necessary due diligence measures to be applied to PIPs, as per the FI Act. With such guidance and as well as current affairs/ public information, SPs should be in a position to identify persons who would be considered PIPs;

3.8. What are some indicators that a PIP poses a higher risk?

Higher risk indicators - geographical

A PIP may pose a greater risk if she/he is from, or closely connected to a country with some of the following characteristics:

- a) associated with high levels of corruption;
- b) political instability;
- c) ineffective state institutions;
- d) ineffective anti-money laundering framework;
- e) armed conflict;
- f) non-democratic forms of government;
- g) widespread organized criminality;
- h) a political economy dominated by persons with close links to the state;
- i) lacking a free press on legal or other means of investigation;
- j) a criminal justice system vulnerable to political interference;
- k) lacking expertise and skills related to bookkeeping, accountancy and audit, particularly in the public sector;
- l) law and culture unfriendly to the interests of whistle-blowers; and

m) weaknesses in the transparency of registries of ownership for companies, land and equities.

Higher risk indicators – personal and professional

A prominent influential person may pose a higher risk if she/he has any of the following characteristics:

- a) hold or held a very high-ranking political position;
- b) personal wealth or lifestyle inconsistent with known legitimate sources of income or wealth;
- c) subject to credible allegations of financial misconduct;
- d) there is evidence they have sought to disguise the nature of their financial circumstances;
- e) is responsible for, or able to influence, large public procurement exercises, particularly where procurement is not subject to competitive tender, or otherwise lacks transparency; and
- f) is responsible for, or able to influence allocation of scarce government licenses/permits such as mineral extraction concessions or permission for significant construction projects.

3.9. What are some indicators that a PIP's family or known close associates pose a higher risk?

The family and close associates of a PIP may pose a higher risk if they have any of the following characteristics:

- a) Wealth derived from the granting of government licenses';
- b) Wealth derived from granting of government tenders and access to the privatization of former state assets;
- c) Wealth derived from commerce in industry or sectors associated with high-barriers to entry or a lack of competition, particularly where these barriers stem from law, regulation or other government policy;
- d) Wealth or lifestyle inconsistent with known legitimate sources of income or wealth;
- e) Subject to credible allegations of financial misconduct;
- f) Appointment to a public office that appears inconsistent with personal merit; and
- g) The PIP is acting on behalf of the family member or close associate.

This is not an exhaustive list. SPs should consider the profile or information relating to PIPs, and who they are doing business with.

3.10. PIP's behavior – Red Flags

Specific behavior and individual characteristics of PIPs may raise red flags or a suspicion. For example;

- Use of corporate vehicles (legal entities and legal arrangements) to obscure ownership or business(es)/ company(ies) involved
- The PIP makes inquiries about the institution's AML policy or PIP policy
- The PIP seems generally uncomfortable to provide information about source of wealth or source of funds
- The PIP insists on skipping some due diligence requirements as they are well known
- The information that is provided by the PIP is inconsistent with other (publicly available) information
- The PIP is unable or reluctant to explain the reason for doing business in the country of the financial institution or listed business
- Funds are repeatedly moved to and from countries to which the PIP does not appear to have ties
- The PIP is or has been denied entry to the country (visa denial).

3.11. What measures should AI/SP take when they identify a customer is a PIP, or a family member or known close associate of a PIP?

- The FI Act require that enhanced customer due diligence measures be taken to manage and mitigate the risks posed by PIPs and their families and known close associates. This includes appropriate risk management systems/mechanisms to determine whether the customer, or the beneficial owner of the customer, is a PIP, or a family or known close associate of a PIP.
- Section 18(2) of the FI Act requires that SPs:
 - a) obtain senior management approval before establishing the business relationships;
 - b) take reasonable measures to establish the source of wealth and source of funds of a prospective customer;

“*Source of wealth*” refers to the origin of the PIP’s entire body of wealth (the total assets), which in turn will give that SPs an indication of both the volume of wealth the customer would be expected to have and how the PIP acquired that wealth.

“*Source of funds*” refers to the origin of the particular funds or assets which are subject of the business relationship between the PIP and SPs, such as amounts being invested, deposited or transferred.

c) conduct enhanced, ongoing monitoring of those business relationships.

3.12. To what extent may public information be taken into account?

When deciding whether a person is a known close associate of a PIP, SPs only need to have regard for information that is already in their possession or credible information that is publicly known. SPs should make use of credible public information when establishing source of wealth and source of funds. This could include information from public registers, such as beneficial ownership registers and other credible databases. SPs should take account of the information on these types of registers or databases to minimize the burden on customers and avoid duplication with other regimes where appropriate. If any, the extent to which media reports and other information in the public domain are to be relied on is dependent on the SPs evaluation of such information.

3.13. What measures may SPs take in higher-risk situations?

Each circumstance or customer presents a unique set of facts which may have a bearing on risk exposure. For example, a PIP who is involved in certain types of business ventures may present a different risk to a PIP whose only source of income is a monthly salary, but he is in a position to influence awarding of tenders etc. Such unique circumstances of each PIP thus call for unique or tailored approach in due diligence, depending on the control framework of a-SP. It is thus quite challenging to prescribe a “one size fits all approach”. What is helpful is to categorize customers who share commonalities in terms of their risk profiles. Each category is then accorded certain control measures relevant to its risk exposure. When customers are engaged, they are simply subjected to due diligence measures as per such risk categorization.

The following measures can be amongst key considerations appropriate in higher-risk situations:

- a) Establish the source of wealth and source of funds (per identified transaction) of family members or known close associates of a PIP;
- b) Oversight and approval of the relationship takes place at a more senior level of management. Before providing services to a PIP, such are first approved by senior management; and

c) A business relationship with a PIP or a PIP's family and close associates is subjected to more frequent and thorough formal reviews to determine potential suspicious transactions which should be reported to the FIA.

It should be noted that if a person is a PIP, this does not mean that there is an automatic link to criminal activities or abuse of the financial system. The enhanced due diligence applied in the cases of PIPs are preventative and should not be interpreted as stigmatizing PIPs as being involved in criminal activity, rather these measures recognize the increased risk, including opportunity, associated with holding this type of role.

4. Commencement

This Guidance Note comes into effect on 01 July 2020.

5. General

This Guidance Note:

- a) uses plain language to explain the obligations under the Act, as well as related Regulations;
- b) is intended to explain and guide, but not replace the language of the Act and Regulations;
- c) is issued without prejudice to other existing guidance or work in the identified area; and
- d) NBFIRA reserves the right to amend, modify or change the contents of this document.