



Federation of  
Law Societies  
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# Guidance on Politically Exposed Persons/ Heads of International Organizations

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**This guidance explains:**

**Why** people who are identified as politically exposed persons (PEPs) and heads of international organizations (HIOs) may create unique risks as clients of legal professionals

**How** to determine whether the client is a foreign or domestic PEP or a HIO, or a family member of or a person closely associated with one of those people

**What** a legal professional can do to mitigate risk if a client is identified as a PEP or HIO

## INTRODUCTION

Part of managing risk when applying law societies' anti-money laundering (AML) requirements may involve identifying clients as politically exposed persons (PEPs) and heads of international organizations (HIOs) and assessing the risks associated with them. The increased risk arises because PEPs and HIOs are typically entrusted with important functions or are associated with political officeholders which creates potential exposure to corrupt activities. The [family members](#) and close associates of PEPs and HIOs may also be vulnerable to such exposure because they can more easily avoid detection.

There are no specific law society AML rules or requirements related to PEPs or HIOs. However, when dealing with PEPs and HIOs, or family members or close associates of such people, a legal professional may determine that enhanced due diligence - reasonable, appropriate and proportionate in the circumstances – should be taken to satisfy themselves that they have sufficiently verified the identity of the client in a retainer involving a financial transaction, that the transaction is for a legitimate purpose and consistent with the known profile of the client and their financial means, and that the source of funds or, in some cases, source of wealth, has been ascertained.

### 1. WHO ARE PEPS AND HIOS?

As a guide, the descriptions of PEPs and HIOs set out in the definitions in Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* are useful:



### Head of an international organization

A person who, at a given time, holds — or has held within a prescribed period<sup>1</sup> before that time — the office or position of head of

- (a) an international organization that is established by the governments of states;
- (b) an institution of an organization referred to in paragraph (a); or
- (c) an international sports organization.

### Politically exposed domestic person

A person who, at a given time, holds — or has held within a prescribed period<sup>2</sup> before that time — one of the offices or positions referred to in any of paragraphs (a) and (c) to (j) in or on behalf of the federal government or a provincial government or any of the offices or positions referred to in paragraphs (b) and (k):

- (a) Governor General, lieutenant governor or head of government;
- (b) member of the Senate or House of Commons or member of the legislature of a province;
- (c) deputy minister or equivalent rank;
- (d) ambassador, or attaché or counsellor of an ambassador;
- (e) military officer with a rank of general or above;
- (f) president of a corporation that is wholly owned directly by Her Majesty in right of Canada or a province;
- (g) head of a government agency;
- (h) judge of an appellate court in a province, the Federal Court of Appeal or the Supreme Court of Canada.
- (i) leader or president of a political party represented in a legislature;
- (j) holder of any prescribed office or position; or
- (k) mayor, reeve or other similar chief officer of a municipal or local government.

### Politically exposed foreign person

A person who holds or has held one of the following offices or positions in or on behalf of a foreign state:

- (a) head of state or head of government;
- (b) member of the executive council of government or member of a legislature;
- (c) deputy minister or equivalent rank;
- (d) ambassador, or attaché or counsellor of an ambassador;
- (e) military officer with a rank of general or above;
- (f) president of a state-owned company or a state-owned bank;

<sup>1</sup> The prescribed period is currently five years.

<sup>2</sup> The prescribed period is currently five years.



- (g) head of a government agency;
- (h) judge of a supreme court, constitutional court or other court of last resort;
- (i) leader or president of a political party represented in a legislature; or
- (j) holder of any prescribed office or position.<sup>3</sup>

The regulations under the PCMLTFA set out who are considered **family members** of PEPs or HIOs:

- their spouse or common-law partner;
- their biological or adoptive child(ren);
- their mother(s) or father(s);
- the mother(s) or father(s) of their spouse or common-law partner (mother-in-law or father-in-law); and
- the child(ren) of their mother or father (sibling(s)).

The regulations provide that once a person is determined to be a family member of a foreign PEP (including a deceased foreign PEP), they remain a family member of a foreign PEP forever and you are not required to make this determination again. Once a person is determined to be a family member of a domestic PEP or HIO, they remain a family member of a domestic PEP or HIO until five years after the domestic PEP or HIO has left office

A **close associate** can be a person who is connected to a PEP or HIO for personal or business reasons. Examples include persons who:

- are the business partners of, or who beneficially own or control a business with, a PEP or HIO;
- are in a romantic relationship with a PEP or HIO;
- are involved in financial transactions with a PEP or a HIO;
- serve as prominent members of the same political party or union as a PEP or HIO;
- serve as a member of the same board as a PEP or HIO;
- carry out charitable works closely with a PEP or HIO; or
- are listed as joint on a policy where one of the holders may be a PEP or HIO.

Once a person is determined to be a close associate of a PEP or HIO, they remain a close associate until they lose that connection.

### Why PEPs and HIOs May Present Unique Risks

As noted, because of their status, clients who are identified as PEPs and HIOs may be considered a higher risk for exposure to illicit activity. In addition, other factors related to retainers with such clients may prompt more consideration of risk, including:

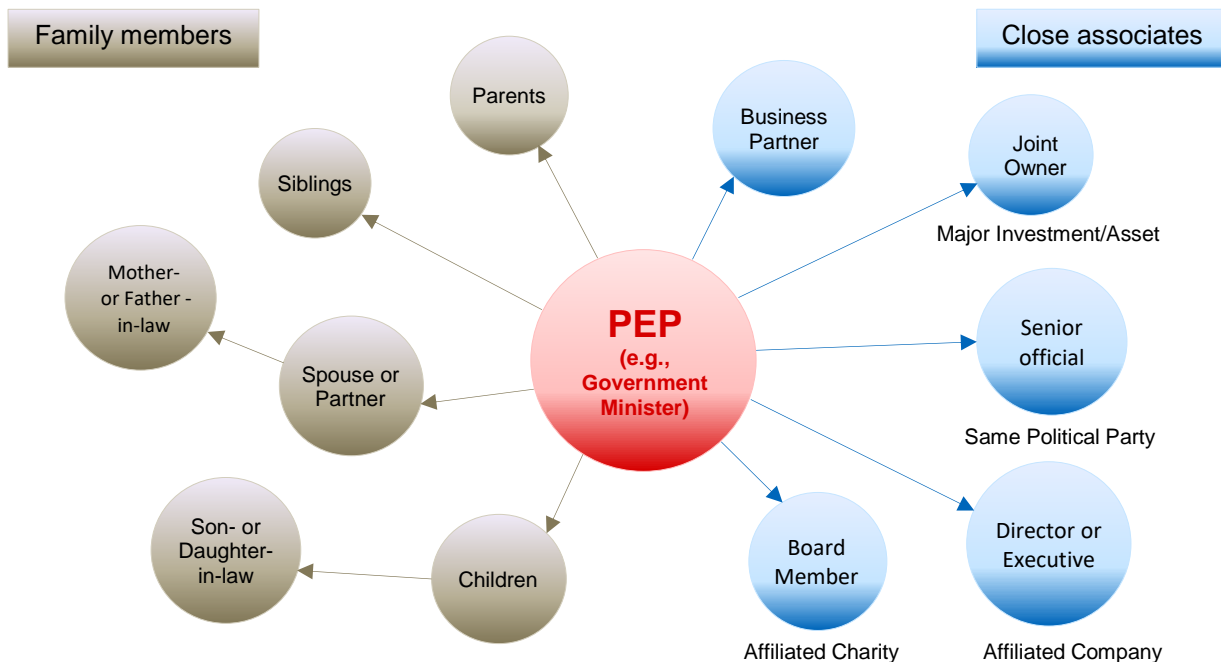
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<sup>3</sup> This would presumably be determined by regulation.



- the level of influence or control a client has in accessing or managing financial resources in their official capacity;
- a client who is not a local resident or who is outside of the practice's normal customer base/geographical service area;
- a client purchasing a local residential or commercial property while residing overseas; or
- a client based or conducting business in a high-risk country with known higher corruption or organized criminal activity, that is a known tax haven or that is known to have links to terrorist organizations.

### Sample PEP Visualization



## 2. DETERMINING A CLIENT'S STATUS AS A PEP OR HIO

Determining whether a client is a PEP or HIO should typically be done at the time the legal professional is verifying the identity of a client as required under law society AML rules.

In some cases, it will be apparent from their office, employment or appointment to a specific position or title that a client is a PEP or HIO. Where a question about their status remains, the legal professional may use information that is reasonably available to help determine whether or not a client is a PEP or HIO, based on an assessment of the client, the retainer, and the nature of the financial transaction(s) involved.



Measures may include one or more of the following actions:

- asking the client;
- conducting an open source search; or
- consulting a source of commercially available information.

This may include:

- Asking the person for information that could indicate PEP status, such as existing or previous connections to the relationships set out in the definitions;
- Accessing public domain information, such as parliament and government websites, reliable news sources and work by reputable pressure groups focused on corruption risk such as Transparency International or Global Witness
- Searching reliable public registers, such as business corporation registries
- Screening the person's name and other personal information against a commercial database that contains lists of PEPs, family members and known close associates or publicly available databases to gather more information about the person; using a database would require an understanding of how such databases are populated and being satisfied that those flagged by the system fall within the definition of a PEP, family member or close associate.

To establish whether someone is a family member or known close associate of a PEP, legal professionals may refer to information that is either in the public domain or already in their possession.

### **3. BEST PRACTICES WHEN DEALING WITH A CLIENT WHO IS A PEP OR HIO**

While there are no mandatory steps that must be taken once a client is identified as a PEP or HIO, it would be prudent to consider what further measures might be required based on assessment of the client's matter, the financial transactions associated with the retainer and other information about the client already obtained. If the assessment discloses increased risks of the client being used for, or involved in illicit activities, there are measures that may be taken beyond those already required by law society AML rules. These measures are described below.

#### **Screening**

A law practice may wish to incorporate a level of review before agreeing to act for a PEP or HIO as part of the risk assessment process. If the firm structure permits, this function might be assigned to a designated person, for example, one having overall responsibility for certain risk management processes or procedures. It may also be part of an established protocol, when files for new or existing clients are opened and assigned, to be undertaken by the legal professional receiving the file.



After collecting appropriate information and completing its assessment, a legal practice may conclude that there are few, if any, risks posed by a potential client who is a PEP or HIO, or if risks are present, that they can be managed or mitigated. In some circumstances, the legal practice may decide that the risks are higher than they can effectively mitigate. In those cases, the legal practice may decide that the retainer should be declined.

### Source of Wealth

If a legal professional determines that a client is a PEP or a HIO, or a family member or close associate of such a person, the legal professional may need to take steps to inquire into the client's source of wealth. This additional information should help in assessing whether the subject of the legal retainer and the financial transactions to be undertaken on the client's behalf are commensurate with what one could reasonably expect from that client, given their particular circumstances. Obtaining this information should give an indication of the volume of wealth the client would reasonably be expected to have and a picture of how they acquired such wealth. For example, a mayor of a small city known to have a modest salary who is purchasing a business venture for several millions of dollars without financing should prompt an inquiry into source of wealth.

Source of wealth is different from information about source of funds, which must be obtained under law society rules based on the Model Rule on Client Identification and Verification.

Source of Funds: The economic activity or action generating the funds received, paid or transferred in a transaction in respect of the client's retainer, and information that identifies the person or entity if not the client who provides the funds, and the relationship of the client to the person or entity providing the funds.

Source of Wealth: The origin of the client's entire body of wealth, or how the client came to have the funds. The source refers to the activities that have generated or contributed to a client's accumulation of funds and assets, or how a client acquired their total wealth over time.

Sources of wealth for a person can include:

- Inheritance
- High income from employment
- Savings
- Business revenue
- Sales of business or assets
- Investments



Sources of wealth or assets for a business or entity with which the person is connected can include:

- Proceeds from an IPO (initial public offering)
- Funding and investments
- Equity from the business or entity owner(s)

Source of wealth may be established through a combination of sources, such as publicly available information, external confirmations and information provided by the client.

Depending on what a PEP is required to disclose because of their role, publicly available information may include categories such as income, values of real estate, stock holdings, positions on boards of companies, etc.

Sources for information may include:

- publicly available property registers, land registers, asset disclosure registers, company registers
- past transactions (in the case of existing clients)
- sources of information about legal and beneficial ownership where available
- internet searches (from reputable sources), including social media, may reveal useful information about a PEP's wealth, lifestyle and official income
- confirmation from regulated professionals with knowledge of the client (e.g. accountants, investment advisors)
- evidence of title, copies of trust deeds, audited documents (annual reports containing information on dividends)
- documents confirming salary, tax returns and bank statements

In the absence of information from these sources, a legal professional may have to rely primarily on declarations made by the client. If such information can't be verified, this should be taken into consideration in determining the true value of wealth.

Generally, the amount of a client's accumulated wealth should appear to be reasonable and consistent with the information provided. Doubts about the origin of wealth should be satisfied before the legal professional proceeds with the engagement for legal services and the financial transactions associated with the retainer. Further, the refusal of a client who is a PEP or HIO to disclose information about how much wealth he or she controls could be a red flag.

## Enhanced Measures

### Foreign PEPs

If a client is a foreign PEP, the legal professional may consider undertaking additional due diligence, acknowledging the higher risk that may be present with such persons.





The legal professional may take enhanced measures for **verification of identity**. These would include obtaining additional information from a reliable source<sup>4</sup> that would typically be used to verify identity under law society rules or establishing more stringent thresholds for ascertaining identification. This may also involve gathering additional documents, data or information (e.g., occupation, assets, information available through public databases, Internet, etc.), or taking additional steps to verify the documents obtained. It may also be prudent to take measures to keep identity verification information up to date in an ongoing retainer.

The legal professional may also wish to take enhanced measures to **ascertain the nature and purpose of the transaction(s)** based on what is known about the client. This might involve obtaining information on the reasons for intended or conducted transactions or identifying patterns of transactions that need further examination. For example, where the client who is a PEP instructs on the movement of funds from a high-risk country with an inadequate AMLFT legislative regime, it is probably appropriate to obtain more information before proceeding with any legal work involving the financial transaction.

Related to the above measures is **enhanced monitoring of the professional business relationship** with the client. Enhanced monitoring involves monitoring the activity with the client over a period of time on a more frequent basis and incorporates different monitoring activities. The legal professional may consider the following measures to monitor the professional business relationship with foreign PEPs, should the retainer continue for a period of time:

- flagging unusual activities;
- setting limits or parameters regarding transactions that would trigger early warning signals and require mandatory review;
- reviewing transactions more frequently against risk indicators relevant to the professional relationship.

Enhanced monitoring may also involve the legal professional reviewing any planned or future transactions to ensure that they are consistent with the legal professional's understanding of the client's circumstances and their business or economic profile. These measures should help the legal professional to mitigate the risks of potentially high-risk clients like foreign PEPs, as increasing the internal controls for such professional business relationships will help increase awareness of any high-risk activities and transactions. Done effectively, this should assist in identifying any unusual or suspicious instructions or transactions.

### Domestic PEPs

A client who is a domestic PEP would not usually present a risk similar to a foreign PEP, given their different profile.

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<sup>4</sup> A reliable source is a trusted originator or issuer of information. To be considered reliable, the source should be well known and considered reputable. For example, a reliable source could be the federal, provincial, territorial or municipal levels of government, crown corporations, federally regulated financial institutions, or utility providers.



The legal professional's assessment of any risks associated with the retainer for a domestic PEP may involve consideration of factors such as:

- the prominence of the public functions the PEP undertakes, the type of position held by the client or the profile of the organization or institution where the client holds or has held their position
- the amount of time that has passed since the person held the position.
- whether the client's personal wealth or lifestyle is consistent with known legitimate sources of income or wealth
- responsibility for, or ability to influence, allocation of significant government resources or large public procurement initiatives
- assessing whether the client is subject to regulatory oversight, including disclosure requirements or prescribed ethical standards
- determining whether there is any known and relevant adverse media on the person;
- credible allegations of or actual past financial misconduct

### Record Keeping

As part of good risk management practice, legal professionals may wish to supplement the existing record-keeping requirements in law society AML rules with information they obtain when a retainer involves a PEP or HIO. This may include, for example, a record of the reasonable measures that were taken for enhanced due diligence and in longer term retainers, the nature of enhanced monitoring of the professional business relationship with the client for legal services.



## **ADDITIONAL RESOURCES:**

### **FINTRAC**

**Politically exposed persons and heads of international organizations guidance**

[Politically exposed persons and heads of international organizations guidance \(fintrac-canafe.gc.ca\)](https://www.fintrac-canafe.gc.ca)

**Politically Exposed Persons and Heads of International Organizations Guidance for Non-Account-Based Reporting Entity Sectors**

[Politically exposed persons and heads of international organizations guidance for non-account-based reporting entity sectors \(fintrac-canafe.gc.ca\)](https://www.fintrac-canafe.gc.ca)

### **Financial Conduct Authority (UK)**

The treatment of politically exposed persons for anti-money laundering purposes

[FG17/6: The treatment of politically exposed persons for anti-money laundering purposes \(fca.org.uk\)](https://www.fca.org.uk)

### **FATF Guidance**

Politically Exposed Persons

[FATF GUIDANCE \(fatf-gafi.org\)](https://www.fatf-gafi.org)

