STATE FINANCIAL MONITORING SERVICE OF UKRAINE

(with support of the International Monetary Fund)

GUIDELINES

to identify public figures and provide financial monitoring of their financial transactions

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CONTENT

FOREWORD

While determining a level of corruption in the country, a great significance is attributed to the agenda of building a national framework for prevention and counteraction of laundering of corruptive assets and its efficient performance.

The said framework is pretty well-developed which is confirmed by the fact that in late 2014, as part of the anti-corruption package of reforms, a new law was adopted in this field, namely the Law of Ukraine Law of Ukraine "On Anti-Money Laundering and Counteracting Terrorism Financing and Financing of the Spread of Mass Destruction Weapons" (hereinafter – the "Law").[1]

Priority being taken for the purpose of prevention of corruption and corruptive actionsof politically exposed persons are: first, elaboration of an efficient framework of economic and financial means of control and anti-money laundering; second, introduction, in parallel with generic norms, of special norms that procure liability for commitment of specific corruptive actions and also actions and impede which commitment the fight against corruption.

In spite of the active build-up of the national anti-money laundering (in 2002-2005, 2010-2011, 2013-2014) and anti-corruption (in 2010-2014) legislation, this agenda remains to be crucial now.

On the global arena, the agenda of fighting corruption and anti-money laundering is especially acute. This is addressed by two such influential international organizations, as GRECO and FATF. It is they that elaborate international standards for combating these phenomena and directly or through regional organizations assess the states in terms of compliance with these standards.

Ukraine is also assessed in this regard from time to time, and, as such experience shows, links between money laundering and corruption are traced on the theoretical, regulatory, and practical levels.

The Ukrainian legislation has identified a large number of preventive due diligence measures that are applied by financial and non-financial intermediaries with regard to politically exposed persons. At that, it should be noted that the international standards employ the term "politically exposed" for these persons, while the Law calls them "publicly exposed". In terms of their meaning, these words are not synonyms and undoubtedly differ, since the category of "publicly exposed persons" is wider than that of "politicallyexposed persons" [Translator's comment: The sake of coherence with the IMF Glossary, the term used in this translation is "politically exposed persons" or "PEPs"]. Therefore, the Ukrainian regulation is more rigid compared to the international requirements in terms of establishing an

[1] On Anti-Money Laundering and Counteracting Terrorism Financing and Financing of the Spread of Mass Destruction Weapons: Law of Ukraine, dated October 14, 2014, No. 1702-VII // Holos Ukrayiny. – 2014. – No. 216.

approach to measures of control over financial transactions of persons who have higher corruptive risks.

The guidelines focus on the analysis of the terminology and due diligence measures with regard to politically exposed persons under the Ukrainian legislation, as well as according to the international standards in the field of financial monitoring.

The guidelines have been developed primarily for primary financial monitoring entities, although they will be helpful for use by the staff of the state financial monitoring institution, law enforcement and judicial bodies, as well as research fellows.

SECTION I. Definition of Terms

1.1. National Politically Exposed Persons

The definition of the term “national politically exposed persons” is givenin clause 25 of part one of Article 1 of the Law.

> **National politically persons** shall mean individuals who perform or have performed the specified public functions in Ukraine, namely:
> President of Ukraine, Prime Minister of Ukraine, members of the Cabinet of Ministers of Ukraine;
> First deputies and deputies of ministers, heads of other central executive authorities, their first deputies and deputies;
> Members of the Ukrainian Parliament;
> Governor and members of the Board of the National Bank of Ukraine, members of the Council of the National Bank of Ukraine;
> Chairperson and judges of the Constitutional Court of Ukraine, the Supreme Court of Ukraine, and the higher specialized courts;
> Members of the Higher Council of Justice, members of the Higher Qualification Commission of Judges of Ukraine, members of the Qualification and Disciplinary Commission of Prosecutors;
> Ukrainian Prosecutor General and his/her deputies;
> Head of the Security Service of Ukraine and his/her deputies;
> Director of the National Anti-Corruption Bureau of Ukraine and his Deputies;
> Chairperson of the Anti-Monopoly Committee of Ukraine and his/her deputies;
> Chairperson and members of the Accounting Chamber;
> Members of the National Council of Ukraine for TV and Radio Broadcasting;
> Ambassadors extraordinary and plenipotentiary;
> Chief of the Headquarters - Commander-in-Chief of the Armed Forces of Ukraine, Commanders of the Land Forces, Air Forces, and Naval Forces of Ukraine;
> Civil servants whose offices are categorized as offices of categories one and two;
> Heads of regional bodies of the central executive authorities, regional bodies of prosecution, the Security Service of Ukraine, chairpersons and judges of courts of appeal;
> heads of administrative, management or supervisory bodies of state-owned and fiscal enterprises, economic partnerships with a share of more than 50% in the statutory capital owned by the state;
> chairpersons of governing bodies of political parties and members of their central statutory bodies.

The lawmaker procured that national PEPs are individuals who perform or have performed certain public functions or having been carrying on such functions for the last three years in Ukraine, namely:

1.1.1. Members of the Cabinet of Ministers of Ukraine

In accordance with Article 102 of the Constitution of Ukraine,[2]the President of Ukraine is the Head of State and acts in its name. The President of Ukraine is the guarantor of state sovereignty and territorial indivisibility of Ukraine, the observance of the Constitution of Ukraine and human and citizens' rights and freedoms.

[2] Constitution of Ukraine: Law of Ukraine, dated June 28, 1996, No. 254k/96-VR // Herald of the Ukrainian Parliament. – 1996. – No. 30.

Article 103 of the Basic Lawentails that the President of Ukraine is elected by the citizens of Ukraine for a five-year term, on the basis of universal, equal and direct suffrage, by secret ballot.

A citizen of Ukraine who has attained the age of thirty-five, has the right to vote, has resided in Ukraine for the past ten years prior to the day of elections, and has command of the state language, may be elected as the President of Ukraine. One and the same person shall not be the President of Ukraine for more than two consecutive terms.

The President of Ukraine may not have another representative mandate, hold office in bodies of state power or in associations of citizens, and also perform any other paid or entrepreneurial activity, or be a member of an administrative body or board of supervisors of an enterprise that is aimed at making profit.

1.1.2. Prime Minister of Ukraine

The Prime Minister of Ukraine is the highest government official in the executive branch of power. Article 114 of the Constitution of Ukraineprocures that the Prime Minister of Ukraine is appointed by the Ukrainian Parliament upon propositions of the President of Ukraine.

A nominee for appointment to the office of the Prime Minister of Ukraine is submitted by the President of Ukraine upon a proposal from the coalition of Ukrainian parliamentary factions formed under Article 83 of the Constitution of Ukraine or from the parliamentary faction which includes the majority of members of the Ukrainian Parliament in the constitutional composition of the Ukrainian Parliament.

In accordance with part two of Article 117 of the Constitution of Ukraine, the Prime Minister of Ukraine shall sign acts of the Cabinet of Ministers of Ukraine.

The status and powers of the Prime Minister of Ukraine, in addition to the Constitution of Ukraine, are also specified in the Law of Ukraine “On the Cabinet of Ministers of Ukraine”.[3]

1.1.3. Members of the Cabinet of Ministers of Ukraine

According to part 3 of Article 6 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine”, offices in the Cabinet of Minister of Ukraine are regarded as political offices falling out of the scope of labor and civil service legislation.

The status of the members of the Cabinet of Ministers of Ukraine is determined by the Constitution of Ukraine, the Law of Ukraine “On the Cabinet of Ministers of Ukraine”, and other laws of Ukraine.

[3] On the Cabinet of Ministers of Ukraine: Law of Ukraine, dated February 27, 2014, No. 794-VII // Holos Ukrayiny. – 2014. – No. 39.

Part 1 of Article 114 of the Constitution of Ukraine stipulates that members of the Cabinet of Ministers of Ukraine include, aside from the Prime Minister of Ukraine, First Vice Prime Minister, Vice Prime Ministers, and ministers.

According to Article 7 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine", members of the Cabinet of Ministers of Ukraine shall be citizens of Ukraine with the right to vote and a university degree, and speaking the state language. No person with a previous conviction, unless such conviction is spent or legally expunged, or subjected to an administrative sanction for corruption in the previous year may be appointed a member of the Cabinet of Ministers of Ukraine.

Members of the Cabinet of Ministers of Ukraine shall not have the right to have a concurrent job except for an educational, scientific or creative job in off-duty hours, or to be a member of a management body or a supervisory board of a for-profit company. Should any circumstances violating the requirement regarding concurrent jobs or positions arise, the member of the Cabinet of Ministers of Ukraine in question shall, within 20 days upon appearance of such circumstances, abandon such a job or position or submit a personal letter of resignation.

According to Article 9 of the above Law, members of the Cabinet of Ministers of Ukraine, except for Prime Minister of Ukraine, Minister of Defense of Ukraine, and Minister of Foreign Affairs of Ukraine, shall be appointed by the Ukrainian Parliament upon the recommendation of Prime Minister of Ukraine. When a new Cabinet of Ministers of Ukraine is created, the newly appointed Prime Minister of Ukraine shall submit recommendations on appointing members of the Cabinet of Ministers of Ukraine to the Ukrainian Parliament.

Presently, the Cabinet of Ministers of Ukraine includes heads of: the Ministry of Agrarian Policy and Food of Ukraine; the Ministry of Internal Affairs of Ukraine; the Ministry of Ecology and Natural Resources of Ukraine; the Ministry of Economic Development and Trade of Ukraine; the Ministry of Energy and Coal Industry of Ukraine; the Ministry of Foreign Affairs of Ukraine; the Ministry of Information Policy of Ukraine; the Ministry of Infrastructure of Ukraine; the Ministry of Culture of Ukraine; the Ministry of Youth and Sports of Ukraine; the Ministry of Defense of Ukraine; the Ministry of Education and Science of Ukraine; the Ministry of Health of Ukraine; the Ministry of Regional Development, Construction and Housing and Utilities of Ukraine; the Ministry of Social Policy of Ukraine; the Ministry of Finance of Ukraine; the Ministry of Justice of Ukraine.

1.1.4. First Deputy Ministers and Deputy Ministers

According to Article 9 of the Law of Ukraine "On the Central Executive Authorities",[4] a minister shall have a first deputy and deputies, one of which shall be the deputy for anti-corruption efforts.

[4] On the Central Executive Authorities: Law of Ukraine, dated March 17, 2011, No. 3166-VI // Holos Ukrayiny. – 2011. – No. 65.

First deputy ministers shall be appointed and discharged by the Cabinet of Ministers of Ukraine upon recommendations of Prime Minister of Ukraine based on propositions of the respective minister.

When a minister is discharged, first deputy minister and deputy ministers shall be discharged by the Cabinet of Ministers of Ukraine.

The person appointed first deputy minister or deputy minister shall comply with the requirements to members of the Cabinet of Ministers of Ukraine set forth in the Law of Ukraine "On the Cabinet of Ministers of Ukraine".

Offices of first deputy minister and deputy ministers are political ones and fall out of scope of labor and civil service legislation.

The exception is a Deputy Minister – Chief of Staff who, according to Article 10 of the Law of Ukraine "On the Central Executive Authorities", shall be appointed and discharged by the Cabinet of Ministers of Ukraine upon recommendation of the Prime Minister of Ukraine based on proposition of the respective minister. A Deputy Minister – Chief of Staff is a civil servant.

Nominees for Deputy Minister – Chief of Staff shall be citizens of Ukraine having university degree and complying with other requirements stipulated by civil service legislation.

1.1.5. Heads of other central executive authorities, first deputy heads and deputy heads

According to Article 19 of the Law of Ukraine "On the Central Executive Authorities", the head of a central executive authority shall be appointed and discharged by the Cabinet of Ministers of Ukraine upon recommendation of the Prime Minister of Ukraine.

The head of a central executive authority shall lead the central executive authority and manage its activities.

A central executive authority shall be created for performance of individual functions for implementation of state policy in the capacity of a service, agency, or inspectorate.

Presently, the following services operate in Ukraine: the State Aviation Service; the State Archival Service; the State Enforcement Services of Ukraine; the State Treasury Service of Ukraine; the State Migration Service of Ukraine; the State Penitentiary Service of Ukraine; the State Border Guard Service of Ukraine; the State Assay Service of Ukraine; the State Registration Service of Ukraine; the State Sanitary and Epidemiologic Service of Ukraine; the State Geological and Mineral Resources Service of Ukraine; the State Service of Mining Supervision and Industrial Safety of Ukraine; the State Service of Ukraine for War Veterans and Participants of the Anti-terroristic Operation; the State Intellectual Property Service of Ukraine; the

State Statistics Service of Ukraine; the State Service of Ukraine on Drugs Control; the State Emergency Service of Ukraine; the State Service of Ukraine on Medicinal Products; the State Service of Ukraine on Personal Data Protection; the State Service of Ukraine on HIV/AIDS and Other Socially Dangerous Diseases; the State Regulatory Service of Ukraine; the State Financial Monitoring Service of Ukraine; the State Veterinary and Phytosanitary Service of Ukraine; the State Service of Export Control of Ukraine; the State Fiscal Service of Ukraine.

The following agencies operate: the State Agency of Automobile Roads of Ukraine; the State Water Resources Agency of Ukraine; the State Environmental Investment Agency of Ukraine; the State Agency on Energy Efficiency and Energy Saving of Ukraine; the State Agency for E-Governance of Ukraine; the State Agency of Land Resources of Ukraine; the State Agency of Reserve of Ukraine; the State Agency of Fisheries of Ukraine; the State Film Agency of Ukraine; the State Agency of Ukraine for Tourism and Resorts; the State Agency of Ukraine on the Exclusion Zone Management; the State Space Agency of Ukraine; State Audit Service of Ukraine.

Also, the following inspectorates have been created in Ukraine as of today: the State Inspectorate of Architecture and Construction Control of Ukraine; the State Ecological Inspectorate of Ukraine; the State Inspectorate of Educational Institutions of Ukraine; the State Agriculture Inspectorate of Ukraine; the State Inspectorate of Ukraine for Sea and River Transport Safety; the State Inspectorate of Ukraine for Land Transport Safety; the State Inspectorate of Ukraine for Price Control; the State Inspectorate of Ukraine for Consumer Rights Protection; the State Labor Inspectorate of Ukraine; the State Nuclear Regulatory Inspectorate of Ukraine.

Furthermore, the Pension Fund of Ukraine is also considered a central executive authority.

Central bodies of executive power with special status are the Anti-Monopoly Committee of Ukraine, the State Committee for Television and Radio Broadcasting of Ukraine, the State Property Fund of Ukraine, Administration of the State Service of Special Communication and Information Protection of Ukraine, the National Agency of Ukraine on Civil Service.

Activities of the central executive authorities shall be directed and coordinated by the Cabinet of Ministers of Ukraine through respective ministers as set forth in the legislation.

The head of a central executive authority may not have more than two deputies appointed and discharged by the Cabinet of Ministers of Ukraine upon recommendations of the Prime Minister of Ukraine.

Propositions concerning appointment or discharge of the head and deputy heads of a central executive authority shall be submitted to the Prime Minister of

Ukraine by the minister directing and coordinating the activities of the central executive authority.

The head of a central executive authority shall submit propositions on appointment or discharge of the deputies to the minister.

The head and deputy heads of a central executive authority are civil servants.

1.1.6. Members of the Ukrainian Parliament

Article 76 of the Constitution of Ukrainestates that the constitutional composition of the Ukrainian Parliament consists of 450 members of the Ukrainian Parliament who are elected for a five-year term on the basis of universal, equal and direct suffrage, by secret ballot.

A citizen of Ukraine who has attained the age of twenty-one on the day of elections, has the right to vote, and has resided on the territory of Ukraine for the past five years, may be a member of the Ukrainian parliament.

Powers of members of the Ukrainian Parliament are determined by the Constitution and the laws of Ukraine.

According to Article 1 of the Law of Ukraine "On the Status of Members of the Ukrainian Parliament",[5] a members of the Ukrainian Parliament is a representative of the people of Ukraine in the Ukrainian Parliament elected according to the Law of Ukraine "On Elections of Members of the Ukrainian Parliament"[6] and authorized by the people to exercise powers entailed by the Constitution and the laws of Ukraine for the duration of his or her term of powers.

People's Deputies shall exercise their powers on a full-time basis.

The powers of a People's Deputy shall begin upon taking the oath of the office before the Ukrainian Parliament and putting the personal signature under the text of the oath. The powers of a People's Deputy shall be terminated upon opening of the first meeting of the new Parliament.

Article 3 of the Law of Ukraine "On the Status of Members of the Ukrainian Parliament" envisages that a Member of the Ukrainian Parliament shall not: be a member of the Cabinet of Ministers of Ukraine, the head of a central executive authority; have another representative mandate or concurrently be a civil servant; hold the office of a city, town or a village mayor; take any paid job beside Deputy's except for teaching, scientific or creative activities, as well as medical practice in off-duty hours; be engaged as an expert in a criminal proceedings or practice law; be a member of a management body, board or council of a for-profit company, institution or organization.

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[5] On the Status of Members of the Ukrainian Parliament: Law of Ukraine, dated November 17, 1992, No. 2790-XII // Holos Ukrayiny. – 1992.

[6] "On Elections of People's Deputies of Ukraine: Law of Ukraine", November 17, 2011, No. 4061-VI // Holos Ukrayiny. – 2011. – No. 234.

1.1.7. Governor and members of the Board of the National Bank of Ukraine, members of the Council of the National Bank of Ukraine[7]

In accordance with Article 18 of the Law of Ukraine “On the National Bank of Ukraine”[8]the Governor the National Bank of Ukraine shall be appointed to the office upon the proposition by the President of Ukraine for a term of seven years.

The Governor of the National Bank shall be a citizen of Ukraine permanently residing in Ukraine and having formal higher education in economics or finance, or academic degree in the fields above as well as experience of work of not less than 10 years in the legislative bodies or on management positions in other state authorities and the state agencies ensuring implementation of the state financial, economic or legal policies, or on management positions in international financial organizations, or on management positions in a banking institution, or else the scientific research experience in the field of finance, economics or laws, and having irreproachable business reputation, inter alia having no previous conviction, unless such conviction is spent or legally expunged in accordance with the legally established procedure.

No person is entitled to be the Governor of the National Bank, if such a person is a mandatory with representative capacity or holds (has held) the office of the chief of a state authority or other government agency (and from the day of expiry of the run of office of such a person less than one year has passed), or is a leader of a political party or a member of the governing bodies of a political party, or is a chief or a member of the governing board of a legal entity (with the exception of the National Bank), or else is a direct or indirect owner of some shares (stakes) of a legal entity. For the period of execution of his/her office the Governor of the National Bank shall suspend membership in any political party.

Chairman of the National Bank of Ukraine is in the position up to the moment when the newly appointed Chairman arrives, except as provided in paragraphs 2 - 10 part eight of Article 18 of the Law of Ukraine "On the National Bank of Ukraine."

The National Bank has five deputies, including one first deputy, which are appointed and dismissed by the Council of the National Bank by the Chairman of the National Bank.

Deputy Chairman of the National Bank of Ukraine is appointed for a term of seven years. The appointment and dismissal of the Vice Governor of the National Bank carried out in a way that ensured the possibility of holding a meeting of the Board of the National Bank in accordance with the requirements of Article 17 of the Law of Ukraine "On the National Bank of Ukraine."

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[7] While detecting officials of the National Bank of Ukraine and of the Council of the National Bank of Ukraine among its clients, primary financial monitoring entities should pay attention to the recent legislative initiatives in this domain, namely to the draft Law on Making Amendments to Some Legislative Acts of Ukraine on Development of the Institutional Capacity of the National Bank of Ukraine (registration # 2742 of April 27, 2015).

[8] On the National Bank of Ukraine: Law of Ukraine, dated May 20, 1999, No. 679-XIV // Holos Ukrayiny. – 1999.

The same person can not be appointed Deputy Chairman of the National Bank for more than two consecutive terms.

According to Article 14 of the Law of Ukraine "On the National Bank of Ukraine" Board of the National Bank of Ukraine in accordance with basic principles of monetary policy through appropriate monetary instruments and other means of banking regulation ensures the implementation of monetary policy, organizes other functions under this Law and conducts management of the National bank.

National Bank of Ukraine is a collegial body and consists of six people: Head of the National Bank, the First Deputy Head and Deputies of the National Bank.

Board of the National Bank of Ukraine is conducted by the Head of the National Bank of Ukraine.

In this connection, as the Deputy Heads of the National Bank of Ukraine, are part of its Board of Directors, they are also assigned to national public figures.

The procedure for organizing and conducting meetings of the Board of the National Bank of Ukraine is determined by its Regulations.

The decision of the National Bank of Ukraine is adopted collectively by simple majority. Each member of the Board of the National Bank of Ukraine has one vote. Head of the National Bank of Ukraine has the casting vote in case of equality of votes of the Board of the National Bank of Ukraine during decision making.

Meetings of the Board of the National Bank of Ukraine are competent if attended by at least four members of the Board of the National Bank of Ukraine.

National Bank of Ukraine has the right to create a Committee on Oversight and regulation of banks supervision (oversight) of payment systems and to delegate it the right to supervise the banking system, including the right to apply to banks and other persons who may be subject of the inspection of National Bank of Ukraine, measures (sanctions) imposed by the laws of Ukraine, in addition to measures imposed by paragraphs 11 - 13 of Article 73 of the Law of Ukraine "On banks and banking activity".

Board of the National Bank of Ukraine has the right to create a Committee on Asset and Liability National Bank and delegate to it the authority to make decisions on asset and liability management, including the gold reserves of Ukraine, ensuring risk monitoring and financial results from operations with assets and liabilities of the National Bank Ukraine.

In accordance with Article 8 of the Law of Ukraine “On the National Bank of Ukraine, the chief duties of the Council of the National Bank consist in elaboration of the Monetary Policy Fundamentals and exercise of control over monetary policy implementation.

Council of The National Bank of Ukraine supervises the internal control system of the National Bank of Ukraine.

Article 10 of the said Lawentails that the Council of the National Bank is comprised of the members of the Council of the National Bank appointed by the President of Ukraine and by the Ukrainian Parliament.

A member of the National Bank Council may be a citizen of Ukraine permanently residing in Ukraine and having formal higher education in economics, finance or law, or academic degree in the fields above as well as experience of work of not less than 10 years in the legislative bodies or on management positions in other state authorities and the state agencies ensuring implementation of the state financial, economic or legal policies, or on management positions in international financial organizations, or on management positions in a banking institution, or else the scientific research experience in the field of finance, economics or laws, and having irreproachable business reputation, inter alia having no previous conviction, unless such conviction is spent or legally expunged in accordance with the legally established procedure.

The Verkhovna Rada of Ukraine appointed four members of the National Bank of Ukraine by taking appropriate resolution. President of Ukraine appoints four members of the National Bank of Ukraine by issuing the decree. Governor of the National Bank of Ukraine, appointed by the Verkhovna Rada of Ukraine by the President of Ukraine, member of the Board of the National Bank of Ukraine for the position.

Nominations of persons for appointment to the Supreme Council of Ukraine members of the National Bank of Ukraine held a special discussion at a public meeting of the profile committee of the Verkhovna Rada of Ukraine, which makes its recommendations to the Verkhovna Rada of Ukraine.

Term of the members of the National Bank of Ukraine is seven years, besides the Head of the National Bank of Ukraine, which is part of the National Bank of Ukraine for a period of exercise of powers by post. The same person may be appointed a member of the National Bank of Ukraine for more than two consecutive terms.

President of Ukraine dismisses members of the National Bank of Ukraine appointed by him by issuing the decree, which must state the grounds for dismissal.

The Verkhovna Rada of Ukraine dismisses designated members of the National Bank of Ukraine by adopting an appropriate resolution on the proposal of the profile committee of the Verkhovna Rada of Ukraine, which shall contain grounds for dismissal.

The powers of the Head of the National Bank of Ukraine as a member of the Council of the National Bank of Ukraine prematurely end when he resigns or if his dismissal from office on other grounds provided by this Law.

Members of the National Bank of Ukraine (except the Head of the National Bank of Ukraine) for the performance of its functions are being paid by the National

Bank. The fee amount is determined according to the methodology approved by the Council of the National Bank of Ukraine on the proposal of the Board of the National Bank of Ukraine.

Information about the remuneration received by each member of the Council of the National Bank of Ukraine shall be published as a part of the annual financial statements of the National Bank of Ukraine.

1.1.8. Chairperson and judges of the Constitutional Court of Ukraine

Article 147 of the Constitution of Ukraine entails that the Constitutional Court of Ukraine is the only body of constitutional jurisdiction in Ukraine.

In accordance with Article 148 of the Basic Law, the Constitutional Court of Ukraine is comprised of eighteen judges of the Constitutional Court of Ukraine.

The President of Ukraine, the Ukrainian Parliament and a Congress of Judges of Ukraine appoint six judges of the Constitutional Court of Ukraine each.

A citizen of Ukraine who has attained the age of forty on the day of appointment, has a higher legal education and professional experience of no less than ten years, has resided in Ukraine for the last twenty years, and has command of the state language may be a judge of the Constitutional Court of Ukraine.

A judge of the Constitutional Court of Ukraine is appointed for nine years without the right of appointment to a repeat term.

The Chairperson of the Constitutional Court of Ukraine is elected by secret ballot only for one three-year term at a special plenary meeting of the Constitutional Court of Ukraine from among the judges of the Constitutional Court of Ukraine.

Information about the Chairperson and judges of the Constitutional Court of Ukraine is available on the official website of the Constitutional Court of Ukraine (http://www.ccu.gov.ua).

1.1.9. Chairperson and judges of the Supreme Court of Ukraine

In accordance with Article 125 of the Constitution of Ukraine, the Supreme Court of Ukraine is the highest judicial body in the system of general jurisdiction courts.

Article 39 of the Law of Ukraine “On the Judiciary and Status of Judges”[9] states that the Supreme Court of Ukraine shall be composed of 48 judges from among which the Chairperson of the Supreme Court of Ukraine, First Deputy Chairperson of the Supreme Court of Ukraine and four Deputy Chairperson of the Supreme Court of Ukraine shall be elected.

Part three of Article 20 of the Law of Ukraine "On the Judicial System and Status of Judges" establishes that Head of the Supreme Court of Ukraine and his

[9] On the Judiciary and Status of Judges: Law of Ukraine, dated July 7, 2010, No. 2453-VI // Holos Ukrayiny. – 2010. – No. 142.

Deputies are elected to office and dismissed by the Plenum of the Supreme Court of Ukraine in the manner defined by the law.

According to the second part of the Article 39 of the Law of Ukraine "On the Judicial System and Status of Judges" a judge of the Supreme Court of Ukraine may judge that the results of the qualification evaluation confirmed the ability to administer justice in the highest judicial body of general jurisdiction courts Ukraine has Judge experience least than fifteen years or a degree, received before the appointment as a judge, and the experience of scientific activity in law or in scientific research in law in high school or higher educational institutions that train specialists educational degree "master" to appointment as a judge for at least fifteen years.

The following chambers operate within the Supreme Court of Ukraine:

- the Judicial Chamber in Administrative Cases;

- the Judicial Chamber in Commercial Cases;

- the Judicial Chamber in Criminal Cases;

- the Judicial Chamber in Civil Cases.

A Judicial Chamber consists of judges of the respective special jurisdiction (administrative, economic, criminal, civil).

The status of the Chairperson of the Supreme Court of Ukraine and of the judges of this Court is regulated by Articles 41 and 40 of the Law of Ukraine “On the Judiciary and Status of Judges”.

1.1.10. Chairpersons and judges of the higher specialized courts

According to Article 125 of the Constitution of Ukraine, the highest judicial bodies of the specialized courts are the respective higher specialized courts.

Article 31 of the Law of Ukraine “On the Judiciary and Status of Judges” stipulates that the higher specialized courts act within the system of courts of general jurisdiction as courts of cassation for civil and criminal, commercial, and administrative cases.

The higher specialized courts are the Higher Specialized Court of Ukraine for Civil and Criminal Cases, the Higher Economic Court of Ukraine, the Higher Administrative Court of Ukraine.

The judge of a high specialized court may judge that the results of the qualification evaluation confirmed the ability to administer justice in a high specialized court, has experience as a judge for at least ten years or a degree, received before the appointment as a judge, and the experience of scientific activity in law or scientific and educational activities in the field of law in high school or higher educational institutions that train specialists educational degree "master" for appointment as a judge for at least ten years.

In a high specialized court chambers are formed from different categories of cases. The Trial Chamber is headed by the secretary of the Chamber, elected from among the judges of the court for two years. A judge can not be the secretary of the Chamber in the appropriate court for more than two consecutive terms. The decision to form the panel, its composition, as well as the election of the secretary of the Chamber accepted meetings of judges of high specialized court on a proposal chairman. Secretary of the Chamber organizes the work of the respective chamber, controlled by analyzing and summarizing court practice in cases within the competence of the Chamber, inform the meeting of judges of the high specialized court on the activities of the Chamber.

High Specialized Court has a Plenary Court to address the issues defined by this Law. The composition and procedure of the High Specialized Court plenum are defined by this Law.

The competence of the chairperson of a higher specialized court and of a judge of such a court is set forth in Articles 34 and 33 of the Law of Ukraine "On the Judiciary and Status of Judges" respectively.

1.1.11. Members of the Higher Council of Justice

Under Article 131 of the Constitution of Ukraine,the Higher Council of Justice operates in Ukraine, whose competence comprises:

- forwarding submissions on the appointment of judges to office or on their dismissal from office;

- adopting decisions in regard to the violation by judges and procurators of the requirements concerning incompatibility;

- exercising disciplinary procedure in regard to judges of the Supreme Court of Ukraine and judges of high specialized courts, and the consideration of complaints regarding decisions on bringing to disciplinary liability judges of courts of appeal an d local courts, and also procurators.

The Higher Council of Justice consists of twenty members. The Ukrainian Parliament, the President of Ukraine, the Congress of Judges of Ukraine, the Congress of Barristers of Ukraine, and the congress of representatives of higher legal educational establishments and scientific institutions, each appoint three members to the Higher Council of Justice, and the All-Ukrainian Conference of Prosecution Staff - two members of the Higher Council of Justice.

The Chairperson of the Supreme Court of Ukraine, the Minister of Justice of Ukraine and the Ukrainian Prosecutor General are ex officio members of the Higher Council of Justice.

According to Article 1 of the Law of Ukraine "On the Higher Council of Justice",[10] the Higher Council of Justice is a collegial standing independent body

[10] On the Higher Council of Justice: Law of Ukraine, dated January 15, 1998, No. 22/98-VR // Holos Ukrayiny. – 1998.

responsible for formation of the independent highly professional judiciary capable of qualified, fair and unbiased administration of justice in a professional manner, as well as for making decisions concerning violations of judges' and prosecutors' violations of requirements regarding concurrent jobs or positions and, within the limits of the remit, on the disciplinary sanctions.

Members of the Higher Council of Justice, except for ex officio members, shall be appointed for the term of four years and for one term only.

1.1.12. Members of the Higher Qualification Commission of Judges of Ukraine

According to Article 100 of the Law of Ukraine "On the Judiciary and Status of Judges", the Higher Qualification Commission of Judges of Ukraine is a standing body within the judiciary system of Ukraine.

Article 102 of the Act provides that the High Qualification Commission of Judges of Ukraine are elected (appointed) Fourteen members who are citizens of Ukraine, have higher legal education and experience in the field of law for at least fifteen years.

High Qualification Commission of Judges of Ukraine shall consisting of two chambers - the qualification and discipline. The Commission shall be elected (appointed):

1) Congress of Judges of Ukraine - four members of the disciplinary and qualification Chambers among the judges elected to a lifetime judicial position or retired judges;

2) Congress of Representatives of law schools and scientific institutions - one member of the disciplinary chambers and qualification;

3) Congress of Advocates of Ukraine - one member of the disciplinary chambers and qualification;

4) the Commissioner of Verkhovna Rada of Ukraine on human rights - one member of the Disciplinary Chamber from among persons who are not judges;

5) Head of the State Judicial Administration of Ukraine - a member of the Chamber of qualification among persons who are not judges.

High Qualification Commission of Judges of Ukraine performs functions and exercises authority:

on the appointment of judges and qualifying evaluation of judges - consisting qualifying Chamber;

on disciplinary responsibility of judges - consisting of Disciplinary Chamber;

on the organization of the Commission and other issues concerning the activities of both chambers of the Commission - a joint composition of both chambers.

The members of the High Qualification Commission of Judges of Ukraine are elected/appointed for four years. One person can not exercise the powers of two consecutive terms.

According to the High Qualification Commission of Judges of Ukraine, person who is a judge or civil servant at the time of the stored position of authority, status and place of work.

Members of the High Qualification Commission of Judges of Ukraine at the time of exercise of the powers seconded to the Commission and can not perform any other paid work except teaching, artistic and scientific.

1.1.13. Members of the Qualification and Disciplinary Commission of Prosecutors

In accordance with Article 73 of the Law of Ukraine "On the Public Prosecution Office",[11] the Qualification and Disciplinary Commission of Prosecutors is a collegial body that shall, within the scope of responsibilities envisaged by this Law, determine the competence level of contenders of prosecutor positions and resolve the issues concerning disciplinary sanctions, transfer or discharge of prosecutors.

According to Article 74 of the Law of Ukraine "On the Public Prosecution Office", the Qualification and Disciplinary Commission of Prosecutors shall consist of 11 members who shall be citizens of Ukraine, have a degree in law and experience of law practice of at least 10 years, of which:

- five prosecutors shall be appointed by the All-Ukrainian Conference of Prosecutors;

- two persons (scientists) shall be appointed by representatives of law schools and scientific institutions;

- one person (a lawyer) shall be appointed by the Congress of Barristers of Ukraine;

- three persons shall be appointed by the Ombudsperson in consultation with the Committee of the Ukrainian Parliament concerned with organization and activities of public prosecution bodies.

The term of office of members of the Qualification and Disciplinary Commission of Prosecutors is three years. No person shall exercise the powers of the member of the Commission two terms in a row.

Members of the Qualification and Disciplinary Commission of Prosecutors shall perform their duties on a full-time basis and shall be detached to the Commission for the time of performing their respective duties.

1.1.14. Ukrainian Prosecutor General and his/he deputies

[11]On the Public Prosecution Office: Law of Ukraine, datedOctober 14, 2014, No. 1697-VII // Holos Ukrayiny. – 2014. – Issue No. 206.

According to Article 122 of the Constitution of Ukraine, the Public Prosecution Office of Ukraine is headed by the Ukrainian Prosecutor General appointed and discharged by the President of Ukraine subject to approval of the Ukrainian Parliament. The term of office of the Ukrainian Prosecutor General shall be five years.

According to Article 40 of the Law of Ukraine “On the Public Prosecution Office”, no person may be appointed the Ukrainian Prosecutor General for more than one term.

The Ukrainian Prosecutor General shall be a citizen of Ukraine who:

- has a university degree in law;

- has an experience in law practice of at least 10 years;

- speaks the state language;

- is not subject to circumstances set forth in part 5 of Article 27 of the Law of Ukraine “On the Public Prosecution Office”;

- is characterized by high ethical and professional level and is a good organizer.

Part 2 of Article 8 of the Law of Ukraine “On the Public Prosecution Office” states that the Prosecutor General’s Office of Ukraine shall be headed by the Ukrainian Prosecutor General who has a first deputy and four deputies, as well as Deputy Ukrainian Prosecutor General – Chief Military Prosecutor.

One of the deputies is the head of the Special Anticorruption Prosecution.

1.1.15. Head of the Security Service of Ukraine and his/her deputies

According to Article 13 of the Law of Ukraine “On the Security Service of Ukraine”,[12] the Head of the Security Service of Ukraine shall manage all the activities of the Service. S/he shall be personally responsible for completing tasks of the Security Service of Ukraine.

The Head of the Security Service of Ukraine shall be appointed and discharged by the President of Ukraine.

Deputy Heads of the Security Service of Ukraine shall be appointed and discharged by the President of Ukraine, the appointments being made upon recommendations of the Head of the Security Service of Ukraine.

1.1.16. Director of the National Anti-Corruption Bureau of Ukraine and his deputies

According to Article 6 of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" management of the National Anti-Corruption Bureau of Ukraine carries out its Director. He is responsible for the activities of the National Anti-Corruption Bureau of Ukraine.

[12] On the Security Service of Ukraine: Law of Ukraine, dated March 25, 1992, No. 2229-XII // Holos Ukrayiny. – 1992.

Director of the National Anti-Corruption Bureau of Ukraine is appointed and dismissed by the President of Ukraine in the manner defined by the Law.

Director of the National Anti-Corruption Bureau of Ukraine has deputies who are appointed and dismissed by him.

1.1.17. Chairperson of the Anti-Monopoly Committees of Ukraine and his/her deputies

According to Article 6 of the Law of Ukraine "On the Anti-Monopoly Committee of Ukraine",[13] the Anti-Monopoly Committee shall consist of the Chairperson and eight authorized state officials.

Article 8 of the Law of Ukraine "On the Anti-Monopoly Committee" of Ukraine states that the Chairperson of the Anti-Monopoly Committee of Ukraine shall be appointed and discharged by the President of Ukraine subject to approval of the Ukrainian Parliament.

The term of office of the Chairperson of the Anti-Monopoly Committee of Ukraine shall be seven years. The Chairperson of the Anti-Monopoly Committee of Ukraine shall not hold this position for more than two terms in a row.

After the end of the term of office, the Chairperson of the Anti-Monopoly Committee of Ukraine shall continue performing the duties until a new Chairperson is appointed.

According to Article 10 of the Law of Ukraine "On the Anti-Monopoly Committee of Ukraine", the First Deputy Chairperson and Deputy Chairperson of the Anti-Monopoly Committee of Ukraine from among the authorized state officials shall be appointed upon recommendations of the Prime Minister of Ukraine and discharged by the President of Ukraine. The Prime Minister of Ukraine shall submit a recommendation on appointment of the First Deputy Chairperson and Deputy Chairperson of the Anti-Monopoly Committee of Ukraine to the President of Ukraine based on propositions of the Chairperson of the Anti-Monopoly Committee of Ukraine.

1.1.18. Chairperson and members of the Accounting Chamber

The Accounting Chamber, according to Article 1 of the Law of Ukraine "On the Accounting Chamber"[14] is a standing controlling body created by, subordinated and responsible to the Ukrainian Parliament.

The Chamber operates independently of any other agencies.

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[13] On the Anti-Monopoly Committee of Ukraine: Law of Ukraine, dated November 26, 1993, No. 3659-XII // Holos Ukrayiny. – 1993. – No. 206.

[14] On the Accounting Chamber: Law of Ukraine, dated July 11, 1996, No. 315/96-VR // Holos Ukrayiny. – 1996. – No. 204.

According to part 1 of Article 8 of the Law of Ukraine "On the Accounting Chamber", the Accounting Chamber shall consist of the Chairperson of the Accounting Chamber and members of the Accounting Chamber, including:

- the First Deputy Chairperson of the Accounting Chamber;

- the Deputy Chairperson of the Accounting Chamber;

- the Chief Controllers (chiefs of departments of the Accounting Chamber);

- the Secretary of the Accounting Chamber.

The Chairperson of the Accounting Chamber shall be appointed by the Ukrainian Parliament upon recommendation of the Speaker of the Ukrainian Parliament for the term of seven years and may be appointed for a second term (part 1 of Article 10 of the above Law).

The First Deputy Chairperson and Deputy Chairperson, Chief Controllers (chiefs of departments of the Accounting Chamber) and Secretary of the Accounting Chamber shall be appointed by the Ukrainian Parliament upon recommendations of the Chairperson of the Accounting Chamber by secret ballot for list for the term of seven years following the procedure established for appointment of the Chairperson of the Accounting Chamber (part 6 of Article 10 of the above Law).

The Chairperson and members of the Accounting Chamber shall be appointed by legislative acts of the Ukrainian Parliament to be printed in the official press and published for use in open sources.

1.1.19. Members of the National Council of Ukraine for TV and Radio Broadcasting

According to the Law of Ukraine "On the National Council of Ukraine for TV and Radio Broadcasting",[15] the National Council of Ukraine for TV and Radio Broadcasting is a constitutional, permanent and collegial body supervising compliance with the laws of Ukraine concerning television and radio broadcasting and performing regulatory functions envisaged by such laws. According to Article 4 of the above Law, the National Council of Ukraine for TV and Radio Broadcasting shall consist of eight persons. Four of them shall be appointed by the Ukrainian Parliament (by an act of the Ukrainian Parliament), and the other four — by the President of Ukraine (by a decree of the President of Ukraine).

Acts of the Ukrainian Parliament and Decrees of the President of Ukraine concerning appointment of members of the National Council of Ukraine for TV and Radio Broadcasting are legislation acts to be printed in the official press and published for use in the open sources.

[15] On the National Council of Ukraine for TV and Radio Broadcasting: Law of Ukraine, dated September 23, 1997, No. 538/97-VR // Holos Ukrayiny. – 1997.

Powers of a member of the National Council of Ukraine for TV and Radio Broadcasting shall begin upon the date of appointment and last for five years except for instances set forth in the Law of Ukraine "On the National Council of Ukraine for TV and Radio Broadcasting".

A person can be re-appointed a member of the National Council of Ukraine for TV and Radio Broadcasting only once.

According to part 2 of Article 7 of the Law of Ukraine "On the National Council of Ukraine for TV and Radio Broadcasting", members of the National Council of Ukraine for TV and Radio Broadcasting are civil servants of category one.

According to part 1 of Article 9 and part 1 of Article 10 of the above Law, the Chairperson, First Deputy Chairperson, Deputy Chairperson and Executive Secretary of the National Council of Ukraine for TV and Radio Broadcasting shall be elected by the National Board from among its members, so they also fall into the category of PEPs.

1.1.20. Ambassadors Extraordinary and Plenipotentiary

A diplomatic service employee is a civil servant performing diplomatic or consular functions in Ukraine or abroad and having a corresponding diplomatic rank. Ambassador Extraordinary and Plenipotentiary is a diplomatic rank, a special title which, according to Article 16 of the Law of Ukraine "On the Diplomatic Service"[16] shall be awarded to employees of a diplomatic service for life.

The diplomatic rank of an Ambassador Extraordinary and Plenipotentiary is equal to the first rank of a civil servant.

According to part 3 of Article 17 of the Law of Ukraine "On the Diplomatic Service", persons without a diplomatic rank holding positions in the structural units of the Ukrainian Presidential Administration supporting President's exercising the powers in foreign policy, or positions within structural units of the Staff of the Ukrainian Parliament and Secretariat of the Cabinet of Ministers of Ukraine supporting representation of the Speaker of the Ukrainian Parliament and the Prime Minister of Ukraine in liaisons with authorities of other states and taking measures for international cooperation between the Ukrainian Parliament and the Cabinet of Ukraine, shall be assigned a diplomatic rank upon recommendations of heads of such bodies following the procedure established by law.

A diplomatic rank shall be assigned in correspondence with the position of the civil servant and taking into account qualification and record of service, observing the terms of holding diplomatic ranks. Correspondence between positions of civil servants and diplomatic ranks shall be determined by the List of Positions Corresponding to Diplomatic Ranks of Ukraine approved by the President of Ukraine.

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[16] On the Diplomatic Service: Law of Ukraine, dated September 20, 2001, No. 2728-III // Holos Ukrayiny. – 2001. – Issue No. 194.

The List of Positions Corresponding to Diplomatic Ranks of Ukraine was approved by the Decree of President of Ukraine No. 301/2002 dated March 26, 2002[17]. According to this List, the following positions correspond to the rank of Ambassador Extraordinary and Plenipotentiary:

- the Minister of Foreign Affairs of Ukraine;

- the First Deputy Minister of Foreign Affairs of Ukraine;

- the Deputy Minister of Foreign Affairs of Ukraine;

- the Deputy Head of the Ukrainian Presidential Administration (who, according to the Chart of Segregation of Duties between the Head, First Deputy Head and Deputy Heads of the Ukrainian Presidential Administration, and of the Responsibilities for Independent Structural Units of the Ukrainian Presidential Administration, is responsible for the structural units supporting President's exercising the powers in foreign policy), Chief Assistant of the President of Ukraine, Assistant of the President of Ukraine, Chief, First Deputy Chief, Deputy Chief of the Main Department for Foreign Policy and European Integration at the Ukrainian Presidential Administration, Chief, Deputy Chief of the Head Department of State Protocol and Ceremonial at the Ukrainian Presidential Administration.

- the Ambassador Extraordinary and Plenipotentiary of Ukraine;

- the Ukrainian Ambassador to an international organization;

- the Department Director, Ambassador at Large of the Ministry of Foreign Affairs of Ukraine;

- the Protocol Advisor of a central executive authority;

- the Special Representative of Ukraine for Transdnistrian Settlement;

- the President of the Diplomatic Academy of Ukraine under the Ministry of Foreign Affairs of Ukraine (who is a diplomatic employee).

According to part 7 of Article 17 of the Law of Ukraine "On Diplomatic Service", the diplomatic rank of Ambassador Extraordinary and Plenipotentiary shall be awarded by a decree of the President of Ukraine constituting a legislation act printed in the official press and published for use in the open sources.

A diplomatic employee's having the rank of Ambassador Extraordinary and Plenipotentiary can be checked using the work book of the diplomatic employee where, according to part 19 of Article 17 of the Law of Ukraine "On Diplomatic Service", records on awards of diplomatic ranks, on deprivation of diplomatic ranks, and on equaling of the ranks to the ranks of civil servants shall be made.

[17] On the List of Positions Corresponding to Diplomatic Ranks of Ukraine: Decree of the President of Ukraine, March 26, 2002, No. 301/2002 // Ofitsiynyi Visnyk Ukrayiny. – 2002. – Issue No. 29.

1.1.21. Chief of the Headquarters – Commander-in-Chief of the Armed Forces of Ukraine, Commanders of the Land Forces, Air Forces, and Naval Forces of Ukraine

The Law of Ukraine "On the Defense of Ukraine"[18] determines that the military command shall include the Headquarters of the Armed Forces of Ukraine, commands of the services of the Armed Forces of Ukraine, joint operational command, department of operational commands, territorial departments, commands of forces, units of the Armed Forces of Ukraine and other military formation created according to the laws of Ukraine;

According to Article 1 of the Law of Ukraine "On the Armed Forces of Ukraine", the Armed Forces of Ukraine are a military formation responsible, according to the Constitution of Ukraine, for defense of Ukraine, protection of its sovereignty, territorial integrity and security. The Armed Forces of Ukraine shall deter and oppose armed aggression against Ukraine, defend the air space of the state and underwater space within the territorial sea of Ukraine as stipulated by the law, take part in anti-terrorist measures.

According to Article 3 of the Law of Ukraine "On the Armed Forces of Ukraine", the Armed Forces of Ukraine have the following general structure:

- the Headquarters of the Armed Forces of Ukraine as the principal body of military command;

- services of the Armed Forces of Ukraine: the Land Forces, the Air Forces, the Naval Forces;

- forces, military units, military schools, institutions and organizations not belonging to services of the Armed Forces of Ukraine.

Part 4 of Article 8 of the above Law states that the Chief of the Headquarters – Commander-in-Chief of the Armed Forces of Ukraine shall exercise immediate military direction of the Armed Forces of Ukraine, which shall include activities aimed at development of the Armed Forces of Ukraine, their technical equipment, preparation and all-out support, determination of their use and direction.The Chief of the Headquarters is the ex officio Commander-in-Chief of the Armed Forces according to Article 8 of the Law of Ukraine "On the Armed Forces of Ukraine".

According to item 9 of the Regulation on the Headquarters of the Armed Forces of Ukraine adopted by the Decree of the President of Ukraine No. 406/2011 dated April 6, 2011,[19] the Headquarters shall be headed by the Chief of Headquarters – Commander-in-Chief of the Armed Forces of Ukraine appointed and discharged by

[18] "On the Armed Forces of Ukraine: Law of Ukraine, dated December 6, 1991, No. 1934-XII // Holos Ukrayiny. – 1991.

[19] On the Regulation on the Ministry of Defense of Ukraine and the Regulation on the Headquarters of the Armed Forces of Ukraine: Decree of the President of Ukraine, April 6, 2011, No. 406/2011 // Ofitsiynyi Visnyk Ukrayiny. – 2011. – Issue No. 29.

the President of Ukraine. The Chief of the Headquarters shall be a person in active military service.

According to item 16 of Article 106 of the Constitution of Ukraine, the President of Ukraine shall appoint and discharge the high command of the Armed Forces of Ukraine and other military formations.

Thus, Commanders of the Land Forces of the Armed Forces of Ukraine, the Air Forces of the Armed Forces of Ukraine, the Naval Forces of the Armed Forces of Ukraine shall be appointed by the President of Ukraine (by issuing a respective Decree).

1.1.22. Civil servants whose offices are categorized as offices of categories one and two

According to Article 24 of the Law of Ukraine “On the Civil Service”,[20] the issues related to the service shall be resolved according to categories of offices of the civil servants and to the ranks they are awarded.

Article 25 of the Law of Ukraine “On the Civil Service” states that the main criteria for classification of offices of civil servants are organizational and legal level of the body employing them, scope and character of competence on the certain office, role and office of the responsibility within the structure of the state body.

Category one of offices includes the offices of first deputy ministers, heads of central executive authorities not being members of the Government of Ukraine, their first deputies, heads and members of state collegial bodies, Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea, heads of Oblast, Kyiv and Sevastopol City State Administrations, chiefs of the Administration of the President of Ukraine and Staff of the Ukrainian Parliament, Deputy chiefs of the Administration of the President of Ukraine and Staff of the Ukrainian Parliament, and other equivalent offices.

Category two of offices includes the offices of heads of secretariats of committees of the Ukrainian Parliament, units of the Administration of the President of Ukraine and Staff of the Ukrainian Parliament, Secretariat of the Cabinet of Ministers of Ukraine, advisors and assistants to the President of Ukraine, Speaker of the Ukrainian Parliament, Prime Minister of Ukraine, deputy ministers, deputies of other heads of central executive authorities, first deputy Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea, first deputy, and other equivalent offices.

Cabinet of Ministers of Ukraine of 14 August 2013 № 703, adopted pursuant to Article 25 of the Law of Ukraine "On civil service", some office employees of state authorities, other state bodies, institutions assigned to the relevant categories of civil servants (in accordance with Annexes 1 - 31). The regulation establishes a list of

[20] On the Civil Service: Law of Ukraine, dated December 16, 1993, No. 3723-XII // Holos Ukrayiny. – 1994.

government positions that are equivalent to the first and second categories of civil servants.

1.1.23. Heads of regional bodies of the central executive authorities

The procedure for appointment and discharge of heads of regional bodies of ministries and other central executive authorities was adopted by the Decree of the Cabinet of Ministers of Ukraine No. 45 dated January 25, 2012[21].

1.1.24. Heads of regional bodies of prosecution

In accordance with clause 2 of part one of Article 7 of the Law of Ukraine "On the Public Prosecution Office", regional public prosecution offices shall operate on the oblast level. Article 10 of the Law states that regional Public Prosecution Offices include public prosecution offices of the oblasts, Autonomous Republic of Crimea, cities of Kyiv and Sevastopol.

A regional public prosecution office shall be headed by the chief of the regional Public Prosecution Office – Prosecutor of the Oblast, Autonomous Republic of Crimea, cities of Kyiv and Sevastopol, who has a first deputy and four deputies.

Powers of the head of a regional public prosecution office are set forth in Article 11 of the Law of Ukraine "On the Public Prosecution Office".

1.1.25. Heads of regional bodies of the Security Service of Ukraine

According to part 1 of Article 11 of the Law of Ukraine "On the Security Service of Ukraine", in order to ensure efficient performance of its functions, the Security Service of Ukraine shall create its regional bodies including, in particular, oblast divisions of the Security Service of Ukraine.

Part 1 of Article 15 of the Law of Ukraine "On the Security Service of Ukraine" states that heads of regional bodies – oblast divisions of the Security Service of Ukraine shall be appointed upon recommendations of the Head of the Security Service of Ukraine and discharged by the President of Ukraine.

1.1.26. Chairpersons and judges of courts of appeal

According to item 2 of part 2 of Article 17 of the Law of Ukraine "On the Judiciary and Status of Judges", the system of courts of general jurisdiction consists, in particular, of the courts of appeal.

Article 26 of the Law states that the appeal courts shall act as courts of appeal for proceedings of civil and criminal cases, commercial, administrative cases, and cases of administrative violations.

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[21] On Adoption of the Procedure for Appointment and Discharge of Heads of Territorial Bodies of Ministries and Other Central Bodies of Executive Power: the Decree of the Cabinet of Ministers of Ukraine, January 25, 2012 No. 45 // Ofitsiynyi Visnyk Ukrayiny. – 2012. – Issue No. 9.

Courts of appeal for civil, criminal cases and cases of administrative violations shall be: appeal courts of the oblasts, appeal courts of the cities of Kyiv and Sevastopol, the appeal court of the Autonomous Republic of Crimea.

Courts of appeal for commercial cases and appeal courts for administrative cases shall be, respectively, commercial appeal courts and administrative appeal courts established in the districts of appeal as per the decree of the President of Ukraine.

Appeal Court judge may be that the results of the qualification evaluation confirmed the ability to administer justice in the appellate court, a judge has experience of at least five years or has a degree, got to the appointment of judges, and the experience of scientific activity in law or scientific and educational activities in law in higher education or higher education institutions that train professionals educational degree "Master" to the appointment as a judge for at least ten years.

As part of the appeal court can create chambers on different categories of cases. The Trial Chamber is headed by the secretary of the Chamber, elected from among the judges of the court for two years. A judge can not be the secretary of the Chamber in the appropriate court for more than two consecutive terms. The decision to form the panel, its composition, as well as the election of the secretary of the Chamber Assembly adopted the Appeal Court judges on the proposal of the chief judge. Secretary of the Chamber organizes the work of the respective chamber controls to analyze and summarize judicial practice in cases within the competence of the Chamber informs the Court of Appeal judges meeting on the activities of the Chamber.

Powers of the chairperson and judges of courts of appeal are regulated by Articles 29 and 28 of the Law of Ukraine “On the Judiciary and Status of Judges” respectively.

Chairman of the Appeal Court, his deputies are appointed for two years by secret ballot from among the judges of this court, but not exceeding the term of office of a judge.

1.1.27. Heads of administrative, management or supervisory bodies of state-owned and fiscal enterprises, economic partnerships with a share of more than 50% in the statutory capital owned by the state

This category of national PEPs includes heads of administrative, management or supervisory bodies of:

- state-owned enterprises;

- fiscal enterprises;

- economic entities with a share of more than 50% in the statutory capital owned by the state.

According to Article 73 of the Economic Code of Ukraine,[22] a state unitary enterprise is founded by an order of the competent state authority on the basis of a separate part of the property of the state, mostly without dividing into shares, and falls under jurisdiction of this authority. State unitary enterprises act as state-owned commercial companies or fiscal enterprises.

A state-owned commercial enterprise is a commercial entity acting on the basis of the statute or model statute bearing responsibility for consequences of the activities with all its property according to the Economic Code of Ukraine and other laws adopted in accordance with the Code (part 1 of Article 74 of the Economic Code of Ukraine).

A fiscal enterprise is created by a resolution of the Cabinet of Ministers of Ukraine. The resolution on creation of a fiscal enterprise shall determine the scope and nature of the core activities of the company, as well as the body under jurisdiction of which the newly-created company falls and which is authorized to appoint the manager of this company (Article 76 of the Economic Code of Ukraine).

Fiscal enterprises shall be created in the industries where:

- state-owned enterprises are the only ones legally allowed to conduct economic activities;

- the main (over 50 per cent) consumer of the products (work, services) is the state;

- business conditions render free competition among manufacturers or consumers impossible;

- dominating (over 50 per cent) is the manufacturing of socially necessary products (work, services) that cannot be profitable due to the conditions and nature of demand;

- privatization of assets of state-owned enterprises is prohibited by the law.

Part 6 of Article 73 of the Economic Code of Ukraine stipulates that the management body of a state unitary enterprise shall be the manager of the enterprise appointed by the body under jurisdiction of which this enterprise falls, and this manager shall report to such a body.

According to Article 79 of the Economic Code of Ukraine, economic entities are companies or other economic entities established by legal entities and/or natural persons by uniting their property and taking part in business activities of the company in order to obtain the profit.

[22] The Economic Code of Ukraine: Law of Ukraine, dated January 16, 2003, No. 436-IV // Holos Ukrayiny. – 2003. – Issue No. 49.

Economic entities include: joint-stock companies, limited liability companies, additional liability companies, unlimited companies, partnerships en commandite (Article 80 (types of economic entities) of the Economic Code of Ukraine).

A joint-stock company is an economic entity with the charter capital divided into a certain number of shares of the same nominal value, bearing responsibility for liabilities with the property of the company only, while the shareholders carry a risk of losses due to activities of the company limited by the cost of the shares in their possession.

A limited liability company is an economic entity with the charter capital divided into shares the size of which is determined by the statutory documents, bearing responsibility for its liabilities with the property of the company only. Participants of the company who have paid their shares in full carry a risk of losses due to activities of the company limited by the amounts of their respective shares.

An additional liability company is an economic entity with the charter capital divided into shares the size of which is determined by the statutory documents, bearing responsibility for its liabilities with the property of the company, and if such property is not sufficient, the participants of the company bear additional solidary responsibility within the amounts equally proportional to the share of each participant, such amounts being determined by the statutory documents.

A full liability company is an economic entity all participants of which conduct business activities on behalf of the company in accordance with the contract they have closed between them, and bear additional solidary responsibility for liabilities of the company with all their property.

A partnership en commandite is an economic entity where one or more participants conduct business activities on behalf of the company and bear additional solidary responsibility for its liabilities with all their property on which, according to the law, recourse can be taken (full participants), while other participants take part in the company with their shares only (contributors).

According to Article 65 of the Economic Code of Ukraine, a company shall be managed as per its statutory documents based on combination of the rights of the owner with regard to business use of the property and labor collective's participation in the management. The owner shall exercise his/her rights to management immediately or through bodies he/she authorizes according to the statute of the company or other statutory documents.

For the purpose of managing economic activities of the company, the owner(s) or the authorized body shall appoint (elect) a company manager.

Company manager shall perform agency of necessity, represent the company at the state authorities and local authorities, other organizations, in relations with legal entities and natural persons, form the administration of the company and

resolve issues of activities of the company within the framework and procedure established by the statutory documents.

According to Article 89 of the Economic Code Ukraine, management of activities of an economic entity shall be conducted by its bodies and officials, composition and election (appointment) procedure of which shall be determined based on the type of the company, and in the cases envisaged by law — by the participants of the company.

Officials of a company are the head and members of the executive body, head of the audit commission (auditor), and if a company board is created —the head and members of the board.

An economic entity where over 50 per cent of shares of the charter capital are in possession of the state, shall produce and fulfill annual business plans according to Article 75 of the Economic Code of Ukraine.

A separate notion should be given to managers of state-owned banks.

According to Article 7 of the Law of Ukraine "On Banks and Banking",[23] a state-owned bank is a bank one hundred per cent of the charter capital of which is in possession of the state. State-owned banks are created by resolutions of the Cabinet of Ministers of Ukraine.

The state shall exercise the powers of the owner with regard to shares in the charter capital of the state-owned bank its possession through management bodies of the bank. The Cabinet of Ministers of Ukraine shall manage a state-owned bank in cases set forth in this Law, other laws and the statute of the state-owned bank.

Since, according to Article 6 of the Law of Ukraine "On Banks and Banking", banks in Ukraine are created in the form of a public joint-stock company or cooperative bank, state-owned bank therefore are also economic entities, and managers of their administrative, management or supervisory bodies are national PEPs.

Management bodies of a state-owned bank are the supervisory board and the board of the bank. The controlling body of a state-owned bank is the audit commission composition of which shall be determined by the supervisory board of the state-owned bank.

The supervisory board is the supreme managing body of a state-owned bank controlling the activities of the board of the band in order to preserve the attracted funding, ensure their repayment and protection of interests of the state as the shareholder of the state-owned bank. The supervisory board also performs other functions as set forth in this Law.

[23] On Banks and Banking: Law of Ukraine, dated December 7, 2000 No. 2121-III // Holos Ukrayiny. – 2001. – Issue No. 12.

The supervisory board shall consist of the members appointed by the Ukrainian Parliament, the President of Ukraine and the Cabinet of Ministers of Ukraine. To ensure representation of interests of the state, membership of the supervisory board of a state-owned bank may include representatives of bodies of executive power or other persons eligible according to this Article. The term of office of members of the supervisory board of a state-owned bank is five years.

The supervisory board of a state-owned bank shall be headed by the head elected by the supervisory board from among its members.

Powers of the executive body of a state-owned bank are determined by its statute. Nominated head and members of the executive body shall be agreed with the National Bank of Ukraine in compliance with the Law of Ukraine "On Banks and Banking".

Falling out of scope of this regulation are heads of administrative, management or supervisory bodies of municipal unitary companies (according to Article 78 of the Economic Code of Ukraine these are companies established by an order of a competent local authority on the basis of a separated part of municipal property and falling under jurisdiction of such a local authority), who, therefore , are not PEPs.

1.1.28. Chairpersons of governing bodies of political parties and members of their central statutory bodies

Part 1 of Article 10 of the Law of Ukraine "On the Political Parties in Ukraine"[24] stipulates that the statute and program of a political party shall be adopted and the party's governing and auditing bodies shall be elected at its founding congress.

Article 11 of the above Law states that the political parties shall be registered by a central executive authority exercising state policy in the field of state registration (legalization) of associations of citizens, other civil formations. An application for registration shall be submitted appended, in particular, with information on the composition of governing bodies of the political party.

Information on the chairpersons of governing bodies of political parties and members of their central statutory bodies may be published on the official web sites of the political parties.

[24] On the Political Parties in Ukraine: Law of Ukraine, dated April 5, 2001, No. 2365-III // Holos Ukrayiny. – 2001. – Issue No. 82.

1.2. Foreign Politically Exposed Persons

The term “foreign politically exposed persons” is defined in clause 19 of part one of Article 1 of the Law.

> **Foreign PEPs** shall mean individuals who perform or has performed, in the course of the last three years, the defined public functions in foreign states, namely:
> head of state, head of the government, ministers and their deputies;
> members of the parliament;
> governor and members of the boards of the central banks;
> members of the supreme court, the constitutional court or other judicial bodies, which decisions are beyond appeal, except for appeals based on extraordinary circumstances;
> ambassadors extraordinary and plenipotentiary, charges d’affaires and heads of national military authorities;
> heads of administrative, management or supervisory bodies of state-owned enterprises of strategic importance;
> chairpersons of management bodies of the political parties represented in the parliament.

It should be noted that the list of foreign PEPs is by far narrower than the one on national PEPs, as provided for by the Law (clause 25 of part one of Article 1).

At that, specific monitoring for transactions of foreign PEPs in Ukraine, as a contrast to national PEPs or actors who perform political functions in international organizations, has been introduced back by the Law of Ukraine “On Anti-Money Laundering and Counteracting Terrorism Financing” (of 2010)[25].

The recommended list of information sources for the detection of foreign PEPs is given in clause 3.2 of the Guidelines.

[25] On Making Amendments to the Law of Ukraine “On Anti-Money Laundering and Counteracting terrorism Financing”: Law of Ukraine, dated May 18, 2010 No. 2258-VI // Holos Ukrayiny. - 2010. - Issue No. 93.

1.3. International Politically Exposed Persons

The term “actors who perform political functions in international organizations” is defined in clause 13 of part one of Article 1 of the Law.

> **Actors who perform political functions in international organizations**shall mean officials of international organizations who hold or have held, in the course of the last three years, management positions in such organizations (directors, heads of the boards or their deputies) or perform any other management functions on the highest level, particularly in international intergovernmental organizations, members of international parliamentary assemblies, judges and management officials of international courts.

The lawmaker procured that such persons are the following:

1.3.1. Officials of international organizations who:

- hold or have held, in the course of the last three years, management positions in such organizations (directors, heads of the boards or their deputies);

- perform any other management functions on the highest level, particularly in international intergovernmental organizations.

According to Article 2 of the Law of Ukraine “On International Treaties of Ukraine”, an international organization is an international intergovernmental organization.

International intergovernmental organizations (IIGOs) are most often associated with the term “international organizations” as an association of three or more independent states, their governments, and other intergovernmental organizations, which seeks to address certain common issues or arrange for projects. The governments act on behalf of their states and represent their interests, while paying respect to their sovereignty.

International intergovernmental organizations are often called international organizations, although the latter may also be the term for international non-governmental organizations (INGOs), such as international non-for-profit organizations, or multinational corporations. International intergovernmental organizations are an important subject within international public law, which starts acting upon signing of a mutual agreement ratified by member states[26].

Currently, the following general political organizations operate: the United Nations (UN), the League of Arab States (LAS), the Organization of American States (OAS), the Organization of African Unity (OAU), the Commonwealth of Independent States (CIS), and the Asia Pacific Council (APC).

Military and political organizations: the North Atlantic Treaty Organization (NATO), the Western European Union (WEE), etc.

[26]The list below is not exhaustive.

International economic associations: the World Trade Organization (WTO), the Organization of the Petroleum Exporting Countries (OPEC), the Organization of the Black Sean economic Cooperation (OBSEC).

Regional organizations: the European Union (EU), the Organization for Democracy and Economic Development (GUAM), the Central European Initiative (CEI).

Financial organizations: the International Bank for Reconstruction and Development (IBRD), the International Monetary Fund (IMF), etc.

1.3.2. Members of international parliamentary assemblies

International parliamentary assemblies, for example, are:

- the Parliamentary Assembly of the Council of Europe (PACE)[27]as one of the two key statutory bodies of the Council of Europe, an advisory body which is comprised of representatives of the parliaments of all member states. PACE members are appointed by the parliaments of the member states. The largest states in PACE are represented by 18 members, while the minimal representation is 2 members of a state. As a whole, there are 318 members and 318 “deputies” in PACE;

- the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCEPA)[28]as one of the central institutions within OSCE, which plays a pivotal role in addressing the tasks faced by the whole Organization. The Assembly includes representatives of the national parliaments of OSCE member states.

1.3.3. Judges and management officials of international courts

The International Court of Justice[29]may serve as an example. It is a key judicial organ of the UN, founded under the Charter, which is a part of the UN Charter, for the purpose of achieving one of the key aims of the UN, i.e., to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace. The President and the Vice-President are elected by all the 15 Members of the Court every three years by secret ballot. The election is held on the date on which Members of the Court elected at a triennial election are to begin their terms of office or shortly thereafter. An absolute majority is required and there are no conditions with regard to nationality. The President and the Vice-President may be re-elected. The Court appoints the Secretary.

[27]http://assembly.coe.int/nw/Home-EN.asp
[28]http://www.oscepa.org
[29]http://www.icj-cij.org

1.4. Related Parties and Close Associates

Under related persons recommended to understand people (natural/legal), to which national and foreign public figures and leaders performing political functions in international organizations and/or their family members have business or personal relationships, and legal person final beneficial owners (controllers) by such figures or their family members.

Term business relationships recommended to understand as a certified document (including title documents) communications that occur between public figures and / or members of their families and persons or entities in the context, in particular:

ownership (co-ownership, use or disposal of the assets of family members of public figures (e.g. a person has a share in common partial or common property, including equipment, facilities, transportation and other movable and immovable property, etc. a company owned by a family member of a public figure or a close relative. this is accepted by the ownership document);

control, ie to exercise decisive influence on the economic activity of the entity carried out in particular through the implementation of the right of possession or use of all assets, or their significant part, the right of decisive influence on the composition, voting results and decision-making authorities subject management, and also any transactions which make it possible to determine the conditions of economic activity, to give binding instructions or serve as the governing body of the entity;

occupation of managerial positions in the administration of the entity;

Mission: (a) representation based on administrative act; (b) the establishment based on the law (representation by law); (c) establishment, based on the contract (voluntary or contractual representation); (d) commercial representation;

business partnership.

Under the personal ties recommended to understand connections arising between public figures and / or members of their families and individuals, particularly in the context of the right to use the assets of the family members of public figures, regardless of formal ownership (ie known that a person lives together with a family member or a public figure living in the home, by family members of public figures, etc.).

For example, under clause 28 of part one of Article 1 of the Law of Ukraine “On Financial Services and State Regulation of Financial Services Market”[30], the head of a financial institution, member of the supervisory board of a financial institution, of [its] executive body, head of an internal audit unit; head of a legal person which has

[30] On Financial Services and State Regulation of Financial Services Market: Law of Ukraine, dated July 12, 2001, No. 2664-III // Holos Ukrayiny. - 2001. - Issue No. 150.

a qualifying holding in a financial institution; head, controller of the related party of a financial institution; head, controller of the related party of a financial institution; members of the family of an individual who is the head of a financial institution, member of the supervisory board of a financial institution, of [its] executive body, head of an internal audit unit, head, controller of the related entity of a financial institution, head, controller of an affiliated entity (members of the family of an individual are considered to be his/her husband (wife), children or parents both of the individual and his/her husband (wife), and also the husband (wife) of any of the children or parents of the individual); a legal entity in which family members of the individual who is head of a financial institution, member of the supervisory board of a financial institution, of [its] executive body, head of an internal audit unit, head, controller of the related party, head, controller of an affiliated entity are heads or controllers.

In accordance with parttwo of Article 1 of the Law, the term "close associates" shall be used with the meaning ascribed thereto by the Law of Ukraine "On the Fundamentals of Corruption Prevention and Counteraction"[31].

However, as of now, said norm of the Law is not pertinent because on October 14, 2014, the Ukrainian Parliament passed the Law of Ukraine "On Prevention of Corruption",[32] following which the Law of Ukraine "On the Fundamentals of Corruption Prevention and Counteraction" lost its force and effect.

The provisions of part one of Article 8 of the Civil Code of Ukraine[33]entail that if civil relations are not settled by that Code, other acts of civil legislation or a contract, they are regulated by legal norms of that Code, other acts of civil legislation which regulate civil relations that are similar in nature (analogy bylaw). That said, in the current context one should be guided by norms of the new Law of Ukraine "On Prevention of Corruption".

Paragraph four of part one of Article 1 of the Law of Ukraine «On Prevention of Corruption»entails that close associates are persons who live together, are related through common households and have mutual rights and obligations with a subject specified in part one of Article 3 of that Law (expect for persons whose mutual rights and obligations with the subject are not of family nature), including persons who live together but are not married, and also, irrespective of the stated conditions, a husband, wife, father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, blood brother, blood sister, grandfather, grandmother, grandson, granddaughter, grand-grandson, grand-granddaughter, son-in-law, daughter-in-law, fathers-in-law, mothers-in-law, adoptive parent or adopted child, guardian or care-giver, person under guard or care of the said subject.

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[31] On the Fundamentals of Corruption Prevention and Counteraction: Law of Ukraine, dated April 7, 2011, No. 3206-VI // Holos Ukrayiny. – 2011. – Issue No. 107.

[32] On Prevention of Corruption: Law of Ukraine, dated October 14, 2014, No. 1700-VII // Holos Ukrayiny. - 2014. - 206.

[33] Civil Code of Ukraine: Law of Ukraine, dated January 16, 2003, No. 435-IV // Holos Ukrayiny. - 2003. - 45.

The subject specified in part one of Article 3 of that Law is:

1) persons authorized to fulfill functions of the state or local self-government:

a) President of Ukraine, Speaker of the Ukrainian Parliament, its First Vice-Speaker and Vice-Speaker, Prime Minister of Ukraine, First Vice Prime Minister of Ukraine, Vice Prime Ministers of Ukraine, ministers, other heads of the central executive authorities that are not a part of the Cabinet of Ministers of Ukraine and their deputies, head of the Security Service of Ukraine, Ukrainian Prosecutor General, Governor of the National Bank of Ukraine, Chairperson of the Accounting Chamber, Ukrainian Ombudsperson, Speaker of the Parliament of the AR of Crimea, Chair of the Council of Ministers of the AR of Crimea;

b) members of the Ukrainian Parliament, members of the Parliament of the AR of Crimea, members of local councils, heads of villages, towns and cities;

c) civil servants, officials of local self-government;

d) military officials of the Armed Forces of Ukraine, State Special Communications Service of Ukraine and other military formations established under the law, except for military officials under active military;

e) judges of the Constitutional Court of Ukraine, other professional judges, members, disciplinary inspectors of the Higher Qualification Commission of Judges of Ukraine, staff of the secretariat of the said Commission, Chairperson, Deputy Chairperson, secretaries of sections of the Higher Council of Justice, and also other members of the Higher Council of Justice, jurors and lay judges (while they discharge their functions);

f) privates and executives of ministry of Internal Affairs, State Penitentiary Service, Tax police, executives of divisions of civil defense;

g) officials and officers of bodies of prosecution, the Security Service of Ukraine, diplomatic service, state forest guard, state guard for natural reserves, central executive authority which ensures development and implementation of state tax policy and state policy in the field of state customs affairs;

h) members of the National Agency for Corruption Prevention;

i) members of the Central Electoral Commission;

j) officials and officers of other public bodies and public bodies of the AR of Crimea;

2) persons who, for the purpose of this Law, are equalized to the persons authorized to fulfill functions of the state or local self-government:

a) officials of legal entities of public law which are not specified in clause 1 of part one of this Article;

b) persons who are not civil servants, officials of local self-government, but provide public services (auditors, notaries, appraisers, and also experts, bankruptcy

commissioners, independent intermediaries, members of labor arbitration, court of arbitration, when they perform these functions, and other persons specified by the law);

3) persons who permanently or temporarily occupy positions related to the implementation of organizational and administrative or administrative-economic duties or specially authorized to perform such duties in legal entities of private law, regardless of the legal form and others who are not officials and who perform work or provide services under the contract with the enterprise, institution, organization - in cases stipulated by this law.

SECTION II. Characteristics and Analysis of Measures that Are Taken by Primary Financial Monitoring Entities with Regard to PEPs

2.1. General requirements for the identification of PEPs

The conditions under which the subjects of initial financial monitoring conduct the identification, verification and contemplation of the client, as a PEP, and a list of identification data is established by article 9 of the Law.

Identification, verification and contemplation of a PEP, usually include the following activities:

- the initial identification and verification at the time of establishment of the business relationship;

- in-depth verification of information about a PEP, in case of doubt as to the accuracy or completeness of the provided information;

- clarification of identification data and other available information about a PEP if they change or expiration of the documents on the basis of which identification was carried out, verification, contemplation.

During the studying of a PEP, the entity of initial financial monitoring is recommended:

- to explore the content of its activities;

- to assess its financial condition;

- to analyze the financial transactions according to the specifics of its activities;

- Defines its belonging to the category of public figures, their close persons or related persons;

- to find out all the data relative to the address of the place of residence or his place of residence (temporary stay) in Ukraine;

- to set the purpose nature of the business relationship.

In addition, in case of establishing that client belongs to the category of public figures, persons close to or related to a public figure, reporting entities should take measures to identify persons close or related public figure among their other customers.

Based on he analysis of the identity of a PEP, other available data and information about him and his activities, the entity of initial financial monitoring assesses risk based on the risk criteria (high/unacceptably high risk).

Taking into account the peculiarities of the activity and by-laws of the entities of state financial monitoring, the entities of initial financial monitoring in accordance with article 9 of the Law in the documents on financial monitoring (rules and

program of financial monitoring) can set individual (specific) internal mechanisms for the identification of public officials, which may include:

- the employees of the entity of initial financial monitoring, responsible for the identification, verification, valuation of financial condition and clarify information about the PEPs;

- the procedure of identification, verification on cerning the PEPs;

- the implementation of measures for information and/or documents to establish whether a PEP of the ultimate beneficial owner (controller), a beneficiary under financial transactions, including a list of relevant procedures, including the requested information and/or documents;

- the procedure of the in-depth identification of a PEP;

- the order of storage of documents and information on issues of financial monitoring and other precautions.

2.2. PEPs as High-Risk Clients

PEPs are clients whom a primary financial monitoring entity is obliged to categorize as high-risk (part four of Article 6 of the Law).

> A primary financial monitoring entity shall be obliged to categorize as **high-risk**, in particular, the following clients:
> …
> National, foreign PEPs, and actors who perform political functions in international organizations, or their related parties, when a primary financial monitoring entity ascertained the fact that a client or a person acting on their behalf relates to them;
> …

The requirement for high-risk categorization of a PEP is a novelty under the Law. That is, if a client is a PEP, this means that, subsequent to findings of assessment of his/her risks, a primary financial monitoring entity is very likely to be used for money laundering and/ or terrorism financing.

High risk is attributable to:

a) national, foreign PEPs;

b) national, foreign PEPs;

c) actors who perform political functions in international organizations,

d) clients - legal entities ultimate beneficial owners (controllers), the heads of which are public figures, persons close to or related to a public figure.

Parties related to PEPs are persons with whom family members of national, foreign PEPs, and actors who perform political functions in international organizations have business or personal relations, and also legal entities which final beneficiary owners (controllers) are such PEPs or their family members or persons with whom such PEPs have business or personal relations.

Under the said norm, a primary financial monitoring entity categorizes as high-risk in particular a legal entity being a client which final beneficiary owners (controllers) are national, foreign PEPs, and actors who perform political functions in international organizations.

The said norm has been brought about by objective circumstances. In some cases, a PEP (civil servant) who collects huge amounts of money through corruption is more vulnerable than other criminals.

A drug trafficker lays his/her hopes with his/her ability to stay anonymous with a large amount of money; a PEP starts attracting an undesired attention, once his/her name becomes associated with large amounts of funds from unidentified sources. Therefore, vulnerability of corrupted PEPs enables public bodies engaged in the framework of anti-money laundering, counter-terrorism financing, and counter-corruption to apply sanctions.

Back in 2009, FATF's operational monitoring revealed that PEPs are deemed as one of the largest categories of high-risk clients for money laundering; they have access to large government's cash flows, and also are in possession of knowledge and ability to control the budget, state-owned companies and government contracts.

Corrupted PEPs can use these knowledge and ability to have contracts in exchange for personal financial benefits or just to set out schemes for pumping money out of the national treasury.

It should be noted that the Law provides for a three-year term on the assignment of individuals to a national PEP. In practice, in many cases, the influence held by prominent public officials and close associates outlasts the term in office by years, even decades.

Given the above, entities recommended in the assessment of risk of individual clients apply a risk-based approach to such clients operations (including going beyond the three-year limit), in particular to establish a high risk to such clients with an adequate justification.

2.3. Additional Due Diligence Measures with regard to PEPs[34]

Additional due diligence measures that are taken by primary financial monitoring entities with regard to PEPs are set out by clause 2 of part five of Article 6 of the Law.

> A primary financial monitoring entity shall be obliged to take the following **additional measures** with regard to high-risk clients:
>
> …
>
> For national, foreign PEPs, and actors who perform political functions in international organizations, their close associates or related parties (related parties are persons with whom family members of national, foreign PEPs, and actors who perform political functions in international organizations have business or personal relations, and also legal entities which final beneficiary owners (controllers) are such PEPs or their family members or persons with whom such PEPs have business or personal relations):
>
> a) detecting, in accordance with internal documents on financial monitoring, whether a client or a person acting on his/her behalf belongs to the said category of clients while carrying out identification, verification or in the process of servicing them, and also whether they are final beneficial owners (controllers) or managers of legal entities;
>
> b) establishing business relations with such persons upon permission from the manager of a primary financial monitoring entity;
>
> c) taking measures, before or during establishment of business relations, for identification of sources of funds of such persons on the basis of documents received therefrom and/ or information from other sources, if such information is public (open), which confirm sources of their assets, rights to such assets, etc.;
>
> d) conducting primary financial monitoring of financial transactions which participants or beneficiaries are such persons under the procedure specified for high-risk clients, with due regard to recommendations of the relevant state financial monitoring entity which performs, under the Law, the functions of state regulation and supervision over a primary financial monitoring entity;
>
> e) itemizing information about a client at least once a year.

The said norm of the Law entails five extra measures that are taken by a primary financial monitoring entity with regard to national, foreign PEPs, and actors who perform political functions in international organizations, their close associates or related parties:

2.3.1. Detecting, in accordance with internal documents on financial monitoring, whether a client or a person acting on his/her behalf belongs to the said category of clients while carrying out identification, verification or in the process of servicing them, and also whether they are final beneficial owners (controllers) or managers of legal entities

While carrying out identification and verification, and servicing, a primary financial monitoring entity, in accordance with internal documents on financial monitoring, detects the following:

- whether a client belongs to the mentioned category of clients;

[34] During the implementing of banks the measures of PEPs except the law and these guidelines, should be guided by the banking legislation, including the Regulation on the implementation of financial monitoring by banks.

- whether a person acting on behalf of the client belongs to the mentioned category of clients;

- if they are final beneficiary owners (controllers) or managers of legal entities.

At that, it should be noted that a primary financial monitoring entity is obliged to ascertain the above-mentioned facts and account for them also while conducting other due diligence measures with regard to these persons in fulfillment of further sub-clauses (b through e) of clause 2 of part five of Article 6 of the Law, namely in: establishment of business relations upon permission from the manager; conducting of primary financial monitoring for high-risk clients; itemization of information about such clients.

However, in order to identify such persons reporting entities can use the open information resources listed in Section III of these guidelines.

2.3.2. Establishing business relations with such persons upon permission from the manager of a primary financial monitoring entity

According to clause 12 of part one of Article 1 of the Law, business relations are relations between a client and a primary financial monitoring entity which emerged on the basis of a financial or other services contract (including public one).

The Law requires that establishment of business relations with PEPs, their close associates or related parties should be done exclusively upon permission of the manager of a primary financial monitoring entity.

However, entities recommended to develop internal procedures that would provide for obtaining permission of initial financial monitoring entity for the continuation of existing business relationships with public officials, their close persons or entities associated with them, holding one-time financial transactions (without establishing business relations) in significant amounts.

2.3.3. Taking measures (before or during establishment of business relations) for identification of sources of funds of such persons on the basis of documents received therefrom and/ or information from other sources, if such information is public (open), which confirm sources of their assets, rights to such assets, etc.

The Law entails that, before or during establishment of business relations, a primary financial monitoring entity takes measures for identification of sources of funds (assets, rights thereto, etc.) of PEPs, their close associates or related parties on the basis of the following:

- documents received therefrom; and/ or

- information from other sources, if such information is public (open).

Also, please note that according to the part six and seven of Article 9 reporting entities have the right to request:

government agencies, public registers shall within ten working days of receipt of the request under the legislation provide information relating to the identification and / or required to study customer specification information about him or conduct in-depth checks of the client. The above information is supplied free of charge. The procedure for submission of information is defined by the Cabinet of Ministers of Ukraine.

client, client's representative shall submit information (official documents) required (necessary) for identification, verification, customer study, specification of customer information, and to perform other requirements of legislation in the sphere of combating legalization (laundering) of proceeds from crime, terrorist financing and the financing of proliferation of weapons of mass destruction by such entities.

Thus under Article 10 of the Law entities may waive from installation (maintenance) business relationship (including by way of cancellation of business relations) or financial transaction in the event of failure by the client to explore the necessary documents or information of clients or client installation unacceptably high risk of the evaluation or reassessment of risk and are obliged to refuse service (including through termination of business relations) in case of submission of fact during the identification and / or verification of client (Extended Validation client) false information or provided false information to mislead the subject of initial financial monitoring.

Documents that confirm sources of funds of a client are defined by the legislation depending on the legal execution of transactions, their type and essence.

For instance, under the Ukrainian law, there are various ways for a person to acquire the ownership right for funds: income received from the sales of manufactured products and delivered services, the sales of property owned by this person, inheritance, a lottery prize, acquisition of the right for treasure trove, etc. In each particular case, documents that confirm the person's ownership rights for received funds will be different. Therefore, sources of funds which [details] are shared by persons with primary financial monitoring entities should be confirmed with relevant documents: for example, financial statements that contain information about the types and amount of received income, payment/ settlement documents that evidence revenues received for services rendered, an income declaration, documents on inheritance, payment of insurance proceeds under an insurance contract, etc.

Furthermore, documents confirming the sources of funds / assets can also be: a copy of the declaration of property and income with mark form supervisory authority of its receipt in Ukraine (for tax residents of Ukraine);a copy of the declaration of assets, revenues, expenses and financial obligations / declaration of the person authorized to perform state or local governmental functions received, in particular from the Unified State Register of declarations of persons authorized to

perform state or local government that is formed and is the National Agency for the Prevention of Corruption; copy of tax return (declaration of income) to mark the supervisory authority of a foreign country to obtain (for non-residents of Ukraine) [if any]) of documents received inheritance, sale of assets, payment of the sum insured under the insurance contract, etc..

Where the ultimate beneficial owner of the client - legal entity is a public figure, close or connected person, reporting entities must ascertain the source of funds and assets, rights to such assets of the individual - the final beneficiary owner. In addition, if the manager or person acting on behalf of the client - legal entity is a public figure, close or connected person, the client is considered a related party of this public figure. In this case, reporting entities must ascertain the source of funds and assets, rights to such assets of the client - legal entity.

2.3.4. Conducting primary financial monitoring of financial transactions which participants or beneficiaries are such persons under the procedure specified for high-risk clients, with due regard to recommendations of the relevant state financial monitoring entity which performs, under the Law, the functions of state regulation and supervision over a primary financial monitoring entity

Under clause 31 of part one of Article 1 of the Law, primary financial monitoring is a totality of actions that include, among other things, conducting of mandatory and internal financial monitoring. Such monitoring is conducted with due regard to recommendations of the relevant state financial monitoring entity which performs, under the Law, the functions of state regulation and supervision over a primary financial monitoring entity

2.3.5. Itemizing information about a client at least once a year

In accordance with clause 44 of part one of Article 1 of the Law, itemizing information about a client is updating data on a client, including identification details, through documented confirmation of presence (absence) of changes therein.

Part seventeen of Article 9 of the Law entails that the state financial monitoring entities may establish specific features of itemization of information about clients for relevant primary financial monitoring entities depending on specifics of their activity and/ or clients' risks.

Annual itemization of information about a PEP is a specific requirement for monitoring of the activity (transactions) of PEPs as high-risk clients, which is a novelty under the Law.

2.4. Additional Due Diligence Measures in the Field of Life Insurance

Additional, specific due diligence measures for transactions on insurance of PEPs' lives are procured for insurers (re-insurers) and insurance (re-insurance) brokers.

Such conditions are provided for by paragraph seven of clause 2 of part five of Article 6 of the Law.

> Insurers (re-insurers), insurance (re-insurance) brokers, in addition to the measures provided for by this clause, shall also take measures on ascertaining if such person is a beneficiary under a life insurance contract (certificate). Should the fact that such person is a beneficiary be ascertained, prior to paying an insurance premium under such [insurance] certificate, the manager of a primary financial monitoring entity shall be informed thereof and an in-depth check shall be done fortheclient who holds such [insurance] certificate, subsequent to which a decision on informing the specially designated body is made.

Under clause 1 of part four of Article 6 of the Law of Ukraine «On Insurance»,[35] life insurance is a voluntary type of insurance.

Part six of Article 6 of the said Law procures that life insurance is a type of personal insurance which entails the insurer's obligation to pay an insurance premium under an insurance contract in case of the insured person's death and also, if this is provided for by the insurance contract, in case of the insured person's survival until the expiry of the insurance contract and (or) the insured person's reaching an age specified in the contract. Terms and conditions of a life insurance contract may also procure the insurer's obligation to pay an insurance premium in case of an accident happened with an insured person and (or) the insured person's disease. In the event that occurrence of an insurance event entails regular, subsequent lifetime insurance premiums (lifelong pension insurance), it is mandatory that the insurance contract should provide for the risk of the insured person's death within a period of time between commencement of the insurance contract validity and the first insurance premium from among lifelong ones. Otherwise, providing for the risk of death of the insured person is mandatory throughout the validity period of the life insurance contract.

So, insurers (re-insurers) and insurance (re-insurance) brokers, in addition to the measures provided for by clause 2 of part five of Article 6 of the Law:

- take measures to ascertain if a PEP, his/her close relatives or their related parties are a beneficiary under a life insurance contract (certificate);

- should it be ascertained that a PEP, his/her close relatives or their related parties is a beneficiary, prior to paying an insurance premium under such [insurance] certificate, the manager of a primary financial monitoring entity is informed thereof and an in-depth check is done for a client who holds such [insurance] certificate,

[35] On Insurance: Law of Ukraine, dated March 7, 1996, No. 85/96-VR // Holos Ukrayiny. - 1996.

subsequent to which a decision on informing the State Financing Monitoring Service is made.

2.5. Mandatory Control over PEPs' Financial Transactions

According to clause 17 of part one of Article 15 of the Law,a financial transaction is subject to mandatory financial monitoring in the event that its amount equals or exceeds 150,000 UAH (for economic entities that run lotteries, or run and enable access to gambling in casinos, any other gambling, including an electronic (virtual) casino) – 30,000 UAH),or equals or exceeds an amount in a foreign currency, bank metals, other assets which is equivalent to 150,000 UAH (for economic entities that run lotteries, or run and enable access to gambling in casinos, any other gambling, including an electronic (virtual) casino) – 30,000 UAH), and has the following feature:

- financial transactions of persons categorized as high risk.

Simultaneously subject to obligatory financial monitoring may be financial transactions of public figures who meet other signs, under Article 15 of the Act (other codes signs obligatory financial monitoring).

Furthermore, in addition to the above, financial transactions of PEPs may be subject to internal financial monitoring in case a primary financial monitoring entity rises to have suspicions.

Under clause 32 of part one of Article 1 of the Law, a suspicion is an assumption which is based on findings of the analysis of available information and may evidence that a financial transaction or its participants, their activity or sources of assets are associated with money laundering or terrorism financing, or are associated with commitment of another publicly dangerous action which is categorized by the Criminal Code of Ukraine as a crime or for which international sanctions are entailed.

According to Article 16 of the Law a financial transaction which participant is a PEP is subject to internal financial monitoring, if a primary financial monitoring entity rises to have suspicions which are based, in particular, on the following:

- risk criteria defined by the primary financial monitoring entity on its own, with due regard to the risk criteria set forth by the central executive authority for development and ensuring of implementation of state policy in the field of anti-money laundering and terrorism financing counteracting;

- a fact(s) that a financial transaction(s) is non-compliant with the financial standing and/ or the nature of the client's activity ascertained subsequent to findings of the analysis conducted;

- typological researches in the field of counteracting money laundering and terrorism financing or financing the spread of mass destruction weapons, developed and published by the specially designated body.

SECTION III. Recommendations concerning Open Information Sources on Detection of PEPs[36]

3.1. Information Resources on National PEPs

Currently, the legislation of Ukraine does not provided the formation uniform information state resource with an exhaustive list of national PEPs, that correspond to internationally accepted practice.

Still, information concerning national PEPs is present in several for-a-fee and free-of-charge web databases, and also on official websites of the Ukrainian authorities.

Examples of such information resources are given below[37].

3.1.1. Ukrainian officials database

The a.m. database was created by the NGO «Anticorruption Action Centre» specifically for use in the implementation of the Law.

Database contains information concerning Ukrainian officials their relatives and related persons.

Database uses a legal source of information about public figures. The list of sources is defined by the Law of Ukraine "On Access to Public Information". Namely: official publications, official websites and any other official information.

Internet address – http://www.pep.org.ua

3.1.2. Internet guidebook «Oficiyna Ukraina sogodni»

The specified guidebook contains information about government agencies and biographical information of significant public officials.

General contact information is listed for the government agencies (address, telephone and official website), managers' staff list (position, full name, telephone), structural and regional units.

The feature of the guidebook is that it uses a variety of online sources (not only official pages of agencies and politicians, but also their blogs, us analytical dossier, etc.).

Internet address – http://dovidka.com.ua

3.1.3. Internet resource "Public figures"

[36] The information resources (products) are recommended, rather than mandatory, for use for the purpose of detection of PEPs.

[37] It should be note that the responsibility for obtaining the relevant information about the client lies on the entity of initial financial monitoring.

The abovementioned database was created to search for public figures.

It contains information about the Ukrainian public figures and their relatives and related persons, if the information about them was to be published.

Database uses a legal source of information about public figures. The list of sources is defined by the Law of Ukraine "On Access to Public Information". Namely: official publications, official websites and any other official information.

Internet address – http://www.public.biz.ua

3.1.4. Official websites of the Ukrainian authorities

Item # [in line with Section I (item 1.1)]	PEP category	Name of the official website
1.1.1.	President of Ukraine	Official website of the Ukrainian President (http://www.president.gov.ua)
1.1.2.	Prime Minister of Ukraine	Government's portal (http://www.kmu.gov.ua)
1.1.3.	Members of the Cabinet of Ministers of Ukraine	Government's portal (http://www.kmu.gov.ua)
1.1.4.	First deputies and deputies of ministers	Official websites of theministries
1.1.5.	Heads of other central executive authorities, their first deputies and deputies	Government's portal (http://www.kmu.gov.ua) Official websites of thecentral executive authorities
1.1.6.	Members of the Ukrainian Parliament	Official website of theUkrainian Parliament (http://www.rada.gov.ua)
1.1.7.	Governor and members of the Board of the National Bank of Ukraine, members of the Council of the National Bank of Ukraine	Official website of theNational Bank of Ukraine (http://www.bank.gov.ua)
1.1.8.	Chairperson and judges of the Constitutional Court of Ukraine	Official website of theConstitutional Court of Ukraine (http://www.ccu.gov.ua)
1.1.9.	Chairperson and judges of the Supreme Court of Ukraine	Official website of the Supreme Court of Ukraine (http://www.scourt.gov.ua)
1.1.10.	Chairpersons and judges of the higher specialized courts	Official websites of the: Higher Specialized Court of Ukraine for Civil and Criminal Cases (http://sc.gov.ua); - Higher Commercial Court of Ukraine (http://vgsu.arbitr.gov.ua); - Higher Administrative Court of Ukraine (http://www.vasu.gov.ua)
1.1.11.	Members of the Higher Council of Justice	Official website of the Higher Council of Justice (http://www.vru.gov.ua)
1.1.12.	Members ofthe Higher	Official website of the Higher Qualification

	Qualification Commission of Judges of Ukraine	Commission of Judges of Ukraine (http://www.vkksu.gov.ua)
1.1.13.	Members of the Qualification and Disciplinary Commission of Prosecutors	There is no core information resource
1.1.14.	Ukrainian Prosecutor General and his/her deputies	Official website of the Ukrainian Prosecutor General's Office (http://www.gp.gov.ua)
1.1.15.	Head of the Security Service of Ukraine and his/her deputies	Official website of the Security Service of Ukraine (http://www.sbu.gov.ua)
1.1.16.	Director of the National Anti-Corruption Bureau of Ukraine	Official website of the National Anti-Corruption Bureau of Ukraine (http://www.nabu.gov.ua)
1.1.17.	Chairperson of the Anti-Monopoly Committee of Ukraine and his/her deputies	Official website of the Anti-Monopoly Committee of Ukraine (http://www.amc.gov.ua)
1.1.18.	Chairperson and members of the Accounting Chamber	Official website of the Accounting Chamber (http://www.ac-rada.gov.ua)
1.1.19.	Members of the National Council of Ukraine for TV and Radio Broadcasting	Official website of the National Council of Ukraine for TV and Radio Broadcasting (http://nrada.gov.ua)
1.1.20.	Ambassadors extraordinary and plenipotentiary	There is no core information resource
1.1.21.	Chief of the Headquarters - Commander-in-Chief of the Armed Forces of Ukraine, Commanders of the Land Forces, Air Forces, and Naval Forces of Ukraine	Official website of the Ministry of Defense of Ukraine (http://www.mil.gov.ua)
1.1.22.	Civil servants whose offices are categorized as offices of categories one and two	There is no core information resource
1.1.23.	Heads of regional bodies of the central executive authorities	Official website of the Cabinet of Ministers of Ukraine (http://www.kmu.gov.ua/control/uk/publish/officialcategory?cat_id=24482930)
1.1.24.	Heads of regional bodies of prosecution	Official website of the Ukrainian Prosecutor General's Office (http://www.gp.gov.ua/ua/regions_www.html)
1.1.25.	Heads of regional bodies of the Security Service of Ukraine	Official website of the Security Service of Ukraine (http://www.ssu.gov.ua/sbu/control/uk/publish/article?art_id=39367&cat_id=39365)
1.1.26.	Chairpersons and judges of courts of appeal	Official webportal of the Judicial Branch of Power of Ukraine (http://court.gov.ua)
1.1.27.	Heads of administrative, management or supervisory bodies of state-owned and fiscal enterprises, economic	There is no core information resource

	partnerships with a share of more than 50% in the statutory capital owned by the state	
1.1.28.	Chairpersons of governing bodies of political parties and members of their central statutory bodies	There is no core information resource

While detecting PEPs, one should pay attention to possible changes (as a result of reorganization) in the names of the authorities and offices of their top executives.

3.1.5. Single state register of declarations of persons authorized to perform state or local governmental functions

According to the Law of Ukraine "On prevention of corruption" a central body of executive power of Ukraine with special status must be established, which will provide development and implementation of the state anticorruption policy - National Agency for prevention of corruption.

According to paragraph 9 of Article 11 of this Law one of the powers of the National Agency for prevention of corruption is to ensure the Unified State Register of declarations of persons authorized to perform state or local governmental functions.

According to Article 47 of the Law of Ukraine "On Prevention of Corruption" (accounting and disclosure of declarations) National Agency on Corruption Prevention provides round the clock open access to the Unified State Register of declarations of persons authorized to perform state or local governmental functions, at their own official's website.

Access to the Unified State Register of declarations of persons authorized to perform state or local governmental functions is provided at the official website of the National Agency for prevention of corruption by the ability to view, copy and print the information, as well as a set of data (electronic documents), organized in a format which allows its automatic processing by electronic means for reuse.

Information about the person in the Unified State Register of declarations of persons authorized to perform state or local governmental functions persists throughout the execution time of that person's state functions or local government, and for five years after termination of its specified functions, except the last declaration, filed by a person which is preserved in perpetuity.

Tentatively, the introduction of the Unified State Register of declarations of persons authorized to perform state or local governmental functions, will not happen before April 2016.

3.2. Information Resources on Foreign and International PEPs (including national ones)

3.2.1. Lexisnexis

This software allows to search PEP's on the national and foreign (international) level. This risk management platform enables the automatic monitoring of business affiliates and flags any adverse actions or relationships that are indicators of risk for initial financial monitoring entity.

Web: http://www.lexisnexis.com

3.2.2. Dow Jones Watchlist

Dow Jones Watchlist feed is relied on by eight of the largest financial institutions for their enterprise-wide PEP list screening programs. With its flexible data format; granular, targeted categorization of PEP profiles; and thorough application of secondary identifiers.

Web: http://www.dowjones.com

3.2.3. Six Financial Information

PEP-Check enables initial financial monitoring entity to run checks on potential and existing clients against official sanction lists, PEP (politically exposed person) lists, and risk lists (watch lists and blacklists) as required by law and recommended by the international FATF.

Web: http://www.six-financial-information.com

3.2.4. Accuity's Global PEP

Consisting of over 1.3 million entities in 240 countries and territories, Accuity's PEP Due Diligence Database, is the one of the largest Politically Exposed Person (PEP) database in the world.

It details information such as: names, aliases, date and place of birth, photographs, positions, family members, associates and company holdings, giving you direct access to the most comprehensive information available to assist with identifying true matches. Additionally, Accuity provides key relationships viewable in an interactive diagram to identify high-risk customers with connections to PEPs.

Web – http://www.accuity.com/compliance/pep-due-diligence-database

3.2.5. Thomson Reuters World-Check

Database updated online with more than 2,6 millions profiles of individuals and legal persons from more than 240 countries of the world. Provides effective

monitoring of more than 400 sanction programs and published lists of persons by law enforcement authorities, national regulators. Profiles, among other things, contain links to open sources of information.

Internet address – https://risk.thomsonreuters.com/products/world-check

SECTION IV. International Standards and Best Practices on Prudence Measures concerning PEPs

The international standards relating to financial institutions and designated non financial businesses (DNFBs) relationships with PEPs are set by the Financial Acton Task Force (FATF). The standards are expressed in the FATF's 40 Recommendations[38] and expanded upon in the Interpretative Notes to the recommendations.

Best practice for financial institutions and DNFBs, collectively referred to hereafter as Reporting Entities (REs), in establishing and maintaining financial relationships with PEPs has been established by countries in legislation and regulatory requirements but considerable guidance has been provided by the FATF itself, international organizations, and others such as Wolfsberg Group[39], the Bank of International Settlements[40], the Basel Institute for Governance[41] and the Egmont Group of Financial Intelligence Units (The Egmont Group)[42]. A particularly useful and informative source of information on PEPs and anti-corruption measures generally is the Stolen Asset Recovery (StAR) Initiative, a joint initiative of the World Bank and the United Nations Office on Drugs and Crime (UNODC)[43].

This section draws heavily on guidance from the FATF but also from the various groups referred to above. Reference is made to specific papers or publications where appropriate.

[38] Financial Action Task Force 40 Recommendations - http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html
[39] http://www.wolfsberg-principles.com
[40] https://www.bis.org
[41] https://www.baselgovernance.org
[42] http://www.egmontgroup.org
[43] http://star.worldbank.org/star

4.1. Who is a Politically Exposed Person (PEP): the Definition

A PEP is defined by the FATF as «an individual who is or has beenentrusted with a prominent public function». The FATF recognizes that, due to their status and influence, many PEPs are in positions that can be platforms for committing money laundering and related predicate offences, particularly corruption related offences. These include corrupt practices and bribery, as well as conducting activity related to the financing of terrorism.

Consequently, the FATF Recommendations require the application of additional customer due diligence to business relationships with PEPs due to the potential risk associated with PEPs. It must be emphasized that these measures are preventive in nature. The FATF emphasizes that it should not be automatically inferred that all PEPs are involved in criminal activity or that they are, by default, involved in corrupt practices.

Addressing the risks associated with PEPs requires the effective implementation of FATF Recommendations 10, 12 and 22, amongst others. Recommendation 12 is specific to PEPs and sets out Anti Money-Laundering/Counter-Terrorism Financing (AML/CTF) measures applicable to reporting entities that engage in or enter into a business relationships with PEPs. Recommendations 10 and 22 are general customer due diligence requirements for financial institutions and DNFBs respectively.

4.2. Categories of PEPs

The FATF definition of PEPs identifies Foreign PEPs, Domestic PEPS, International Organizations PEPs[44].

4.2.1. Foreign PEPs:individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.[45]

4.2.2. Domestic PEPs:individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.[46]

The following examples of domestic PEPS tend to be included in the definitions applied by various countries in guidance to reporting entities:

- Head of State – the President of a republic;
- Head of Government – the Prime Minister;
- Senior Members of the Legislature - The Speaker of the House and the President of the Senate;
- Senior Politicians - all Members of Parliament, Government Ministers, Mayors, State or Provincial Governors, Leader of the Opposition, Parliamentary Secretaries;
- Senior Government Officials - Permanent Secretaries, Chief Technical Officers, an Ambassador or High Commissioner, Assistant Commissioner of Police or higher rank;
- Judicial Officials - Magistrates or judges of inferior courts, judges of higher courts, Prosecutor General and senior prosecution officials;
- High ranking military officials – a Colonel or higher rank (for example);
- Senior executives of State owned corporations e.g. Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest;
- Senior political party officials e.g. Chairman, Political Leader and Deputy Political Leader of a political party.

[44]For a detailed description of the various categories and PEPs and measures required to be applied to dealings with them see FATF Guidance – Politically Exposed Persons (Recommendations 12 and 22) - http://www.fatf-gafi.org/topics/fatfrecommendations/documents/peps-r12-r22.html

[45] See Glossary to the FATF 40 Recommendations - http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html

[46] Ibid

This list is obviously not exhaustive and will vary greatly from one jurisdiction to another.

4.2.3. International organization PEPs: persons who are or have been entrusted with a prominent function by an international organization, and refers to members of senior management or individuals who have been entrusted with equivalent functions, *i.e.* directors, deputy directors and members of the board or equivalent functions.[47]

4.2.4. Immediate family members: Individuals who are related to a PEP either through birth or marriage or other marriage type relationship.

Definitions of immediate family members often include:

- spouse;
- parents;
- siblings;
- children;
- parents, siblings and additional children of the PEP's spouse.

References to parents, siblings or children usually include half and whole blood relations and relationships through adoption. Spouse usually includes ex-spouse.

4.2.5. Close associates: Individuals who are closely connected to a PEP, either socially or professionally.

The international standards include in this definition:

- partners outside the family unit (*e.g.* girlfriends, boyfriends, mistresses);
- prominent members of the same political party, civil organization, labor or employee union as the PEP;
- business partners or associates, especially those that share (beneficial) ownership of legal entities with the PEP; or
- who are otherwise connected (*e.g.*, through joint membership of a company board);
- in the case of personal relationships, the social, economic and cultural context may also play a role in determining how close those relationships generally are.[48]

Again, the lists are obviously not exhaustive and will vary greatly from one jurisdiction to another.

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[47] See Glossary to the FATF 40 Recommendations - http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html

[48] FATF Guidance – Politically Exposed Persons (Recommendations 12 and 22) - http://www.fatf-gafi.org/topics/fatfrecommendations/documents/peps-r12-r22.html

4.3. Enhanced Due Diligence Measures

International standards and best practices require that due diligence measures be applied to each PEP, whether the PEP is a customer or beneficial owner, or beneficiary of a wire transfer, insurance policy, trust etc.[49] Such measures are also to be applied to his/her immediate family members and close associates however defined by the individual jurisdiction.

In addition to performing normal customer due diligence measures, reporting entities must, as a minimum, apply the following enhanced due diligence measures:

- have appropriate risk-management systems to determine whether the customer or the beneficial owner is a PEP, or immediate family member or close associate of a PEP;
- obtain senior management approval before establishing, or continuing, the business relationship;
- take reasonable measures to determine the source of wealth and source of funds; and
- conduct enhanced on-going monitoring of the business relationship.

Reasonable measures should be taken to determine whether a customer or beneficial owner is a foreign or domestic PEP or a person who is or has been entrusted with a prominent function by an international organization. The requirements for PEPs must also be applied to immediate family members and close associates of such PEPs.

The key to the effective monitoring of a business relationship with a PEP is for reporting entities to always adopt a risk-based approach and to strictly apply «know your customer» principles as set out in the FATF 40 recommendations and Guidance Notes.

[49]FATF Guidance – Politically Exposed Persons (Recommendations 12 and 22) – paras 32 -35 - http://www.fatf-gafi.org/topics/fatfrecommendations/documents/peps-r12-r22.html

4.4. Guidance on the Use of Sources of Information for the Determination of PEPs, their Family Members & Close Associates[50]

Determining whether customers or beneficial owners are PEPs and/or finding out who are their family members and close associates can be challenging, particularly when dealing with foreign PEPs for whom current information may not be readily available. Another implementation issue is determining whether existing clients of financial institutions and DNFBPs have become PEPs since the business relationship began.

International standard setters and others have suggested a range of measures that can be applied in dealing with PEPs or possible PEPs. These are summarized below. Almost all of the reference materials listed at the end of this section contain some guidance on best practices for the determination of PEPs and others associated with them.

The FATF stresses that customer due diligence is the key source of information for the purpose of determining that a customer is a PEP, as required by FATF Recommendations 10 and 12.

- Ensuring that client CDD information is up to date.
- Employees -FATF Interpretative Note to Recommendation 18 requires internal control policies to include ongoing employee training programs.
- Internet and media searches - while general searches on the larger search engines can prove difficult because of the number of «hits» that would require reviewing, free search tools are offered through AML-specific websites that would be more targeted. In addition, searching focused sources that could be linked to the customer may assist in locating relevant information, for example, social media websites in the customer's country of origin. Internet searches can also assist in retrieving general relevant country information. For example, for a financial institution or DNFBP it is relevant to know which countries prohibit certain PEPs (such as elected officials) from maintaining bank accounts abroad.
- Commercial databases - there are a variety of commercial databases available which may assist in the detection of PEPs. Use of these databases is not required by the FATF Recommendations, and is not sufficient for compliance with Recommendation 12. Financial institutions, DNFBPs and competent authorities can acquire access to such databases through the payment of a subscription.[51]

[50]FATF Guidance – Politically Exposed Persons (Recommendations 12 and 22) - http://www.fatf-gafi.org/topics/fatfrecommendations/documents/peps-r12-r22.html

[51] For example: www.world-check.com, www.acuity.com, www.info4c.net, www.finsac.com, www.dowjones.com, www.pep-web.org, www.tracesmart.co.uk (Lexis Nexis),

- Government issued PEPs lists. Some governments do issue lists of PEPs but it is rare and it is generally recognized that they are often of limited value because they usually only include lists of names. There are varying opinions on the value of such lists, most of them negative. The FATF favors a list of government positions and appointments rather than one containing names and makes it clear in its guidance that simply checking a list compiled by a government agency does not satisfy customer due diligence requirements. A list of positions and appointments, the incumbents and former incumbents of which would fit the definition of a PEP, provides reporting entities with a direct point of reference and is much easier for governments to keep up to date and therefore accurate. This is the approach favored by the FATF.
- In-house databases and information sharing within financial groups or countries.
- Asset disclosure systems.
- Customer self declarations.

4.5. Red Flags /Suspicious Indicators[52]

The FATF has developed a list of red flags /suspicious indicators that can be used to assist in detecting the misuse of the financial systems by PEPs during a customer relationship. This list of red flags/suspicious indicators is intended to assist in the detection of suspicious behavior among those PEPs who abuse the financial system. However, the list of indicators is not intended to stigmatize or 'brand' all PEPs.

4.5.1. PEPs attempting to shields their identity

PEPs are aware that their status as a PEP may facilitate the detection of their illicit behavior. This means that PEPs may attempt to shield their identity, to prevent detection.

Examples of ways in which this is done are:

- use of corporate vehicles (legal entities and legal arrangements) to obscure the beneficial owner;
- use of corporate vehicles without valid business reason;
- use of intermediaries when this does not match with normal business practices or when this seems to be used to shield identity of PEP;
- use of family members or close associates as legal owner.

Red flags and indicators relating to the PEP and his/her behavior:

Specific behavior and individual characteristics of PEPs may raise red flags / risk levels or cause a suspicion:

- use of corporate vehicles (legal entities and legal arrangements) to obscure *i)* ownership, *ii)* involved industries or *iii)* countries;
- the PEP makes inquiries about the institution's AML policy or PEP policy;
- the PEP seems generally uncomfortable to provide information about source of wealth or source of funds;
- the information that is provided by the PEP is inconsistent with other (publicly available) information, such as asset declarations and published official salaries;
- the PEP is unable or reluctant to explain the reason for doing business in the country of the financial institution or DNFBP;
- the PEP provides inaccurate or incomplete information;
- the PEPs seeks to make use of the services of a financial institution or DNFBP that would normally not cater to foreign or high value clients;

[52]FATF Guidance – Politically Exposed Persons (Recommendations 12 and 22) - http://www.fatf-gafi.org/topics/fatfrecommendations/documents/peps-r12-r22.html

- funds are repeatedly moved to and from countries to which the PEPs does not seem to have ties with;
- the PEP is or has been denied entry to the country (visa denial);
- the PEP is from a country that prohibits or restricts its/certain citizens to hold accounts or own certain property in a foreign country.

4.5.2. The PEP's position or involvement in business

The position that a PEP holds and the manner in which the PEP presents his/her position are important factors to be taken into account. Possible red flags are:

- the PEP has a substantial authority over or access to state assets and funds, policies and operations;
- the PEP has control over regulatory approvals, including awarding licenses and concessions;
- the PEP has the formal or informal ability to control mechanisms established to prevent and detected ML/TF;
- the PEP (actively) downplays importance of his/her public function, or the public function s/he is relates to associated with;
- the PEP does not reveal all positions (including those that are *ex officio*);
- the PEP has access to, control or influence over, government or corporate accounts;
- the PEP (partially) owns or controls financial institutions or DNFBPs, either privately, or *ex officio*;
- the PEP (partially) owns or controls the financial institution or DNFBP (either privately or *ex officio*) that is a counter part or a correspondent in a transaction;
- the PEP is a director or beneficial owner of a legal entity that is a client of a financial institution or a DNFBP.

Red flags and indicators relating to the industry/sector with which the PEP is involved:

A connection with a high-risk industry may raise the risk of doing business with a PEP. Under Recommendation 1[53], competent authorities, financial institutions and DNFBPs are required for determining which types of clients may be higher risk. For this, financial institutions and DNFBPs will also be guided by national guidance or risk assessments. Which industries may be at risk depends on the risk assessments and varies from country to country, and on other industry safeguards that may be in place. Examples of higher risk industries are:

[53] Financial Action Task Force 40 Recommendations - http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html

- arms trade and defense industry;
- banking and finance;
- businesses active in government procurement, *i.e.*, those whose business is selling to government or state agencies;
- construction and (large) infrastructure;
- development and other types of assistance;
- human health activities;
- mining and extraction;
- privatization;
- provision of public goods, utilities.

4.5.3. Business relationship/transaction/purpose of business relationship

Red flag and indicators can also relate to the specific business relationship or transaction:

- multiple STRs have been submitted on a PEP;
- consistent use of rounded amounts, where this cannot be explained by the expected business;
- deposit or withdrawal of large amounts of cash from an account, use of bank cheques or other bearer instruments to make large payments. Use of large amounts of cash in the business relationship;
- other financial institutions and DNFBPs have terminated the business relationship with the PEP;
- other financial institutions and DNFBPs have been subject to regulatory actions over doing business with the PEP.;
- personal and business related money flows are difficult to distinguish from each other;
- financial activity is inconsistent with legitimate or expected activity, funds are moved to or from an account or between financial institutions without a business rationale;
- the account shows substantial activity after a dormant period; or over a relatively short time; or shortly after commencing the business relationship;
- the account shows substantial flow of cash or wire transfers into or out of the account;
- transactions between non-client corporate vehicles and the PEP’s accounts;

- a PEP is unable or reluctant to provide details or credible explanations for establishing a business relationship, opening an account or conducting transactions;
- a PEP receives 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;
- a PEP uses third parties to exchange gaming chips for cash and vice versa with little or minimal gaming activity;
- a PEP uses multiple bank accounts for no apparent commercial or other reason.

4.5.4. Products, service, transaction or delivery channels

The FATF Recommendations (Interpretative Note to Recommendation 10)[54] contain examples of products, industries, service, transaction or delivery channels, which are of a higher risk, irrespective of the type of customer. These examples are:

- private banking;
- anonymous transactions (including cash);
- non-face-to-face business relationships or transactions;
- payments received from unknown or un-associated third parties.

If these industries, products, service, transaction or delivery channels are used by PEPs, then this adds an additional risk factor (depending on the nature of the PEP). In addition to the examples already listed in the FATF Recommendations, there are other products, industries, service, transaction or delivery channels that can become additionally vulnerable when used by PEPs.

Examples of these are:

- businesses that cater mainly to (high value) foreign clients;
- trust and company service providers;
- wire transfers, to and from a PEP account that cannot be economically explained, or that lack relevant originator or beneficiary information;
- correspondent and concentration accounts;
- dealers in precious metals and precious stones, or other luxurious goods;
- dealers in luxurious transport vehicles (such as cars, sports cars, ships, helicopters and planes);
- high end real estate dealers.

[54] Financial Action Task Force 40 Recommendations - http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html

4.5.5. Country specific red flags and indicators

The FATF Recommendations (Interpretative Note to Recommendation 10)[55] contain examples of higher risk country or geographic risk factors, irrespective of the type of customer. Additionally, the following red flags and indicators relating to countries can be taken into account when doing business with a PEP:

- the foreign or domestic PEP is from a higher risk country (as defined by the FATF in Recommendation 19, or the Interpretative Note to Recommendation 10);
- additional risks occur if a foreign or domestic PEP from a higher risk country would in his/her position have control or influence over decisions that would effectively address identified shortcomings in the AML/CFT system;
- foreign or domestic PEPs from countries identified by credible sources as having a high risk of corruption;
- foreign or domestic PEPs from countries that have not signed or ratified or have not or insufficiently implemented relevant anti-corruption conventions, such as the UNCAC, and the OECD Anti-Bribery Convention;
- foreign or domestic PEPs from countries with a mono economies (economic dependency on one or a few export products), especially if export control or licensing measures have been put in place;
- foreign or domestic PEPs from countries that are dependent on the export of illicit goods, such as drugs;
- foreign or domestic PEPs from countries (including political subdivisions) with political systems that are based on personal rule, autocratic regimes, or countries where a major objective is to enrich those in power, and countries with high level of patronage appointments;
- foreign or domestic PEPs from countries with poor and/or opaque governance and accountability;
- foreign or domestic PEPs from countries identified by credible sources as having high levels of (organized) crime.

[55] Financial Action Task Force 40 Recommendations - http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html

4.6. Case Studies

What follows is a collection of case studies selected from a number of publications, which demonstrate the use of the financial system to facilitate the laundering of the proceeds of corruption. This is a small sample only and the publications are referenced for further reading.

4.6.1. Case study of asset reporting to assist in detection of corruption related money laundering: US Congressman Randal Cunningham[56]

Randal «Duke» Cunningham was a United States Congressman representing a district in Southern California. A former fighter pilot of some distinction, he was a member of the powerful Appropriations Committee, whose function it was to develop a budget. Congressman Cunningham's prior military experience allowed him to have significance in the military budget. As part of his duties, he had the ability to insert special requirements, known as «earmarks» into defense budgets, requiring that the military purchase a certain good or service. Some of these earmarks also mandated the use of «no-bid» contracts, which would circumvent the normal open bidding process, purportedly because the good or service was highly specialized or classified.

Cunningham accepted bribes, typically through asset transactions, in exchange for no-bid earmarks. In one instance, a defense contractor was able to receive millions in no-bid contracts by purchasing the Congressman's home from him at an inflated price so that Cunningham could purchase a more expensive house. To disguise the transaction, the contractor used a corporate vehicle to purchase Cunningham's house. The contractor paid additional money to the Congressman, disguised through cheques made payable to a corporate entity that Cunningham had previously established. Other similar bribes included the purchase of a yacht, nominally owned by a third party but in fact owned and used by Cunningham, and the purchase of antiques and other furniture. Investigators in the case were aided by the fact that Cunningham was required to disclose his assets and his income. An examination of those records showed that Cunningham's net worth skyrocketed in a few short years, but that his net income had not. Moreover, Cunningham had listed the corporation used to accept some of the bribe money on his asset disclosure form, which enabled investigators to conclude that money paid to that corporation was attributable to him.

The case also demonstrates the difficulty with «no-bid» contracts. Some of the earmarks that the Congressman granted were nothing more than vehicles by which

[56] *Specific Risk Factors in the Laundering of Proceeds of Corruption* - Assistance to reporting institutions, Financial Action Task Force, June 2012. http://www.fatf-gafi.org/topics/methodsandtrends/documents/specificriskfactorsinthelaunderingofproceedsofcorruption-assistancetoreportinginstitutions.html

money could be kicked back to him: the contractor would be awarded the contract for an inflated price and would deliver some of the money back to the congressman.

Source: US court documents, United States v. Randall Cunningham, Case no. 05-cr-2137 (2006).

4.6.2. Case study on use of cash: Diepreye Alamieyesiegha[57]

Diepreye Alamieyesiegha was elected Governor of Bayelsa State Nigeria in 1999 and re-elected in 2003.

In asset declarations in 1999 and 2003, Alamieyesiegha failed to reveal, as he was required to, that he controlled numerous accounts in London with millions of pounds of deposits.

In 2005, Alamieyesiegha was arrested on a flight to the UK and interviewed at a London police station. One of his London properties was searched and GBP 1 million cash was found in numerous locked bags in a locked bedroom. During his interview he denied being involved in corruption and claimed the cash was his «strategic reserve». An analysis of the UK-based accounts associated with Alamieyesiegha showed both cash deposits and account activity highly inconsistent with its stated purpose.

For example, shortly after opening one account, there was a sharp rise in deposits from GBP 35 000 to GBP 1.5 million. In 2003, Alamieyesiegha also instructed a London-based fiduciary/trust company and service provider to register a company in the Seychelles of which Alamieyesiegha was the sole shareholder and director. This company then opened an account with a UK bank. The bank had predicted a turnover of GBP 250 000, but in the first 14 months the account received deposits totaling approximately GBP 2.7 million; contrary to the characteristics of a functioning business did not have any outgoings. GBP 1.6 million came from a bank in Nigeria from a contractor to Bayelsa State. Additionally, at least one of those accounts received cash deposits, often in increments of GBP 10 000 to 15 000.

Source: Court documents, Federal Republic of Nigeria v. Santolina Investment Corporation, et al., HC05-C03602 (2006).

4.6.3. Case study[58]

In one and a half years, the Belgian account of a company from Central Africa was credited with four international transfers for a total amount of over US$2.2 million by order of a company dealing in electronics in Asia. The account of this

[57] Specific Risk Factors in the Laundering of Proceeds of Corruption - Assistance to reporting institutions, Financial Action Task Force, June 2012. http://www.fatf-gafi.org/topics/methodsandtrends/documents/specificriskfactorsinthelaunderingofproceedsofcorruption-assistancetoreportinginstitutions.html

[58] http://www.egmontgroup.org/news-and-events/news/2012/10/03/the-role-of-fius-in-fighting-corruption-and-recovering

African company was opened two years prior at request of an accountancy fiduciary as the company wanted to do business with companies in Belgium and Europe and wanted to place orders and pay suppliers using this account. The manager did not reside in Belgium but in Africa. These four international transfers were followed by transfers to South Korea, Cyprus and also to France.

The transactions on these accounts clearly did not correspond to the anticipated nature of the business relationship, i.e. paying suppliers in Europe. According to press articles, an individual whose identity was almost identical to the person involved was the adviser of a minister of defense of a country in Central Africa. Other articles on the Internet mentioned development projects involving a South Korean company and «donations» from this company to the army of this Central African country to close the deal. This case clearly involved payments to a powerful person.

4.6.4. Case study: Joseph Estrada[59]

Joseph Estrada was President of the Republic of the Philippines from June 1998 to January 2001. He stepped down during his Senate impeachment trial on charges of corruption and amid growing public protests against his presidency. He was arrested in April 2001 and charged with violating the Anti-Plunder Law for allegedly having amassed more than US $ 87 million in unlawful and unexplained wealth On September 12, 2007, the *Sandiganbayan* (antigraft court) convicted Estrada of plunder, holding that, from June 1998 to January 2001, Estrada had (a) conspired with Governor Luis Singson and others, and had collected US $ 11.6 million in kickbacks from illegal *jueteng* gambling operators as protection money, of which US $ 4.26 million were found to have been concealed in the bank accounts of the Erap Muslim Youth Foundation, and (b) directed two government agencies to purchase shares in the Belle Corporation (Belle) and unjustly enriched himself by receiving US $ 4 million in commission for the sale which was held in a bank account under the fake name «Jose Velarde» of which he was the beneficial owner. As part of the plunder decision, the Sandiganbayan ordered the forfeiture of Estrada's illegally acquired assets from the *jueteng* collections and the commissions from the Belle Corporation shares.

Two noteworthy issues in the Estrada case were the use of a foundation to conceal illicitproceeds and the involvement of a large number of individuals who acted in various capacities to help Estrada carry out his illicit schemes.

4.6.5. Case study: Piarco International Airport Scandal[60]

[59] The Puppet Masters, How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It (Van der Does de Willebois, Halter, Harrison, Won Park, Sharman), StAR(World Bank / UNODC) 2011. https://star.worldbank.org/star/publication/puppet-masters

[60] The Puppet Masters, How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It (Van der Does de Willebois, Halter, Harrison, Won Park, Sharman), StAR(World Bank / UNODC) 2011. https://star.worldbank.org/star/publication/puppet-masters

From 1996 through 2000, the government of Trinidad and Tobago conducted what was intended to be a competitive process to award and pay for various contracts in conjunction with the construction of the Piarco International Airport in Trinidad. Birk Hillman Consultants, Inc. (BHC), a construction firm co-owned by Eduardo Hillman-Waller, was hired as designer, consultant, and project manager to oversee the airport construction project. BHC and others, such as businessmen Raul Gutierrez and Armando Paz, were able to rig the bidding and selection process so that overpriced bids submitted by the companies they controlled, such as the Florida corporation Calmaquip Engineering Corp. (Calmaquip), would be chosen to perform the contracts.

According to the civil complaint filed by Trinidad and Tobago against the conspirators, the influence of political appointees, which included chairman of the National Gas Company Steve Ferguson, Minister of Finance Brian Kuei Tung, and chairman of Tourism and Industrial Development Company of Trinidad and Tobago Ishwar Galbaransingh, allowed BHC and the other conspirators to guarantee government approval for the projects.

A contract designated CP-9 was approved for the building enclosure and interior construction of the airport. Despite the fact that eight companies had prequalified to submit bids, only one company from Trinidad and Tobago, Northern Construction Limited (Northern), submitted a bid. According to the indictment, Northern was owned by Galbaransingh. Despite the fact that Northern's bid was approximately US$10 million above the cost estimate, Northern was awarded the contract for CP-9.

The contract designated CP-13 was awarded to Calmaquip for miscellaneous specialty equipment, such as jetways, elevators, escalators, and x-ray machines. Despite the fact that 10 companies had been prequalified to invite bids for CP-13, only Calmaquip and SDC, an international construction firm, submitted bids. Neither Calmaquip nor SDC disclosed that SDC's subsidiary, SDCC, shared corporate officers, directors, and a business location with Calmaquip. Calmaquip won the bid, despite its bid being US$15 million higher than the estimated cost of CP-13. The proceeds of these fraudulently obtained contracts were then secreted into various off shore bank accounts connected to different shell companies. The misuse of corporate vehicles (CVs) was essential in this case.

CVs are often used to protect the anonymity of a Politically Exposed Person (PEP) in corruption schemes; they are further used to hide the names of those involved in the scheme altogether. Another reason CVs are used is to give a fraudulent scheme the appearance of legitimacy. Because of the large-scale nature of the Piarco airport construction project, the prominent role the government played in awarding the contracts, and the high-level PEPs allegedly involved, it would have been nearly impossible for those PEPs to remain completely anonymous throughout the duration of the scheme.

In other words, the primary motivation for using CVs was probably not the protection of the anonymity of the PEPs. Instead, the conspirators likely employed CVs to convince the public that the bidding and the awarding of contracts was being performed legitimately.

The Airports Authority of Trinidad and Tobago (AATT) was the government agency assigned overall responsibility for the construction of the airport. From April to November 2000, AATT paid funds into Calmaquip's bank accounts at Dresdner Bank Lateinamerika, AG (Dresdner) in Miami, Florida, United States, for Calmaquip's work on CP-13.403. Forty-five payments were made, ranging from US$20,461.95 to US$5,500,663.75, and amounting to more than US$29,095,477.404. After the money was deposited into Calmaquip's Dresdner account, the conspirators used a system of layering to create levels of separation.

On May 11, 2000, Raul Gutierrez, president and director of Calmaquip,405 wire transferred US$2,000,000 from Dresdner Bank to Bank Leu Ltd. on behalf of the company, AMA Investment Group (AMA). According to the indictment, that same day, AMA wire transferred US$1,500,000 from its Bank Leu account to the Bank Leu account of Argentum International Marketing Services, S.A. (Argentum). Over the course of the next month, Steve Ferguson, on behalf of Argentum, allegedly wire transferred from Argentum's Bank Leu account to other bank accounts held in the name of various other CVs, such as Bocora Holding, Inc. (Bocora) and Maritime Securities Holdings Ltd.

In August and September 2000, Gutierrez and Armando Paz, both directors for Calmaquip, also made numerous transfers on behalf of Calmaquip to the Banco Bilbao Vizcaya Argentaria accounts of Empresas Sudamericana S.A. (Empresas). Later, Empresas allegedly would wire transfer money from this account to Argentum's Bank Leu account. After sufficient layers had been created, the payouts were made into the bank accounts of the conspirators.

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