

# Politically Exposed Persons

## Risks and Case Studies

David COPE

Executive Director

Legal & Compliance

2012

# Agenda

- What is your role as a MLRO;
- What is a 'Risk Based Approach':
- Who and what are PEPs;
- What is their actual risk ;
- Suspicious Activity Reporting;
- Ongoing Due Diligence;
- Conclusions and Tips.

# What is your role ?

- Protect your organisation...not to help it avoid being caught....
- You need to know what the law and associated guidelines require and what tools you have / need to do comply with them;
- Basic AML/CTF programs have 4 main areas

- (1) KYC on customer acceptance;
- (2) Ongoing KYC based on changes in relationship and on transactions made or received;
- (3) Client / Payment sanction screening system
- (4) System to review and report suspicious activity.

Morgan Stanley



# Intrigues and power struggles lie behind BOC's latest admission

**PLAGUED BY A** series of scandals, Beijing-based Bank of China has been making enormous efforts to reassure a sceptical international audience that it

## Monitor

suspicion of it during his six Shanghai bras were widely by Shanghai prop ngai and local The buck s

## Banks warned of scandal risk on terror guidelines

Those failing to comply with the stricter code are told that they could face ruin

Under the new guidelines, banks should pay more attention to the identities of their customers. Risk factors include clients

serve of Mr Wen and president tao. addition, his faction members ontested the need for measures to se economy, which are opposed by local governments. a strong sign of continuing

all this time? They prefer to keep it hanging over their opponents." Early this month, the new government further asserted its authority by announcing the appointment of a new president of BOC, 111 Bui, while the previous president, chairman. er said that of the BOC was the

and strategic ing the listings of pticism and izing will twist es. now why HSBC are in Bank of e banker said.

## N CASES

ase in the ffered no

said it 327 officials rprises, said a

d reported for of 1.27 billion

on trials" which enrichment of

to serious nearly all of this

Guangdong of taking bribes line where 124 s yet to appear

## ed bars

Mo, who was con- ber, had told Lai ore up the return ries and 1,000 an investigating.

Mo to concurrent r, on each of two acy to defend and ing to black the in-

year for conspiracy to defraud and three concurrent two-year terms for conspiring to pervert the course of justice, for helping to prepare false evidence for the SFC.

He Wong, of the Hong Kong solicitor, the judge said: "It was made perfectly clear to you before you offered any advice. Had the transactions been genuine."

Wong received two concurrent two-year sentences for conspiring to pervert the course of justice.

Alan Lam, the SFC's executive director of offences, said the sentences were a reminder that those who conspired to defraud the market would end up in prison for lengthy periods.

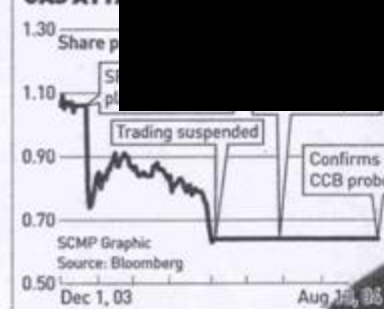
**LOSS OF REPUTATION always = LOSS IN REVENUE**

In the dock

Former Beijing Capital Development yesterday in the capital. He has b

Wa

GAS ATT



pany's activities dence of possi The Growth listed company day that the Com reau had executi and had collecti its head office o "The compa unable to provi

Six years' jail for stock manipulation and perverting the course of justice. Mo, 43, wife of disgraced Sony, had excoon Chiu Ching-ngai, was jailed along with her former pers- onal assistant Shirley Chung, 32, and solicitor Wong Tai-fai, 45, for manipulating the price of shares in Hong Kong-listed Sheng lei Asset Holdings, of which she is a former general manager, and trying to cheer an investigation. The Securities and Futures Commission welcomed the sentences as "strong deterrents to market abuse". A spokeswoman for the Independent Commission Against Corruption, which brought the charges, said: "I think we should be happy."

cluding Charles Ho Tsu-kwok, chairman of Sing Tao News Corporation, five star Jackie Chan and tycoon Liang Yu-tung, were not enough to keep Mo out of jail. Judge Alan Wright said he accepted she had probably not been a prime mover, but had still played an important role in the attempted cover-up. Her action showed her "cynical and blatant disregard for authority", he said. "It demonstrated there was no conduct in which you would sacce- out in order to achieve your aims." The sentence brought to a fu- triling end the once high-flying career of Mo, whose husband, ranked China's 11th-richest man is



Mo Yik-ping: "blatant disregard"

2002 and was given three years' jail in Shanghai in 2001 for manipulating share prices and falsifying share capital reports. During sentence, Judge Wright noted that Mo had instructed personal aide Louise Lai of Ching-ye who was given immunity from prosecution—to trade shares in Shanghai Land through bogus accounts to in-

# Risk Based Approach What Actually is it ?

- Majority of Money Laundering / Terrorist Financing (“ML/TF”) laws are based on the concept of “Reasonableness”;
- Not all customer / transaction types produce the same level of risk of being abused for ML/ TF;
- If you can reasonably risk grade your clients and transactions you can protect yourself and the business from ML/TF regulatory and criminal prosecution risk.

# Recent Regulatory Actions

- FSA GBP8.75 Million fine to Coutts Private Bank - “Coutts did not apply robust controls when starting relationships with high risk customers and did not consistently apply appropriate monitoring of those high risk relationships” FSA determined that the AML team at Coutts failed to provide an appropriate level of scrutiny and challenge. The FSA identified deficiencies in nearly three quarters of the PEP and high risk customer files reviewed, Coutts failed to:
  - (i) Gather sufficient information to establish the source of wealth and source of funds of its prospective PEP and other high risk customers;
  - (ii) Identify and/or assess adverse intelligence about prospective and existing high risk customers properly and take appropriate steps in relation to such intelligence;
  - (iii) Keep the information held on its existing PEP and other high risk customers up-to-date; and
  - (iv) Scrutinize transactions made through PEP and other high risk customer accounts appropriately.

# Anti- Money Laundering Regime in Hong Kong

## the basics :-

- Definition of “Dirty Money” is very wide;
- Definition of “Dealing” is very wide;
- AMLO and associated Guidelines on Firm’s obligations as to AML Programs and KYC processes;
- Obligation to disclose to authorities information in respect of suspicion of money laundering or existence of criminally tainted property;
- DISCLOSURE is SUSPICION based (can be subjective or objective); (STRs /SARs/SMRs)
- PROSECUTION is based on REASONABLE KNOWLEDGE;
- Making Suspicious Transaction Reports can give you and your Firm some protection from PROSECUTION.

# What Risks Do PEPs Represent?

- Misuse their power and influence for personal gain (or for the personal gain of family or close associates) either during or after their period in office;
- Use their family or close associates to conceal money that has been misappropriated;
- Use power and influence to gain control of legal entities for personal gain

*The majority of PEPs do not abuse their position and will not represent any additional risk solely by virtue of being a PEP*



# Your obligations for PEPs

- Statutory obligation to both identify and obtain Senior Management approval for all PEPs both under AMLO;.
- Once a PEP always a PEP – i.e. former politician is still a PEP;
- When considering whether a client is a PEP via association / family then consider the closeness of links to the actual PEP and the likely ties to corruption / criminal conduct;
- What is the PEP's location / role – well known corrupt jurisdiction , the position is it open to abuse e.g. does it approve licenses in lucrative business areas;
- Can you REASONABLY justify that a person is not a PEP when he / she appears to have close ties to a former / current senior political figure;
- Where is the PEPs SoW/ SoF – is it REASONABLE?

# So how do you identify if a client is a PEP ?

- Adopt a common Firm definition of a PEP - publish it to the business and ensure they know it.
- Adopt a process whereby when a person is uniquely identified either as a
  - (i) Account Holder
  - (ii) Beneficial Owner
  - (iii) Source of Funds / Assets – e.g. Settlor of a Trust
  - (iv) Controller of an Account – e.g. Director, Authorised Person or Protector of a Trust

You screen that person against one or more commercial PEP search engines.

- Ensure that the above screening is continuous in order to identify when a client or associated person becomes a PEP;
- **DOCUMENT** what you do.

# Politically Exposed Persons (“PEPs”)

- **A Definition of PEP**

- A current or former senior political figure that has been entrusted with a prominent public role or function (for example, a senior government or military official or a member of a ruling royal family); *or*
- An immediate family member (*i.e.*, a parent, sibling, child or in-law) of a current or former senior political figure; *or*
- A close associate of a current or former senior political figure.
- Once a PEP always a PEP

# What to do with a PEP Client

- DON'T simply make an STR.....
- Understand the nature of both the reason a client is classified as a PEP by your commercial tool and whether it fits your agreed Firm definition;
- Understand what service you are providing to the PEP and understand the risk;
- Record your due diligence in a standard format as to role / source of wealth and funds; ( the “risk assessment” as per Guideline 4.13.16)
- Obtain level of senior management approval for the PEP;
- The more potentially sensitive the PEP, the higher the approval process should be escalated.

# Source of Wealth / Source of Funds

- Differences between Source of wealth and Source of Funds :-
  - (i) Source of wealth (“SoW”) is where the client’s total assets come from;
  - (ii) Source of Funds (“SoF”) is where the assets to be invested at the Firm come from;
  - (iii) (i) and (ii) can be the same as SoW but could be different – this is why the funding Q on the AP is important and should be accurately completed.
- SoW and/or SoF from third party (parents/spouse/friend etc) :- Name that person and where their SoW was from;
- If SoW is from an interest in a listed company, give an approximate % of ownership, some variance is acceptable as interest can change;
- If SoW is from unlisted companies, give as much detail as to company name, type of business, location of business, attach any name cards or other document linking client to that company;
- If SoW is from “investment growth”, what was the seed capital, if the IR has known the client for sometime then state this, and that the IR has seen the client’s wealth grow, if not can the client produce any statement from another bank to show his worth, if from property give the address/location of the developments;
- Do not expect every \$ to be accounted for, only that the size of the PEP’s assets matches what known about them.

# Suspicious Activity Reporting Requirements

- Report to FIU on “Suspicion” of existence of tainted property ( case law suggests tainted property must be in HK but no need to be under the control / custody the reporting person) ;
- Tainted = directly or indirectly is the proceeds of or is intended to be used in the commission of an indictable offence. ;
- Suspicion is a **SUBJECTIVE** test – “more than fanciful”;
- Predicate Crimes are very broad – any **“indictable offence”** including tax evasion ;
- **Consent to deal from FIU** is protection from prosecution for substantive ML offence – but is not mandatory prior to dealing following an STR ;
- Protection from contractual or statutory privacy obligations in making an STR ;
- Tipping off an offence is done with intent to obstruct the investigation of the STR ;

# Ongoing Monitoring for PEP

- Media monitoring;
- Suspicious Activity Monitoring/Transactional Surveillance;
- More frequent reviews for higher risk PEPs;
- Event driven reviews e.g. :-
  - (a) Inactive to active;
  - (b) Media driven:
  - (c) Transaction driven.
- Timely STR reporting

# Ongoing Due Diligence

- Ongoing due diligence is now a key component of an effective due diligence program for PEPs (especially for private banking clients) and you should consider the following on an ongoing basis as well as during your annual review:
  - (a) Is the client trading / account activity in line with expectations?
  - (b) Is the client data, address, shareholder identity, director identity, employment, source of wealth, marital status, up to date? Are there any unexplained changes to client details?
  - (c) Is their net worth current ? If the net worth has grown substantially in a short amount of time, do we have a clear explanation for the sudden growth?
- Seek clarification from the client where necessary and update the Account Profile.
- If you cannot get a reasonable answer from the client, you should consider whether to file an STR.
- Consider re-adoption of the PEP by senior management if there are concerns in the life of a relationship;
- Ensure that the entire bank's PEP list is reviewed and further adopted annually by senior management – with Compliance comments on ongoing due diligence/risk.



# Hints/Tips and Comments

- If you don't write it down or record it – you didn't do it;
- Different types of PEP and different types of roles pose different risks;
- Can a company be a PEP?
- If you consider a client is not a PEP because he / she was wrongly classified have a good reason recorded;
- There is no expiry date on a PEP – once a PEP always a PEP – but what about dead settlors ?
- Post retirement reward corruption – high paying non-jobs for ex-officials;
- For SOES/SWFs – is the PEP only acting in his / her official capacity – e.g.- senior religious figure as authorised signatory for a charitable trust set up for that religious order?

# Questions ?