



**AFS Singapore**

# “Money Laundering”

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## **AML TOPIC: Combating Money Laundering, The Frontline Solider Compliance Officer: Why PEP Is Important?**

In this article, I would like to share with you the knowledge and experience I had about society and Politically Exposed Person (“PEP”), and why PEP is vital in the eyes of the FATF.



In 2003 FATF Forty Recommendations, FATF has expressed great concern on money laundering and targeted PEP as one of the categories of persons potentially abuse their position for wealth whereby committing money laundering offences and possibly, involving in terrorist financing. Given the risk associated with PEPs, FATF introduced Recommendation 6 for FATF members and FATF

Recommendation 12 for Financial Institutions and DNFBPs.

In line with Article 52 of the United Nations Convention against Corruption (“UNCAC” or “the Merida Convention”), FATF had in February 2012, expanded the mandatory requirements to cover domestic PEPs and International PEPs of international organisations such as the International Committee of the Red Cross. The meaning here FATF acknowledges and endorses Article 52 to fight money laundering including corruption and terrorist financing. The critical issues, therefore, are:

- (a) Corruption and bribery; and
- (b) Those carrying out an activity relating to terrorist financing.

From news media and court cases, it appears that the tendency of corruption arises from people holding the prominent public position with the ability to influence people in a society. PEPs are deemed to be “high” profile people because they have gained the trust of the public and that is supremacy. However, for PEPs, trust can be potentially abused by committing money laundering offences. Moreover, involved in terrorist financing, doing businesses, investments and support aids in the of “politics”.

In the previous second article, I shared with you the topic of “Beneficial Ownership.” It is an important area related to money laundering and terrorist financing when “Shadow Owner”, “Agent” or “Shadow Director” used for incorporation of a company or doing a business transaction. For this reason, FATF Recommendations 10, 12, 22 and 23 set forth for PEP customer due diligence requirements, a mandatory CDD measure for the Financial Institutions and DNFBPs. It is a challenging task for the Compliance Officer but not easy to detect and identify whether the customer is a PEP and is doing business. Why?

As a Compliance Officer, you probably need to have some knowledge and interest in politics in the residing country. It will also be an advantage to the Compliance Officer if the Compliance Officer has sound political, economic and judicial knowledge of the country the Compliance Officer resides as well as other countries will help the Compliance Officer to discharge this part of the CDD task.

Compliance Officer must acknowledge the fact that the ability to detect a PEP will become narrower when the Compliance Officer does not know who the people are in the PEP group. Even the Compliance Officer does know the PEP the hierarchy family tree of a PEP may have expanded horizontally and vertically, something beyond the reach of a Compliance Officer. Online PEP check may not provide the answer Compliance Officer required. Similarly, Compliance Officers failed and continue to fail when Compliance Officers could not understand the “Playing Fields” and the ‘Matrix” of a society.

Playing Fields or Players and Matrix exist in every country or a society we lived in today. It is there before you and I were born. Likewise, corruption and bribery and money laundering happened since ancient time. There are five main components or groupings for the players in a society and that result a form of a Matrix for a society. In reality, it is highly sophisticated beyond one’s imagination. However, the characteristics of each grouping about corruption and bribery are:

**1. CIVILIAN:** This is the public of ordinary people. The only power the civilian have is when they go to the election polls to vote. In some countries, “vote buying” is practised. Therefore, bribery occurs. On the other hand, when a civilian got into a severe problem and required help from other groups such as the Politicians, Police or Judicial group, bribery potentially occur.

Further, the civilian group often establishes “organisation” for their interest and protection. Depending on the constitution and mission of the type of organisation, there is a civilian impact that may trigger corruption and bribery to occur. The types of organisation are:

**(a) Non-Trade Association (“NTA”):** Example of NTAs are a church and temple. In the Chinese community around the Asia region, the NTAs likely associated with other groups such as the Clan and Mafia. A big player like the Politicians group is no exception.

**(b) Clan:** Clans usually arise from Tribes and Family groupings. They have their own belief and culture. It is politically and mafia sensitive.

**(c) Mafia:** Mafia is an illegal organisation. It takes the form such as Triads, Secret Societies and Gangs. For their interest and protection, the link between the Politicians and Police groups potentially sensitive.

**2. BUSINESSMEN, PROFESSIONALS AND WORKERS:** Professionals such as accountants and lawyers are also businessmen unlike the Workers, they fall under the Labour Union. People in business do business with an aim to make money, therefore, corruption and bribery potentially to occur. For example, between a businessman and a PEP, or between a businessman and police, or a businessman and a public prosecutor or a judge. On the other hand, Labour Union Chief has a relationship impact with the members when coming for chief of the labour union election (“vote buying”), or between a Labour Union Chief and a business organisation. Therefore, corruption and bribery potentially to occur too.

People in a business where ever they go to do business, they often like to establish Business and Trade Association and to make use of the trade association to protect and secure a desire trade objective. Networking among trade association members provides them with the opportunity to do business. Therefore, association with mafia and bi player like the Politicians group is sensitive and corruption and bribery potentially to occur.

However, Businessmen and Professionals also establish a Charitable Organisation in the name of “charity” and “caring for the society”. The specific country provides tax-free status to Charitable Organisations and the benefit and donations received may be abused.

**3. POLITICIANS:** When a civilian go to the election poll to vote for a District Officer, a Member of Parliament or a President, the ultimate rights of the civilian surrendered. After the election, it is not necessary that the elected District Officer or Member of Parliament must come to rescue the civilian when the civilian is in serious trouble. Corruption and bribery potentially to occur. The tendency for corruption and bribery will be high when a businessperson requires assistance to secure a business or tender for a business project. In some countries, Member of Parliament can do business or sit as a director of a public company or private company.

Politicians lived in a world of their own based on the doctrine of “Sovereignty, Power and Money”. Sovereignty not necessary means a country. It can be a place, an area or a constituent. Without sovereignty, there is no power, and without power, there is no gateway for money. Therefore, you can see how the importance of the doctrine of Sovereignty, Power and Money by applying to each of the Playing Fields, and why Article 52 of UNCAC and FATF is concerned with the PEPs.

**4. ARMED FORCES AND POLICE:** Police have the power to investigate, arrest and detention. They are licensed to kill like “James Bond”. Because of their duty to maintain law and order, power often abused especially in a country when the crime rates

are high coupled with outdated laws, politically immature and suffering from weak economic development?

On the other hand, Armed Forces are also licensed to kill in wartime or when the curfew imposed, or martial law is in place. Again, power often abused under a dictatorship government.

Since detention restricts the legal freedom and movement of a civilian albeit killing is a loss of human life, it triggers corruption and bribery potentially to occur.

**5. JUDICIAL:** In this group, it includes the Public Prosecutor, Judge, Notary Public and non-judicial, the Ombudsman.

Every country has its constitution and laws. Countries are having well-written laws and parliament approved and adopted to follow laws equal to a developed country, but are the laws meant for implementation and follow especially in criminal law and bench trial without a jury?

In some countries, the Public Prosecutor has vast powers to investigate a criminal case and to indict a person just based on a “suspicion”. Trials take a long time. For example, a criminal case with about 60 court trial hours was dragged to spread over two and a half to three years resulting unbearable high legal fees for the defendants and hardship. The rich and famous want to cover up the crime they committed. All these situations trigger corruption and bribery potentially to occur. There were reported news on prosecutor corruption as well as judge corruption in India, Indonesia, South Korea and Taiwan. There were also corruption cases for an ombudsman in the Philippines and corrupted notary public for certifying backdated documents in Pakistan.

The above illustration explains the existence of a Matric in a society in real life, but we can narrow down to find out whether that society responds to the acceptance or practice of corruption, bribery and terrorist financing if the Compliance Officer could understand the following:

(a) Understand the country in which the customer is coming from, whether that country is a developed country; economies in transit; developing country; or a least developed country (*Source*: World Economic Situation and Prospect 2014 (WESSP) [UN/DESA]);

(b) Understand the structure and maturity of the politics of that country where the customer is coming from and the country the customer is doing business with;

(c) Understand the philosophy of the politician; and

(d) Understand the belief of the civilian.

FATF Recommendation 12 imposes mandatory requirements and additional requirements for PEPs to detect whether the customer is a PEP and is doing business, it is challenging but not an easy task due to the characteristics of the Playing Fields and the Matrix impact. However, FATF Recommendation 12 provides Compliance Officer with relief to implement disclosures such as:

(1) Asset Disclosure System:

Many countries around the world have the Asset Declaration Disclosure System for public personnel like Member of Parliament, Minister, President, Judge and public government officials.

The ability of the Compliance Officer to request and obtain a copy of the Asset Declaration Form from a PEP is a matter of law and the attitude of the PEP. For example, if a country in law permits a Member of Parliament to do business or act as a director of a public company, the PEP is likely to provide the Compliance officer with a copy of his/her Asset Declaration Form. The Compliance Officer can identify the customer being a PEP.

(2) Customer Self-Declaration:

Customer Self-Declaration is an alternative relief to assist Compliance Officer to determine whether the customer is formerly a PEP or is currently a PEP but failed to disclose. The burden is shifted to the customer by him doing a Self-Declaration.

I hope this article will be of interest and helpful to Compliance Officers. Compliance Officers should google to look for the Corruption Perceptions Index (“CPI”) published by the Transparency International (“TI”) to obtain an idea of the corrupted countries annually. I enlist below a few interesting reported cases reflecting the analogy of the Society Matrix impact of a PEP in corruption and money laundering for references:

1. ‘Shrimp Boy’ Chow Racking Case, San Francisco (January 2018, CBS SFBay Area).
2. Mayor Ed Lee, Money Laundering, San Francisco Mayor’s Race Case (October 2011, CBS SFBay Area).
3. Americans for Responsible Leadership, ARL, Campaign 2012, Campaign Contribution Case (November 2014, CBS SFBay Area).
4. State Senator Leland Yee Money Laundering Case (March 2014, The Mercury News).
5. Madhu Koda Money Laundering Case (India Forensic, India).
6. Dayanidhi Maran Corruption Case (India Forensic, India).
7. Yani Rosenthal Money Laundering Case (December 2017, Reuters, Business Insider).
8. The Yukos Case: the New Dimension in Money Laundering Cases (September 2008, Queen Mary, University of London).
9. Taiwan Former First Lady, Wu Shu-Chen Money Laundering Case (February 2009, Associated News).
10. Lee Chun-Ti, Chen Jung-Ho and Tsia Kuan-Chih, former Taiwan High Court Judges corruption Case (October 2013, Taiwan News).
11. Chen Yu-Chen, Taiwan Prosecutor, Corruption Case (November 2012, Taipei Times. March 2013, SPH Website-Asia).

12. Panthogatae Shinawatra (son of ousted Thai Prime Minister Thaksin Shinawatra) Money Laundering Case (February 2008, Reuters).

13. Park Geun-Hye, First Female President of South Korea Corruption Case (August 2017, BBC News).



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