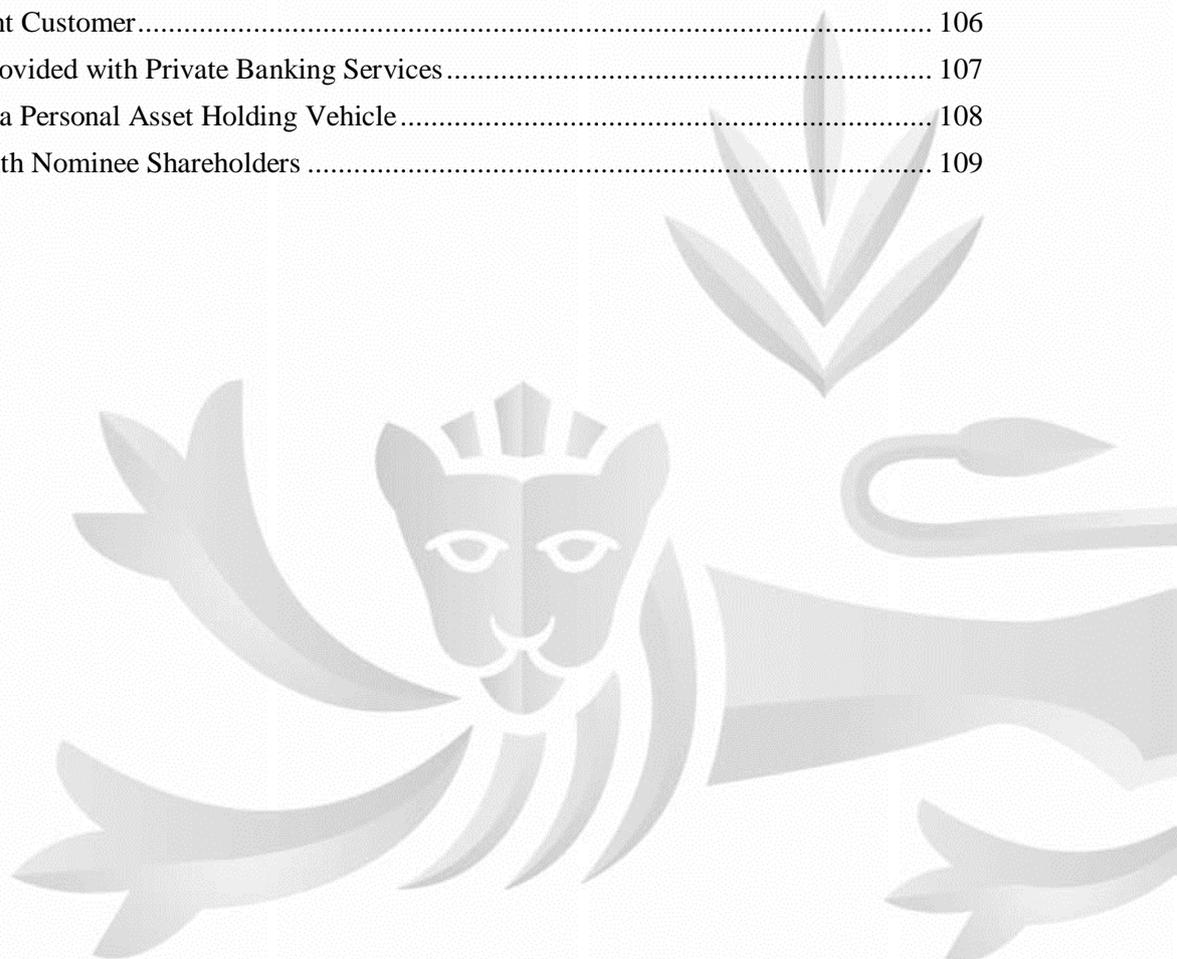


Chapter 8

Enhanced Customer Due Diligence

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Schedule 3 Requirements

The requirements of *Schedule 3 to the Law* to which the *Commission Rules* and *guidance* in this chapter particularly relate are:

- *Paragraph 3*: Provides for a *specified business* to identify and assess the risks of *ML* and *FT*, both in respect of its business as a whole and its individual *business relationships* or *occasional transactions*. The paragraph also provides for a firm to ensure that its policies, procedures and controls are effective and appropriate to the assessed *risk*.
- *Paragraph 4*: Provides for the required *CDD* measures, when and to whom they should be applied.
- *Paragraph 5*: Provides for *ECDD* measures in respect of *business relationships* and *occasional transactions* where the circumstances necessitate additional measures or the *business relationship* or *occasional transaction* has been assessed as *high risk*.
- *Paragraph 8*: Makes provisions in relation to anonymous accounts and *shell banks*.
- *Paragraph 15*: Makes provisions in relation to corporate governance and the review of compliance, including the requirement to appoint an *MLCO*.

8.1. Objectives

- (1) This chapter relates to *business relationships* and *occasional transactions* which have been assessed by the firm as:
 - (a) presenting a *high risk* of *ML* and/or *FT* taking into account the requirements of paragraph 5(1) of *Schedule 3*; and/or
 - (b) involving one or more of the *high risk* characteristics set out in paragraphs 5(2)(b)(i) - (iv) of *Schedule 3*.
- (2) This chapter should be read in conjunction with chapter 3 of this *Handbook* which provides *Commission Rules* and *guidance* on the assessment of *risk* and chapters 4 to 7 of this *Handbook* which set out the *CDD* measures to be applied.

- (3) In accordance with paragraph 5(1) of *Schedule 3*, the firm must apply *ECDD* measures in the following *high risk* circumstances:
 - (a) a *business relationship* or *occasional transaction* in which the *customer* or any *beneficial owner* or *underlying principal* is a foreign *PEP* (see section 8.5. of this *Handbook*);
 - (b) a *business relationship* which is a *correspondent banking relationship*, or similar to such a relationship in that it involves the provision of services, which themselves amount to *specified business* or facilitate the carrying out of such business, by one *specified business* to another (see section 8.6. of this *Handbook*);
 - (c) a *business relationship* or *occasional transaction* where the *customer* is established or situated in a country or territory that –
 - (i) provides funding or support for terrorist activities, or does not apply (or insufficiently applies) *the FATF Recommendations*; or
 - (ii) is a country otherwise identified by *the FATF Recommendations* as a country for which such measures are appropriate (see section 8.7. of this *Handbook*);
 - (d) a *business relationship* or *occasional transaction* which the firm considers to be a *high risk* relationship, taking into account any notices, instructions or warnings issued from time to time by *the Commission*;
 - (e) a *business relationship* or *occasional transaction* where the *customer* is a legal person that issues instruments in bearer form (see section 8.8. of this *Handbook*); or
 - (f) a *business relationship* or *occasional transaction* which has been assessed by the firm as a *high risk* relationship.

- (4) In accordance with paragraph 5(2)(b) of *Schedule 3*, enhanced measures specified by rules in this *Handbook* must also be applied to a *business relationship* or *occasional transaction* exhibiting one of more of the following *high risk* characteristics:
 - (a) the *customer* is not resident in *the Bailiwick* (see section 8.9. of this *Handbook*);
 - (b) the firm provides private banking services to the *customer* (see section 8.10. of this *Handbook*);
 - (c) the *customer* is a legal person or legal arrangement used for personal asset holding purposes (see section 8.11. of this *Handbook*);
 - (d) the *customer* is a company with nominee shareholders (see section 8.12. of this *Handbook*).

- (5) The presence of one or more of the characteristics set out in paragraph 5(2)(b) of *Schedule 3* may not necessarily equate to the overall *risk* of the *business relationship* or *occasional transaction* being high; however, in accordance with rule 3.4.(1) of this *Handbook*, the firm must have regard to the cumulative effect that one or more of these factors could have on the overall *risk* of the *business relationship* or *occasional transaction* when conducting a *relationship risk assessment*.

- (6) Where the firm is required to apply *ECDD*, the enhanced measures applied must be in addition to the measures taken in respect of *business relationships* or *occasional transactions* presenting a low or standard *risk*, as set out in paragraph 4 of *Schedule 3* and chapters 4 to 7 of this *Handbook* and must address the particular *high risk* characteristics present.

8.2. Policies, Procedures and Controls

(1) The firm must ensure that its policies, procedures and controls require the application of *ECDD* measures where the firm has determined, taking into account the circumstances set out in paragraph 5(1) of *Schedule 3* and the *high risk* indicators provided in chapter 3 of this *Handbook*, that a *business relationship* or *occasional transaction* is *high risk*.

(2) In accordance with paragraph 5(3) of *Schedule 3*, the *ECDD* measures applied by the firm shall include, as a minimum:

- (a) obtaining senior management approval for establishing the *business relationship* or *occasional transaction*;
- (b) in the case of an existing *business relationship* within which the *customer*, or a *beneficial owner* or *underlying principal* becomes a foreign *PEP*, obtaining senior management approval for continuing that *business relationship*;
- (c) taking *reasonable measures* to establish the source of any funds and of the wealth of the *customer* and *beneficial owner* and *underlying principal* (see section 8.3. of this *Handbook*);
- (d) carrying out more frequent and more extensive ongoing monitoring, including increasing the number and timing of controls applied and selecting patterns of activity or *transactions* that need further examination (see chapter 11 of this *Handbook*); and
- (e) taking one or more of the following steps as would be appropriate to the particular *business relationship* or *occasional transaction*:
 - (i) obtaining additional *identification data* (see section 5.2. of this *Handbook*);
 - (ii) verifying additional aspects of the *customer's* identity (see section 5.3. of this *Handbook*); and/or
 - (iii) obtaining additional information to understand the purpose and intended nature of the *business relationship* or *occasional transaction*.

(3) In addition to the minimum requirements of paragraph 5(3) of *Schedule 3* noted above, listed below are examples of further steps that the firm could take as part of its *ECDD* measures to address specific *risks* arising from a *high risk business relationship* or *occasional transaction*:

- (a) updating more regularly the *identification data* held on the *customer* and/or any *beneficial owner* or *underlying principal*;
- (b) supplementing the firm's understanding of the purpose and intended nature of *the business relationship* by obtaining information on the reasons for intended or performed *transactions*;
- (c) in the case of an existing *business relationship* which has been assessed as *high risk* not involving a foreign *PEP*, obtaining senior management approval for continuing that relationship;
- (d) requiring the first payment to be carried out through an account in the *customer's* name with an *Appendix C business*;
- (e) commissioning independent research by a specialist firm or consultant pertaining to the purpose and objective of the *business relationship* or *occasional transaction* and evidencing information in relation to the *customer* and/or any *beneficial owner* or *underlying principal*; and/or
- (f) obtaining internal information from group representatives or offices based in a jurisdiction where the *customer* has a connection.

(4) In addition to the application of *ECDD* measures to *high risk business relationships* and *occasional transactions*, in accordance with paragraph 5(2)(b) of *Schedule 3* the firm's policies, procedures and controls must also require the application of enhanced measures as detailed in sections 8.9. - 8.12. of this *Handbook to business relationships and occasional transactions* displaying one or more of the *high risk* characteristics in paragraph 5(2)(b)(i) - (iv) of *Schedule 3*.

(5) There may be a *business relationship* or *occasional transaction* within which the *customer* exhibits more than one of the *high risk* characteristics set out in paragraph 5(2)(b)(i) – (iv) of *Schedule 3*, for example a non-resident *customer* using a personal asset holding vehicle which has *nominee shareholders*. In such cases the firm must apply enhanced measures sufficient to mitigate each of the *high risk* characteristics present within the *business relationship* or *occasional transaction*.

(6) There may also be circumstances in which a *high risk customer* exhibits one or more of the characteristics in paragraphs 5(2)(b)(i) – (iv) of *Schedule 3*, for example a non-resident foreign *PEP* to which the firm is providing private banking services. In such cases, in accordance with paragraph 5(2)(b) of *Schedule 3* the firm shall apply *ECDD* measures as well as applying sufficient additional measures to mitigate the particular higher *risk* characteristics listed in paragraphs 5(2)(b)(i) – (iv).

(7) In the above example it may be that the firm is *satisfied* that the *ECDD* measures applied because the *customer* is a *PEP* already mitigate the *high risk* associated with providing private banking services, for example by establishing the source of funds and source of wealth of the *customer*. The firm would therefore apply additional measures to mitigate the remaining *high risk* characteristics, in this case the *risk* associated with the *PEP* being a non-resident *customer*.

(8) The policies, procedures and controls of the firm should allow for it to determine, based upon the specific *high risk* characteristics of the *business relationship* or *occasional transaction* and its assessment of the overall *risk* present, which and how many enhanced measures it would be appropriate to apply to mitigate the *risk* identified.

8.3. Source of Funds and Source of Wealth

(1) Establishing and understanding the *customer's* source of wealth, and that of any *beneficial owner* and *underlying principal*, together with the source of funds used in a *business relationship* or *occasional transaction*, are important aspects of the due diligence process. These steps serve to assist the firm in *satisfying* itself that such wealth and funds are not the proceeds of criminal activity and are consistent with the firm's knowledge of the *customer* and the nature of the *business relationship* or *occasional transaction*.

(2) In accordance with paragraph 5(3)(a)(iii) of *Schedule 3*, as part of its *ECDD* procedures the firm shall take reasonable measures to establish the source of any funds and the source of the wealth of a *customer* and *beneficial owner* and *underlying principal*.

(3) In complying with the aforementioned requirement of *Schedule 3*, the firm must establish the source of funds and source of wealth of the *customer*, and any *beneficial owner* and *underlying principal*, who are providing funds, assets or any other form of value to the *customer*, *business relationship* or *occasional transaction*.

(4) The source of funds refers to the activity which generated the particular funds for a *business relationship* or *occasional transaction*. Source of wealth is distinct from source of funds and describes the activities which have generated the total net worth of a person both within and outside a *business relationship*, i.e. those activities which have generated a *customer's* net assets and property.

(5) The firm must, in establishing the source of any funds or wealth, document and evidence consideration of the *risk* implications of the source of the funds and wealth and the geographical sphere of the activities which have generated a *customer's* funds and/or wealth.

- (6) Measures the firm could take, the extent of which should be commensurate with the *risk*, to establish the source of any funds involved in a *business relationship* or *occasional transaction* and the source of a *customer's*, or *beneficial owner's* or any *underlying principal's* wealth could include:
- (a) commissioning an independent and reliable report from a specialist agency;
 - (b) obtaining reliable information directly from the *customer/beneficial owner/underlying principal* concerned, for example by obtaining certified copies of corroborating documentation such as contracts of sale, property deeds, salary slips, etc.;
 - (c) where the firm is part of a group, obtaining reliable information from another member of the group where the *customer/beneficial owner/underlying principal* has a connection;
 - (d) obtaining information from a reliable third party (for example a professionally qualified solicitor, accountant or tax advisor) who has an office in a country or territory connected with the *customer/beneficial owner/underlying principal*;
 - (e) where the *customer* has been introduced to the firm, obtaining information from the introducer;
 - (f) where information is publicly available or available through subscription databases, obtaining information from a reliable public or private source; or
 - (g) obtaining information from financial statements that have been prepared and audited in accordance with generally accepted accounting principles.
- (7) For the firm to accept a *customer's* responses on an application form at face value, particularly where vague answers are given, for example 'employment' or 'salary', without further clarification, such as where the *customer* was employed and his actual level of income, would not be considered as having taken reasonable measures to establish the source of funds and source of wealth.
- (8) Similarly, establishing the source of funds involved in a *business relationship* or *occasional transaction* should not simply be limited to knowing from which financial institution the funds may have been transferred. The steps taken by the firm should be substantive and seek to establish the provenance of the funds or the reason for the funds having been acquired.
- (9) The requirements in respect of establishing the source of a *customer's* funds are ongoing and apply to all new proceeds passing through the *business relationship*, either from the *customer* or a third party. Monitoring undertaken as part of *ECDD* should include assessing on an ongoing basis whether the transactional activity of that relationship is consistent with the *risk* profile of that *customer*, including his source of wealth.

8.4. Interplay Between ECDD and SCDD Measures

- (1) It may be possible to apply SCDD measures as specified in chapter 9 of this *Handbook* to a *business relationship* or *occasional transaction* with a *customer* exhibiting one or more of the *high risk* characteristics set out in paragraphs 5(2)(b)(i) – (iv) of *Schedule 3*, provided *ECDD* measures are applied to the *customer* to address the particular *high risk* characteristics present.
- (2) By way of example, it may be possible, where the firm has assessed the *ML* and *FT* risks of a *business relationship* or *occasional transaction* to be low, to apply the SCDD measures proposed in section 9.3.(1) of this *Handbook* to a natural person resident in *the Bailiwick* using a personal asset holding vehicle, provided the firm also applies an enhanced measure as required by Rule 8.5.(2) of this *Handbook* to satisfy itself that such use is genuine and legitimate.

- (3) Similarly it may be possible, where the firm has assessed the *ML* and *FT* risks as low, to apply the SCDD measures proposed in sections 9.5.(4) and 9.5.(5) of this *Handbook* to a non-resident *Appendix C business*, provided an enhanced measure is also applied in accordance with rule 8.9.(4) of this *Handbook* to mitigate the *risk* associated with a non-resident *customer*, for example to determine and understand why the *Appendix C business* is obtaining the services in *the Bailiwick* and not in its home jurisdiction.

8.5. Politically Exposed Persons

8.5.1. Introduction

- (1) Due to their position and influence, *PEPs* may have the potential to abuse their positions for the purpose of committing *ML* and related predicate offences, including bribery and corruption, as well as conducting activity related to *FT*. Where a *PEP* also has connections to countries or business sectors where corruption is widespread, the risk is further increased.
- (2) *PEP* status itself does not incriminate individuals or their associates and connected entities. It will mean, however, that a *customer* who is a foreign *PEP* is subject to *ECDD* measures and that a domestic *PEP* may, on the basis of *risk*, be subject to *ECDD* measures. The nature and scope of the firm's activities, together with the results of its *business risk assessment* and risk appetite, will determine whether the existence of *PEPs* is a practical issue for the firm.
- (3) There is no 'one-size fits all' approach to applying *ECDD* measures for *PEPs*. The nature of the measures applied will be commensurate with the type of *PEP*, the specific *risks* that are identified and the nature of the *PEP*'s position and ability to influence.

8.5.2. Identification of Politically Exposed Persons

(1) In accordance with paragraph 4(3)(f) of *Schedule 3*, as part of the *CDD* measures applied to a *business relationship* or *occasional transaction*, the firm shall make a determination as to whether the *customer*, *beneficial owner* and any *underlying principal* is a person who is, or has been, entrusted with a prominent function by an *international organisation* or a *PEP*, and if he is a *PEP*, whether he is a foreign *PEP* or a domestic *PEP*.

(2) As referenced above, paragraph 5(4) of *Schedule 3* notes three categories of *PEP* defined as follows for the purposes of this *Handbook*:

- (a) "foreign *PEP*" – a natural person who holds, or has held, a prominent public function or who has been elected or appointed to such a function in a country or territory other than *the Bailiwick*;
- (b) "domestic *PEP*" – a natural person who holds, or has held or has been elected or appointed to, a prominent public function within *the Bailiwick*; and
- (c) "*international organisation PEP*" – a natural person who is, or has been, entrusted with a prominent function by an *international organisation*.

(3) In accordance with the *PEP* definition contained within paragraph 5(4)(a) of *Schedule 3*, prominent public function includes, without limitation:

- (i) heads of state or heads of government,
- (ii) senior politicians and other important officials of political parties,
- (iii) senior government officials,
- (iv) senior members of the judiciary,
- (v) senior military officers, and
- (vi) senior executives of state owned body corporates.

- (4) When seeking to establish whether a natural person falls within the definition of a *PEP*, ‘prominent’ should be interpreted as relating only to those persons in positions of seniority in the areas covered by paragraphs 5(4)(a)(i) - (iv) of *Schedule 3*. Middle ranking or more junior individuals in the foregoing categories are explicitly excluded from the definition.
- (5) Notwithstanding the above, the term ‘prominent’ is not defined either in *Schedule 3* or this *Handbook* as the precise level of seniority which triggers the requirement to treat an individual as a *PEP* will depend upon a range of factors, including the particular organisational framework of the government or *international organisation* concerned and the powers and responsibilities associated with particular public functions.
- (6) To assist in the identification of natural persons falling within the definition of domestic *PEP*, Appendix E to *this Handbook* lists those positions in Guernsey, Alderney and Sark deemed to fall within paragraphs 5(4)(a)(i) - (iv) of *Schedule 3*.

Appendix E – List of Domestic PEPs

- (7) In determining whether a *customer*, or any *beneficial owner* or *underlying principal*, is a *PEP*, the firm could consider:
 - (a) using sources such as the Transparency International Corruption Perception Index, the UN, the European Parliament, the UK Foreign and Commonwealth Office and the Group of States Against Corruption to establish, as far as is reasonably practicable, whether or not a *customer*, or any *beneficial owner* or *underlying principal*, is a natural person who is the current or former holder of a prominent public function in a foreign country or territory, or for an *international organisation*;
 - (b) using sources such as the States of Guernsey, States of Alderney and Chief Pleas of Sark to establish, as far as is reasonably practicable, whether or not a *customer*, or *beneficial owner* or *underlying principal*, is a natural person who is the current or former holder of a prominent public function within *the Bailiwick*;
 - (c) seeking confirmation from a *customer*, or *beneficial owner* or *underlying principal*, for example through a question within an application form, as to whether they hold, or have held, a prominent public function either within *the Bailiwick* or beyond, or for an *international organisation*; or
 - (d) using commercially available databases to identify such persons.

(8) Where the firm identifies that an individual who is the *customer*, *beneficial owner* or any *underlying principal* to a *business relationship* or *occasional transaction* is a foreign *PEP*, it shall apply *ECDD* measures to that *business relationship* or *occasional transaction* in accordance with paragraph 5 of *Schedule 3*.

(9) Where the firm identifies that a *customer*, *beneficial owner* or any *underlying principal* is a domestic *PEP* or *international organisation PEP*, it must gather sufficient information to understand the particular characteristics of the public function that the natural person has been entrusted with and factor this information into the *relationship risk assessment* conducted in accordance with paragraph 3 of *Schedule 3* and the rules in chapter 3 of this *Handbook*.

(10) Where, having conducted a *relationship risk assessment*, the firm concludes that the *business relationship* or *occasional transaction* is *high risk*, the firm must apply *ECDD* measures in accordance with paragraph 5(3)(a) of *Schedule 3* and section 8.2. of this *Handbook*.

- (11) Where the firm concludes that the *business relationship* or *occasional transaction* with the domestic *PEP* or *international organisation PEP* does not present a high level of *risk*, it is not necessary to apply the *ECDD* measures set out in paragraph 5(3)(a) of *Schedule 3*, provided the firm has applied *CDD* measures and any enhanced measures necessary in accordance with sections 8.9. – 8.12. of this *Handbook*.
- (12) Where the firm identifies that a foreign *PEP* is a director (or equivalent) of a *customer*, or a person acting or purporting to act for a *customer*, but where the *PEP* does not fall within the definition of a *beneficial owner* or *underlying principal* and where no funds or assets of that *PEP* is handled in the particular *business relationship* or *occasional transaction*, the firm should include as part of its *relationship risk assessment* consideration of the nature of the *PEP*'s role and the reason why the *PEP* holds such a role.
- (13) Where the firm has determined as part of its *relationship risk assessment* that, but for the function held by the *PEP*, the *business relationship* or *occasional transaction* would be other than *high risk*, it could decide to apply, based on risk, *CDD* appropriate to the form of the *customer* in accordance with chapters 4 to 9 of this *Handbook*.
- (14) One such example would be a foreign public sector pension scheme investing into a *CIS*. In such a case there may be members of the pension committee who are *PEPs*, holding their position on the committee by virtue of their political position and with no ability to exercise ultimate effective control over the *customer*. Such persons have no economic interest in the funds involved in the *business relationship* or *occasional transaction* (beyond potentially any pension rights as a resident of that country or organisation) and the *risk* of the relationship being used as a vehicle for the laundering of any funds or assets personally held by the *PEP* is minimal.

8.5.3. International Organisation PEPs

- (1) In accordance with paragraph 5(4)(d) of *Schedule 3*, the definition of a *PEP* includes a natural person who is, or has been, entrusted with a prominent public function by an *international organisation*. This includes members of senior management or individuals who have been entrusted with equivalent functions i.e. directors, councillors and members of the board or equivalent functions of an *international organisation*.
- | |
|--|
| <ol style="list-style-type: none"> (2) Paragraph 21 of <i>Schedule 3</i> defines an <i>international organisation</i> as an entity: <ol style="list-style-type: none"> (a) which was established by a formal political agreement between its member states that has the status of an international treaty; (b) the existence of which is recognised by law in its member states; and (c) which is not treated as a resident institutional unit of the country in which it is located. |
|--|
- (3) Examples of *international organisations* covered by *Schedule 3* and this *Handbook* include the UN, the World Bank and NATO.
 - (4) While not falling within the *Schedule 3* definition, there may be other examples of *international organisations*, for example international sporting federations, where the firm considers that enhanced measures should be applied to a *business relationship* or *occasional transaction*. However, there are no prescribed requirements in this regard and any decision taken should be based on the firm's assessment of *risk*.

8.5.4. Family Members and Close Associates

- (1) In addition to the specific risks posed by *PEPs*, the firm should be alive to the potential for the abuse of a *business relationship* or *occasional transaction* with or by a family member or close associate of a *PEP*. This abuse could be for the purpose of moving the proceeds of crime or facilitating the placement and concealment of such proceeds without specific connection to the *PEP* themselves.
- (2) In this respect the definition of a *PEP* set out in paragraph 5(4) of *Schedule 3* includes an immediate family member or close associate. The scope of these two terms is not categorically defined, as the interpretation of them will depend on the social, economic and cultural structure of the country of the *PEP*. It should also be noted that the number of persons who qualify as immediate family members and close associates is fluid and may change over time.

- (3) Paragraph 5(4)(c) of *Schedule 3* provides examples of immediate family members, including without limitation:
 - (a) a spouse;
 - (b) a partner, being a person who is considered by the law of the country or territory in which the relevant public function is held as being equivalent to a spouse;
 - (c) a parent;
 - (d) a child;
 - (e) a sibling;
 - (f) a parent-in-law; and
 - (g) a grandchild.

- (4) In deciding whether a person is an immediate family member or close associate of a *PEP*, the firm should determine the extent of the influence that a particular *PEP* relationship or association has and assess the level of *risk* that exists through the particular connection with a *PEP*.
- (5) For immediate family members, this determination will include such relevant factors as the influence that particular types of family members generally have and how broad the circle of close family members and dependents tends to be. In some cultures the number of family members who are considered to be close or who have influence may be quite small, while in others the circle of family members may be broader and extend to cousins or even clans.

- (6) Paragraph 5(4)(d) of *Schedule 3* provides examples of close associates, including without limitation:
 - (a) a person who is widely known to maintain a close business relationship with a *PEP*; or
 - (b) a person who is in a position to conduct substantial financial transactions on behalf of such a person.

- (7) There may however be additional instances where the firm considers a person to be a close associate. These could include known partners outside the family unit (for example girlfriends, boyfriends and extra-marital partners) or prominent members of the same political party, civil organisation, labour or employee union as the *PEP*. As with an immediate family member, the interpretation of whether an individual should be considered to be a close associate will depend upon the social, economic and cultural context of the relationship.
- (8) Where the firm determines that a natural person who is the *customer*, or any *beneficial owner* or *underlying principal*, to a *business relationship* or *occasional transaction* is a family member or close associate of a domestic *PEP* or international organisation *PEP*, the firm should treat that person in accordance with the requirements set out in *Schedule 3* and this *Handbook* for the

category of *PEP* to which they are connected, for example the child of a domestic *PEP* should be treated in accordance with the provisions for domestic *PEPs*.

- (9) In deciding whether a person is a family member or close associate of a *PEP*, the firm need only research information which is in its possession or which is publicly available.

8.5.5. Former PEPs

- (1) On the basis of the potential for *PEPs* to abuse their prominent positions for the purpose of committing various financial crimes, the default position on the treatment of *PEPs* in the *FATF Recommendations* is that once you are a foreign *PEP*, or a family member or close associate of such, the relationship should be subject to *ECDD* forever.
- (2) Notwithstanding the above, it is acknowledged that there may be situations where a *business relationship* or *occasional transaction* involves persons who have held public positions historically but which would otherwise not be considered to be *high risk*.
- (3) The definition of *PEP* included within *Schedule 3* provides flexibility in respect of the timeframe within which a natural person must be classified as a *PEP* and therefore subject to *ECDD* measures. Details of these timeframes are included within sections 8.5.5.1. to 8.5.5.3. of this *Handbook* below and differ depending on the type of *PEP* (i.e. foreign/*international organisation or domestic*) and the position held.
- (4) *Commission Rules* and *guidance* are also included within these sections detailing the steps to be taken by the firm when it is looking to establish a *business relationship* or undertake an *occasional transaction* within which the *customer*, or any *beneficial owner* or *underlying principal*, is a former *PEP*.

8.5.5.1. Foreign PEPs, Family Members and Close Associates

- (1) A *business relationship* or *occasional transaction* within which the *customer*, or any *beneficial owner* or *underlying principal*, is a *PEP* who holds, or previously held, a function falling within (a) or (b) below, or a family member or close associate of such a person, shall be assessed as *high risk* in accordance with paragraph 5(4)(a) of *Schedule 3* and no flexibility exists in the disapplication of *ECDD* measures:
 - (a) heads of state or government; and
 - (b) individuals who have/had the ability in their role as a *PEP* to direct or influence the flow or spending of significant public funds.

- (2) In determining whether a *PEP* falls within (b) above, the firm should consider whether:
 - (a) the foreign *PEP* has/had authority over, or access to, substantial state assets and funds, policies and/or operations;
 - (b) the foreign *PEP* has/had control over regulatory approvals, including awarding licences and concessions;
 - (c) the foreign *PEP* has/had the formal or informal ability to control mechanisms established to prevent and detect *ML* and/or *FT*, for example control over law enforcement or other public sector investigative agencies; and
 - (d) the foreign *PEP* has/had access to, or control or influence over, government accounts or the accounts of state owned enterprises.

- (3) For all other foreign *PEPs* falling within paragraph 5(4)(a) of *Schedule 3*, the firm could decide to declassify a natural person as a foreign *PEP* following a period of seven years, such period commencing on the date that the individual ceased to be entrusted with any prominent public function (a “former foreign *PEP*”).

- (4) Where, during the course of a *business relationship*, the *customer*, or *beneficial owner* or any *underlying principal*, becomes a former foreign *PEP*, the firm can cease applying *ECDD* measures to that *business relationship* provided the following criteria are met:
- (a) neither the *customer*, or *beneficial owner* or any *underlying principal*, is currently classified as a foreign *PEP*;
 - (b) the firm has undertaken a *relationship risk assessment* and is *satisfied* that the *business relationship* is other than *high risk*, taking into account factors such as the geographic risk associated with the *PEP* and the perceived level of corruption;
 - (c) there is no apparent evidence that the former foreign *PEP* continues to exercise political influence;
 - (d) the former foreign *PEP*'s source of wealth has been established, documented and is understood, together with the source of the funds within the *business relationship*; and
 - (e) the firm's senior management has approved the declassification of the natural person's foreign *PEP* status and the overall reduction in the *risk* of the *business relationship*.

- (5) Where the firm identifies that the *customer* to a prospective *business relationship* or *occasional transaction*, or any *beneficial owner* or *underlying principal* to such, is a former foreign *PEP*, the firm is not required to treat the *business relationship* or *occasional transaction* as *high risk* or apply *ECDD* measures provided the following criteria are met:
- (a) the firm has undertaken a *relationship risk assessment* and is *satisfied* that the *risk* of the *business relationship* or *occasional transaction* is other than *high risk*;
 - (b) the source of the funds within the *business relationship* or *occasional transaction* is understood; and
 - (c) there is no evidence that the former foreign *PEP* continues to exercise political influence.

8.5.5.2. International Organisation PEPs, Family Members and Close Associates

- (1) In accordance with paragraph 5 of *Schedule 3*, a natural person falling within the definition of an *international organisation PEP* by virtue of them holding a function falling within (a) or (b) below, or a family member or close associate of such a person, must always be treated as an *international organisation PEP* and be subject to the measures set out in section 8.5.3. of this *Handbook*;
- (a) heads of an international organisation;
 - (b) individuals who have/had the ability in their role at the *international organisation* to direct or influence the flow or spending of significant funds of the organisation.

- (2) In determining whether an *international organisation PEP* falls within (b) above, the firm should consider whether:
- (a) the *international organisation PEP* has/had authority over, or access to, substantial assets and funds, policies and/or operations of the international organisation;
 - (b) the *international organisation PEP* has/had access to, or control or influence over, the accounts of the international organisation; and
 - (c) the *international organisation PEP* has/had control over the awarding of contracts or similar by the international organisation.

- (3) For all other *international organisation PEPs* falling within paragraph 5(4)(a) of *Schedule 3*, the firm can make a decision to declassify a natural person as an *international organisation PEP* following a period of seven years, such period commencing on the date that the individual ceased to be entrusted with any prominent public function (a “former *international organisation PEP*”).

- (4) Where, during the course of a business relationship, the customer, or beneficial owner or any underlying principal, becomes a former *international organisation PEP*, the firm can cease applying the measures set out in section 8.5.3. of this *Handbook* for that natural person provided the following criteria are met:
- (a) there is no evidence that the former *international organisation PEP* continues to exercise influence over the *international organisation*; and
 - (b) the firm’s senior management has approved the declassification of the natural person’s *international organisation PEP* status.

- (5) Where the firm identifies, in accordance with paragraph 4(3)(f) of *Schedule 3*, that the *customer* to a prospective *business relationship* or *occasional transaction*, or any *beneficial owner* or *underlying principal* to such, has held a prominent public function with an *international organisation* within the past seven years, the firm should consider this as a risk factor when undertaking its *relationship risk assessment*.

- (6) After a period of seven years from the date that the individual ceased to be entrusted with any prominent public function has elapsed and the natural person becomes a former *international organisation PEP*, consideration of their previous functions as part of a *relationship risk assessment* is no longer required.

8.5.5.3. Domestic PEPs, Family Members and Close Associates

- (1) In accordance with paragraph 5 of *Schedule 3*, the firm can make a decision to declassify a natural person as a domestic *PEP* following a period of five years, such period commencing on the date that the individual ceased to be entrusted with a prominent public function within *the Bailiwick* (a “former domestic *PEP*”).

- (2) Where, during the course of a *business relationship*, the *customer*, or *beneficial owner* or any *underlying principal*, becomes a former domestic *PEP*, the firm can cease applying the measures set out in section 8.5.2. of this *Handbook* in respect of that natural person, provided the following criteria are met:
- (a) there is no evidence that the former domestic *PEP* continues to exercise political influence; and
 - (b) the firm’s senior management has approved the declassification of the natural person’s domestic *PEP* status.

- (3) Where the firm identifies, in accordance with paragraph 4(3)(f) of *Schedule 3*, that the *customer* to a prospective *business relationship* or *occasional transaction*, or any *beneficial owner* or *underlying principal* to such, has held a prominent public function within *the Bailiwick* within the past five years, the firm should consider this as a risk factor when undertaking its *relationship risk assessment*.

- (4) After a period of five years from the date that the individual ceased to be entrusted with any prominent public function has elapsed and the natural person becomes a former domestic *PEP*, consideration of their previous functions as part of a *relationship risk assessment* is no longer required.

8.6. Correspondent Banking Relationships

(1) Correspondent banking is the provision of banking services by one bank (“the correspondent bank”) to another bank (“the respondent bank”). Used by banks throughout the world, correspondent accounts enable banks to conduct business and provide services that the bank does not offer directly. There are also similar relationships in other areas of financial services business.

(2) In accordance with paragraph 5(1)(b) of *Schedule 3*, the firm shall apply *ECDD* measures to a *business relationship* or *occasional transaction* which is a *correspondent banking relationship*; or similar to such a relationship in that it involves the provision of services, which themselves amount to specific business or facilitate the carrying on of such business, by one *specified business* to another.

(3) Additionally, in accordance with paragraph 8(2) of *Schedule 3*, the firm must:

- (a) not enter into, or continue, a correspondent banking relationship with a *shell bank*; and
- (b) take appropriate measures to ensure that it does not enter into, or continue, a *correspondent banking relationship* where the respondent bank is known to permit its accounts to be used by a *shell bank*.

(4) In relation to *correspondent banking relationships* and similar correspondent relationships established for securities transactions or funds transfers, whether for the firm as principal or for its *customers*, the firm must apply additional *CDD* measures including those set out in (a) to (e) below and, where relevant, those in Rule 8.6.(5) of this *Handbook*:

- (a) gather sufficient information about a respondent institution to understand fully the nature of the respondent institution’s business;
- (b) determine from publicly available information the reputation of the respondent institution and the quality of supervision, including whether it has been subject to an *ML* or *FT* investigation or regulatory action;
- (c) assess the respondent institution’s AML and CFT policies, procedures and controls and ascertain that they are adequate, appropriate and effective;
- (d) obtain *board* approval before establishing new correspondent relationships; and
- (e) document the respective AML and CFT responsibilities of each institution.

(5) Where a correspondent relationship involves the maintenance of ‘payable-through accounts’, the firm must also take steps in order to *satisfy* itself that:

- (a) it clearly understands the respective responsibilities of each institution;
- (b) the *customer* (the respondent institution) has complied with all of the required *CDD* obligations set out in *Schedule 3* and this *Handbook* on those of its *customers* with direct access to the accounts of the correspondent institution; and
- (c) the respondent institution is able to provide relevant *customer identification data* upon request to the correspondent institution.

(6) The firm must ensure that appropriate and effective policies, procedures and controls are in place when establishing a correspondent relationship with a foreign bank or other institution.

(7) Additionally, the firm must have appropriate and effective policies, procedures and controls in place to ensure compliance with the requirements of paragraph 8 of *Schedule 3* in respect of *shell banks*.

8.7. High Risk Countries or Territories

(1) In accordance with paragraph 5(1)(c)(i) of *Schedule 3*, the firm shall apply *ECDD* measures to a *business relationship* or *occasional transaction* where the *customer* is established or situated in a country or territory that:

- (a) provides funding or support for terrorist activities;
- (b) does not apply or insufficiently applies *the FATF Recommendations*; or
- (c) has otherwise been identified by *the FATF Recommendations* as a country for which such measures are appropriate.

(2) In addition to those countries and territories falling within (a) to (c) above, the firm must also give special attention to *business relationships* and *occasional transactions* where the *customer* is established or situated in a country or territory closely associated with illegal drug production, processing or trafficking, corruption, terrorism and other organised crime.

(3) The firm must have policies, procedures and controls in place which enable it to determine those countries or territories falling within paragraphs 8.7.(1) - (2) above.

(4) As part of its policies, procedures and controls, the firm must:

- (a) be aware of concerns about weaknesses in the AML and CFT systems of other countries or territories; and
- (b) consider any Business from Sensitive Sources Notices and Instructions issued from time to time by *the Commission*.

(5) As part of its policies, procedures and controls the firm should also consider:

- (a) findings of reports issued by the FATF, FATF-style regional bodies and FATF associate members, for example MONEYVAL, the Asia/Pacific Group on Money Laundering, the IMF and the World Bank (see Appendix B of this *Handbook*);
- (b) findings of reports issued by governments, government bodies and other independent organisations, for example Transparency International, the National Crime Agency, the Financial Crimes Enforcement Network, the US State Department and the International Centre for Political Violence and Terrorism Research (see Appendix B of this *Handbook*);
- (c) situations where a country or territory has not been the subject of an AML and CFT assessment; and
- (d) its own experience, or the experience of other group entities where part of a multinational group, which may indicate weaknesses in the *ML* or *FT* framework of a country or territory or wider concerns, for example the prevalence of drug or human trafficking or political corruption.

8.8. Bearer Shares

(1) When assessing the *risk* of a particular *business relationship* or *occasional transaction*, the firm should consider whether any legal person who is the *customer*, *beneficial owner* or *underlying principal* has issued, or has the ability to issue, *bearer shares*, bearer warrants or *bearer negotiable instruments* (collectively referred to as “*bearer shares*” for the purposes of this section).

(2) A *bearer share* is a share that is owned by, and gives all associated rights to, the person who is in control or possession of the share. The *bearer share* is not recorded by indefeasible title, for example on a register, and transfer of the ownership of the share does not need to go through a

register to be effected. As there are no records as to the holder, it is often difficult to identify the true or ultimate *beneficial owner* of a *bearer share* or more broadly *bearer share* companies.

(3) Where the firm's risk appetite allows for a *customer*, or the *beneficial owner* or *underlying* of a *customer*, to have issued or have the ability to issue *bearer shares*, the firm must have appropriate policies, procedures and controls in place, including the application of the measures required under Rule 8.8.(5) below, to ensure that they are not misused for *ML* and/or *FT*.

(4) The firm's procedures must apply irrespective of whether the identified *bearer share* represents an amount below the relevant threshold for ownership or control of the legal person.

(5) Where the firm establishes or maintains a *business relationship* or undertakes an *occasional transaction* within which the *customer*, or any *beneficial owner* or *underlying principal*, is a legal person which has issued, or has the ability to issue, *bearer shares*, the firm must apply each of the following measures in respect of that *business relationship* or *occasional transaction*:

- (a) determine and satisfy itself as to the reasons why the *customer*, or any *beneficial owner* or *underlying principal*, has issued *bearer shares* or retains the ability to do so;
- (b) have custody of the *bearer shares* or be satisfied as to the location and immobilisation of the *bearer shares*. This should include confirming the number and location of the *bearer shares* on a periodic basis, or receiving a written undertaking from the custodian of those *bearer shares* that the firm will be notified of any changes to records relating to those shares and the custodian;
- (c) ensure that any new or continued relationships or any occasional transactions are approved by the senior management of the firm; and
- (d) review the *business relationship* on at least an annual basis, including all documents, data and information obtained as part of its *CDD* measures to ensure that they remain appropriate and relevant.

8.9. Non-Resident Customer

(1) *Customers* who are not resident in a country or territory but who nevertheless seek to form a *business relationship* or conduct an *occasional transaction* with a business in that country or territory may have legitimate reasons for doing so.

(2) Some *customers* will, however, pose a risk of *ML* and/or *FT* and may be attempting to move illicit funds away from their country or territory of residence or attempting to further conceal the source of funds from that country or territory.

(3) In accordance with paragraph 5(2)(b)(i) of *Schedule 3*, the firm shall apply enhanced measures to a *business relationship* or *occasional transaction* in which the *customer* is not resident in *the Bailiwick*.

(4) Where the firm establishes or maintains a *business relationship* or undertakes an *occasional transaction* with a *customer* who is not resident in *the Bailiwick*, the firm must carry out enhanced measures which are commensurate with the *high risk* characteristics associated with non-resident *customers*.

(5) For the purposes of Rule 8.9.(4) above, examples of the enhanced measures applied by the firm in respect of that *business relationship* or *occasional transaction* could include:

- (a) taking steps to understand the reason(s) behind the *customer* seeking to establish a *business relationship* or carry out an *occasional transaction* in *the Bailiwick*;

- (b) the use of external data sources to collect information on the *customer* and the particular country risk in order to build a customer business and *risk* profile similar to that available for a resident *customer*;
 - (c) taking reasonable measures to establish the source of the funds used within the *business relationship* or *occasional transaction* and considering whether this is consistent with the firm's understanding of the *customer* and the rationale for the *business relationship* or *occasional transaction* (see section 8.3. of this *Handbook*).
- (6) For the purposes of paragraph 8.9.(5)(a) above, when determining the reasons for establishing a *business relationship* or undertaking an *occasional transaction*, the firm should document its determination, which should be more detailed and/or substantive than merely 'tax planning', 'asset protection' or similar.
 - (7) Where the firm determines that the rationale for the *customer* establishing a *business relationship* or undertaking an *occasional transaction* with the firm is tax planning or tax mitigation, the firm should seek to understand the substance of the underlying tax rationale for the *business relationship* or *occasional transaction*. Where concerns are raised about this rationale, the firm could consider requesting a copy of the tax opinion or tax advice to support its understanding of the *customer's* arrangements.
 - (8) With regard to paragraph 8.9.(5)(c) above, when seeking to establish the source of any funds the firm should consider both the activities which generated those funds in order to understand the provenance of the funds and any potential implications to those funds being moved to *the Bailiwick*, for example is the *customer* seeking to circumvent capital controls by moving the funds to the firm.

8.10. Customer Provided with Private Banking Services

- (1) Private banking is generally understood to be the provision of personalised banking and/or investment services to high net worth *customers* in a closely managed relationship. It may involve complex, bespoke arrangements and high value transactions across multiple countries and territories. Such *customers* may therefore present a higher risk of *ML* and/or *FT*.
- (2) For the purposes of this section a service will be regarded as a private banking service if it:
 - (a) is offered or proposed to personal, private client, *customers* (either directly or through a legal person or legal arrangement) identified by the firm as being eligible for the service on the basis of their net worth;
 - (b) involves high value investment;
 - (c) is non-standardised; and
 - (d) is tailored to the *customer's* needs.
- (3) For the avoidance of doubt private banking services are not considered to be solely the preserve of a bank but could feasible be offered by a firm licensed under *the POI Law*. A business licensed under *the Fiduciaries Law* who facilitates private banking services as part of its duties as a trustee is not considered to be providing private banking services.

(4) In accordance with paragraph 5(2)(b)(ii) of *Schedule 3*, the firm shall apply enhanced measures to a *business relationship* or *occasional transaction* in which the firm provides private banking services to the *customer*.

(5) Where the firm establishes or maintains a *business relationship* or undertakes an *occasional transaction* with a *customer* to which it provides private banking services, the firm must carry out enhanced measures which are commensurate with the higher *risk* characteristics associated with the provision of private banking services.

- (6) For the purposes of Rule 8.10.(5), examples of the enhanced measures applied by the firm in respect of that *business relationship* or *occasional transaction* could include:
- (a) reviewing the *business relationship* on at least an annual basis, including all documents, data and information obtained as part of the firm's *CDD* measures in order to ensure they continue to be appropriate and relevant;
 - (b) where *transaction* monitoring thresholds are used, ensuring that these are appropriate for the circumstances of the *business relationship* and considering whether they should be reduced to provide greater oversight of *transactions* connected with the *business relationship*;
 - (c) taking reasonable measures to establish the source of funds and source of wealth of the *customer*, and *beneficial owner* and *underlying principal* (see section 8.3. of this *Handbook*).
- (7) Where the firm offers private banking services, it should consider on a case by case basis whether a *customer* utilises such services, or whether the products and/or services provided to the *customer* fall within more traditional retail banking services. In such circumstances there is no requirement to apply the above measures.

8.11. Customer is a Personal Asset Holding Vehicle

- (1) Personal asset holding vehicles are legal persons or *legal arrangements* established by individuals for the specific purpose of holding assets for investment. Whilst there are perfectly legitimate reasons for establishing a personal asset holding vehicle, the use of such, either a legal person or *legal arrangement*, can serve to conceal the true source of wealth and funds, or the identity of the ultimate *beneficial owner* of the investment.
- (2) The use of personal asset holding vehicles therefore presents a higher *risk*, making it more difficult for the firm to establish the true beneficial ownership of a *customer*.

(3) In accordance with paragraph 5(2)(b)(iii) of *Schedule 3*, the firm shall apply enhanced measures to a *business relationship* or *occasional transaction* in which the *customer* is a legal person or legal arrangement used for personal asset holding purposes.

(4) Where the firm establishes or maintains a *business relationship* or undertakes an *occasional transaction* with a *customer* which is a legal person or legal arrangement used for personal asset holding purposes, the firm must carry out enhanced measures which are commensurate with the higher *risk* characteristics associated with the use of personal asset holding vehicles.

- (5) For the purposes of Rule 8.11.(4) above, examples of the enhanced measures applied by the firm in respect of that *customer* could include:
- (a) determining the purpose and rationale for making use of a personal asset holding vehicle and *satisfying* itself that the *customer's* use of such a vehicle has a genuine and legitimate purpose;
 - (b) taking reasonable measures to establish the source of funds and source of wealth of the *customer*, and *beneficial owner* and *underlying principal* (see section 8.3. of this *Handbook*).

- (6) Rule 8.11.(4) above applies where the personal asset holding vehicle is the *customer*, or the third party where the customer is a trustee or general partner acting on behalf of a personal asset holding vehicle.
- (7) For the purposes of paragraph 8.11.(5)(a) above, when determining the purpose and rationale for a customer making use of an asset holding vehicle, the firm should document its determination which should be more detailed and/or substantive than merely ‘tax planning’, ‘asset protection’ or similar.
- (8) Where the firm determines that the rationale for the *customer* making use of an asset holding vehicle is tax planning or tax mitigation, the firm should seek to understand the substance of the underlying tax rationale. Where concerns are raised about this rationale, the firm could consider requesting a copy of the tax opinion or tax advice to support its understanding of the *customer’s* arrangements.

8.12. Customer with Nominee Shareholders

- (1) There may be sound commercial reasons for a *customer* to use *nominee shareholders*, for example to ease administration and reduce costs by enabling the nominee to take necessary corporate actions in the administration of the structure.
- (2) Notwithstanding the above, as detailed in section 7.3. of this *Handbook*, the use of *nominee shareholders* can provide a *customer* with the means to obscure true ownership and control, by separating legal and beneficial ownership. The use of *nominee shareholders* therefore presents a *high risk*, making it more difficult for the firm to establish the true beneficial ownership of a *customer*.

(3) In accordance with paragraph 5(2)(b)(iv) of *Schedule 3*, the firm shall apply enhanced measures to a *business relationship* or *occasional transaction* in which the *customer* is a company with *nominee shareholders*.

(4) Where the firm establishes or maintains a *business relationship* or undertakes an *occasional transaction* with a *customer* which is a legal person with *nominee shareholders*, the firm must carry out enhanced measures that are commensurate with the *high risk* characteristics associated with the use of *nominee shareholders*.

- (5) For the purposes of Rule 8.12.(4) above, examples of the enhanced measures to be applied by the firm in respect of that *customer* could include:
 - (a) determining and *satisfying* itself as to the reasons why the *customer* is making use of *nominee shareholders*;
 - (b) using external data sources to collect information on the fitness and propriety of the *nominee shareholder* (such as their regulated status and reputation) and the particular country risk.

