

Authorities demand rigor yet offer little guidance

First of two parts.

By **Kenneth L. Bryant**

In recent years, high-profile money laundering scandals have increasingly been dominated by senior foreign political figures or politically exposed persons (PEPs), such as Abacha, Bhutto, Montesinos, Lazarenko, and Salinas, who are implicated in massive public corruption cases.

As a result, financial institutions are eager to identify PEPs to avoid the reputational and legal risks associated with handling their accounts. But compliance is a huge problem. And at the root of the problem is chronically weak guidance from governmental and international organizations.

In a 2001 document, "Customer Due Diligence for Banks," the Bank for International Settlement's Basel Committee on Banking Supervision advises financial institutions to "gather sufficient information from a new customer, and check publicly available information, in order to establish whether or not the customer is a PEP." Basel defines PEPs as "individuals who are or have been entrusted with prominent public functions, including heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of publicly owned corporations and important political party officials."

The core U.S. advice appears in the 2001 document "Guidance on Enhanced Scrutiny For Transactions That May Involve the Proceeds of Foreign Official Corruption," which was jointly issued by the Departments of State and the Treasury. The document encouraged financial institutions "to develop and maintain 'enhanced scrutiny' practices and procedures designed to detect and deter transactions that may involve the proceeds of official corruption by senior foreign political figures, their immediate family,

or their close associates," and gave a definition of each.

The guidance also states that a financial institution should not rely solely on information obtained from the PEP, his or her immediate family and close associates, but "should attempt to obtain additional information from its organization and from independent sources." The U.S. advisory continues: "while there is no requirement to do so, a financial institution may wish to consult some or all of the following sources." A list follows of various reports and websites of government and non-government organizations, and includes a rather nondescript mention of "publicly available sources such as newspapers, magazines and other articles ..." In effect, financial institutions are left holding the bag with nothing more than a vague notion of "sources," some of which are identified in only the most general sense.

Given the poor quality of the available guidance and the proliferation of increasingly rigorous AML international standards and best practices in the past few years, it is not surprising that dozens of PEP database vendors have popped up, responding to what appears to be a growth industry.

But although database providers may tell you otherwise, there is no magic bullet when it comes to finding a PEP. The only publicly available, centralized, and free of charge list of PEPs is produced by the U.S. Central Intelligence Agency - www.cia.gov/cia/publications/chiefs/. That list, however, contains only chiefs of state, cabinet members, heads of central banks, ambassadors to the United States and permanent representatives to the United Nations. No immediate family members or close associates are listed, although the U.S. guidance encourages financial institutions to perform enhanced scrutiny on these individuals as well.



Is it reasonable to expect an international bank of modest size to maintain PEP lists sufficiently complete to include all the first cousins or brothers-in-law or business associate of every public official of every country? Wouldn't that seem to be an intelligence agency function?

The U.S. intelligence budget is upwards of \$40 billion - and a list of cabinet ministers is the best they could come up with? While the U.S. intelligence community does hard and very fine work, the list shows obvious limitations. If you recall, these are the same guys that couldn't find two of the 9-11 terrorists living in the U.S., although they were both listed in the San Diego phone book under their real names.

To have real value, the relevant international bodies (you know who you are) should pressure member governments to produce a comprehensive PEP list and make it available to the public. I find it outrageous that my clients are continually brow-beaten into complying with ever-tougher international standards without being given an effective way to do so by the very same authorities that are demanding it.

Kenneth L. Bryant has 15 years senior management experience as an anti-money laundering professional. He resides in the Cayman Islands where he manages and operates a global asset protection and risk mitigation consultancy. For more information, see www.amlcft.com. Next month's article will examine how financial institutions might screen for PEPs.