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CENTRAL BANK OF SRI LANKA



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நிதியியல் உளவறிதற் பிரிவு

Financial Intelligence Unit ED

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October 01, 2019

DS & DL
FRA
8/10/19



To : CEOs / General Managers / Managing Directors of All Financial Institutions and Designated Non- Finance Business

Guidelines on Identification of Politically Exposed Persons, No. 03 of 2019

8/10/19

The above Guidelines will come in to force with immediate effect and shall be read together with the Financial Transactions Reporting Act, No. 6 of 2006, Financial Institutions (Customer Due Diligence) Rules, No. 01 of 2016 and Designated Non-Finance Business (Customer Due Diligence) Rules, No. 1 of 2018.

Yours faithfully,

D M Rupasinghe
Director
Financial Intelligence Unit

Cc;

1. Director, Bank Supervision Department of Central Bank of Sri Lanka
2. Director, Department of Supervision of Non - Bank Financial Institutions of Central Bank of Sri Lanka
3. Director General, Securities and Exchange Commission of Sri Lanka
- ✓ 4. Director General , Insurance Regulatory Commission of Sri Lanka
5. Director General, National Gem and Jewellery Authority of Sri Lanka
6. Compliance Officers, all Financial Institutions and Designated Non- Finance Business

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Guidelines on Identification of Politically Exposed Persons, No. 03 of 2019

A. Introduction

1. These Guidelines are issued pursuant to section 15(1) (j) of the Financial Transactions Reporting Act, No. 06 of 2006 (FTRA).
2. These Guidelines are issued to the Institutions defined under Section 33 of the FTRA for the purpose of determining whether a customer or the beneficial owner is a Politically Exposed Person (herein after referred as PEPs).
3. Further, these guidelines should be read along with the Financial Institutions (Customer Due Diligence) Rules, No. 01 of 2016 by Gazette Extraordinary No. 1951/13, dated January 27, 2016, and Designated Non- Finance Business (Customer Due Diligence) Rules, No. 1 of 2018 by Gazette Extraordinary No. 2053/20, dated January 10, 2018. These Customer Due Diligence (CDD) Rules are hereinafter referred to as FIs CDD Rules and DNFBs CDD Rules respectively.
4. Rule 59 of the FIs CDD Rules and Rule 24 of the DNFBs CDD Rules establishes the procedure to be followed by the FIs and DNFBs in dealing with customers /beneficial owners who are Politically Exposed Persons, or their immediate family members and closed associates.
5. These Guidelines are provided as an aid to interpret and apply CDD Rules. These Guidelines are not intended to be exhaustive and cannot be considered as legal advice from the Financial Intelligence Unit (FIU). Nothing in these Guidelines should be construed as releasing FIs or DNFBs from any of their obligations under the CDD Rules or the FTRA.

B. Background/ Context

Who is a Politically Exposed Person (PEP)?

6. Rule 99 of the FIs CDD Rules and Rule 43 of the DNFBs CDD Rules define PEPs, their immediate family members and close associates.
7. As per these CDD Rules, “politically exposed person” means an individual who is entrusted with prominent public functions either domestically or by a foreign country, or in an international organization and includes a head of a State or a Government, a politician, a senior government officer, judicial officer or military officer, a senior executive of a State

Owned Corporation/Government or Autonomous body but does not include middle ranking or junior ranking individuals. The CDD Rule is also applicable to family members and close associates of a PEP as well.

8. Accordingly, PEPs can be identified under following categories

- a) *Domestic PEPs*: individuals who are entrusted with prominent public functions in Sri Lanka.
- b) *Foreign PEPs*: individuals who are entrusted with prominent public functions by a foreign country.
- c) *International organization PEPs*: persons who are entrusted with a prominent function by an international organization.
- d) *Immediate Family members*: individuals who are related to a PEP either directly (on grounds of consanguinity) or through marriage or similar (civil) forms of partnership.
- e) *Close associates*: individuals who are closely connected to PEP, either socially or professionally.

9. Immediate family members of PEPs include any of the following relations:

- i. spouse (current and past);
- ii. siblings, (including half-siblings) and their spouses;
- iii. children (including step-children and adopted children) and their spouses;
- iv. parents (including step-parents);
- v. grand children and their spouses.

10. Close associates of PEPs or their family members includes;

- i. a natural person having joint beneficial ownership of legal entities and legal arrangements, or any other close business relationship with any person identified in guidelines 7 or 9 above; and
- ii. a legal person or legal arrangement whose beneficial owner is a natural person and is known to have been set up for the benefit of such person or his immediate family members identified in guidelines 7 and 9;
- iii. a PEP's widely- and publicly-known close business colleagues or personal advisors, in particular, persons acting in a financial fiduciary capacity.

11. For the purposes of the PEP definition, “international organizations” are organizations established by formal political agreements between its member countries, where such agreement has the status of an international treaty, and the organization is recognized in the law of the member countries. The examples of international organizations provided by FATF include:

- a) the United Nations and its affiliates such as the International Maritime Organization;
- b) regional international organizations;
- c) international military organizations such as the North Atlantic Treaty Organization;
- d) economic organizations such as the World Trade Organization, International Monetary Fund, World Bank, Asian Development Bank, etc.

12. CDD Rules require FIs/ DNFBs to establish specific procedures in relation to PEPs as well as their immediate family members and close associates.

C. Money Laundering, Terrorism Financing and Proliferation Financing Risks Associated with PEPs

13. Due to their official status or position held and influence, it is recognized that many PEPs are in positions that potentially can be abused for money laundering and related predicate offences, including bribery and corruption, as well as activity related to terrorism financing. The potential risks associated with PEPs justify the application of additional Anti Money Laundering and Countering the Financing of Terrorism (AML/CFT) measures to prevent, detect and manage these risks emanating from their conduct.

14. However, it should be noted that if a person is a PEP, this does not mean that there is an automatic link to criminal activities or abuse of the financial system. The additional AML/CFT measures applied in the case of PEPs are preventative, and should not be interpreted as stigmatizing PEPs as being involved in criminal activity; rather these measures recognize the increased risk, including opportunity, associated with holding this type of role.

D. Identification of PEPs

15. Every FI/ DNFB is required to implement appropriate internal policies, procedures and controls to determine if the customer or the beneficial owner is a politically exposed person. This is applicable for all new and ongoing business relationships with customers.

16. The ability to determine if customers or beneficial owner is a PEP fully depends upon the effective implementation of CDD measures, including the identification, verification, and

ongoing due diligence requirements as set out in the CDD Rules. CDD measures are the indispensable starting point as these should be applied to any type of customer. Key factors in the CDD process such as principal occupation or employment would be a good starting point in such determination.

17. The PEP definition specifically excludes identifying middle ranking or junior individuals as PEPs. However, there should be awareness that middle ranking and junior officials could act on behalf of a PEP to circumvent AML/CFT controls. These less prominent public functions could be appropriately taken into account as customer risk factors in the framework of the overall assessment of risks associated with the business relationship in accordance with CDD Rules when they are acting on behalf of a PEP.
18. FIs/ DNFBs doing business with a foreign PEP may not have had much first-hand knowledge or direct access to information about variables such as what a reasonable income would be for a foreign public official at a particular level or in a particular position. Consequently, appropriate risk management systems need to be implemented to address these particular risks both at the account opening/CDD stage, and when existing foreign customers become PEPs.
19. In case the customer is determined to be a domestic/international organization PEP, then FIs/DNFBs should gather sufficient information to understand the particular characteristics of the public functions that the PEP has been entrusted with and, in the case of an international organization, the business model of that organization. Information on international organizations, for example, may be found on their respective website.
20. FIs/ DNFBs may refer to the non-exhaustive list at Annex A as examples of types of customers, whether domestic or foreign or in relation to international organizations and with political exposure. However, FIs/DNFBs are required to identify any individual who falls within the definition of PEP even though such person/designation is not listed within the Annex A.

E. Beneficial owners

21. When conducting CDD, FIs/ DNFBs are required to identify the beneficial owners and take reasonable measures to verify the identity of the beneficial owners. This should include legal persons and arrangements whose ultimate beneficial owners or controllers are PEPs or their family members or associates.

22. If there are reasonable grounds to believe that a beneficial owner is a PEP, a FIs/DNFBs entity required to verify if the beneficial owner is a PEP.
23. FIs/DNFBs are required to inquire the reason for a person purporting to act on behalf of a beneficial owner in order to determine whether the beneficial owner of the customer or client is a PEP.
24. FIs/DNFBs required to apply all the requirements applicable to a PEP for:
 - a) a person who is acting on behalf of a PEP, or
 - b) a customer or beneficial owner of a customer who is identified as a family member or close associate of a PEP.

F. Methods used in PEP identification

25. There is no single method of identifying PEPs, their family members, or close associates. Whereas PEPs and family members can be identified using objective criteria, criteria for close associates are sometimes (but not always) relatively more subjective. It is highly unlikely that any single method of identification will be adequate. Instead a combination of methods will yield the best results. Some of those methods include:
 - a. Screening of customer and beneficial owner identifiers using commercial databases compiled for this purpose. These databases are populated from public sources of information and, accordingly may not be complete or up-to-date.
 - b. Screening of customer and beneficial owner identifiers using an internally maintained database of PEPs, family members, and close associates.
 - c. Screening against publicly available registries of people with financial declaration /disclosure requirements in their home country in case of foreign PEPs.
 - d. Conducting and utilizing ad-hoc customer research. This involves researching customers using available tools such as search engines, social media, company registries, company websites, news websites, trade websites, government websites, commercial information aggregators, in-person interviews, etc.
 - e. Self- declaration obtained from a customer - FIs/DNFBs can obtain information from customers on their PEP status as a part of the CDD process However, FIs/DNFBs who confirm customer's PEP status through a self-declaration should ensure that they do not rely solely on such self-declarations as customers may not be able to determine

if they are indeed a PEP. Institutions are advised to actively engage with customers and elicit information pertinent to the different elements of the PEP definition if they deploy self-declaration.

G. Review/Update of Customer Status

26. Existing customers may become PEPs after they enter a business relationship, therefore, it is essential that FIs /DNFBs monitor non-PEP accounts for a change in the customer status/profile or account activity and update customer information accordingly. Such monitoring is required to be based on risk, consistent with the requirements under the CDD Rules. Following are some instances where institutions are required to update its customer status relating to PEPs.
- a. when a customer spontaneously submits a new declaration of political exposure;
 - b. when ongoing monitoring reveals activities or information that deviate significantly from the customer and/or account profile in a manner that suggests previously unknown political exposure;
 - c. when an election is held that affects any of the customer's PEP status;
 - d. whenever the FIs/DNFBs becomes aware, through any means, of the need for such an update.
27. Existing PEP customer relationships should be subject to periodic review to ensure that due diligence information remains current and the associated controls remain appropriate.

H. Managing PEP Risks

28. Any customer identified as a PEP is ~~considered to be a high risk customer~~ and FIs/DNFBs are required to conduct enhanced due diligence of the business relationships. *AD*
29. Once identified, PEPs, their family members, and close associates always represent additional risk that requires appropriate management. The precise nature and magnitude of that risk and commensurate risk mitigations, however, may vary widely. Factors that affect risk relating to PEPs may include:
- a. the perceptions of corruption and financial transparency in the PEP's country of citizenship;
 - b. the nature of the political exposure;
 - c. the nature of the relationship with the PEP, in the case of family members and close associates ;
 - d. the elapsed time since the PEP held the position(s) that qualified him to be a PEP;

- e. the nature of the claimed sources of funds and the ability to fully and confidently verify those sources and their legitimacy;
- f. has business interests, which are related to his/her public functions (conflict of interest);
- g. involved in public procurement processes; where the PEP holds several (related or unrelated) prominent public functions that may enable influence to be exerted at several key decision making points in a process, especially relating to payments;
- h. holds a prominent public function in sectors known to be exposed to corruption; or
- i. holds a prominent public function that would allow him/her to exert a negative impact on the effective implementation of the AML/CFT framework in the country.

30. FIs /DNFBs are required to apply following measures relating to PEPs as per the CDD Rules;

- a. Obtain approval from the institution's board of directors/ senior management prior to entering in to a new business relationship or continuing an existing relationship;
- b. Identify the source of funds and wealth by appropriate means;
- c. Enhanced ongoing monitoring of the business relationship is performed.

I. Establishment of the Source of Wealth and Source of Funds of the PEP

31. FIs/DNFBs are required to take reasonable measures to establish the *source of wealth* and the *source of funds* of PEPs, as required in the CDD Rules.

32. "Wealth" and "funds" are two different concepts. The *source of wealth* refers to the origin of the PEP's entire body of wealth (*i.e.*, total assets). This information will usually give an indication as to the volume of wealth the customer would be expected to have, and a picture of how the PEP acquired such wealth. Although FIs/DNFBs may not have specific information about assets not deposited or processed by them, it may be possible to gather general information from commercial databases or other open sources.

33. The *source of funds* refers to the origin of the particular funds or other assets that are the subject of the business relationship between the PEP and the FIs/DNFBs (*e.g.*, the amounts being invested, deposited, or transferred/wired as part of the business relationship). Normally, it will be easier to obtain this information but it should not simply be limited to knowing from which institution it may have been transferred/wired. The information obtained should be substantive and establish a source or reason for having been acquired.

34. Information about the source of wealth and source of funds is useful for ongoing due diligence purposes. When conducting ongoing due diligence of the business relationship, it is

important for FIs/DNFBs to ensure that the level and type of transactions are consistent with the institution's knowledge of the PEP's source of wealth and source of funds. The aim is to ensure that the reason for the business relationship is commensurate with what one could reasonably expect from the PEP, given his/her particular circumstances.

35. Where the level or type of activity in the business relationship is different from what can be reasonably explained, given the knowledge of a PEP's sources of funds and sources of wealth, an entity should undertake a further assessment on the business relationship to establish whether to:
 - a. continue with or terminate the business relationship; or
 - b. file a suspicious transaction report to the FIU.

J. Time Limits of PEP Status

36. The handling of a customer who is no longer entrusted with a prominent public function should be based on an assessment of risk and not on any predetermined time limits.
37. Such risk-based approach requires that FIs/ DNFBs assess the ML/TF risks of a PEP who is no longer entrusted with a prominent public function, and take effective action to mitigate this risk. Possible risk factors are:
 - a. the level of (informal) influence that the individual could still exercise; the seniority of the position that the individual held as a PEP; or
 - b. whether the individual's previous and current function are linked in any way (*e.g.*, formally by appointment of the PEPs successor, or informally by the fact that the PEP continues to deal with the same substantive matters).
38. PEPs are not immune from the application of the requirements under the CDD Rule or from being the subject of the obligation to report suspicious transactions under Section 7 of the FTRA.

K. PEPs Red Flags / Indicators

39. The Financial Action Task Force (FATF) has developed a collection of red flags / indicators (**Annex B**) that can be used to assist in the detection of misuse of the financial systems by PEPs during a customer relationship. This list of red flags / indicators is relevant to detect those PEPs that abuse the financial system, and does not intend to stigmatize all PEPs. Often, matching one or more of these red flags / indicators may only raise the risk of doing business

with a customer (red flags, risk factors), and several red flags may need to be met to create a suspicion. However, in some cases and depending on the specific circumstances, matching just one or more of these red flags / indicators will directly lead to a ML suspicion (indicators of suspicion).

40. These PEP red flags are not an exhaustive list and are complementary to the usual ML red flags that a reporting entity may be using. The methods of those PEPs that engage in illicit activity change and therefore indicators of their activity will do so as well. Also, there may be other red flags that should be considered as equally important in a particular country or region.

L. Board of Directors/ Senior Management

41. Consistent with the requirement for FIs/DNFBs to obtain senior management approval for establishing or continuing a business relationship with PEP, a FIs/DNFBs should determine what constitutes senior management within the FIs/DNFBs.
42. What would constitute as senior management should depend on the size, structure, and nature of the entity involved.
43. FIs/DNFBs should ensure that senior management are aware of relationships with PEPs and in no circumstances the FIs/DNFBs undertake business relationships with PEPs in the absence of adequate controls by senior management.
44. In assessing whether FIs/DNFBs should undertake a business relationship with a PEP, senior management involved shall:
 - a. have full knowledge and understanding of the FI/DNFB's AML or CFT internal control programs;
 - b. have a strong understanding of the potential or existing client's or customer's ML or TF risk profile; and
 - c. have active involvement in the approval process of the entity's AML or CFT policies and procedures.
45. Without limiting the determination or otherwise of FIs/DNFBs assessing what constitutes senior management, an entity may establish monitoring committees, or comparable decision-making structures that:
 - a. review establishment of business relationships with PEPs at the acceptance stage and on an on-going basis;
 - b. ensure that all relevant internal information is carefully considered in specific cases;

- c. manage the termination of a business relationship with a PEP in appropriate circumstances; and
- d. ensure that appropriate information, which include internal policies, procedures, and controls regarding PEPs, is available within the reporting entity when and where necessary.

M. Record Keeping Obligations

- 46. The FIs/DNFBs are required to maintain records of identification and verification information relating to PEPs as prescribed under Part V and Part III of the FIs and DNFBPs CDD Rules respectively and FTRA.

N. Internal control policies-training and group-wide policies

- 47. FIs/DNFBs should establish and maintain internal control policies that include ongoing employee training programs.
- 48. The training programs, which should be regularly updated, shall be designed to address effective ways of determining whether a client or customer is a PEP and to understand, assess and handle the potential risks associated with PEPs.
- 49. FIs/DNFBPs that are part of a financial group should establish and maintain group-wide internal controls, policies and procedures.

O. Information Sharing

- 50. FIs/DNFBPs that are part of financial groups may share information amongst themselves on PEPs for AML/CFT purposes, provided that there are adequate safeguards on the confidentiality and use of information exchanged.

**NON-EXHAUSTIVE LIST CATEGORIES OF CUSTOMERS THAT CAN BE
CONSIDERED AS PEPS**

DOMESTIC PEPS

A.	1	The President
	2	The Prime Minister
	3	The Speaker and the Deputy Speaker of the Parliament
	4	Cabinet Ministers, Non-Cabinet Ministers, State Ministers, Deputy Ministers
	5	Members of Parliament
	6	Leaders of Political Parties

B	7	Governors of Provinces
	8	Chief Ministers of Provinces
	9	Mayor, Chairman of Municipal Councils
	10	Chairman of Provincial Councils
	11	Members of Municipal Councils/ Provincial Councils / Local Government Bodies
	12	Commissioners/ Secretaries to Municipal Councils/ Provincial Councils / Local Government Bodies

C	13	Chief Justice
	14	Attorney General
	15	Judges of Supreme Court
	16	Judges of the Court of Appeal
	17	Solicitor General of the Attorney General's Department
	18	Judges of High Courts/Provincial High Courts
	19	Judges of District Courts
	20	Judges of Magistrate Courts
	21	Registrar of Supreme Court
	22	Registrar of the Court of Appeal
	23	Registrars of Judges of High Courts/Provincial High Courts
	24	Registrars of District Courts
	25	Registrars of Magistrate Courts

D	26	Ambassadors /High Commissioners
	27	Consul-General/ Deputy Head of Mission/Charge d'affaires/Honorary Consul
	28	Ministers plenipotentiary and Envoys Extraordinary
	29	Representatives of UN agencies and Heads of other international organizations

E	30	Secretary/ Senior Additional Secretaries/ Additional Secretaries to the President
	31	Secretary/ Senior Additional Secretaries/ Additional Secretaries to the Prime

		Minister
	32	Secretary /Senior Additional Secretaries/ Additional Secretaries to the Cabinet of Ministers, Non-Cabinet Ministers, State Ministers, Deputy Ministers
	33	Deputy Secretary to the Treasury
	34	Secretary/ Senior Additional Secretaries /Additional Secretaries/ Deputy Secretaries to Ministries
	35	Members of the Monetary Board
	36	Governor / Deputy Governors / Assistant Governors and Heads and Additional Heads of Department of the Central Bank of Sri Lanka
	37	Advisors to the President/ Prime Minister / Ministers/ Ministries
	38	Chief of staff of presidential secretariat
	39	Auditor General
	40	Secretary General of Parliament
	41	District Secretaries/ Government Agent and Secretaries
	42	Heads and Senior Officials of Government Departments
	43	Chairmen and Senior Officials of State Enterprises
	44	Chairmen and Senior Officials of State Corporations / Statutory Boards/ Authorities/ Public Corporations

F	45	Field Marshall / Admiral of the Fleet/ Marshal of the Air Force
	46	Chief of Defence Staff
	47	General of Sri Lanka Army/Admiral of Sri Lanka Navy/ Air Chief Marshal of Sri Lanka Air Force
	48	Officers in the Rank of Lieutenant Colonel and above of Sri Lanka Army
	49	Officers in the Rank of Commander and above of Sri Lanka Navy
	50	Officers in the Rank of Wing Commander and above of Sri Lanka Air Force
	51	Inspector General of Police
	52	Police officers above the rank of Asst. Superintendent of Police

G	53	Chairman/ members and senior officers of the Public Service Commission
	54	Chairman/ members and senior officers of the National Police Commission
	55	Chairman/ members and senior officers of the Human Right Commission
	56	Chairman/ members and senior officers of the Commission to Investigation Allegations of Bribery or Corruption
	57	Chairman/ members and senior officers of the Finance Commission
	58	Chairman/ members and senior officers of the Election Commission
	59	Members of Constitutional Council
	60	Chairman/ members and senior officers of the Audi Service Commission
	61	Chairman/ members and senior officers of the Delimitation Commission
	62	Chairman/ members and senior officers of the National Procurement Commission
	63	Members of Cabinet appointed committees

H	64	Chairman, Members and senior officers of University Grant Commission
	65	Chairman, members of University Councils
	66	Chancellor
	67	Vice Chancellor
	68	Registrar of universities

FOREIGN PEPS

I	69	Officials of international organizations who hold or have held, in the course of the last 5 years, management positions in such organizations (directors, heads of the boards or their deputies)
	70	Officials of international organization who perform or performed any other management functions on the highest level, particularly in international and intergovernmental organizations,
	71	Members of international parliamentary assemblies,
	72	Judges and management officials of international courts

DETECTING MISUSE OF THE FINANCIAL SYSTEM BY PEPs – RED FLAGS AND INDICATORS FOR SUSPICION**A. PEPs attempting to shield their identity:**

1. Use of corporate vehicles (legal entities and legal arrangements) to obscure i) ownership, ii) involved industries or iii) countries.
2. Use of corporate vehicles without valid business reason.
3. Use of intermediaries when this does not match with normal business practices or when this seems to be used to shield identity of PEP.
4. Use of family members or close associates as legal owner.

B. Red flags and indicators relating to the PEP and his behavior

1. The PEP makes inquiries about the institution's AML policy or PEP policy.
2. The PEP seems generally uncomfortable to provide information about source of wealth or source of funds.
3. The information that is provided by the PEP is inconsistent with other (publicly available) information, such as asset declarations and published official salaries.
4. The PEP is unable or reluctant to explain the reason for doing business in the country of the FIs/DNFBs.
5. The PEP provides inaccurate or incomplete information.
6. The PEPs seeks to make use of the services of a FIs/ DNFBs that would normally not cater to foreign or high value clients.
7. Funds are repeatedly moved to and from countries to which the PEPs does not seem to have ties with.
8. The PEP is or has been denied entry to the country (visa denial).
9. The PEP is from a country that prohibits or restricts its/certain citizens to hold accounts or own certain property in a foreign country.

C. PEP's position or involvement in businesses:

1. The PEP has a substantial authority over or access to state assets and funds, policies and operations.
2. The PEP has control over regulatory approvals, including awarding licences and concessions.
3. The PEP has the formal or informal ability to control mechanisms established to prevent and detected ML/TF.
4. The PEP (actively) downplays importance of his/her public function, or the public function s/he is relates to associated with.
5. The PEP does not reveal all positions (including those that are *ex officio*).
6. The PEP has access to, control or influence over, government or corporate accounts.
7. The PEP (partially) owns or controls FIs/ DNFBs, either privately, or *ex officio*.

8. The PEP (partially) owns or controls the FIs/ DNFBP (either privately or *ex officio*) that is a counter part or a correspondent in a transaction.
9. The PEP is a director or beneficial owner of a legal entity that is a client of a FIs/DNFB.

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

1. Arms trade and Defence industry.
2. Banking and finance.
3. Businesses active in government procurement, *i.e.*, those whose business is selling to government or state agencies.
4. Construction and (large) infrastructure.
5. Development and other types of assistance.
6. Human health activities.
7. Privatization.
8. Provision of public goods, utilities.

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