CONSULTATION PAPER
NO. 4 2015

REVISIONS TO THE MONEY LAUNDERING (JERSEY) ORDER 2008 AND COMMISSION AML/CFT HANDBOOKS

Proposals to amend provisions in the Money Laundering (Jersey) Order 2008 and the Handbooks for the Prevention and Detection of Money Laundering and the Financing of Terrorism for:

- Financial Services Business Regulated under the Regulatory Laws
- the Accountancy Sector
- the Legal Sector
- Estate Agents and High Value Dealers

ISSUED FEBRUARY 2015
CONSULTATION PAPER

Please note that terms in italics are defined in the glossary of terms.

Some changes proposed will impact on the Three Handbooks and the Handbook for Estate Agents and High Value Dealers. Rather than include multiple references, this consultation paper only refers to sections of the AML/CFT Handbook.

The Commission invites comments on this consultation paper. William Byrne at Jersey Finance is co-ordinating an Industry response that will incorporate any matters raised by its members. Comments should reach Jersey Finance by 18 March 2015.

William Byrne
Head of Technical
Jersey Finance Limited
4th Floor, Sir Walter Raleigh House
48-50 Esplanade
St Helier
Jersey
JE2 3QB

Telephone: +44 (0) 1534 836021
Facsimile: +44 (0) 1534 836001
Email: william.byrne@jerseyfinance.je

Alternatively, responses may be sent directly to cpcodes@jerseyfsc.org by 20 March 2015. If you require any assistance, clarification or wish to discuss any aspect of the proposals prior to formulating a response, it is of course appropriate to contact the Commission. The Commission contact is:

Andrew Le Brun
Director, Financial Crime Policy
Jersey Financial Services Commission
PO Box 267
14-18 Castle Street
St Helier
Jersey
JE4 8TP

Telephone: +44 (0) 1534 822065
Email: a.lebrun@jerseyfsc.org

It is the policy of the Commission to make the content of all responses available for public inspection unless specifically requested otherwise.
### GLOSSARY OF TERMS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
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<tbody>
<tr>
<td>Commission</td>
<td>means the Jersey Financial Services Commission</td>
</tr>
<tr>
<td>Commission Law</td>
<td>means the Financial Services Commission (Jersey) Law 1998</td>
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<tr>
<td>FATF</td>
<td>means the Financial Action Task Force</td>
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<tr>
<td>Handbook for the Legal Sector</td>
<td>means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Legal Sector</td>
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<tr>
<td>identification measures</td>
<td>has the same meaning as in Article 3 of the Money Laundering Order</td>
</tr>
<tr>
<td>Jersey Finance</td>
<td>means Jersey Finance Limited</td>
</tr>
<tr>
<td>Money Laundering Order</td>
<td>means the Money Laundering (Jersey) Order 2008</td>
</tr>
<tr>
<td>relevant person</td>
<td>means a person carrying on a financial services business (as described in Schedule 2 of the Proceeds of Crime (Jersey) Law 1999 and which is carrying on that business in or from within Jersey, or, if a Jersey legal person, carrying on that business in any part of the world</td>
</tr>
<tr>
<td>Three Handbooks</td>
<td>means the AML/CFT Handbook, the Handbook for the Accountancy Sector and the Handbook for the Legal Sector</td>
</tr>
</tbody>
</table>
## CONTENTS

1 EXECUTIVE SUMMARY ................................................................................. 7
   1.1 Overview ................................................................................................. 7
   1.2 Who would be affected? ......................................................................... 8

2 CONSULTATION .......................................................................................... 9
   2.1 Basis for consultation ............................................................................ 9
   2.2 Responding to the consultation ............................................................... 9
   2.3 Next steps ............................................................................................... 9

3 THE COMMISSION ..................................................................................... 10
   3.1 Overview ............................................................................................... 10
   3.2 Commission’s functions ......................................................................... 10
   3.3 Guiding principles ................................................................................. 10

4 IDENTIFICATION MEASURES – WHERE THE CUSTOMER IS
   ACTING FOR A THIRD PARTY ................................................................. 11
   4.1 Overview ............................................................................................... 11
   4.2 Identification measures in place in Jersey ............................................. 11
   4.3 Proposal ................................................................................................. 11
   4.4 Question ............................................................................................... 11

5 POLICIES, PROCEDURES AND TRAINING TO PREVENT AND
   DETECT MONEY LAUNDERING ............................................................. 13
   5.1 Overview ............................................................................................... 13
   5.2 Identification measures in place in Jersey ............................................. 13
   5.3 Proposal ................................................................................................. 13
   5.4 Question ............................................................................................... 14

6 SECTION 3.3 OF THE AML/CFT HANDBOOK ........................................ 15
   6.1 Overview ............................................................................................... 15
   6.2 Identification process – stage 1.2 ............................................................ 15
   6.3 Proposal ................................................................................................. 15
   6.4 Question ............................................................................................... 15

7 SECTION 4 OF THE AML/CFT HANDBOOK ........................................... 16
   7.1 Overview ............................................................................................... 16
   7.2 Beneficial ownership and control .......................................................... 16
   7.3 Proposal ................................................................................................. 18
   7.4 Question ............................................................................................... 19
8 SECTIONS 4.4.5 AND 4.5.7 OF THE AML/CFT HANDBOOK....20
  8.1 Overview .................................................................................................................20
  8.2 Regulated trust and company service provider ......................................................20
  8.3 Proposals ..................................................................................................................20
  8.4 Question ...................................................................................................................21

9 SECTION 13 OF THE AML/CFT HANDBOOK ....................................................22
  9.1 Overview ...................................................................................................................22
  9.2 Beneficial ownership and control ...........................................................................22
  9.3 Proposals ..................................................................................................................22
  9.4 Questions ..................................................................................................................22

10 COST BENEFIT ANALYSIS ......................................................................................23
  10.1 Costs to Industry .....................................................................................................23
  10.2 Costs to the Commission .......................................................................................23
  10.3 Benefits ..................................................................................................................23

APPENDIX A ....................................................................................................................24
  List of representative bodies who have been sent information relating to these proposals. 24

APPENDIX B ....................................................................................................................25
  Draft Section 4 of the AML/CFT Handbook .................................................................25
  4 IDENTIFICATION MEASURES: FINDING OUT IDENTITY AND OBTAINING EVIDENCE 26
    4.1 Overview of section ...............................................................................................26
    4.2 Obligation to find out identity and obtain evidence ..............................................26
    4.3 Obligation to find out identity and obtain evidence: individuals. 27
    4.4 Obligation to find out identity and obtain evidence: legal arrangements.............33
    4.5 Obligation to find out identity and obtain evidence: legal persons ......................38
    4.6 Obligation to find out identity and obtain evidence: authorised agent of customer 47
    4.7 Timing of identification measures ........................................................................47
    4.8 Failure to complete identification measures .......................................................52

APPENDIX C ....................................................................................................................53
  Draft Section 4 of the AML/CFT Handbook .................................................................53
  13 TRUST COMPANY BUSINESS .............................................................................54
13.1 Overview of section ................................................................. 54
13.2 Overview of section ................................................................. 54
13.3 Identification measures: finding out identity and obtaining evidence ................................................................. 57
13.4 Timing of identification measures ............................................. 60
13.5 Failure to complete identification measures................................. 61
1 EXECUTIVE SUMMARY

1.1 Overview

1.1.1 Section 4 of this consultation paper makes proposals to amend Article 3(2) of the Money Laundering Order.

1.1.2 The proposed amendment will make it clear that identification measures to be applied to a customer include determining whether the customer is acting indirectly for a third party and, if so, identifying that third party.

1.1.3 Section 5 of this consultation paper makes proposals to amend Article 11(3)(e) of the Money Laundering Order.

1.1.4 The proposed amendment will extend the current requirement to have policies and procedures to include policies and procedures to determine whether a relationship is with a person who is subject to sanctions legislation.

1.1.5 Section 6 of this consultation paper makes proposals to amend Section 3.3 of the Three Handbooks. Similar changes will also be made as appropriate to the Handbook for Estate Agents and High Value Dealers.

1.1.6 The proposed amendment will provide further guidance on what is meant by “any third party (or parties) on whose behalf the customer acts” by including a footnote to the phrase in order to clarify the position of named beneficiaries of life assurance policies.

1.1.7 Section 7 of this consultation paper makes proposals to amend Section 4 of the Three Handbooks. Similar changes will also be made as appropriate to the Handbook for Estate Agents and High Value Dealers.

1.1.8 The proposed amendments will develop the current guidance in relation to the identification of beneficial owners and controllers by incorporating detailed guidance on the “control” element as well as the “ownership” element.

1.1.9 The proposed amendments are based upon recent guidance notes provided by the FATF on the subject.

1.1.10 Section 8 of this consultation paper makes proposals to amend Sections 4.4.5 and 4.5.7 of the Three Handbooks. Similar changes will also be made as appropriate to the Handbook for Estate Agents and High Value Dealers.

1.1.11 The proposed amendment will provide further guidance on what is meant by “regulated trust and company service provider”.

1.1.12 Section 9 of this consultation paper makes proposals to amend Section 13 of the AML/CFT Handbook.
1.1.13 The proposed amendments will ensure that the guidance given in this section on the identification of beneficial owners and controllers is consistent with the guidance given in Section 4 of the Three Handbooks.

1.1.14 A draft of the proposed revisions to Sections 4 and 13 of the AML/CFT Handbook are attached as Appendices B and C.

1.2 Who would be affected?

1.2.1 The amendments that are proposed in sections 4, 5, 7, and 8 of the consultation paper will affect all relevant persons.

1.2.2 The amendments that are proposed to section 6 of the consultation paper will affect only relevant persons carrying on insurance business.

1.2.3 The amendments that are proposed to section 9 of the consultation paper will affect only relevant persons carrying on trust company business.
2 CONSULTATION

2.1 Basis for consultation

2.1.1 The Commission has issued this consultation paper in accordance with Article 8(3) of the Commission Law, under which the Commission “may, in connection with the carrying out of its functions - ....consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate”.

2.2 Responding to the consultation

2.2.1 The proposals set out in sections 7 and 9 of this consultation paper have already been sent to all members of the Commission’s AML/CFT Steering Group.

2.2.2 The Commission invites comments in writing from interested parties on the proposed amendments to the Money Laundering Order and the Handbooks. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.

2.2.3 The cost to industry of implementing these proposals is considered in section 10 of this consultation paper.

2.2.4 To assist in analysing responses to the consultation paper, respondents are asked to:

2.2.4.1 prioritise comments and to indicate their relative importance; and

2.2.4.2 respond as specifically as possible and, where they refer to costs, to quantify those costs.

2.2.5 The Commission’s strong preference is (where possible) for respondents to email their responses to the Commission using the following address: cpcodes@jerseyfsc.org. Where responses are submitted in this manner please include the consultation paper number in the subject line of the email.

2.3 Next steps

2.3.1 Following consultation, the Commission will:

2.3.1.1 Recommend to the Chief Minister that he makes an amendment to the Money Laundering Order.

2.3.1.2 Prepare and give effect to appropriate changes to the Handbooks.

2.3.2 It is intended that the amending Order and amended Three Handbooks should have effect no later than 23 March 2015.
3 THE COMMISSION

3.1 Overview

3.1.1 The Commission is a statutory body corporate established under the Commission Law. It is responsible for the supervision and development of financial services provided in or from within Jersey.

3.2 Commission’s functions

3.2.1 The Commission Law prescribes that the Commission shall be responsible for:

3.2.1.1 the supervision and development of financial services provided in or from within Jersey;

3.2.1.2 providing the States of Jersey, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;

3.2.1.3 preparing and submitting to Ministers recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;

3.2.1.4 such functions in relation to financial services or such incidental or ancillary matters:
   - as are required or authorised by or under any enactment, or
   - as the States of Jersey may, by Regulations, transfer; and

3.2.1.5 such other functions as are conferred on the Commission by any other Law or enactment.

3.3 Guiding principles

3.3.1 The Commission’s guiding principles require it to have particular regard to:

3.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;

3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;

3.3.1.3 the best economic interests of Jersey; and

3.3.1.4 the need to counter financial crime in both Jersey and elsewhere.
4 IDENTIFICATION MEASURES – WHERE THE CUSTOMER IS ACTING FOR A THIRD PARTY

4.1 Overview

4.1.1 This section proposes changes to Article 3 of the Money Laundering Order (Meaning of “customer due diligence measures”).

4.2 Identification measures in place in Jersey

4.2.1 Article 13 of the Money Laundering Order establishes the requirement to perform CDD measures – in line with former FATF Recommendation 5.

4.2.2 Article 3 of the Money Laundering Order sets out the meaning of CDD measures, and Article 3(2) explains the meaning of identification measures. These include measures for “determining whether the customer is acting for a third party and, if so – identifying that third party…”.

4.2.3 The current construction of Article 3(2)(b) does not specify that a customer may be acting indirectly for a third party. For example, a customer that is a nominee company will be acting for one or more third parties (level 1 third parties). In turn, one or more of those third parties may themselves be acting on behalf of other parties (level 2 third parties).

4.3 Proposal

4.3.1 It is proposed to amend the Money Laundering Order so that Article 3(2)(b) specifies that identification measures in respect of a customer of a relevant person include measures for determining whether the customer is acting (directly or indirectly) for a third party and, if so – identifying that third party. In the example given above, the effect of the change would be to clarify that identification measures are to be applied to both level 1 and level 2 third parties.

4.3.2 Although Article 3(2)(b) requires that all third parties be identified, the Commission expects that, in practice, Article 17 of the Money Laundering Order will continue to be applied so as to introduce a degree of “materiality” to the identification of third parties where simplified identification measures may be applied.

4.4 Question

4.4.1 Do you consider that the proposal is effective and proportionate?
Yes / No
Identification measures – where the customer is acting for a third party

If no, please explain: 

_______________________________________________________________

_______________________________________________________________
5 POLICIES, PROCEDURES AND TRAINING TO PREVENT AND DETECT MONEY LAUNDERING

5.1 Overview

5.1.1 This section proposes changes to Article 11 of the *Money Laundering Order* (Policies, procedures and training to prevent and detect money laundering).

5.2 Identification measures in place in Jersey

5.2.1 Article 11 of the *Money Laundering Order* establishes the requirement to maintain appropriate and consistent policies and procedures.

5.2.2 Article 11(3)(e) of the *Money Laundering Order* states that such policies and procedures must include policies and procedures for:

“determining whether a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country or territory that is subject to measures for purposes connected with the prevention and detection of money laundering, such measures being imposed by one or more countries or sanctioned by the European Union or the United Nations”.

5.2.3 The current construction of Article 11(3)(e) only encompasses persons with connections to a country or territory that is subject to sanctions and does not extend to persons who are themselves subject to sanctions.

5.3 Proposal

5.3.1 It is proposed to amend the *Money Laundering Order* so that Article 11(3)(e) specifies that policies and procedures required by Article 11 must include policies and procedures for determining whether a business relationship or transaction, or proposed business relationship or transaction, is with:

5.3.1.1 a person connected with a country or territory that is subject to measures for purposes connected with the prevention and detection of money laundering, such measures being imposed under legislation having effect in Jersey; or

5.3.1.2 a person connected with an organisation that is subject to such measures; or

5.3.1.3 a person who is themselves subject to such measures.
5.4 Question

5.4.1 Do you consider that the proposal is effective and proportionate?
Yes / No
If no, please explain: ____________________________________________
_______________________________________________________________
_______________________________________________________________
_______________________________________________________________
6 SECTION 3.3 OF THE AML/CFT HANDBOOK

6.1 Overview

6.1.1 Section 3.3 of the AML/CFT Handbook contains guidance on taking a risk based approach to the application of identification measures.

6.2 Identification process – stage 1.2

6.2.1 Paragraph 23 of Section 3.3 of the AML/CFT Handbook sets out a number of stages in the “identification process”. Stage 1.2 states that a relevant person must find out the identity of:

6.2.1.1 The customer;
6.2.1.2 Any beneficial owners and controllers of the customer;
6.2.1.3 Any third party (or parties) – including a legal arrangement – on whose behalf the customer acts (and beneficial owners and controllers of the third party (or parties)); and
6.2.1.4 Others listed in Article 3(2) of the Money Laundering Order.

6.3 Proposal

6.3.1 It is proposed to provide further guidance on what is meant by “any third party (or parties) on whose behalf the customer acts” by including a footnote to the third bullet point of stage 1.2 which reads “For the avoidance of doubt, this will include any person who is a named beneficiary of a life assurance policy entered into by the customer”.

6.3.2 This is in line with former FATF Recommendation 5 which states that, for life and other investment linked insurance, the beneficiary under the policy must also be identified and verified.

6.4 Question

6.4.1 Do you consider that the proposals are effective and proportionate? Yes / No
If no, please explain: ____________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
7 SECTION 4 OF THE AML/CFT HANDBOOK

7.1 Overview

7.1.1 Section 4 of the AML/CFT Handbook explains who is to be considered the beneficial owner and controller of a customer, and lists what evidence of identity might be obtained in order to comply with Article 13 of the Money Laundering Order. Guidance is also given on the timing of obtaining evidence of identity and on what to do where it is not possible to complete identification measures.

7.1.2 A revised draft of Section 4 of the AML/CFT Handbook is attached at Appendix B.

7.2 Beneficial ownership and control

7.2.1 During the recent MONEYVAL assessment visit, the assessors noted that, although the definition of beneficial owner in Article 2 of the Money Laundering Order encompasses the concept of an ultimate owner or controller, guidance in the AML/CFT Handbook focuses primarily on ownership of a “material interest” in a customer and not on other elements of control. The concern is that, as a result, a relevant person might fail to find out the identity of a person who exercises control over a customer other than through holding a “material interest”.

7.2.2 With this in mind, the Commission has brought forward proposals to make amendments to the Handbooks in order to incorporate guidance provided in the revised FATF methodology on beneficial ownership (Recommendation 10) and recent guidance on transparency and beneficial ownership.

7.2.3 Extracts of the guidance are included below and the guidance in full can be found at: http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf.

“BENEFICIAL OWNERSHIP INFORMATION

32. The fundamental requirement of Recommendation 24 is that countries should ensure that there is adequate, accurate and timely information available on the beneficial ownership of all legal persons, and that their authorities can access this information in a timely manner. Beneficial ownership information of legal persons should be determined as follows:

Step 1 (a) The identity of the natural persons (if any, as ownership interests can be so diversified that there are no natural persons, whether acting alone or together, who exercise control of the legal person through ownership) who ultimately have a controlling ownership interest in a legal person, and
(b) to the extent that there is doubt as to whether the persons with the controlling ownership interest are the beneficial owners, or where no natural person exerts control through ownership interests, the identity of the natural persons (if any) exercising control of the legal person through other means.

**Step 2** Where no natural person is identified under (a) or (b) above, financial institutions should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.

33. The following are some examples of natural persons who could be considered as beneficial owners on the basis that they are the ultimate owners/controllers of the legal person, either through their ownership interests, through positions held within the legal person or through other means:

*Natural persons who may control the legal person through ownership interests*

**a)** The natural person(s) who directly or indirectly holds a minimum percentage of ownership interest in the legal person (the threshold approach). For example, Recommendation 24 allows the determination of the controlling shareholders of a company based on a threshold (for example, any persons owning more than a certain percentage of the company, such as 25%). The FATF Recommendations do not specify what threshold may be appropriate. In determining an appropriate minimum threshold, countries should consider the level of ML/TF risk identified for the various types of legal persons or minimum ownership thresholds established for particular legal persons pursuant to commercial or administrative law. The ownership interest approach suggests that it is likely that there could be more than one beneficial owner (for example, with a threshold of more than 25%, there could be a maximum of three beneficial owners). In any case, a percentage shareholding or ownership interest should be considered as a key evidential factor among others to be taken into account. It is also important to highlight that this approach includes the notion of indirect control which may extend beyond formal ownership or could be through a chain of corporate vehicles. Ultimately, countries should implement the concept of ownership interest that is sufficiently clear, practical, workable and enforceable for the full range of legal persons administered in a country.

**b)** Shareholders who exercise control alone or together with other shareholders, including through any contract, understanding, relationship, intermediary or tiered entity (a majority interest approach). It is also important to highlight that this approach includes the notion of indirect control which may extend beyond legal (direct) ownership or could be through a chain of corporate vehicles and through nominees. This indirect control could be identified through various means, as shareholder’s agreement, exercise of dominant influence or power to appoint senior management. Shareholders may thus collaborate to increase the level of control by a person through formal or informal agreements, or through the use of nominee shareholders. Countries will need to consider various types of ownership interests and the possibilities that exist within their country, including voting or economic rights. Other issues worth considering are
whether the company has issued convertible stock or has any outstanding debt that is convertible into voting equity.

Natural persons who may control the legal person through other means

c) The natural person(s) who exerts control of a legal person through other means such as personal connections to persons in positions described above or that possess ownership.

d) The natural person(s) who exerts control without ownership by participating in the financing of the enterprise, or because of close and intimate family relationships, historical or contractual associations, or if a company defaults on certain payments. Furthermore, control may be presumed even if control is never actually exercised, such as using, enjoying or benefiting from the assets owned by the legal person.

Natural persons who may exercise control through positions held within a legal person

e) The natural person(s) responsible for strategic decisions that fundamentally affect the business practices or general direction of the legal person. Depending on the legal person and the country’s laws, directors may or may not take an active role in exercising control over the affairs of the entity, but identification of the directors may still provide useful information. However, information on directors may be of limited value if a country allows for nominee directors acting on behalf of unidentified interests.

f) The natural person(s) who exercises executive control over the daily or regular affairs of the legal person through a senior management position, such as a chief executive officer (CEO), chief financial officer (CFO), managing or executive director, or president. The natural person(s) who has significant authority over a legal person’s financial relationships (including with financial institutions that hold accounts on behalf of a legal person) and the ongoing financial affairs of the legal person.”

7.3 Proposal

7.3.1 It is proposed to amend Section 4 of the AML/CFT Handbook so that the guidance provided on identification of beneficial owners and controllers more closely follows recent FATF guidance on transparency and beneficial ownership.

7.3.2 Each paragraph that deals with beneficial owners and controllers will be amended to incorporate the tiered approach as outlined in the guidance. A tracked change version of Section 4 of the AML/CFT Handbook which shows the proposed amendments is attached at Appendix B.

7.3.3 The effect of the proposals will be to highlight more prominently the wide application of the existing definition of beneficial ownership and control in Article 2 of the Money Laundering Order.
7.3.4 The approach may also have the effect of limiting the circumstances in which the identity of directors of a customer will be found out and verified, particularly in a case where a relevant person currently finds out and verifies the identity of all directors (irrespective of whether they may be considered to be a controller).

7.4 Question

7.4.1 Do you consider that the proposals are effective and proportionate?
Yes / No
If no, please explain: ________________________________
________________________________________________
________________________________________________
________________________________________________
8 SECTIONS 4.4.5 AND 4.5.7 OF THE AML/CFT HANDBOOK

8.1 Overview

8.1.1 Sections 4.4.5 and 4.5.7 of the AML/CFT Handbook contain guidance on obtaining copy documentation from a “regulated trust and company service provider” in order to meet a relevant person’s obligations under Article 13 of the Money Laundering Order.

8.2 Regulated trust and company service provider

8.2.1 Article 13 of the Money Laundering Order requires a relevant person to apply CDD measures including identification measures.

8.2.2 A relevant person may exercise judgement in relation to how to how it meet its obligations, including forming its own view on the adequacy and reliability of sources of information and/or documentation.

8.2.3 Sections 4.4.5 and 4.5.7 of the AML/CFT Handbook contain guidance that provides a form of “safe harbour” by stipulating that evidence of identity may be obtained from a “regulated trust and company service provider”. The AML/CFT Handbook does not, however, provide any further information on how this term should be interpreted.

8.2.4 Currently, “regulated trust and company service provider” could be interpreted as a trust and company service provider that is regulated by the Commission or that carries on an equivalent business, as defined in Article 5 of the Money Laundering Order. This would be consistent with the application of simplified due diligence and reliance provisions, which both incorporate the concept of equivalent business.

8.2.5 However, although a relevant person is required to consider the risk that such a regulated trust and company service provider may not find out the identity of all persons listed in Article 3(7) of the Money Laundering Order, the construction of the “safe harbour” does not include all the conditions and limitations that are required for the application of simplified due diligence and reliance provisions.

8.3 Proposals

8.3.1 It is proposed to provide further guidance so that “regulated trust and company service provider” is defined as a trust and company service provider that is regulated by the Commission, the Guernsey Financial Services Commission or the Isle of Man Financial Supervision Commission.
8.3.2  This would be consistent with the guidance on the treatment of aggregated deposits as set out at Section 7.13, paragraph 107 of the AML/CFT Handbook and would provide the necessary level of comfort that a regulated trust and company service provider has found out the identity of all persons listed in Article 3(7) of the Money Laundering Order.

8.4  Question

8.4.1  **Do you consider that the proposals are effective and proportionate?**

Yes / No

If no, please explain: ____________________________________________

_______________________________________________________________

_______________________________________________________________

_______________________________________________________________

________________________________________
9 SECTION 13 OF THE AML/CFT HANDBOOK

9.1 Overview

9.1.1 Section 13 of the AML/CFT Handbook is intended to assist with the application of customer identification measures where a relevant person establishes a business relationship or carries out a one-off transaction in the course of carrying on trust company business.

9.1.2 A draft of Section 13 of the AML/CFT Handbook is attached at Appendix C.

9.2 Beneficial ownership and control

9.2.1 During the recent MONEYVAL assessment visit, the assessors expressed some concerns in relation to the application of Article 3(7) of the Money Laundering Order, in that associated guidance does not address the issue of potential “dummy settlors”; nor does it fully address a situation where a person listed in Article 3(7) is a legal person.

9.2.2 With this in mind, the Commission has brought forward proposals to make amendments to Section 13 of the AML/CFT Handbook in order to incorporate guidance provided in the revised FATF methodology on beneficial ownership (Recommendation 10) and recent guidance on transparency and beneficial ownership.

9.3 Proposals

9.3.1 It is proposed to amend Section 13 of the AML/CFT Handbook so that the guidance provided on identification of beneficial owners and controllers more closely follows recent FATF guidance on transparency and beneficial ownership.

9.3.2 Section 13 of the AML/CFT Handbook will be amended to incorporate the concept of a “dummy settlor” and others who may have influence over the trust or the trustee, and to more fully address the situation where a person listed in Article 3(7) is a legal person. A tracked change version of Section 13 which shows the proposed amendments is attached at Appendix C.

9.4 Questions

9.4.1 Do you consider that the proposals are effective and proportionate?
Yes / No
If no, please explain: ____________________________________________
_______________________________________________________________
_______________________________________________________________
_______________________________________________________________
_______________________________________________________________

22 of 61

Issued: February 2015
10 COST BENEFIT ANALYSIS

10.1 Costs to Industry

10.1.1 It is thought that the Commission’s proposals in this consultation paper will be neutral.

10.1.2 Relevant persons who have hitherto only considered “material interest” when identifying their customers’ beneficial owners and controllers may face increased costs. Relevant persons who hitherto have automatically identified all directors may face reduced costs.

10.2 Costs to the Commission

10.2.1 It is not expected that the Commission will incur any additional costs as a result of the proposals in this consultation paper.

10.3 Benefits

10.3.1 The proposals in this consultation paper will bring the Money Laundering Order, the Three Handbooks and the Handbook for Estate Agents and High Value Dealers into line with current international guidance on transparency of legal persons and legal arrangements and improve the clarity of existing guidance.
APPENDIX A

List of representative bodies who have been sent information relating to these proposals.

The proposals in sections 7 and 9 of this consultation paper were sent to all members of the Commission’s AML/CFT Steering Group. Members are listed on the Commission’s website under AML/CFT Steering Group.

In addition, copies of this paper will be sent to:

- Association of English Solicitors Practising in Jersey
- Association of Investment Companies
- Chartered Institute for Securities & Investment – Jersey branch
- Institute of Directors – Jersey branch
- Jersey Association of Directors and Officers
- Jersey Association of Trust Companies
- Jersey Bankers’ Association
- Jersey Chamber of Commerce and Industry Incorporated
- Jersey Compliance Officers Association
- Jersey Estate Agents Association
- Jersey Finance Limited
- Jersey Funds Association
- Jersey International Insurance Association
- Jersey Motor Traders Association
- Jersey Society of Chartered and Certified Accountants
- Law Society of Jersey
- Personal Finance Society – Jersey branch
APPENDIX B

Draft Section 4 of the AML/CFT Handbook
4 IDENTITY MEASURES: FINDING OUT IDENTITY AND OBTAINING EVIDENCE

4.1 OVERVIEW OF SECTION

1. The purpose of this section of the AML/CFT Handbook is to explain what information on identity is to be found out when establishing a business relationship or carrying out a one-off transaction (or otherwise under Article 13 of the Money Laundering Order), and what evidence is to be obtained that is reasonably capable of verifying that the person to be identified is who the person is said to be and satisfies a relevant person that it does establish that fact.

2. This section does not address the information that must also be collected under Article 3(5) of the Money Laundering Order as part of identification measures in order to assess the risk that any business relationship or one-off transaction will involve money laundering or financing of terrorism, which is covered by stage 1.4 in Section 3.3. Nor does it address the enhanced measures that will be required in order to address the case of a customer that is assessed as presenting a higher risk of money laundering or financing of terrorism, which is covered in Section 7.

3. Guidance is also given on the timing of obtaining evidence of identity and on what to do where it is not possible to complete identification measures. This guidance covers all elements of identification measures, including, where appropriate, the collection of information under Article 3(5) of the Money Laundering Order.

4. The requirement to find out identity and obtain evidence (part of the “identification measures” referred to in Article 3 of the Money Laundering Order) applies: at the outset of a business relationship or one-off transaction; where there is suspicion of money laundering or financing of terrorism; where there is some doubt as to the veracity or adequacy of documents, data or information that are already held (including the circumstances set out in paragraph 5 below); and in respect of “existing customers”.

5. Inter alia, the requirement to find out identity and obtain evidence will apply when there is a:
   - change in information found out for a customer, e.g. following marriage or change of nationality;
   - change in beneficial ownership and control of a customer; or
   - change in a third party (or parties) (or beneficial ownership or control of a third party (or parties) on whose behalf a customer acts.

6. A customer may be an individual (or group of individuals) or legal person. Section 4.3 deals with a customer who is an individual (or group of individuals), Section 4.4 deals with a customer (an individual or legal person) who is acting for a legal arrangement, and Section 4.5 deals with a customer who is a legal person.

7. Throughout this section, references to “customer” include, where appropriate, a prospective customer (an applicant for business). A customer is a person with whom a business relationship has been formed or one-off transaction conducted.

4.2 OBLIGATION TO FIND OUT IDENTITY AND OBTAIN EVIDENCE

OVERVIEW

8. Determining that a customer is the person that he, she, or it claims to be is a combination of being satisfied that:
   - a person exists - on the basis of information found out; and
   - the customer is that person - by collecting from reliable and independent source documents, data or information, satisfactory confirmatory evidence of appropriate components of the customer's identity.
9. Evidence of identity can take a number of forms. In respect of individuals, much weight is placed on identity documents and these are often the easiest way of providing evidence as to someone’s identity. It is, however, possible to be satisfied as to a customer’s identity by obtaining other forms of confirmation, including independent data sources and, in appropriate circumstances, written assurances from obliged persons.

10. When obtaining evidence of identity, a relevant person will need to be prepared to accept a range of documents.

### STATUTORY REQUIREMENTS

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Identification Measures</th>
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<tbody>
<tr>
<td>11. Requirements for identification measures are summarised in Section 3.</td>
<td>Inter alia, identification measures must establish the persons who are concerned with a</td>
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<td></td>
<td>legal arrangement, and each beneficial owner and controller of a customer who is a legal</td>
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<tr>
<td>12. Under Article 3(2)(b) of the Money Laundering Order a relevant person</td>
<td>person must determine whether a customer is acting for a legal arrangement, and, if so,</td>
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<td>identify the legal arrangement.</td>
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<tr>
<td>13. Where a customer is acting for a legal arrangement, Article 3(2)(a) of</td>
<td>Article 3(2)(a) of the Money Laundering Order requires the customer, e.g. the trustee of a</td>
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<td>trust or general partner of a limited partnership, to be identified.</td>
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<tr>
<td>14. Article 3(2)(b)(iii) of the Money Laundering Order requires the identity</td>
<td>In the case of a trust, the settlor.</td>
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<td>In the case of a trust, the protector.</td>
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<td></td>
<td>Having regard to risk, a person that has a beneficial interest in the legal arrangement,</td>
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<td></td>
<td>or who is the object of a trust power in relation to a trust.</td>
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<tr>
<td>15. In respect of each person falling within Article 3(7) who is not an</td>
<td>Article 3(2)(b)(iii) requires each individual who is that person’s beneficial owner or controller to be identified.</td>
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<td>individual, Article 3(2)(b)(iii) requires each individual who is that</td>
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<td>person’s beneficial owner or controller to be identified.</td>
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#### 4.3 OBLIGATION TO FIND OUT IDENTITY AND OBTAIN EVIDENCE: INDIVIDUALS

**OVERVIEW**

16. The following paragraphs apply to situations where an individual is the **customer** or where the customer is more than one individual, such as a husband and wife opening a joint account.

17. The provisions also apply to situations where an individual is:

- A person connected to a legal arrangement, because of a requirement in Article 3(2)(b)(iii) to identify each person who falls within Article 3(7) of the Money Laundering Order, and each individual who is that person’s beneficial owner or controller;
- The beneficial owner or controller of a customer, because of a requirement in Article 3(2)(c)(iii) of the Money Laundering Order to identify the individuals who are the customer’s beneficial owners or controllers;
- Acting on behalf of a customer who is not an individual (e.g. is acting according to a power of attorney, or has signing authority over an account) because of a requirement in Article 3(2)(c)(i) of the Money Laundering Order; or
- A third party on whose behalf a customer is acting, because of a requirement in Article 3(2)(b)(ii) of the Money Laundering Order to identify the individuals who are the third party’s beneficial owners or controllers.

##### 4.3.1 FINDING OUT IDENTITY

**GUIDANCE NOTES**

18. A relevant person may demonstrate that it has found out the identity of an individual who is a customer under Article 3(2)(a) of the Money Laundering Order where it collects all of the following:

- Legal name, name(s) currently used, any former legal name(s) (such as maiden name), and name(s) formerly used.
• Principal residential address.
• Date of birth.
• Place of birth.
• Nationality.
• Sex.
• Government issued personal identification number or other government issued unique identifier.

19. However, in the case of a lower risk relationship, a relevant person may demonstrate that it has found out the identity of an individual who is a customer under Article 3(2)(a) of the Money Laundering Order where it collects the following: legal name, any former names (such as maiden name) and any other names used; principal residential address; and date of birth.

4.3.2 OBTAINING EVIDENCE OF IDENTITY

OVERVIEW

20. Evidence of identity may come from a number of sources, including documents or independent data sources (see section 4.3.4 below). These sources may differ in their integrity, reliability and independence. For example, some identification documents are issued after due diligence on an individual’s identity has been undertaken, for example passports and national identity cards; others are issued on request, without any such checks being carried out. A relevant person should also recognise that some documents are more easily forged than others.

21. Additionally, documents incorporating photographic confirmation of customer identity provide a higher level of assurance that an individual is the person who he or she claims to be.

22. Where a relevant person is not familiar with the form of the evidence obtained, appropriate measures may be necessary to satisfy itself that the evidence is genuine.

23. Where evidence of identity obtained subsequently expires, e.g. a passport, national identity card, or driving licence, it is not necessary to obtain further evidence under identification measures set out in Article 13 of the Money Laundering Order.

AML/CFT CODE OF PRACTICE

24. All key documents (or parts thereof) obtained as evidence of identity must be understandable (i.e. in a language understood by the employees of the business), and must be translated into English at the request of the JFCU or the Commission.

GUIDANCE NOTES

25. A relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that an individual to be identified is who the individual is said to be where that evidence covers the following components of identity and, where documentary evidence of identity is exclusively relied upon, uses at least two sources of evidence (see paragraph 27):

• Legal name and name(s) currently used;
• Principal residential address;
• Date of birth;
• Place of birth;
• Nationality;
• Passport or national identity number; and
• Sex.

26. However, in the case of a lower risk relationship, a relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that an individual to be identified is who the individual is said to be where that evidence covers: legal name and other given names used; and principal residential address (or, as an alternative, date of birth) using at least one source of evidence (see paragraph 27):
27. A relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that an individual to be identified is who the individual is said to be where that evidence is one of the following documents:

<table>
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<tr>
<th>All element of identity</th>
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<tr>
<td>• A current passport or copy of such a passport certified by a suitable certifier - providing photographic evidence of identity.</td>
</tr>
<tr>
<td>• A current national identity card or copy of such a national identity card certified by a suitable certifier - providing photographic evidence of identity.</td>
</tr>
<tr>
<td>• A current driving licence or copy of such a driving licence certified by a suitable certifier - providing photographic evidence of identity - where the licensing authority carries out a check on the holder’s identity before issuing.</td>
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<table>
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<tr>
<th>Residential address</th>
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<tbody>
<tr>
<td>• Correspondence from a central or local government department or agency (e.g. States and parish authorities).</td>
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<tr>
<td>• A letter of introduction confirming residential address from: (i) a relevant person that is regulated by the Commission; (ii) a person carrying on a financial services business which is regulated and operates in a well-regulated country or territory; or (iii) a branch or subsidiary of a group headquartered in a well-regulated country or territory which applies group standards to subsidiaries and branches worldwide, and tests the application of, and compliance with, such standards.</td>
</tr>
<tr>
<td>• A bank statement or utility bill.</td>
</tr>
<tr>
<td>• A tenancy contract or agreement.</td>
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</tbody>
</table>

28. However, in the case of a lower risk relationship with a customer who is resident in Jersey, a relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that an individual to be identified is who the individual is said to be where that evidence is a: (i) Jersey driving licence; or (ii) birth certificate, in conjunction with a bank statement, or a utility bill, or document issued by a government source, or a letter of introduction from a relevant person that is regulated by the Commission.

29. A relevant person may also demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that an individual to be identified is who the individual is said to be where the data or information comes from an independent data source or (in the case of a residential address) personal visit to that address.

30. Where an individual’s residential address changes, a relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that an individual to be identified is who the individual is said to be where the data or information is collected through on-going correspondence with that customer at the changed address.

31. A relevant person may demonstrate that a country or territory is well-regulated for the purpose of a letter of introduction, where it has regard to:

- the development and standing of the country or territory’s regulatory framework; and
- recent independent assessments of its regulatory environment, such as those conducted and published by the IMF.
4.3.3 SUITABLE CERTIFICATION

OVERVIEW

32. “Suitable certification” is a process where, rather than requesting a person to present evidence of identity directly to a relevant person, the person is called on to present himself, herself or itself to a trusted external party along with original documentation that supports that person’s identity (and which is current) specifically for the purpose of entering into a relationship or one-off transaction with a relevant person. The effect of this is to create an environment in which identification measures are applied through a trusted external party and where the customer (or other person) is seen on a face to face basis.

33. “Suitable certification” is not to be confused with a case where a relevant person uses Article 16 of the Money Laundering Order - which allows reliance to be placed on identification measures that have already been completed by an obliged person where evidence of identity that may subsequently be provided by that obliged person may now be out of date, and where the obliged person has a continuing responsibility to the relevant person in respect of record-keeping and access to records - where Section 5 is relevant.

34. Nor should provisions in Section 4.4.5 and Section 4.5.7 for copy documentation to be provided by a regulated trust and company services provider be confused with “suitable certification”.

35. For certification to be effective, a person will need to personally present an original document to an acceptable suitable certifier and that certifier will need to be subject to professional rules (or equivalent) providing for the integrity of the certifier’s conduct.

36. Acceptable persons to certify evidence of identity may include:
   - a member of the judiciary, a senior civil servant, or a serving police or customs officer;
   - an officer of an embassy, consulate or high commission of the country of issue of documentary evidence of identity;
   - an individual who is a member of a professional body that sets and enforces ethical standards;
   - an individual that is qualified to undertake certification services under authority of the Certification and International Trade Committee (in Jersey this service is available through the Jersey Chamber of Commerce); and
   - a director, officer, or manager of: (i) a person carrying on a financial services business which is regulated and operates in a well-regulated country or territory; or (ii) a branch or subsidiary of a group headquartered in a well-regulated country or territory which applies group standards to subsidiaries and branches worldwide, and tests the application of and compliance with such standards.

37. In determining whether a country or territory is well-regulated, a relevant person may have regard to:
   - the development and standing of the country or territory’s regulatory framework; and
   - recent independent assessments of its regulatory environment, such as those conducted and published by the IMF.

38. Best efforts should be exercised to secure an adequate quality copy of photographic evidence of identity that is certified.

39. A higher level of assurance will be provided where the relationship between the certifier and the subject is of a professional rather than personal nature.

GUIDANCE NOTES

40. A relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that a person to be identified is who the person is said to be when it:
   - obtains a true copy, signed and dated by the suitable certifier ("wet" signature), of a document that is accompanied by confirmation on the matter set out in paragraph 41 and adequate information set out in paragraph 43 so that he may be contacted in the event of a query; and
takes additional steps in line with paragraph 44 to validate the credentials of the suitable certifier, where that person is connected to a higher risk country or territory, based in a different country or territory to that of the individual, or there is reason to believe that certification may not be effective (see paragraphs 35 and 36).

41. The matter to be confirmed is that the copy of the document is a true copy of an original document (or extract thereof) that includes information on the identity and/or residential address of an individual.

42. In a case where the document to be certified relates to a legal arrangement or legal person, then paragraphs 40 and 41 of this section apply, except that the documents to be certified will be those that provide evidence of identity of that arrangement or person.

43. An adequate level of information to be provided by a certifier will include his or her name, position or capacity, his or her address and a telephone number or email address at which he or she can be contacted.

44. The additional steps to be taken to validate the credentials of the certifier may include considering factors such as: the stature and track record of the certifier; previous experience of accepting certifications from certifiers in that profession or country or territory; the adequacy of the framework to counter money laundering and financing of terrorism in place in the country or territory in which the certifier is located; and the extent to which the framework applies to the certifier.

4.3.4 OBTAINING EVIDENCE OF IDENTITY - INDEPENDENT DATA SOURCES

OVERVIEW

45. Independent data sources can provide a wide range of confirmatory material on a customer, and are becoming increasingly accessible, for example, through improved availability of public information (registers of electors and telephone directories - to the extent permitted by data protection legislation) and the emergence of commercially available data sources such as those provided by data services providers, e.g. credit reference agencies and business information service providers.

46. Where a relevant person is seeking to obtain reliable and independent evidence of identity using an independent data source, whether by accessing the source directly or by using a data services provider, an understanding of the depth, breadth and quality of the data or information is important in order to determine that the source does in fact provide satisfactory evidence of identity and that the process of obtaining evidence is sufficiently robust to be relied upon.

GUIDANCE NOTES

47. A relevant person may demonstrate that it is satisfied that data or information it has accessed directly from data source(s) is sufficiently extensive, reliable and accurate under Article 3(2)(a) of the Money Laundering Order:

- The source, scope and quality of the data or information accessed are understood;
- The relevant person uses positive data or information source(s) that can be called upon to link a customer to both current and historical data and information; and
- Processes allow the relevant person to capture and record the data or information.

48. A relevant person may demonstrate that it is satisfied that data or information supplied by the data service provider is sufficiently extensive, reliable and accurate where:

- It understands the basis of the system used by the data service provider and is satisfied that the system is sufficiently robust; including knowing what checks have been carried out, knowing what the results of these checks were, and being able to determine the level of satisfaction provided by those checks;
- The data services provider is registered with a data protection authority in Jersey, the EEA, or country or territory that has similar data protection provisions to the EEA, e.g. Guernsey and the Isle of Man;
- The data services provider either
a. accesses (i) a range of positive data or information sources that can be called upon to link a customer to both current and historical data and information; (ii) negative data and information sources such as databases relating to fraud and deceased persons; and (iii) a wide range of alert data sources; or

b. otherwise ensures that its source(s) are sufficiently extensive, reliable and accurate; and

• Processes allow the relevant person to capture and record the data or information.

4.3.5 GUARDING AGAINST THE FINANCIAL EXCLUSION OF JERSEY RESIDENTS

OVERVIEW

49. On occasions, an individual may be unable to provide evidence of identity using the sources of evidence set out at Section 4.3.2. Examples of such individuals may include:

• Seasonal workers whose principal residential address is not in Jersey.

• Individuals living in Jersey in accommodation provided by their employer, with family, or in care homes, who may not pay directly for utility services.

• Jersey students living in university, college, school, or shared accommodation, who may not pay directly for utility services.

• Minors.

AML/CFT CODE OF PRACTICE

50. A relevant person must determine that there is a valid reason for a customer being unable to provide more usual sources of evidence of identity, and must document that reason.

GUIDANCE NOTES

51. In the case of a lower risk minor, whose parent or guardian is unable to produce more usual evidence of identity for the minor, and who would otherwise be excluded from accessing financial services and products, a relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that a person to be identified is who the person is said to be where that evidence is: (i) the minor’s birth certificate; and (ii) letter from the parent or guardian confirming their status (i.e. I am the parent of [name of minor]; or guardian of [name of minor]) and the residential address of the minor.

52. In the case of a lower risk individual who is resident in a Jersey nursing home or residential home and has a valid reason for being unable to produce more usual evidence of identity, and would otherwise be excluded from accessing financial services and products, a relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that a person to be identified is who the person is said to be where that evidence is a letter from a Jersey nursing home or residential home for the elderly, which a relevant person is satisfied that it can place reliance on, confirming the identity of the resident.

53. In other cases, where a lower risk individual has a valid reason for being unable to produce more usual evidence of identity, and would otherwise be excluded from accessing financial services and products, a relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order of residential address that is reasonably capable of verifying that a person to be identified is who the person is said to be where that evidence is:

• A letter from a Jersey employer, which a relevant person is satisfied that it can place reliance on, that confirms residence of an individual at a stated Jersey address, and, in the case of a seasonal worker, indicates the expected duration of employment and gives the worker’s principal residential address in his or her country of origin.

• A letter from the head of household at which the individual resides confirming that the individual lives at that Jersey address, setting out the relationship between the customer and the head of household, together with evidence that the head of household resides at the address.

• A letter from a principal of a university or college, which a relevant person is satisfied that it can place reliance on, that confirms residence of the individual at a stated address. In the case of a Jersey student studying outside the Island, a residential address in Jersey should also be collected.
54. Confirmatory letters should be written on appropriately headed notepaper.

4.3.6 RESIDENTIAL ADDRESS: OVERSEAS RESIDENTS

OVERVIEW

55. On occasions, an individual that resides abroad may be unable to provide evidence of his principal residential address using the sources set out at Section 4.3.2. Examples of such individuals include residents of countries without postal deliveries and few street addresses, who rely upon post office boxes or employers for delivery of mail, and residents of countries where, due to social restraints, evidence of a private address may not be obtained through a personal visit.

56. It is essential for law enforcement purposes that a record of an individual’s residential address (or details of how that individual’s place of residence may be reached) be recorded. As a result, it is not acceptable only to record a post office box number as an address.

AML/CFT CODES OF PRACTICE

57. A relevant person must determine that there is a valid reason for a customer being unable to provide more usual sources of evidence for an address, and must document that reason.

58. Where alternative methods to obtain evidence for an address are relied on, a relevant person must consider whether enhanced monitoring of activity and transactions is appropriate.

GUIDANCE NOTES

59. Where an individual has a valid reason for being unable to produce more usual evidence for a residential address, a relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that a person to be identified is who the person is said to be where it receives written confirmation from an individual satisfying the criteria for a suitable certifier that he or she has visited the individual at that address.

60. Where an individual has a valid reason for being unable to produce more usual evidence for a residential address, a relevant person may demonstrate that it has found out the identity of that person under Article 3(2)(a) of the Money Laundering Order where, in addition to principal residential address, it collects a “locator” address. In such a case, a relevant person may demonstrate that it has obtained evidence that is reasonably capable of verifying that a person to be identified is who the person is said to be where it obtains evidence that the individual may normally be met or contacted at that address.

61. A “locator” address is an address at which it would normally be possible to physically meet or contact an individual (with or without prior arrangement), for example, an individual’s place of work.

4.4 OBLIGATION TO FIND OUT IDENTITY AND OBTAIN EVIDENCE: LEGAL ARRANGEMENTS

OVERVIEW

62. Jersey law recognises two distinct forms of legal arrangement: the trust and the limited partnership.

63. Jersey trusts law comprises both the Trusts (Jersey) Law 1984, as amended and the Jersey customary law of trusts. Limited partnerships are established under the Limited Partnerships (Jersey) Law 1994.

64. There is a wide variety of trusts ranging from large, nationally and internationally active organisations subject to a high degree of public scrutiny and transparency, through to trusts set up under testamentary arrangements and trusts established for wealth management purposes. Trusts may also be established as a collective investment scheme – known as a unit trust.

65. A legal arrangement cannot form a business relationship or carry out a one-off transaction itself. It is the trustee(s) of the trust or general partner(s) of the limited partnership who will enter into a business relationship or carry out the one-off transaction with a relevant person on behalf of the legal arrangement and who will be considered to be the customer(s). In line with Article 3 of the Money Laundering Order, the trust or limited partnership will be considered to be the third party on whose behalf the trustee(s) or general partner(s) act(s).
66. In forming a business relationship or carrying out a one-off transaction with a trustee or general partner, a relevant person will be dependent on information provided by the trustee or general partner (a regulated trust and company services provider or otherwise) relating to the legal arrangement and persons concerned with the legal arrangement (set out in Article 3(7) of the Money Laundering Order). When determining the risk assessment for a legal arrangement (Section 3.3), the risk factors set out in Section 3.3.4.1 and Section 7.8.13.1 will be relevant in deciding whether it is appropriate to use information provided by the trustee or general partner. In addition, the monitoring measures maintained by a relevant person (Section 6) may provide additional comfort that relevant and up to date information on identity has been found out.

67. In the case of a unit trust which is a third party, individual investors into the unit trust are not considered to be settlors for the purpose of Article 3(7)(a).

68. The following provisions apply to situations where a trustee of an express trust or general partner of a limited partnership is the customer of a relevant person. A sector specific section for trust company business explains the identification measures to be applied by a trustee or general partner itself in respect of the legal arrangement. See Section 13.

69. The provisions will also assist with the identification of ultimate beneficial owners and controllers and will be relevant in situations where a legal arrangement (through the trustee or general partner) is:
   - The owner or controller of a customer, because of a requirement in Article 3(2)(c)(iii) of the Money Laundering Order to identify the individuals who are the customer’s beneficial owners or controllers; or
   - A third party on whose behalf a customer is acting, because of a requirement in Article 3(2)(b)(ii) of the Money Laundering Order to identify the individuals who are the third party’s beneficial owners or controllers.

70. Where the trustee or general partner is a relevant person carrying on regulated business or is a person who carries on equivalent business to any category of regulated business, it may be possible to apply simplified identification measures under Article 17 and Article 18(7) of the Money Laundering Order. See Section 7.

71. The measures that must be applied to obtain evidence of identity of beneficiaries and persons who have been identified as presenting higher risk will necessarily reflect the verification methods that are available at a particular time to the trustee. For example, it may not be appropriate to request evidence directly from the beneficiary or object of a power.

72. Where a relevant person is not familiar with the form of the evidence of identity obtained to verify identity, appropriate measures may be necessary to satisfy itself that the evidence is genuine.

73. Notwithstanding the requirement to find out identity and obtain evidence of identity in relation to the trustee, the trust and those individuals listed in Article 3(7) of the Money Laundering Order, a relevant person is not expected to collect information on the detailed terms of the trust, nor rights of the beneficiaries.

4.4.1 FINDING OUT IDENTITY – LEGAL ARRANGEMENT THAT IS A TRUST

GUIDANCE NOTES

75. A relevant person may demonstrate that it has found out the identity of a trust which is a third party under Article 3(2)(b)(ii) of the Money Laundering Order where it collects all of the following components of identity:
   - Name of trust.
   - Date of establishment.
   - Official identification number (e.g. tax identification number or registered charity or non-profit organisation number).
   - Mailing address of trustee(s).
76. A relevant person may demonstrate that it has found out the identity of the settlor of a trust which is a third party under Article 3(2)(b)(iii)(B) of the Money Laundering Order where it finds out the identity of the initial settlor(s) and (including any persons subsequently settling funds into the trust), any person who directly or indirectly provides trust property or makes a testamentary disposition on trust or to the trust, and any other person exercising ultimate effective control over the trust. This information may be provided by the trustee.

77. A relevant person may demonstrate that it has found out the identity of persons having a beneficial interest in a trust (other than a unit trust) which is a third party under Article 3(2)(b)(iii)(B) of the Money Laundering Order where it finds out the identity of each beneficiary with a vested right. This information may be provided by the trustee.

78. A relevant person may demonstrate that it has found out the identity of persons having a beneficial interest in a trust (other than a unit trust) which is a third party under Article 3(2)(b)(iii)(B) of the Money Laundering Order where it finds out the identity of each beneficiary who has been identified as presenting higher risk. This information may be provided by the trustee.

79. A relevant person may demonstrate that it has found out the identity of persons having a beneficial interest in a unit trust which is a third party where, having regard to risk, it finds out the identity of investors holding a material interest in the capital of the unit trust. This information may be provided by the trustee.

80. A relevant person may demonstrate that it has found out the identity of the object of a trust power in a trust which is a third party under Article 3(2)(b)(iii)(B) of the Money Laundering Order where it finds out the identity of each person who is the object of a power, who has been identified as presenting higher risk. This information may be provided by the trustee.

81. In any case where a settlor, protector, beneficiary, or object of a power, or other person referred to in paragraphs 76 to 79 (the “person”) of a trust which is a third party is not an individual, a relevant person may demonstrate that it has identified each individual who is the person’s beneficial owner or controller under Article 3(2)(b)(iii)(C) of the Money Laundering Order where it has identified:

- Each individual with a material controlling ownership interest in the capital of that the person (through direct or indirect holdings of interests or voting rights) or who exerts control through other ownership means.
- To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising control over the person through other means.
- Where no individual is otherwise identified under this section, individuals who exercise control of the person through positions held (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions).

82. All key documents (or parts thereof) obtained as evidence of identity must be understandable (i.e. in a language understood by the employees of the business), and must be translated into English at the request of the JFCU or the Commission.

83. A relevant person must obtain evidence that any person purporting to act as the trustee of a trust which is a third party has authority so to act.
GUIDANCE NOTES

84. A relevant person may demonstrate that it has obtained evidence under Article 3(2)(b)(i) of the Money Laundering Order that is reasonably capable of verifying that a trust which is a third party is what it is said to be where the evidence covers the following components of identity: name and date of establishment of the express trust, appointment of the trustee and nature of the trustee’s duties. This need not involve a review of an existing trust instrument (or similar instrument) as a whole; reviewing or obtaining copies of relevant extracts of a trust instrument may suffice.

4.4.3 FINDING OUT IDENTITY – LEGAL ARRANGEMENT THAT IS A LIMITED PARTNERSHIP

GUIDANCE NOTES

85. A relevant person may demonstrate that it has found out the identity of a limited partnership which is a third party under Article 3(2)(b)(i) of the Money Laundering Order where it collects all of the following:

- Name of partnership.
- Any trading names.
- Date and country of registration/establishment.
- Official identification number.
- Registered office/business address.
- Mailing address (if different).
- Principal place of business/operations (if different).
- Names of all general partners.

86. A relevant person may demonstrate that it has found out the identity of a person who has a beneficial interest in a limited partnership which is a third party under Article 3(2)(b)(iii)(B) of the Money Laundering Order where it finds out the identity of limited partners holding a material controlling ownership interest in the capital of the partnership (through direct or indirect holdings of interests or voting rights) or any other person exercising control through other ownership means, e.g. partnership agreements, power to appoint senior management, or any outstanding debt that is convertible into voting rights.

87. To the extent that there is doubt as to whether the persons exercising control through ownership are beneficial owners, or where no person exerts control through ownership, a relevant person may demonstrate that it has found out the identity of those who exercise control through other means, e.g. those who exert control through personal connections, by participating in financing, because of close and intimate family relationships, historical or contractual associations or as a result of default on certain payments.

86. Where no person is otherwise identified under this section, a relevant person may demonstrate that it has found out the identity of a person who has a beneficial interest in a limited partnership where it finds out the identity of:

- Limited partners holding a material interest in the capital of the partnership. This information may be provided by the general partner.

88. Persons with ultimate effective exercise control through positions held (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions) over the limited partnership’s assets, including the individuals comprising the mind and management of the partnership, e.g. any other general partners and or limited partners that participate in the management of the limited partnership. This information may be provided by the general partner.
88. However, in the case of a lower risk relationship, as an alternative to finding out the identity of persons with effective ultimate control over the limited partnership's assets, a relevant person may find out the identity of partners who have and exercise authority to operate a relationship or to give the relevant person instructions concerning the use or transfer of funds or assets, e.g. any other general partners and any limited partners that participate in the management of the limited partnership. This information may be provided by the general partner.

89. In any case where a partner or other person referred to in paragraphs 86 to 88 is not an individual, a relevant person may demonstrate that it has identified each individual who is the partner's beneficial owner or controller under Article 3(2)(b)(iii)(C) of the Money Laundering Order where it has identified:

- Each individual with a material controlling ownership interest in the capital of the partnership (through direct or indirect holdings of interests or voting rights) or who exerts control of the partnership through other ownership means.
- To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising control over the partnership through other means.
- Where no individual is otherwise identified under this section, individuals who exercise control of the partnership through positions held (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions).

90. In the case of a lower risk relationship, partners who have and exercise authority to operate a business relationship or one-off transaction will be those who exercise control through positions held.

89.91 For lower risk relationships, a general threshold of 25% is considered to indicate a material controlling ownership interest in the capital of a limited partnership. Whilst this principle may also apply to other relationships, where the distribution of interests is uneven the percentage where effective control may be exercised (a material interest) may be less than 25% when the distribution of other interests is taken into account, i.e. interests of less than 25% may be material interests.

4.4.4 OBTAINING EVIDENCE OF IDENTITY – LEGAL ARRANGEMENT THAT IS A LIMITED PARTNERSHIP

AML/CFT CODES OF PRACTICE

90.92 All evidence of identity (or parts thereof) must be understandable (i.e. in a language understood by the employees of the business), and must be translated into English at the request of the JFCU or the Commission.

91.93 A relevant person must obtain evidence that any person purporting to act as general partner of a partnership which is a third party has authority so to act.

GUIDANCE NOTES

92.94 A relevant person may demonstrate that it has obtained evidence under Article 3(2)(b)(i) of the Money Laundering Order that is reasonably capable of verifying that a limited partnership which is a third party to be identified is who the partnership is said to be where the evidence covers all of the following components of identity:

- Name of partnership.
- Date and country of registration/establishment.
- Official identification number.
- Registered office/business address.
- Principal place of business/operations (if different).

93.95 However, in the case of a lower risk relationship, a relevant person may demonstrate that it has obtained evidence under Article 3(2)(b)(i) of the Money Laundering Order that is reasonably capable of verifying that a limited partnership which is a third party to be identified is who the partnership is said to be where the evidence covers the following components of identity: name of partnership; date and country of registration/establishment; and official identification number.
A relevant person may demonstrate that it has obtained evidence under Article 3(2)(b)(i) of the Money Laundering Order that is reasonably capable of verifying that a limited partnership which is a third party to be identified is who the partnership is said to be where it obtains two or more sources of evidence (one or more source(s) for lower risk customers):

- Partnership agreement or copy of such an agreement certified by a suitable certifier.
- Certificate of registration (where a partnership is registered) or copy of such a certificate certified by a suitable certifier.
- Latest audited financial statements or copy of such statements certified by a suitable certifier.

A relevant person may also demonstrate that it has obtained evidence under Article 3(2)(b)(i) of the Money Laundering Order that is reasonably capable of verifying that a partnership which is a third party is who the partnership is said to be where the data or information comes from an independent data source or (in the case of a principal place of business) personal visit to that address. An independent data source may include a registry search, which confirms that the partnership is not in the process of being dissolved, struck off, wound up or terminated.

Where a partner holds this role by virtue of his employment by (or position in) a business that is a regulated Jersey trust and company services provider, a relevant person may demonstrate that it has taken reasonable measures to find out the identity of that person and to obtain evidence under Article 3(2)(b)(iii)(B) of the Money Laundering Order where it obtains the following:

- the full name of the partner; and
- an assurance from the trust and company services provider that the individual is an officer or employee.

**4.4.5 COPY DOCUMENTATION PROVIDED BY REGULATED TRUST AND COMPANY SERVICES PROVIDER**

GUIDANCE NOTES

Where information is provided by a regulated trust and company services provider on a person listed in Article 3(7) of the Money Laundering Order (following an assessment of risk in line with paragraph 66), a relevant person may demonstrate that it has taken reasonable measures to obtain evidence of identity for that person under Article 13 of the Money Laundering Order where it obtains a copy of a document that is listed in paragraph 27 from the regulated trust and company services provider, along with confirmation on certain matters.

The matters to be confirmed are that:

- the regulated trust and company services provider has seen the original document that it has copied to the relevant person, or the document that has been copied to the relevant person was provided to the regulated trust and company services provider by a suitable certifier;
- the regulated trust and company services provider is satisfied that the original document seen, or document provided to it by a suitable certifier, provides evidence that the individual is who he or she is said to be; and
- the document provided to the relevant person is a true copy of a document that is held by the regulated trust and company services provider.

This will be different to a case where a relevant person decides to make use of Article 16 of the Money Laundering Order - which allows reliance to be placed on identification measures that have already been completed by an obliged party where evidence of identity may be held by the obliged party, and where the obliged party has a continuing responsibility to the relevant person in respect of record-keeping and access to records - Section 5 is relevant.

In both cases, the risk of placing reliance on another person to have carried out identification measures must be considered – either as part of an assessment of customer risk under Article 13, or assessment of risk under Article 16 of the Money Laundering Order.

Nor should provision for copy documentation to be provided by a regulated trust and company services provider be confused with “suitable certification”, which is explained in Section 4.3.3.
4.5 OBLIGATION TO FIND OUT IDENTITY AND OBTAIN EVIDENCE: LEGAL PERSONS

OVERVIEW

102. Jersey law recognises a number of distinct forms of legal person, in particular: the company; the foundation; the limited liability partnership; the separate limited partnership; and the incorporated limited partnership.

103. Companies are established under the Companies (Jersey) Law 1991 (the “Companies Law”). Foundations are established under the Foundations (Jersey) Law 2009. Limited liability partnerships are established under the Limited Liability Partnerships (Jersey) Law 1997. Separate Limited Partnerships are established under the Separate Limited Partnerships (Jersey) Law 2011. Incorporated Limited Partnerships are established under the Incorporated Limited Partnerships (Jersey) Law 2011.

104. The following provisions apply to situations where a legal person is the customer.

105. The provisions will also assist with the identification of ultimate beneficial owners and controllers and will be relevant in situations where a legal person is:

- A person connected to a legal arrangement, because of a requirement in Article 3(2)(b)(iii) to identify each person who falls within Article 3(7) of the Money Laundering Order, and each individual who is that person’s beneficial owner or controller;
- The owner or controller of a customer, because of a requirement in Article 3(2)(c)(iii) of the Money Laundering Order to identify the individuals who are the customer’s beneficial owners or controllers;
- Acting on behalf of a customer (e.g. is acting according to a power of attorney, or has signing authority over an account); or
- A third party on whose behalf a customer is acting, because of a requirement in Article 3(2)(b)(ii) of the Money Laundering Order to identify the individuals who are the third party’s beneficial owners or controllers.

106. The Companies Law allows for the incorporation of cell companies: incorporated cell companies (“ICCs”) and protected cell companies (“PCCs”).

107. Each of these types of cell companies may establish one or more cells.

108. In the case of a PCC, each cell, despite having its own memorandum of association, shareholders and directors, as well as being treated for the purposes of the Companies Law as if it were a company, does not have a legal personality separate from the cell company. Accordingly, where a cell wishes to contract with another party, it does so through the cell company acting on its behalf. In order to ensure that creditors and third parties are aware of this position, a director of the cell company is under a duty to notify the counterparties to a transaction that the cell company is acting in respect of a particular cell.

109. Where a relevant person establishes a business relationship or enters into a one-off transaction with a cell of a PCC, because the cell does not have the ability to enter into arrangements or contract in its own name, for the purposes of Article 3 of the Money Laundering Order, the PCC will be taken to be a customer acting for a third party and the particular cell will be taken to be the third party that is a person other than an individual.

110. By contrast, in the case of an ICC, each cell has its own separate legal personality, with the ability to enter into arrangements or contracts and to hold assets and liabilities in its own name. Where a relevant person establishes a business relationship or enters into a one-off transaction with a cell of an ICC, the cell (a company) will be taken to be the customer.

111. In a case where the ownership structure of a legal person to be identified (A) includes other legal persons, the beneficial owners and controllers of A will include those individuals ultimately holding a material controlling ownership interest in A. See paragraph 128.

112. The identification measures to be applied to a company are set out in Sections 4.5.1 and 4.5.2. The identification measures to be applied to a foundation are set out in Sections 4.5.3 and 4.5.4. The identification measures to be applied to a partnership are set out in Sections 4.5.5 and 4.5.6.
For the purpose of this section, provisions that are said to apply to a company are to be taken to apply, with appropriate modification, to: any other body that can establish a business relationship with a relevant person or otherwise own property; an anstalt; an incorporated or unincorporated association, club, society, charity, church body, or institute; a mutual or friendly society; a co-operative; and a provident society.

Where information relating to a legal person is not available from a public source, a relevant person will be dependent on the information that is provided by the legal person. When determining the risk assessment for a legal person (Section 3.3), the risk factors set out in Section 3.3.4.1 will be relevant. The risk factors set out in Section 7.8.1 will also be relevant in determining whether it is appropriate to use information on a legal person provided through a trust and company (or other) services provider. In addition, the monitoring measures maintained by a relevant person (Section 6) may provide additional comfort that relevant and up to date information on identity has been found out.

Where a director of a company holds this role by virtue of his employment by (or position in) a business that is a regulated Jersey trust and company services provider, separate provision is made for obtaining evidence of identity. Similar provision is made for a council member of a foundation and for a partner of a partnership.

Article 2 of the Money Laundering Order, which describes those persons to be considered to be beneficial owners of a body corporate, provides that no individual is to be treated as a beneficial owner of a person that is a body corporate, the securities of which are listed on a regulated market.

The measures that must be applied to obtain evidence of identity of beneficiaries and persons in whose favour the council of a foundation may exercise discretion and that have been identified as presenting higher risk will necessarily reflect the verification methods that are available at a particular time to the relevant person. For example, it may not be appropriate to request evidence directly from a person in whose favour discretion may be exercised.

Where a relevant person is not familiar with a document obtained to verify identity, appropriate measures may be necessary to satisfy itself that the evidence is genuine.

A relevant person may demonstrate that it has found out the identity of a company which is a customer under Article 3(2)(a) of the Money Laundering Order where it collects all of the following:

- Name of company.
- Any trading names.
- Date and country of incorporation/registration.
- Official identification number.
- Registered office address.
- Mailing address (if different).
- Principal place of business/operations (if different).
- Names of all directors.

A relevant person may demonstrate that it has found out the identity of a person who is the customer's company's beneficial owners or controllers under Article 3(2)(c)(iii) of the Money Laundering Order where it finds out the identity of: persons holding a material controlling ownership interest in the capital of the company (through direct or indirect holdings of interests or voting rights) or who exert control through other ownership interests, e.g. shareholders' agreements, power to appoint senior management, or through holding convertible stock or any outstanding debt that is convertible into voting rights.
123. To the extent that there is doubt as to whether the persons exercising control through ownership are beneficial owners, or where no person exerts control through ownership, a relevant person may demonstrate that it has found out the identity of a person who is the customer’s beneficial owner or controller under Article 3(2)(c)(iii) of the Money Laundering Order where it finds out the identity of those who exercise control through other means, e.g. those who exert control through personal connections, by participating in financing, because of close and intimate family relationships, historical or contractual associations or as a result of default on certain payments.

124. Where no person is otherwise identified under this section, a relevant person may demonstrate that it has found out the identity of a person who is the customer’s beneficial owner or controller under Article 3(2)(c)(iii) of the Money Laundering Order where it finds out the identity of persons who exercise control through positions held (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions, e.g. directors).

125. This information may be provided by the company.

126. In any case where a person identified under paragraphs 122 to 124 is not an individual, a relevant person may demonstrate that it has identified each individual who is that person’s beneficial owner or controller under Article 3(2)(c)(iii) of the Money Laundering Order where it has identified:

- Each individual with a material controlling ownership interest in the capital of the company. This information may be provided by the company (through direct or indirect holdings of interests or voting rights) or who exerts control of the company through other ownership means. Individuals with ultimate effective control over the company’s assets, including the individuals comprising the mind and management of the company, e.g. directors. This information may be provided by the company. In the case of other bodies, anstalts, associations, clubs, societies, charities, church bodies, institutes, mutual or friendly societies, co-operatives and provident societies, individuals with ultimate effective control will often include members of the governing body or committee plus executives.

- To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising control over the company through other means.

- Where no individual is otherwise identified under this section, individuals who exercise control of the company through positions held (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions) individuals ultimately holding a material interest in the capital of the company. This information may be provided by the company.

127. However, in the case of a lower risk relationship, as an alternative to finding out the identity of individuals with effective ultimate control over the company’s assets, a relevant person may find out the identity of directors who have and exercise authority to operate a business relationship or one-off transaction will be those who exercise control through positions held to give the relevant person instructions concerning the use or transfer of funds or assets.

128. In any case where a director is not an individual, a relevant person may demonstrate that it has identified each individual who is the director’s controller where it has identified each individual who ultimately controls or otherwise exercises management of the director.

129. For lower risk relationships, a general threshold of 25% is considered to indicate a material controlling ownership interest in the capital of a company. Whilst this principle may also apply to other relationships, where the distribution of interests is uneven the percentage where effective control may be exercised (a material interest) may be less than 25% when the distribution of other interests is taken into account, i.e. interests of less than 25% may be material interests.

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1 This information may be provided by the company. In the case of other bodies, anstalts, associations, clubs, societies, charities, church bodies, institutes, mutual or friendly societies, co-operatives and provident societies, senior individuals will often include members of the governing body or committee plus executives.
4.5.2 OBTAINING EVIDENCE OF IDENTITY - LEGAL PERSON THAT IS A COMPANY

AML/CFT CODE OF PRACTICE

124. All key documents (or parts thereof) obtained as evidence of identity must be understandable (i.e. in a language understood by the employees of the business), and must be translated into English at the request of the JFCU or the Commission.

GUIDANCE NOTES

125. A relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that a company which is a customer to be identified is who the company is said to be where the evidence covers all of the following components of identity:

- Name of company.
- Date and country of incorporation/registration.
- Official identification number.
- Registered office address.
- Principal place of business/operations (where different to registered office).

126. However, in the case of a lower risk relationship, a relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that a company which is a customer to be identified is who the company is said to be where the evidence covers the following components of identity: name of company; date and country of incorporation/registration; and official identification number.

127. A relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that a company which is a customer is who the company is said to be where it obtains two or more sources of evidence (one or more source(s) for lower risk customers):

- Certificate of incorporation (or other appropriate certificate of registration or licensing) or copy of such a certificate certified by a suitable certifier.
- Memorandum and Articles of Association (or equivalent) or copy of such documents certified by a suitable certifier.
- Latest audited financial statements or copy of such statements certified by a suitable certifier.

128. A relevant person may also demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that a company which is a customer is who the company is said to be where the data or information comes from an independent data source or (in the case of a principal place of business) personal visit to that address. An independent data source may include a company registry search, which confirms that the company is not in the process of being dissolved, struck off, wound up or terminated.

129. Where a director holds this role by virtue of his employment by (or position in) a business that is a regulated Jersey trust and company services provider, a relevant person may demonstrate that it has taken reasonable measures to find out the identity of that person and to obtain evidence under Article 3(2)(c)(iii) of the Money Laundering Order where it obtains the following:

- the full name of the director; and
- an assurance from the trust and company services provider that the individual is an officer or employee.

4.5.3 FINDING OUT IDENTITY - LEGAL PERSON THAT IS A FOUNDATION

GUIDANCE NOTES

130. A relevant person may demonstrate that it has found out the identity of a foundation which is a customer under Article 3(2)(a) of the Money Laundering Order where it collects all of the following:
Appendix B

- Name of foundation.
- Date and country of incorporation.
- Official identification number.
- Business address. In the case of a foundation incorporated under the Foundations (Jersey) Law 2009, this will be the business address of the qualified member of the council.
- Mailing address (if different).
- Principal place of business/operations (if different).
- Names of all council members and, if any decision requires the approval of any other person, the name of that person.

A relevant person may demonstrate that it has found out the identity of the foundation’s beneficial owners and controllers under Article 3(2)(c)(iii) of the Money Laundering Order where it finds out the identity of:

- The founder, a person (other than the founder of the foundation) who has endowed the foundation (directly or indirectly) and, if any rights a founder of the foundation had in respect of the foundation and its assets have been assigned to some other person, that person. This information may be provided by the foundation.
- The guardian (who takes such steps as are reasonable to ensure that the council of the foundation carries out its functions). This information may be provided by the foundation.
- All council members and, if any decision requires the approval of any other person, that person. This information may be provided by the foundation.
- Any beneficiary entitled to a benefit under the foundation in accordance with the charter or the regulations of the foundation. This information may be provided by the foundation.
- Any other beneficiary and person in whose favour the council may exercise discretion under the foundation in accordance with its charter or regulations and that have been identified as presenting higher risk.
- Any other person exercising ultimate effective control over the foundation.

This information may be provided by the foundation.

In any case where a founder, guardian, beneficiary or other person listed in paragraph 136 (the “person”) is not an individual, a relevant person may demonstrate that it has identified each individual who is the person’s beneficial owner or controller under Article 3(2)(c)(iii) of the Money Laundering Order where it has identified:

- Each individual with a material controlling ownership interest in the capital of the person (through direct or indirect holdings of interests or voting rights) or who exerts control through other ownership means.
- To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising control over the person through other means.
- Where no individual is otherwise identified under this section, individuals who exercise control of the person through positions held (who are responsible for strategic decision-taking or exercising executive control through senior management positions).

However, in the case of a lower risk relationship, as an alternative to finding out the identity of all council members and, if any decision requires the approval of any other person, that person, a relevant person may find out the identity of council members who have and exercise authority to operate a business relationship or one-off transaction to give the relevant person instructions concerning the use or transfer of funds or assets.

In any case where a council member is not an individual, a relevant person may demonstrate that it has identified each individual who is the council member’s controller where it has identified each individual who ultimately controls or otherwise exercises management of the council member.
In any case where a founder, guardian, beneficiary or other person listed in paragraph 136 above is not an individual, a relevant person may demonstrate that it has identified each individual who is that person’s beneficial owner where it has identified each individual with a material interest in the capital of that person.

For lower risk relationships, a general threshold of 25% is considered to indicate a material controlling ownership interest in capital. Whilst this principle may also apply to other relationships, where the distribution of interests is uneven the percentage where effective control may be exercised (a material interest) may be less than 25% when the distribution of other interests is taken into account, i.e. interests of less than 25% may be material interests.

4.5.4 OBTAINING EVIDENCE OF IDENTITY – LEGAL PERSON THAT IS A FOUNDATION

AML/CFT CODE OF PRACTICE

All key documents (or parts thereof) obtained as evidence of identity must be understandable (i.e. in a language understood by the employee of the business), and must be translated into English at the request of the JFCU or the Commission.

GUIDANCE NOTES

A relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that a foundation which is a customer is who the foundation is said to be where the evidence covers all of the following components of identity:

- Name of foundation.
- Date and country of incorporation.
- Official identification number.
- Business address.
- Principal place of business/operations (if different).

However, in the case of a lower risk relationship, a relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that a foundation which is a customer is who the foundation is said to be where the evidence covers the following components of identity: name of foundation, date and country of incorporation, and official identification number.

A relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that a foundation which is a customer is who the foundation is said to be where it obtains two or more sources of evidence (one or more for lower risk customers):

- Charter (or equivalent) or copy of such a charter certified by a suitable certifier.
- Latest audited financial statements or copy of such statements certified by a suitable certifier.

A relevant person may also demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that a foundation which is a customer is who the foundation is said to be where the data or information comes from an independent data source or (in the case of a principal place of business) personal visit to that address. An independent data source may include a registry search on the Commission’s website (for the business address of the qualified member of the council).

Where a council member who is an individual holds this role by virtue of his employment by (or position in) a business that is a regulated Jersey trust and company services provider, a relevant person may demonstrate that it has taken reasonable measures to find out the identity of that person and to obtain evidence under Article 3(2)(c)(iii) of the Money Laundering Order where it obtains the full name of the council member and an assurance from the trust and company services provider that the individual is an officer or employee.
4.5.5 FINDING OUT IDENTITY – LEGAL PERSON THAT IS A PARTNERSHIP

GUIDANCE NOTES

143. A relevant person may demonstrate that it has found out the identity of a partnership which is a customer under Article 3(2)(a) of the Money Laundering Order where it collects all of the following:
- Name of partnership.
- Any trading names.
- Date and country of incorporation/registration.
- Official identification number.
- Registered office/business address.
- Mailing address (if different).
- Principal place of business/operations (if different).
- Names of all partners (except any limited partners).

144. A relevant person may demonstrate that it has found out the identity of a person who is the partnership’s customer’s beneficial owner or controllers under Article 3(2)(c)(iii) of the Money Laundering Order where it finds out the identity of:

145. Individuals with ultimate effective control over the partnership’s assets, including the individuals comprising the mind and management of the partnership, e.g. general partners and limited partners that participate in the management of the partnership. This information may be provided by the partnership.

148. Individuals ultimately holding a material controlling ownership interest in the capital of the partnership (through direct or indirect holdings of interests or voting rights) or any other person exercising control through other ownership means, e.g. partnership agreements, power to appoint senior management, or any outstanding debt that is convertible into voting rights.

149. To the extent that there is doubt as to whether the persons exercising control through ownership are beneficial owners, or where no person exerts control through ownership, a relevant person may demonstrate that it has found out the identity of those who exercise control through other means, e.g. those who exert control through personal connections, by participating in financing, because of close and intimate family relationships, historical or contractual associations or as a result of default on certain payments.

150. Where no person is otherwise identified under this section, a relevant person may demonstrate that it has found out the identity of persons who exercise control through positions held (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions, e.g. general partner or limited partner that participates in management).

151. This information may be provided by the partnership.

152. However, in the case of a lower risk relationship, as an alternative to finding out the identity of the individuals with ultimate effective control over the partnership’s assets, a relevant person may find out the identity of the partners who have and exercise authority to operate a relationship or to give the relevant person instructions concerning the use or transfer of funds or assets, e.g. general partners and any limited partners that participate in the management of the partnership.

153. In any case where a general partner or other person referred to in paragraphs 148 to 150 is not an individual, a relevant person may demonstrate that it has identified each individual who is the general partner’s or other person’s beneficial owner or controller under Article 3(2)(c)(iii) of the Money Laundering Order where it has identified:
- Each individual with a material controlling ownership interest in the capital of the partnership (through...
direct or indirect holdings of interests or voting rights) or who exerts control of the partnership through other ownership means.

- To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising control over the partnership through other means.

- Where no individual is otherwise identified under this section, individuals who exercise control of the partnership through positions held (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions).

148. 153. In the case of a lower risk relationship, partners who have and exercise authority to operate a business relationship or one-off transaction will be those who exercise control through positions held.

149. 154. For lower risk relationships, a general threshold of 25% is considered to indicate a material controlling ownership interest in the capital of a partnership. Whilst this principle may also apply to other relationships, where the distribution of interests is uneven the percentage where effective control may be exercised (a material interest) may be less than 25% when the distribution of other interests is taken into account, i.e. interests of less than 25% may be material interests.

4.5.6 OBTAINING EVIDENCE OF IDENTITY – LEGAL PERSON THAT IS A PARTNERSHIP

AML/CFT CODE OF PRACTICE

150. 155. All evidence of identity (or parts thereof) must be understandable (i.e. in a language understood by the employees of the business), and must be translated into English at the request of the JFCU or the Commission.

GUIDANCE NOTES

151. 156. A relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that a partnership which is a customer to be identified is who the partnership is said to be where the evidence covers all of the following components of identity:

- Name of partnership.
- Date and country of incorporation/registration.
- Official identification number.
- Registered office/business address.
- Principal place of business/operations (if different).

152. 157. However, in the case of a lower risk relationship, a relevant person may demonstrate that it has obtained evidence under Article 3(2)(a) of the Money Laundering Order that is reasonably capable of verifying that a partnership which is a customer to be identified is who the partnership is said to be where the evidence covers the following components of identity: name of partnership, date and country of incorporation/registration, and official identification number.

153. 158. A relevant person may demonstrate that it has obtained evidence that is reasonably capable of verifying that a partnership which is a customer to be identified is who the partnership is said to be where it obtains under Article 3(2)(a) of the Money Laundering Order two or more sources of evidence (one or more source(s) for lower risk customers):

- Partnership agreement or copy of such an agreement certified by a suitable certifier.
- Certificate of registration (where a partnership is registered) or copy of such a certificate certified by a suitable certifier.
- Latest audited financial statements or copy of such statements certified by a suitable certifier.
A relevant person may also demonstrate that it has obtained evidence that is reasonably capable of verifying that a partnership which is a customer is who the partnership is said to be under Article 3(2)(a) of the Money Laundering Order where the data or information comes from an independent data source or (in the case of a principal place of business) personal visit to that address. An independent data source may include a registry search, which confirms that the partnership is not in the process of being dissolved, struck off, wound up or terminated.

Where a partner holds this role by virtue of his employment by (or position in) a business that is a regulated Jersey trust and company services provider, a relevant person may demonstrate that it has taken reasonable measures under Article 3(2)(c)(iii) of the Money Laundering Order to find out the identity of that person and to obtain evidence where it obtains the following:

- the full name of the partner; and
- an assurance from the trust and company services provider that the individual is an officer or employee.

**4.5.7 COPY DOCUMENTATION PROVIDED BY REGULATED TRUST AND COMPANY SERVICES PROVIDER**

**GUIDANCE NOTES**

Where information is provided by a regulated trust and company services provider on a person who is a beneficial owner or controller of a legal person (following an assessment of risk in line with paragraph 116), a relevant person may demonstrate that it has taken reasonable measures to obtain evidence for that person under Article 13 of the Money Laundering Order where it obtains a copy of a document that is listed in paragraph 27 from the regulated services provider, along with confirmation on certain matters.

The matters to be confirmed are that:

- the regulated trust and company services provider has seen the original document that it has copied to the relevant person, or the document that has been copied to the relevant person was provided to the regulated services provider by a suitable certifier;
- the regulated trust and company services provider is satisfied that the original document seen, or document provided to it by a suitable certifier, provides evidence that the individual is who he or she is said to be; and
- the document provided to the relevant person is a true copy of a document that is held by the regulated trust and company services provider.

This will be different to a case where a relevant person decides to make use of Article 16 of the Money Laundering Order - which allows reliance to be placed on identification measures that have already been completed by an obliged party where evidence of identity may be held by the obliged party, and where the obliged party has a continuing responsibility to the relevant person in respect of record-keeping and access to records - Section 5 is relevant.

In both cases, the risk of placing reliance on another person to have carried out identification measures must be considered – either as part of an assessment of customer risk under Article 13, or assessment of risk under Article 16 of the Money Laundering Order.

Nor should provision for copy documentation to be provided by a regulated trust and company services provider be confused with “suitable certification”, which is explained in Section 4.3.3.

**4.6 OBLIGATION TO FIND OUT IDENTITY AND OBTAIN EVIDENCE: AUTHORISED AGENT OF CUSTOMER**

**OVERVIEW**

Article 13 of the Money Laundering Order requires a relevant person to find out the identity of persons purportedly authorised to act on behalf of a customer that is a legal person and to take reasonable measures to obtain evidence of identity of such persons. This will include account signatories and those to whom powers of attorney have been granted. In addition, Article 13 requires a relevant person to verify the authority of any person purporting to act.
Appendix B

162. Article 18 allows this particular identification measure (or part of the identification measure) to be simplified in some limited cases.

AML/CFT CODES OF PRACTICE

163. In a case where another person purports to act on behalf of a customer, a relevant person must obtain a copy of the power of attorney or other authority or mandate that provides the persons representing the customer with the right to act on its behalf.

164. In the case of a legal arrangement that is a trust, a relevant person must obtain evidence that any person purporting to act as the trustee has authority so to act.

165. In the case of a legal arrangement that is a limited partnership, a relevant person must obtain evidence that any person purporting to act as general partner has authority so to act.

GUIDANCE NOTES

166. A relevant person may demonstrate that it has taken reasonable measures to obtain evidence of identity where it takes into account factors such as the risk posed by the relationship and the materiality of the authority delegated to individuals.

167. In the case of a lower risk relationship, a relevant person may demonstrate that it has taken reasonable measures to obtain evidence of identity where it does so for a minimum of two individuals that have purported authority to act on behalf of a customer.

4.7 TIMING OF IDENTIFICATION MEASURES

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<tr>
<th>STATUTORY REQUIREMENTS</th>
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168. Article 13(1) of the Money Laundering Order requires identification measures to be applied before the establishment of a relationship or before carrying out a one-off transaction.

169. However, Article 13(4) of the Money Laundering Order permits evidence of identity to be obtained after the establishment of a business relationship in three cases.

170. The first – set out in Article 13(6) and (7) of the Money Laundering Order - is a business relationship that relates to a life insurance policy if the identification measure relates to a beneficiary under the policy and the relevant person is satisfied that there is a little risk of money laundering or financing of terrorism occurring. Where identification measures are not completed before the establishment of a business relationship, they must be completed before any payment is made under the policy or any right vested under the policy is exercised.

171. The second – set out in Article 13(8) and (9) of the Money Laundering Order - is a business relationship that relates to a trust or foundation if the identification measure relates to a person who has a beneficial interest in the trust or foundation by virtue of property or income having been vested and the relevant person is satisfied that there is a little risk of money laundering or financing of terrorism occurring. Where identification measures are not completed before the establishment of a business relationship, they must be completed before any distribution of trust property or income is made.

172. The third – set out in Article 13(4) of the Money Laundering Order – is where:
- it is necessary not to interrupt the normal conduct of business;
- there is little risk of money laundering or financing of terrorism occurring as a result of obtaining evidence of identity after establishing the relationship; and
- evidence of identity is obtained as soon as reasonably practicable.

173. Under Article 11(3)(fa)(4) of the Money Laundering Order, policies and procedures must be in place to: assess the risk of money laundering or financing of terrorism referred to in Article 13(4); and ensure that there is periodic reporting to senior management to allow it to assess that appropriate arrangements are in place to address risk and to ensure that identification measures are completed as soon as reasonably practicable.
## During business relationship

174. **Article 13(1)(c)(i)** of the Money Laundering Order requires a relevant person to apply identification measures where it suspects money laundering or financing of terrorism.

175. In addition, where a relevant person has doubts about the veracity or adequacy of documents, data or information previously obtained under customer due diligence measures, **Article 13(1)(c)(ii)** of the Money Laundering Order requires that person to apply identification measures.

### Existing customers

176. **Article 13(2)** of the Money Laundering Order says that, where a relevant person has a business relationship with a customer that commenced before the Money Laundering Order came into force, a relevant person must apply CDD measures that are in line with the Money Laundering Order to that relationship at appropriate times.

177. **Article 13(3)** of the Money Laundering Order says that “appropriate times” means for the application of identification measures:

- times that are appropriate having regard to the degree of risk of money laundering or financing of terrorism, taking into account the type of customer, business relationship, product or transaction concerned; and
- any time when a relevant person suspects money laundering or financing of terrorism (unless agreed otherwise with the JFCU).

178. **Article 13(3A)** of the Money Laundering Order states that an appropriate time for finding out identity (as required by **Article 3(4)**) is a date no later than 31 December 2014, or such later date as may be agreed by the Commission.

179. **Article 13(3B)** of the Money Laundering Order explains that a person may be considered to have found out the identity of a customer where the information that it holds in relation to a customer is commensurate to the relevant person’s assessment of risk.

### All cases

180. **Article 14(6)** of the Money Laundering Order provides that identification measures need not be applied where a relevant person is acting with the consent of the JFCU and where an existing relationship is terminated, relationship is not established, or one-off transaction not completed or carried out.

### 4.7.1 TIMING OF INITIAL IDENTIFICATION MEASURES – DELAY IN OBTAINING EVIDENCE

#### Overview

181. **Article 13(4)** of the Money Laundering Order allows, in certain circumstances, a relevant person a reasonable timeframe to undertake the necessary enquiries for obtaining evidence of identity after the initial establishment of a relationship. No similar concession is available for finding out identity. Where a reasonable excuse for the continued delay in obtaining evidence of identity cannot be provided, in order to comply with **Article 14(2)** of the Money Laundering Order, a relevant person must terminate the relationship (**Section 4.8**).

182. Funds may be received from a customer during the course of establishing a business relationship. A relationship is considered to be established as soon as a relevant person acts on instructions as to the operation of that relationship, for example, invests funds in a financial product at the request of a customer.

#### AML/CFT CODES OF PRACTICE

183. In a case where **Article 13(4)** of the Money Laundering Order applies, a relevant person may obtain evidence of identity after the initial establishment of a relationship if, in addition, the following conditions are met:

- it highlights to its customer its obligation to terminate the relationship at any time on the basis that evidence of identity is not obtained; and
- money laundering and financing or terrorism risk is effectively managed.
In any event, a relevant person must not pay away funds to an external party, other than to invest or deposit the funds on behalf of the customer, until such time as evidence of identity has been obtained.

GUIDANCE NOTES

A relevant person may demonstrate that it has highlighted to a customer the obligation to terminate a relationship where terms of business, which govern its relationship with its customer: (i) encompass the termination of relationships when evidence of identity is not obtained; and (ii) clearly state that termination may lead to a customer suffering losses – where, e.g. funds have been invested in a collective investment fund where a forced redemption is necessary.

A relevant person may demonstrate that money laundering and financing of terrorism risk is effectively managed where:
- policies and procedures establish timeframes for obtaining evidence of identity;
- the establishment of any relationship benefiting from this concession has received appropriate authorisation, and such relationships are appropriately monitored so that evidence of identity is obtained as soon as is reasonably practicable; and
- appropriate limits or prohibitions are placed on the number, type and amount of transactions over an account.

A relevant person may demonstrate that periodic reporting is in line with Article 11(3)(fa) of the Money Laundering Order where it highlights to the Board:
- the number of customers for which evidence of identity has not been obtained during a reporting period (also expressed as a percentage of the total number of business relationships established during the reporting period) and summarises reasons; and
- in any case where the delay is for more than a particular period of time, the name of the customer, the reason for the delay, the extent to which evidence of identity has not been obtained, the risk rating given to that customer, and action that is to be taken to obtain evidence or terminate the relationship (and by when).

Guidance as to appropriate steps to take where a relevant person is unable to complete identification measures is provided in Section 4.8.

4.7.2 TIMING OF IDENTIFICATION MEASURES DURING BUSINESS RELATIONSHIP–OBTAINING EVIDENCE

GUIDANCE NOTES

In the course of a business relationship between a relevant person and a trustee, a relevant person may demonstrate that it has obtained evidence that is reasonably capable of verifying the identity of each beneficiary with a vested right where:
- it does so at the time of, or before, distribution of trust property or income; and
- it is satisfied that there is little risk of money laundering or financing of terrorism occurring as a result of obtaining evidence after entitlement is conferred.

In the course of a business relationship between a relevant person and a trustee, a relevant person may demonstrate that it has obtained evidence that is reasonably capable of verifying the identity of a beneficiary or person who is the object of a trust power where it does so at the time that the person is identified as presenting a higher risk.

In the case of a business relationship between a relevant person and a foundation, a relevant person may demonstrate that it has obtained evidence that is reasonably capable of verifying the identity of each beneficiary entitled to benefit under the foundation where:
- it does so at the time of, or before, distribution of property or income; and
- it is satisfied that there is little risk of money laundering or financing of terrorism occurring as a result of obtaining evidence after conferring entitlement.
In the course of a business relationship between a relevant person and a foundation, a relevant person may demonstrate that it has obtained evidence that is reasonably capable of verifying the identity of any beneficiary or person in whose favour the council may exercise discretion under the foundation where it does so at the time that the person is identified as presenting a higher risk.

### 4.7.3 TIMING FOR “EXISTING CUSTOMERS”

#### OVERVIEW

Former FATF Recommendation 5 states that “financial institutions” should be required to apply that Recommendation (which deals with CDD measures) to “existing customers” on the basis of materiality and risk, and should conduct CDD measures on such existing relationships at appropriate times. This is based on the presumption that identification measures applied historically to existing customers will have been less effective than those to be applied in line with former FATF Recommendation 5.

For the purposes of the Money Laundering Order, an existing customer means a business relationship established before the Money Laundering Order came into force on 4 February 2008 and which continues.

For the avoidance of doubt, the identification measures (finding out identity and obtaining evidence) to be applied to existing customers include the collection of information that is necessary to assess the risk that a business relationship involves money laundering or financing of terrorism (in line with Article 3(5) of the Money Laundering Order). This is likely to be self-evident for an existing customer on the basis that a relationship will have been established on, or before, 3 February 2008.

Except with the agreement of the Commission, the effect of Article 13(3A) of the Money Laundering Order is to require the identity of a customer to have been found out by 31 December 2014. There is no similar deadline for obtaining evidence of identity.

Once an existing relationship has been “remediated”, then Article 13(1)(c)(ii) of the Money Laundering Order will apply to such a relationship in the same way as a relationship established on or after 4 February 2008 (on the basis that documents, data or information will have been obtained under the CDD measures prescribed in Article 3).

In line with Article 13(3)(a)(ii) of the Money Laundering Order, identification measures must always be applied to an existing customer as soon as a relevant person suspects money laundering or financing of terrorism.

A relevant person may meet its obligation to apply identification measures by placing reliance on an obliged person. See Section 5.

#### AML/CFT CODE OF PRACTICE

A relevant person must review its “existing customer” base in order to determine a risk assessment for each customer that has still to be remediated.

#### GUIDANCE NOTES

Where it does not suspect money laundering or financing of terrorism, a relevant person may demonstrate that it has found out identity at an appropriate time for a higher risk existing customer where it does so at the earlier of the following dates:

- As soon as is practicable after the date that a relevant person has assessed a customer to present a higher money laundering or financing of terrorism risk; and
- 31 December 2014 (or later date agreed with the Commission).

Where it does not suspect money laundering or financing of terrorism, a relevant person may demonstrate that it has found out identity at an appropriate time for a standard or lower risk existing customer where it does so at the earlier of the following dates:

- The date when a transaction of significance takes place;
- The date when a relevant person’s customer documentation standards change substantially; and
- 31 December 2014 (or later date agreed with the Commission).
203. Where it does not suspect money laundering or financing of terrorism, a relevant person may demonstrate that it has obtained evidence of identity at an appropriate time for an existing customer where it does so as soon as is practicable after the customer has been assessed as presenting a higher risk of money laundering or financing of terrorism.

204. A relevant person may demonstrate that it has applied identification measures where it does so in accordance with measures applied to new business relationships and one-off transactions, taking into account any factors that are relevant to an existing relationship. Such factors could include existing knowledge of the customer built up through the historical conduct of the relationship, etc.

4.8 FAILURE TO COMPLETE IDENTIFICATION MEASURES

OVERVIEW

205. Where identification measures cannot be completed, a relevant person must not establish a business relationship or carry out a one-off transaction. In the case of an established customer, the relationship must be terminated.

206. The timing of the termination of an established relationship will depend upon the underlying nature of the business relationship. For example, whereas a bank can close an account relatively easily and return deposited funds to a customer, it may be problematical to affect a compulsory redemption of a holding of units in a collective investment scheme, particularly where it is closed ended, or where valuation dates are infrequent.

207. Wherever possible, a relevant person should return assets or funds directly to the customer.

208. In a case where a customer requests that assets or funds be transferred to an external party, a relevant person should assess whether this provides grounds for knowledge or suspicion, or reasonable grounds for knowledge or suspicion, of money laundering or financing of terrorism.

209. Where contact has been lost with a customer so that it is not possible to complete termination of a business relationship, assets or funds held should be “blocked” or placed on a “suspense” account until such time as contact is re-established.

STATUTORY REQUIREMENTS

210. If a relevant person is unable to apply identification measures before the establishment of a relationship or before carrying out a one-off transaction (except in the circumstances set out in Article 13(4) of the Money Laundering Order), Article 14(1) of the Money Laundering Order requires that a relevant person shall not establish that business relationship or carry out that one-off transaction.

211. Article 14(2) of the Money Laundering Order requires a relevant person that is unable to apply identification measures in the circumstances described in Article 13(4), to terminate the relationship.

212. Article 14(5) of the Money Laundering Order requires a relevant person to terminate a business relationship where it cannot apply on-going identification measures.

213. Article 14(7) of the Money Laundering Order states that, if a relevant person is unable to apply identification measures to an existing customer at the appropriate time, it must terminate that particular business relationship.

214. Article 14(11) of the Money Laundering Order provides that a business relationship or one-off transaction may proceed or continue where a relevant person is acting with the consent of the JFCU.
APPENDIX C

Draft Section 4 of the AML/CFT Handbook
### 13 TRUST COMPANY BUSINESS

#### 13.1 OVERVIEW OF SECTION

1. The purpose of this section is to assist with the application of customer identification measures where a relevant person establishes a business relationship or carries out a one-off transaction in the course of carrying on trust company business.

2. This section applies where a relevant person carries on a business under Article 2(3) of the FS(J) Law that involves the provision of company administration services, the provision of trustee or fiduciary services, the provision of services to foundations or the provision of services to partnerships and, in the course of providing those services, the person provides any of the services specified in Article 2(4) of the FS(J) Law (except any activity that is explicitly excluded from the scope of Part A of Schedule 2 of the Proceeds of Crime Law). Inter alia, those services are:

   - acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, trustee of an express trust;
   - acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, a partner of a partnership;
   - acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, director or alternate director of a company; acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, a member of the council of a foundation;
   - acting as a partnership formation agent, a company formation agent, or a foundation formation agent;
   - acting, or arranging for another person to act, as secretary, alternate, assistant or deputy secretary of a company;
   - providing a registered office or business address for a partnership, a company, a foundation, or for any other person; and
   - providing an accommodation, correspondence or administrative address for any person.

3. This section also applies where a relevant person carries on a business that is described in paragraph 8 of Part B of Schedule 2 of the Proceeds of Crime Law. Paragraph 8 extends the provisions that are summarised at paragraph 1 above to legal persons and legal arrangements that are not otherwise covered by the FS(J) Law. For the purpose of this section, such business is covered by the term “trust company business”.

4. This section does not deal with the provision of any service to a so called “COBO-only” fund. A COBO-only fund is a scheme that would be a collective investment fund (a term that is defined in the CIF(J) Law) except for the fact that the capital, the collective investment of which is the object or one of the objects of the scheme or arrangement, is not acquired by means of an offer to the public of units for subscription, sale or exchange.

5. Activity that is excluded from the scope of Part A of Schedule 2 of the Proceeds of Crime Law is listed in Section 1 of Part 4 of the AML/CFT Handbook. This list includes an individual who:
   
   (i) acts as a director in the course of employment by a trading company (that is not administered by a person carrying on trust company business); 
   (ii) acts as a director of a company that is prudentially supervised by the Commission under the Regulatory Laws; and 
   (iii) acts as, or fulfils the function of, a director to six or less companies.

#### 13.2 OVERVIEW OF SECTION

#### 13.2.1 OBLIGATION TO APPLY IDENTIFICATION MEASURES

**OVERVIEW**

6. Inter alia, Article 13 of the Money LaunderingOrder requires a relevant person to apply identification measures:
• before the establishment of a business relationship or before carrying out a one-off transaction; and
• in the course of a business relationship, where the relevant person has doubts about the adequacy of information previously obtained under identification measures.

7. A relevant person (“A”) that provides, acts as or fulfils one or more of the functions listed in paragraph 1 above, or arranges for another person (“B”) to do so (where B is an officer or employee of A) will be considered to have established a business relationship under the Money Laundering Order.

8. Where B is not an officer or employee of A, then A will not be considered to have established a business relationship each time that it arranges for another person to act as or fulfil such function. However, a relevant person will need to consider whether such an arrangement (a transaction) is a one-off transaction as defined in Article 4 of the Money Laundering Order.

9. A relevant person that acts only as a formation agent will not be considered to have established a business relationship with its customer. However, a relevant person will need to consider whether forming a legal arrangement or legal person (a transaction) is a one-off transaction as defined in Article 4 of the Money Laundering Order.

10. For the avoidance of doubt, the requirement to apply identification measures will apply where the relationship that a relevant person has with its customer is conducted through another service provider, e.g. the relevant person provides a director to a company that is administered by another person carrying on trust company business.

13.2.2 INFORMATION FOR ASSESSING RISK – STAGE 1.4

Note: This section must be read in conjunction with, and is supplemental to, Section 3.3.2 of Part 1 of the AML/CFT Handbook.

OVERVIEW

Limited services

11. Section 3.3.2 of Part 1 of the AML/CFT Handbook explains how a relevant person carrying on trust company business may demonstrate that it has obtained appropriate information for assessing the risk that a business relationship or one-off transaction will involve money laundering or financing of terrorism.

12. Where a relevant person provides only:
• registered office services; or
• secretarial services,
or a combination of the two (hereinafter referred to as “limited services”), that relevant person is unlikely to have any oversight of, or control over, the activities of the legal arrangement or legal person in the way that it would if it also provided one or more directors (or equivalent) or provided full administration services. The absence of oversight or control increases the risk that a legal arrangement or legal person may be used to launder money or to finance terrorism.

13. The effect of this additional risk will be to require a relevant person to request substantially more information on its customer, and on the activities of the legal arrangement or legal person to which it is to provide only limited services, for the purpose of countering money laundering and financing of terrorism than is strictly necessary to provide only limited services.

14. The risk that a legal arrangement or legal person may be used to launder money or to finance terrorism is likely to be mitigated where a customer to whom only limited services are provided is a body corporate the securities of which are listed on an IOSCO compliant market or on a regulated market, or where a customer is a regulated person (or person who carries on equivalent business to any category of regulated business).

Co-trustees and other general partners

15. In some cases, an express trust or limited partnership may have more than one trustee or general partner respectively. In such cases, it will be necessary for a relevant person that is to act as trustee or general partner to obtain information on each co-trustee or other general partner (or limited partner that participates in the management of the limited partnership) in order to consider money laundering and financing of terrorism risk.
GUIDANCE NOTES

Limited services

16. In the case of a relevant person that provides only limited services to a legal arrangement or legal person, a relevant person may demonstrate that it has obtained appropriate information for assessing the risk that a business relationship or one-off transaction will involve money laundering or financing of terrorism where it collects (at the time that a limited service is first provided and then on an ongoing basis thereafter) information on activities by reference to:

- copies of minutes of directors’ and members’ meetings that must be kept by a company (including, in the case of a protected cell company, copies of minutes of directors’ and members’ meetings of the cell company and each of its cells) under Part 15 of the Companies Law (or equivalent for other legal persons or legal arrangements); and
- copies of accounts that must be prepared by the directors of a company (including, in the case of a protected cell company, copies of accounts that must be prepared by the directors of the cell company and each of its cells) under Part 16 of the Companies Law (or equivalent for other legal persons or legal arrangements); or
- where accounts are not required to be prepared, underlying financial records that are maintained by the directors of that company (or equivalent for other legal persons or legal arrangements).

Co-trustees and other general partners

17. In the case of a relevant person that is to act as a trustee of an express trust, a relevant person may demonstrate that it has obtained appropriate information for assessing the risk that a business relationship or one-off transaction will involve money laundering or financing of terrorism where it collects information on any co-trustees of the trust.

18. In the case of a relevant person that is to act as a general partner of a limited partnership, a relevant person may demonstrate that it has obtained appropriate information for assessing the risk that a business relationship or one-off transaction will involve money laundering or financing of terrorism where it collects information on any other general partners or limited partners that participate in the management of the limited partnership.

19. Information requested may include information about why it is necessary to have more than one trustee or general partner, and the stature and regulatory track-record of the trustee or general partner.

13.2.3 ASSESSMENT OF RISK – STAGE 2.1

Note: This section must be read in conjunction with, and is supplemental to, Section 3.3.4 of Part 1 of the AML/CFT Handbook.

OVERVIEW

20. Section 3.3.4 of Part 1 of the AML/CFT Handbook sets out a number of factors that are to be taken into account by a relevant person carrying on trust company business when assessing the risk that a business relationship or one-off transaction will involve money laundering or financing of terrorism.

GUIDANCE NOTES

21. A relevant person that carries on trust company business may demonstrate that it has assessed the risk that a business relationship or one-off transaction will involve money laundering or financing of terrorism where it also takes into account:

- Any failure on the part of a customer to be open about the source of funds. In the case of a trust, this could, amongst other things, indicate that a settlor is in fact a “dummy” settlor who is using another’s funds, and not his own.
- Any failure to be open about the purpose and intended nature of the business relationship or one-off transaction. In the case of a trust, this could, for example, indicate that a settlor is withholding information on persons really intended to benefit from a discretionary trust, e.g. a settlor nominates only charities as beneficiaries of a trust, where he does not intend that the charity will in fact benefit (known as a “blind” trust).
• Any request to include unusual or non-standard clauses in a trust instrument or other constitutive document that might indicate that the disclosed purpose of the structure is not genuine.

• Any request for unusually close supervision or control of assets, other than by the relevant person.

**13.3 IDENTIFICATION MEASURES: FINDING OUT IDENTITY AND OBTAINING EVIDENCE**

**OVERVIEW**

22. The meaning of identification measures is set out in Article 3 of the Money Laundering Order. Inter alia, identification measures are measures for identifying the customer, so the first step will be to determine who the customer is.

23. In the case of a relevant person that carries on trust company business and is to act as the trustee of an express trust, customers will be include the settlor, protector (if any), beneficiaries with a vested right, and any other beneficiaries and persons who are the object of a power and that have been identified as presenting a higher risk (see Section 13.3.1).

24. In the case of a relevant person that carries on trust company business and is to act as the general partner of a limited partnership, customers will be include the limited partners of the partnership (see Section 13.3.4).

25. In the case of a relevant person that carries on trust company business and is to provide a service, e.g. registered office, in respect of a limited partnership, the customer will be the general partner acting for the limited partnership – a third party (see Section 4.4.3 of Part 1 of the AML/CFT Handbook).

26. In the case of a relevant person that carries on trust company business and is to provide a service to a company, the customer will be the company (see Section 4.5.1 of Part 1 of the AML/CFT Handbook).

27. In the case of a relevant person that carries on trust company business and is to provide a service to a foundation, the customer will be the foundation (see Section 4.5.3 of Part 1 of the AML/CFT Handbook).

28. In the case of a relevant person that carries on trust company business and is to provide a service to a separate limited partnership, incorporated limited partnership or limited liability partnership, the customer will be the partnership (see Section 4.5.5 of Part 1 of the AML/CFT Handbook).

29. In the case of a relevant person that carries on trust company business and is to form a company, partnership or foundation, the customer will be the persons who are to be the beneficial owners and controllers of the legal person (see Section 4.3.1 and 4.5 of Part 1 of the AML/CFT Handbook).

**13.3.1 FINDING OUT IDENTITY – LEGAL ARRANGEMENT THAT IS A TRUST**

**GUIDANCE NOTES**

30. A relevant person that is to act as trustee of an express trust may demonstrate that it has applied identification measures under Article 3(2)(a) of the Money Laundering Order to its customer, where it applies those measures to:

- the settlor (except if deceased) and including any persons subsequently settling funds into the trust (except if deceased) and any person who directly or indirectly provides trust property or makes a testamentary disposition on trust or to the trust;
- any co-trustee;
- any protector;
- beneficiaries any beneficiary with a vested right; and
- any other beneficiaries and persons beneficiary or person who are the object of a power and that have been identified as presenting a higher risk; and
- any other person exercising ultimate effective control over the trust.
31. In any case where a settlor, protector, beneficiary or object of a power or other person referred to in paragraph 30 (the “person”) is not an individual, a relevant person may demonstrate that it has identified each individual who is the person’s beneficial owner or controller under Article 3(2)(c)(iii) of the Money Laundering Order, where it has identified each individual with a material interest in the capital of that person.

- Each individual with a material controlling ownership interest in the capital of the person (through direct or indirect holdings of interests or voting rights) or who exerts control through other ownership means.
- To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising control of the person through other means.
- Where no individual is otherwise identified under this section, individuals who exercise control of the person through positions held (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions).

32. For lower risk relationships, a general threshold of 25% is considered to indicate a material controlling ownership interest in capital. However, where the distribution of interests is uneven the percentage where effective control may be exercised (a material interest) may be less than 25% when the distribution of other interests is taken into account i.e. interests of less than 25% may be material interests.

13.3.2 FINDING OUT IDENTITY – LEGAL ARRANGEMENT THAT IS A CHARITABLE TRUST (CAPITAL MARKETS)

GUIDANCE NOTES

33. A relevant person that is to act as the trustee of a charitable trust which is established to hold an investment in a security-issuing vehicle, or to hold security (as bare trustee for security-holders) over assets held within such a vehicle, may demonstrate that it has applied identification measures under Article 3(2)(a) of the Money Laundering Order to its customer, where it applies those measures to:

- the originator or instigator of the capital market transaction; and
- each security holder that is able to exercise effective control over the underlying security-issuing vehicle.

13.3.3 OBTAINING EVIDENCE OF IDENTITY - LEGAL ARRANGEMENT THAT IS A TRUST

OVERVIEW

34. The measures that must be applied to obtain evidence of identity of beneficiaries and persons who are the object of a power and that have been identified as presenting higher risk will necessarily reflect the verification methods that are available at a particular time to the trustee. For example, it may not be appropriate to request evidence directly from the beneficiary or object of a power.

35. Where a relevant person is not familiar with a document obtained to verify identity, appropriate measures may be necessary to satisfy itself that the evidence is genuine.

AML/CFT CODE OF PRACTICE

36. All key documents (or parts thereof) obtained as evidence of identity must be understandable (i.e. in a language understood by the employees of the business), and must be translated into English at the request of the JFCU or of the Commission.

13.3.4 FINDING OUT IDENTITY – LEGAL ARRANGEMENT THAT IS A LIMITED PARTNERSHIP

GUIDANCE NOTES

37. A relevant person that is to act as the general partner of a limited partnership may demonstrate that it has applied identification measures under Article 3(2)(a) of the Money Laundering Order to its customer where it applies those measures to limited partners holding a material interest in the capital of the partnership (through holdings of interests or voting rights) or any other person exercising control through other ownership means.
ownership means, e.g. partnership agreements, power to appoint senior management, or any outstanding debt that is convertible into voting rights.

38. To the extent that there is doubt as to whether the persons exercising control through ownership are beneficial owners, or where no person exerts control through ownership, a relevant person that is to act as the general partner of a limited partnership may demonstrate that it has applied identification measures under Article 3(2)(a) of the Money Laundering Order to its customer where it applies those measures to any other person exercising control over the partnership through other means, e.g. those who exert control through personal connections, by participating in financing, because of close and intimate family relationships, historical or contractual associations or as a result of default on certain payments.

39. Where no person is identified under this section, a relevant person that is to act as the general partner of a limited partnership may demonstrate that it has applied identification measures under Article 3(2)(a) of the Money Laundering Order to its customer where it applies those measures to persons who exercise control through positions held (who have or exercise strategic decision-taking powers or have or exercise executive control through senior management positions, e.g. general partner or limited partner that participates in management).

40. In any case where a partner or other person is not an individual, a relevant person may demonstrate that it has identified each individual who is the partner’s beneficial owner or controller under Article 3(2)(c)(iii) of the Money Laundering Order where it has identified each individual with a material interest in the capital of the partnership:

- Each individual with a material controlling ownership interest in the capital of the partnership (through direct or indirect holdings of interests or voting rights) or who exerts control over other ownership means.
- To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising control over the partnership through other means.
- Where no individual is otherwise identified under this section, individuals who exercise control of the partnership through positions held (who have and exercise strategic decision-taking powers or have or exercise executive control through senior management positions).

41. For lower risk relationships, a general threshold of 25% is considered to indicate a material controlling ownership interest in the capital of a limited partnership. Whilst this principle may also apply to other relationships, where the distribution of interests is uneven, the percentage where effective control may be exercised (a material interest) may be less than 25% when the distribution of other interests is taken into account i.e. interests of less than 25% may be material interests.

13.3.5 OBTAINING EVIDENCE OF IDENTITY - LEGAL ARRANGEMENT THAT IS A LIMITED PARTNERSHIP

OVERVIEW

42. Where a relevant person is not familiar with a document obtained to verify identity, appropriate measures may be necessary to satisfy itself that the evidence is genuine.

AML/CFT CODE OF PRACTICE

43. All key documents (or parts thereof) obtained as evidence of identity must be understandable (i.e. in a language understood by the employees of the business), and must be translated into English at the request of the JFCU or of the Commission.

13.3.6 FINDING OUT IDENTITY - LEGAL PERSON THAT IS A PROTECTED CELL COMPANY

Note: This section must be read in conjunction with, and is supplemental to, Sections 4.5.1 and 4.5.2 of Part 1 of the AML/CFT Handbook.

OVERVIEW

44. Under Article 127YDA(1) of the Companies (Jersey) Law 1991, in the case of both PCCs and ICCs, a cell shall have the same registered office and secretary as the cell company, and the registered office must be in Jersey.
Where a relevant person carrying on trust company business provides a registered office or secretary to a PCC; it will also do so for each cell of that PCC. Because the cell of a PCC does not have the ability to enter into arrangements or contract in its own name, for the purposes of Article 3 of the Money Laundering Order, the PCC will be taken to be a customer acting for a third party and each cell will be taken to be a third party that is a person other than an individual. It follows that identification measures must be applied under Article 13 of the Money Laundering Order to the PCC (the customer) and each cell of the PCC (a third party).

13.3.7 FINDING OUT IDENTITY - LEGAL PERSON THAT IS A PRIVATE TRUST COMPANY

OVERVIEW

Schedule 2 of the Proceeds of Crime Law provides that a private trust company (a “PTC”) - a company the purpose of which is to provide trust company business services in respect of a specific trust or trusts or foundation or foundations, that does not solicit from or provide trust company business services to the public, and the administration of which is carried out by a person that is registered to carry on trust company business - is not subject to the Money Laundering Order.

The basis for this concession is that CDD measures will be applied by the person that is registered to carry on trust company business (a relevant person) to the specific trust or trusts that are serviced by the PTC - in line with Article 13 of the Money Laundering Order. This assumes that since the PTC is administered by the relevant person will provide the PTC with a correspondence or administrative address.

A relevant person will consider the PTC to be its customer and each of the trusts to be third parties (which are not a person).

AML/CFT CODE OF PRACTICE

A relevant person that administers a PTC must apply CDD measures, record-keeping and reporting requirements to that PTC in line with the Money Laundering Order.

13.4 TIMING OF IDENTIFICATION MEASURES

Note: This section must be read in conjunction with, and is supplemental to, Section 4.7 of Part 1 of the AML/CFT Handbook.

OVERVIEW

In line with Article 13(8) of the Money Laundering Order, a relevant person that is to act as trustee may delay obtaining evidence of the identity of a customer after the time that a business relationship is established so long as:

- it does so at the time of, or before, distribution of trust property or income; and
- it is satisfied that there is little risk of money laundering or financing of terrorism occurring as a result of obtaining evidence after entitlement is conferred.

Similar provisions should apply in a case where the customer of a relevant person that is a trustee changes during a business relationship.

GUIDANCE NOTES

During a business relationship, a relevant person that is the trustee of an express trust may demonstrate that it has obtained evidence that is reasonably capable of verifying the identity of each beneficiary with a vested right where:

- it does so at the time of, or before, distribution of trust property or income; and
- it is satisfied that there is little risk of money laundering or financing of terrorism occurring as a result of obtaining evidence after entitlement is conferred.

During a business relationship, a relevant person that is the trustee of an express trust may demonstrate that it has obtained evidence that is reasonably capable of verifying the identity of a beneficiary or person who is the object of a trust power where it does so at the time that the person is identified as presenting a higher risk.
13.5 FAILURE TO COMPLETE IDENTIFICATION MEASURES

**Note:** This section must be read in conjunction with, and is supplemental to, Section 4.8 of Part 1 of the AML/CFT Handbook.

**OVERVIEW**

52. Under Article 14 of the Money Laundering Order, if a relevant person is unable to apply identification measures when required to do so then it must terminate that relationship and consider whether to make a SAR to the JFCU.

53. Such a requirement can be problematic in the case of a relevant person that is a trustee where its customer is the beneficiary or object of a power of a trust and where:
   - the relationship between a relevant person and its customer is governed by other legislation - e.g. the Trusts (Jersey) Law 1984; and
   - the termination of a relationship with a customer (a beneficiary or object of a power) may have a prejudicial effect on the interests of other customers.

54. Such a requirement can also be problematic in the case of a relevant person that is a council member where its customer is a foundation and the foundation is governed by the Foundations Law. In particular, under Article 12(3) of the Foundations Law, the retirement or removal of the qualified member of a foundation does not take effect until immediately before the appointment of a new qualified person to be the qualified member of the council has taken effect.

55. In order to address such tension, termination of a business relationship may be delayed until such time as compliance with Article 14 of the Money Laundering Order does not conflict with another legal requirement, and/or does not have any prejudicial effect on the interests of other customers, so long as the risk of money laundering or financing of terrorism is effectively managed.