



**JERSEY FINANCIAL  
SERVICES COMMISSION**

**HANDBOOK FOR THE  
PREVENTION AND DETECTION OF MONEY  
LAUNDERING  
AND THE FINANCING OF TERRORISM  
FOR REGULATED FINANCIAL SERVICES BUSINESSES**

**Part 1**

Statutory and Regulatory  
Requirements and Guidance Notes

Trust Company Business Section

(This section must be read in conjunction with the main body of the Handbook)

Issued: 23 December 2009

# 1 TRUST COMPANY BUSINESS

1. This section must be read in conjunction with the main body of the Handbook.

## 1.1 OVERVIEW

2. [Section 4 of Part 1 of the Handbook](#) sets out the requirements that are applicable where a trustee of an express trust, legal body, or foundation is the applicant for business or customer of a relevant person.
3. This sector specific section deals with the requirements that are to apply where a relevant person carries on a business under Article 2(3) of the [Financial Services \(Jersey\) Law 1998](#) (the “**FS(J)L**”) that involves the provision of company administration services, the provision of trustee or fiduciary services or the provision of services to foundations and, in the course of providing those services, the person provides any of the services specified in Article 2(4) of the [FS\(J\)L](#) (except any activity that is explicitly excluded from the scope of Part A of Schedule 2 of the [Proceeds of Crime \(Jersey\) Law 1999](#) (the “**Proceeds of Crime Law**”) see paragraph 7). 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, 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 partner of a partnership;
  - 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 company formation agent, a partnership 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 company, a partnership, a foundation, or for any other person; and
  - providing an accommodation, correspondence or administrative address for any person.
4. This sector specific section also deals with the requirements that are to apply 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](#). This paragraph extends the provisions that are summarised at paragraph 3 above to legal persons and arrangements that are not otherwise covered by the [FS\(J\)L](#). For the purpose of this section, such business is covered by the term “trust company business”.
5. This sector specific section does **not** deal with the case where a relevant person is acting as a shareholder or unitholder as nominee for another person. This is addressed through [Sections 3 and 4 of Part 1 of the Handbook](#).

6. This sector specific 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 [Collective Investment Funds \(Jersey\) Law 1988](#)) 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.
7. For the avoidance of doubt, this sector specific section does **not** apply to any activity that is excluded from the scope of Part A of Schedule 2 of the [Proceeds of Crime Law](#). Relevant exclusions are listed in [Appendix E of Part 1 of the Handbook](#). In particular, this section does **not** apply to a director who acts in the course of employment by: (i) a trading company (that is not administered by a trust company); or (ii) a company that is prudentially supervised by the Commission under the Regulatory Laws.
8. The provisions that are set out in this sector specific section do not apply where a relevant person acquires a portfolio of existing business relationships. In such a case, [Section 3.5 of Part 1](#) of the Handbook will be applicable.
9. Finally, Section 6 of this sector specific section summarises one case where a person that would otherwise be subject to the requirements of the [Money Laundering \(Jersey\) Order 2008](#) (the “**Money Laundering Order**”) and regulatory requirements set out in [Part 1](#) of the Handbook is exempt from those requirements.

## 2 CUSTOMER DUE DILIGENCE REQUIREMENTS

### 2.1 CUSTOMER RISK ASSESSMENT

#### OVERVIEW

10. [Section 3 of Part 1](#) of the Handbook sets out a number of factors that are to be taken into account when assessing and evaluating the risk that a particular business relationship or one-off transaction presents. These factors will be relevant to a relevant person that carries on trust company business.

#### GUIDANCE NOTES

11. A relevant person that carries on trust company business may demonstrate that it has properly assessed customer risk where it also takes into account:
  - Any failure 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 of a legal person or legal arrangement. 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 “blind” trusts).
  - 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.

## 2.2 PROVIDING A REGISTERED OFFICE ADDRESS

### OVERVIEW

12. The nature of the service of providing **only** a registered office address is such that a relevant person is unlikely to have any oversight of, or control over, the legal body's activities (in the way that it would if it also provided one or more directors (or equivalent) to the legal body and/or provided full administration services). The absence of oversight or control increases the risk that a legal body 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 body to which it is to provide a registered office service, for the purpose of countering money laundering and terrorist financing than is strictly necessary to provide a registered office address.
14. The risk that a legal body may be used to launder money or to finance terrorism is likely to be mitigated where a customer to whom a registered office only service is provided is a body corporate the securities of which are listed 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).

### GUIDANCE NOTES

15. In the case of a relevant person that provides **only** a registered office address to a legal body, a relevant person may demonstrate that it has properly assessed product risk where it takes into account the "passive" nature of the service that it provides.
16. In the case of a relevant person that provides **only** a registered office address to a legal body, a relevant person may demonstrate that it has collected relevant relationship information where it collects the information that is set out in [Section 3.3.1 of Part 1](#) of the Handbook for a legal body (at the time that an address is first provided and then on an ongoing basis thereafter) and then corroborates this information by reference to:
  - Copies of minutes of directors' and members' meetings that must be kept by the company under Part 15 of the [Companies \(Jersey\) Law 1991](#) (the "**Companies Law**") (or equivalent for other legal bodies).
  - Copies of accounts that must be prepared by the directors of the company under Part 16 of the [Companies Law](#) (or equivalent for other legal bodies).

## 3 IDENTIFICATION AND VERIFICATION OF IDENTITY: EXPRESS TRUSTS

### OVERVIEW

17. Inter alia, Article 13 of the [Money Laundering Order](#) 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.

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18. A relevant person (“A”) that acts as or fulfils the function of trustee of an express trust, or arranges for another person (“B”) to act as or fulfil the function of trustee (where B is an officer or employee of A) will be considered to have established a business relationship under the Money Laundering Order.
  19. Where B is not an officer or employee of A, then A will be considered to have carried out a one-off transaction each time that it arranges for another person to act as or fulfil the function of trustee.
  20. Under Article 13(1)(a) of the [Money Laundering Order](#), identification measures must be applied by a trustee to the trustee’s “customer” - the persons who are concerned with the trust at the time that a trust is settled or at the time of the subsequent appointment of that trustee. However, in line with Article 13(4) of the [Money Laundering Order](#), it will be possible to delay verification of the identity of beneficiaries with a vested right until the time that trust property or income is distributed.
  21. Where there is any subsequent change in the persons who are concerned with the trust then - under Article 13(1)(c) of the [Money Laundering Order](#) - there is an obligation to apply identification measures to the persons who have subsequently become concerned, as the information that is held by the trustee for that relationship will no longer be considered to be adequate.
  22. 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 its relationship and consider whether to make a suspicious activity report to the Joint Financial Crimes Unit (the “JFCU”). This provision works well where there is a direct contractual relationship between a relevant person and its customer. It does not work quite so well when the customer of a relevant person is the beneficiary or object of a power of a trust - where (cumulatively):
    - the relationship between a relevant person and its customer is governed by other legislation - e.g. the [Trusts \(Jersey\) Law 1984](#); and
    - there may be no or very little connection between the customers of a relevant person and each customer may respond independently and differently to the performance of identification measures, in a way that might prejudice the interests of other customers.
  23. In order to address this tension, termination of a 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 does not have any prejudicial effect on the interests of other customers. Accordingly, in the case of a customer that deliberately withholds identification information and / or evidence of identity, a relevant person may delay termination of a relationship where it resolves to postpone making a distribution to that customer until the deficiency has been, or can be, addressed.
  24. The provisions that follow apply equally to trusts that are designated as regulated non-profit organizations under the [Non-Profit Organizations \(Jersey\) Law 2008](#) (the “NPO Law”).
  25. As part of its ongoing risk assessment of a customer, a relevant person will need to take account of the relationship information that is set out in [Section 3.3.1 of Part 1](#) of the Handbook for an express trust.

### 3.1 ESTABLISHING IDENTITY

#### REGULATORY REQUIREMENTS

26. A relevant person that is to become a trustee must collect relevant identification information on the persons who are concerned with the trust before the time that the trust is settled and then subsequent to settlement (when there is a change in the persons who are concerned with the trust or where there is a change to information previously provided).
27. A relevant person that is to become a trustee upon retirement of another trustee must collect relevant identification information on the persons who are concerned with the trust before the time of appointment and then subsequent to appointment (when there is a change in the persons who are concerned with the trust or where there is a change to information previously provided).

#### GUIDANCE NOTES

28. A relevant person may demonstrate the collection of relevant identification information where it requests and receives information (described below) from the following persons who are concerned with a trust.

All trusts
<ul style="list-style-type: none"> <li>• Identification information on settlor(s)<sup>1</sup> - in line with guidance for individuals and legal bodies (<a href="#">Sections 4.3</a> and <a href="#">4.5 of Part 1</a> of the Handbook).</li> <li>• Identification information on protector(s) - in line with guidance for individuals and legal bodies (<a href="#">Sections 4.3</a> and <a href="#">4.5 of Part 1</a> of the Handbook).</li> <li>• Identification information on beneficiaries <u>with a vested right</u> - in line with guidance for individuals and legal bodies (<a href="#">Sections 4.3</a> and <a href="#">4.5 of Part 1</a> of the Handbook).</li> <li>• Identification information on any other beneficiaries and persons who are the object of a power and that have been identified as <u>presenting higher risk</u> - in line with guidance for individuals and legal bodies (<a href="#">Sections 4.3</a> and <a href="#">4.5 of Part 1</a> of the Handbook).</li> <li>• Identification information on any co-trustees - in line with guidance for individuals and legal bodies (<a href="#">Sections 4.3</a> and <a href="#">4.5 of Part 1</a> of the Handbook) - subject to any exemption that may be available under Article 18 of the <a href="#">Money Laundering Order</a>. In the case of a co-trustee, it will be relevant to collect information on the regulatory status of the co-trustee<sup>2</sup>.</li> </ul> <p>Refer to <a href="#">Section 3.4 of Part 1</a> of the Handbook for enhanced due diligence requirements for higher risk relationships.</p>

### 3.2 CAPITAL MARKET TRANSACTIONS

#### GUIDANCE NOTES

29. Where a relevant person acts as a trustee to a charitable trust which is established to hold an investment in a debt-issuing vehicle, or to hold security (as bare trustee for debt-holders) over assets held within such a vehicle, then the “originator” of the transaction is likely to be a person who is concerned with the trust.

<sup>1</sup> The settlors of a trust include the initial settlors and any persons subsequently settling funds into a trust.

<sup>2</sup> Subject to certain threshold tests that are set out in the Financial Services Law, the provision of a trustee service in or from within Jersey is a regulated activity.

30. Except to the extent that any debt-holder is able to exercise effective control over the underlying debt-issuing vehicle, debt-holders will not be considered to be persons who are concerned with the trust (nor will they be considered to be beneficial owners and controllers of the underlying debt-issuing vehicle).

### 3.3 VERIFYING IDENTITY

#### REGULATORY REQUIREMENTS

31. Except as provided for in paragraph 32, a relevant person that is to become a trustee must verify the identity of the persons who are concerned with the trust (in line with guidance for individuals and legal bodies in [Sections 4.3](#) and [4.5 of Part 1](#) of the Handbook) at the times that are described in paragraphs 26 and 27.
32. Verification of the identity of a beneficiary with a vested right may take place at a time after a particular right vests if the following conditions are met:
- all other necessary customer due diligence information (including identification information) has been obtained;
  - verification is carried out at the time of, or before, distribution of trust property or income (a time that is considered to be reasonably practicable); and
  - money laundering risk is effectively managed.
33. Verification of the identity of beneficiaries and persons who are the object of a power and that have been identified as presenting higher risk must take place at the time that the risk is identified.
34. All key documents (or parts thereof) used to verify identity must be understandable (i.e. in a language understood by the employees of the relevant person), and must be translated into English at the request of the JFCU or the Commission.

#### GUIDANCE NOTES

35. The measures that must be applied to verify the 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.
36. The measures that must be applied by a relevant person that is appointed trustee subsequent to the settlement of a trust need not extend to the settlor of a trust who is deceased.
37. Where a relevant person verifies the identity of persons who are concerned with a trust on a non-face to face basis, reference should be made to the requirements and guidance set out in [Section 4.8 of Part 1](#) of the Handbook for non-face to face identification and verification.
38. Where a relevant person is not familiar with the form of the evidence obtained to verify identity, appropriate measures may be necessary to satisfy itself that the evidence is genuine.

### 3.4 EMPLOYEE BENEFIT SCHEMES

#### OVERVIEW

39. Article 18(3) of the [Money Laundering Order](#) provides that identification measures are not required in the case where a relevant person that is a trustee enters into a business relationship with the settlor of a pension, superannuation or similar scheme (a sponsoring employer) - in the circumstances that are set out in that Article. In particular, the effect of this is that the trustee is not required to verify the identity of employees of the settlor (the sponsoring employer).

#### GUIDANCE NOTES

40. Whilst no similar provision is made for schemes that are used to otherwise remunerate employees, in certain cases, the measures that must be applied by a trustee of an employee benefit scheme under Article 3(4)(b) of the [Money Laundering Order](#) to verify the identity of the members of such a scheme (beneficiaries) may be limited to confirming that members (who will have been identified) are bona fide employees of the sponsoring employer.
41. This will be appropriate where the money laundering and terrorist financing risk that is presented by a trust can be considered to be lower. This may be the case where (cumulatively):
- a trust is settled by a sponsoring employer that has been assessed by a relevant person as having a good reputation and adequate controls in place over membership of the scheme;
  - the trust is funded only by the sponsoring employer or by deductions from employee remuneration; and
  - only members or members' immediate family may benefit from the scheme.

## 4 IDENTIFICATION AND VERIFICATION OF IDENTITY: LEGAL BODIES (EXCEPT FOUNDATIONS)

#### OVERVIEW

42. Inter alia, Article 13 of the [Money Laundering Order](#) 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.
43. A relevant person that acts as or fulfils the function of a director (or alternate director) or secretary of a company, or partner of a partnership, will be considered to have established a business relationship under the Money Laundering Order.
44. A relevant person (“A”) that arranges for another person (“B”) to act as or fulfil the function of a director (or alternate director) or secretary of a company, or partner of a partnership (where B is an officer or employee of A) will be considered to have established a business relationship under the Money Laundering Order.

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45. Where B is not an officer or employee of A, then A will be considered to have carried out a one-off transaction each time that it arranges for another person to act as or fulfil the particular function.
  46. A relevant person that provides a registered office, business, accommodation, correspondence or administrative address to a legal body will be considered to have established a business relationship under the Money Laundering Order.
  47. A relevant person that acts as a company formation agent or partnership formation agent will be considered to carry out a one-off transaction each time that it forms a company or partnership, irrespective of the capital paid up or fee that is charged.
  48. Under Article 13(1)(a) of the [Money Laundering Order](#), identification measures must be applied to the relevant person's customer - the persons who are to be the beneficial owners and controllers of the legal body that is to be incorporated or constituted (or the persons who are the beneficial owners and controllers of a body that has already been incorporated or constituted). For the avoidance of doubt, this will be the case even where the relationship that a relevant person has with its customer is conducted through another service provider, e.g. a relevant person providing a service that is outlined in paragraph 46 to a customer that is administered by another service provider.
  49. In the course of a business relationship, where there is any subsequent change in the persons who are the beneficial owners and controllers of the legal body there is an obligation - under Article 13(1)(c) of the [Money Laundering Order](#) - to apply identification measures to the persons who have subsequently become beneficial owners and controllers, as the information that is held by the relevant person for that relationship will no longer be considered to be adequate.
  50. 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 its relationship.
  51. Article 2 of the [Money Laundering Order](#), which describes those persons to be considered to be beneficial owners and controllers, excludes persons who are the beneficial owners of bodies corporate the securities of which are listed on a regulated market.
  52. For the purpose of this section, a legal body is to include a general partnership, a limited partnership (and derivations), and a limited liability partnership.
  53. The provisions that follow also apply equally to legal bodies that are designated as regulated non-profit organizations under the [NPO Law](#).
  54. As part of its ongoing risk assessment of a customer, a relevant person will need to take account of the relationship information that is set out in [Section 3.3.1 of Part 1](#) of the Handbook for a legal body. In addition, the following information may also be relevant to an assessment of customer risk: name of body and any trading names; date and country of incorporation or constitution of body; official identification number of body; and registered office address and mailing address (if different) of body.

#### **4.1 ESTABLISHING IDENTITY**

##### **REGULATORY REQUIREMENTS**

55. Save where a statutory exemption is available, a relevant person that is to incorporate or constitute a legal body must collect relevant identification information on the persons who are to be the beneficial owners and controllers of the legal body before the time that it is incorporated or constituted.

56. Save where a statutory exemption is available, a relevant person that is to act as or fulfil the function of a director of a company, secretary of a company, partner of a partnership, or equivalent function for other legal bodies must collect relevant identification information on the persons who are the beneficial owners and controllers of the legal body before the time that the service is first provided and then subsequent to provision of that service (when there is a change in the persons who are the beneficial owners and controllers of the legal body or where there is a change to information previously provided).
57. Save where a statutory exemption is available, a relevant person that is to provide an address to a legal body must collect relevant identification information on the persons who are the beneficial owners and controllers of the legal body before the time that the address is first provided and then subsequent to provision of that address (when there is a change in the persons who are the beneficial owners and controllers of the legal body or where there is a change to information previously provided).

#### GUIDANCE NOTES

58. A relevant person may demonstrate collection of relevant identification information where it requests and receives information (described below) from the following persons who are the beneficial owners and controllers.

All legal bodies
<ul style="list-style-type: none"> <li>• Identification information on persons with ultimate effective control over the legal body's assets, including the persons comprising the mind and management of the legal body, e.g. directors - in line with guidance for individuals and legal bodies (<a href="#">Sections 4.3 and 4.5 of Part 1</a> of the Handbook).</li> <li>• Identification information on persons ultimately holding an interest in the capital of the legal body - in line with guidance for individuals and legal bodies (<a href="#">Sections 4.3 and 4.5 of Part 1</a> of the Handbook).</li> </ul> <p>Refer to <a href="#">Section 3.4</a> of Part 1 of the Handbook for enhanced due diligence requirements for higher risk relationships.</p>

## 4.2 VERIFYING IDENTITY

### REGULATORY REQUIREMENTS

59. A relevant person that is described at paragraphs 55 to 57 above must verify the identity of the persons who are the beneficial owners and controllers of the legal body (in line with guidance for individuals and legal bodies in [Sections 4.3 and 4.5 of Part 1](#) of the Handbook) at the times that are described in those paragraphs.
60. All key documents (or parts thereof) used to verify identity must be understandable (i.e. in a language understood by the employees of the relevant person), and must be translated into English at the request of the JFCU or the Commission.

#### GUIDANCE NOTES

61. Where a relevant person verifies the identity of persons who are the beneficial owners and controllers of the legal person on a remote basis, reference should be made to the requirements and guidance set out in [Section 4.8 of Part 1](#) of the Handbook for non-face to face identification and verification.
62. Where a relevant person is not familiar with the form of the evidence obtained to verify identity, appropriate measures may be necessary to satisfy itself that the evidence is genuine.

## 5 IDENTIFICATION AND VERIFICATION OF IDENTITY: FOUNDATIONS

### OVERVIEW

63. Inter alia, Article 13 of the [Money Laundering Order](#) 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.
64. A person that acts as or fulfils the function of a council member of a foundation will be considered to have established a business relationship under the Money Laundering Order.
65. A relevant person (“A”) that arranges for another person (“B”) to act as or fulfil the function of a council member of a foundation (where B is an officer or employee of A) will be considered to have established a business relationship under the Money Laundering Order.
66. Where B is not an officer or employee of A, then A will be considered to have carried out a one-off transaction each time that it arranges for another person to act as or fulfil the particular function.
67. A relevant person that provides a business, accommodation, correspondence or administrative address to a foundation will be considered to have established a business relationship under the Money Laundering Order.
68. A person that acts as a foundation formation agent will be considered to carry out a one-off transaction each time that it forms a foundation irrespective of the value of the property that is settled into the foundation or fee that is charged.
69. Under Article 13(1)(a) of the [Money Laundering Order](#), identification measures must be applied to the relevant person’s customer - the persons that are to be concerned with a foundation that is to be incorporated (or the persons who are concerned with a foundation that has already been incorporated). However, in line with Article 13(4) of the [Money Laundering Order](#) it will be possible to delay verification of the identity of beneficiaries entitled to benefit under the foundation until the time that property or income is distributed.
70. In the course of a business relationship, where there is any subsequent change in the persons who are concerned with a foundation there is an obligation - under Article 13(1)(c) of the [Money Laundering Order](#) - to apply identification measures to the persons who have subsequently become concerned, as the information that is held by the relevant person for that relationship will no longer be considered to be adequate.
71. 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 its relationship and consider whether to make a suspicious activity report to the JFCU. This provision works well where there is a direct contractual relationship between a relevant person and its customer. It does not work quite so well when the customer of a relevant person is a beneficiary or person in whose favour the council of a foundation may exercise discretion - where (cumulatively):
- the relationship between a relevant person and its customer is governed by other legislation - e.g. the [Foundations \(Jersey\) Law 2009](#) (the “**Foundations Law**”); and

- there may be no or very little connection between the customers of a relevant person and each customer may respond independently and differently to the performance of identification measures, in a way that might prejudice the interests of other customers.
72. In order to address this tension, termination of a 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 does not have any prejudicial effect on the interests of other customers. Accordingly, in the case of a customer that deliberately withholds identification information and / or evidence of identity, a relevant person may avoid termination of a relationship where it resolves to postpone making a distribution to that customer until the deficiency has been, or can be, addressed.
73. The terms that are used in this section to describe the persons concerned with a foundation are based on those used in the Foundations Law. Where persons are concerned with a foundation that is incorporated or established under the law of a jurisdiction other than Jersey, then the terms that are used below are to be understood as applying to equivalent or similar persons described in foreign legislation.
74. The provisions that follow also apply equally to foundations that are designated as regulated non-profit organizations under the NPO Law.
75. As part of its ongoing risk assessment of a customer, a relevant person will need to take account of the relationship information that is set out in [Section 3.3.1 of Part 1](#) of the Handbook for a legal body. In addition, the following information may also be relevant to an assessment of customer risk: name of foundation; date and country of incorporation of foundation; official identification number of foundation; business address, mailing address (if different to business address) and principal place of business / operation (if different to business address). In the case of a foreign entity that has been continued in Jersey as a foundation, then the certificate that is provided to the Commission at the time of that entity's application to continue in Jersey will also be relevant to the assessment of customer risk.

## 5.1 ESTABLISHING IDENTITY

### REGULATORY REQUIREMENTS

76. A relevant person that is to incorporate a foundation must collect relevant identification information on the persons who are to be concerned with the foundation before the time that it is incorporated.
77. A relevant person that is to act as or fulfil the function of a council member of a foundation must collect relevant identification information on the persons who are concerned with the foundation before the time that the service is first provided and then subsequent to the provision of that service (when there is a change in the persons who are concerned with the foundation or where there is a change to the information previously provided).
78. A relevant person that is to provide an address to a foundation must collect relevant identification information on the persons who are concerned with the foundation before the time that the address is first provided and then subsequent to the provision of that address (when there is a change in the persons who are concerned with the foundation or where there is a change to the information previously provided).

### GUIDANCE NOTES

79. A relevant person may demonstrate collection of relevant identification information where it requests and receives information (described below) from the following persons who are concerned with the foundation.

## All foundations

- Identification information on the founder(s), a person (other than the founder of the foundation) who has endowed the foundation, 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 - in line with guidance for individuals and legal bodies ([Sections 4.3](#) and [4.5 of Part 1](#) of the Handbook).
- Identification information on any beneficiaries entitled to benefit under the foundation in accordance with the charter or the regulations of the foundation - in line with guidance for individuals and legal bodies ([Sections 4.3](#) and [4.5 of Part 1](#) of the Handbook).
- Identification information on any other beneficiaries and persons 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 - in line with guidance for individuals and legal bodies ([Sections 4.3](#) and [4.5 of Part 1](#) of the Handbook).
- Identification information on all council members (other than the relevant person) and, if any decision requires the approval of any other person, that person - in line with guidance for individuals and legal bodies ([Sections 4.3](#) and [4.5 of Part 1](#) of the Handbook).
- Identification information on the guardian - in line with guidance for individuals and legal bodies ([Sections 4.3](#) and [4.5 of Part 1](#) of the Handbook).

Refer to [Section 3.4 of Part 1](#) of the Handbook for enhanced due diligence requirements for higher risk relationships.

**5.2 VERIFYING IDENTITY****REGULATORY REQUIREMENTS**

80. Except as provided for in paragraph 81, a relevant person that is described at paragraphs 76 to 78 above must verify the identity of the persons who are concerned with the foundation (in line with guidance for individuals and legal bodies in [Sections 4.3](#) and [4.5 of Part 1](#) of the Handbook) at the times that are described in those paragraphs.
81. Verification of the identity of a beneficiary entitled to benefit under the foundation may take place at a time after a particular right vests if the following conditions are met:
- all other necessary customer due diligence information (including identification information) has been obtained;
  - verification is carried out at the time of, or before, distribution of property or income (a time that is considered to be reasonably practicable); and
  - money laundering risk is effectively managed.
82. Verification of the identity of other beneficiaries and persons in whose favour the council may exercise discretion and that have been identified as presenting higher risk must take place at the time that the risk is identified.
83. All key documents (or parts thereof) used to verify identity must be understandable (i.e. in a language understood by the employees of the relevant person), and must be translated into English at the request of the JFCU or the Commission.

## GUIDANCE NOTES

84. The measures that must be applied to verify the identity of beneficiaries and persons in whose favour the council 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.
85. The measures that must be applied by a relevant person that provides a service to a foundation subsequent to its incorporation need not extend to the founder of a foundation who is deceased.
86. Where a relevant person verifies the identity of persons who are concerned with a foundation on a remote basis, reference should be made to the requirements and guidance set out in [Section 4.8 of Part 1](#) of the Handbook for non-face to face identification and verification.
87. Where a relevant person is not familiar with the form of the evidence obtained to verify identity, appropriate measures may be necessary to satisfy itself that the evidence is genuine.

## 6 EXEMPTION FROM REQUIREMENTS

### 6.1.1 Private trust company business

#### OVERVIEW

88. Schedule 2 of the [Proceeds of Crime Law](#) provides that a private trust company business (a “PTC”) - a company the purpose of which is to provide trust company business services in respect of a specific trust or trusts, 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 out trust company business - is not subject to the Money Laundering Order.
89. The basis for this concession is that customer due diligence measures will be applied by the person that is registered to carry out 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](#) (and Section 3 of this sector specific section).

#### REGULATORY REQUIREMENT

90. A relevant person that administers a PTC must apply the requirements of Sections 3 and 4 of this sector specific section to the trusts or legal bodies that are owned by the trusts for which the PTC acts as trustee.

## 7 HANDBOOK FOR THE LEGAL SECTOR

#### OVERVIEW

91. This final section highlights a particular concession that may be available where a trustee of an express trust or partner of a partnership (where the partnership is not a legal person) is an applicant for business or customer of a relevant person.

92. [Section 5.10.5](#) of the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Legal Sector (the “**Handbook for the Legal Sector**”) sets out some circumstances where a person that acts as or fulfils the function of trustee of an express trust or partner of a partnership may establish a relationship or carry out a one-off transaction (as an intermediary) with a relevant person that is an independent legal professional - without provision of a client information profile for each underlying client.
93. Full information can be found in the [Handbook for the Legal Sector](#).