

## 7 ENHANCED AND SIMPLIFIED *CDD* MEASURES

Please Note:

- › Regulatory requirements are set within this section as *AML/CFT Codes of Practice*.
- › This section contains references to Jersey legislation which may be accessed through the JFSC website.
- › Where terms appear in the Glossary this is highlighted by the use of italic text. The Glossary is available from the JFSC website.

### 7.1 Overview of Section

1. This section explains the circumstances in which *CDD* measures must be enhanced under Articles 15, 15A, 15B of the *Money Laundering Order* and explains the exemptions from customer due diligence requirements under Part 3A of the *Money Laundering Order*. It also sets out circumstances where simplified measures can be applied in relation to low risk products or services.
2. In addition to any case where a *relevant person* determines that a customer presents a higher risk of money laundering or the *financing of terrorism*, Articles 15, 15A and 15B of the *Money Laundering Order* also require enhanced *CDD* measures to be applied in the following specified scenarios:

Scenario	Section
Customer, or some other person, is not physically present for identification purposes	7.4
Customer has a “relevant connection” to an “enhanced risk state”	7.5
Customer, or some other prescribed person, is a <i>PEP</i>	7.6
Customer is a non-resident	7.7
Customer is provided with private banking services	7.8
Customer is a personal asset holding vehicle	7.9
Customer is a company with nominee shareholders or issues bearer shares	7.10
Correspondent banking or similar relationships	7.11

3. It may be that *CDD* measures routinely applied under Article 13 of the *Money Laundering Order* already address some of the risk characteristics of these customers (for instance identification of beneficial owner(s) and understanding the nature and purpose of the relationship) and significantly reduce the risk that criminals may hide behind “shell” companies or that the basis for the relationship is not considered or understood. Therefore any additional measures may be quite limited.
4. Nevertheless, the enhanced measures required under Articles 15, 15A and 15B must be in addition to the measures to be taken in circumstances presenting a lower or standard risk, as set out in Sections 4 and 6 of this Handbook and must address the particular risk presented. This section provides some (non-exhaustive) examples for each category of customer.

5. 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.
6. Throughout this section, references to “customer” includes, 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.

## 7.2 Requirement to apply enhanced CDD measures

### Statutory Requirements

7. *Article 11(3)(c) of the Money Laundering Order requires a relevant person to maintain appropriate and consistent policies and procedures to determine whether: (i) a customer; (ii) a beneficial owner or controller of a customer; (iii) a third party for whom a customer is acting; (iv) a beneficial owner or controller of a third party described in (iii); (v) a person acting, or purporting to act, on behalf of a customer; or (vi) a beneficiary under a life insurance policy; is a PEP.*
8. *Article 11(3)(d) of the Money Laundering Order requires a relevant person to maintain appropriate and consistent policies and procedures to determine whether a business relationship or one-off transaction is with a person connected with a country or territory that does not apply or insufficiently applies the FATF Recommendations.*
9. *Article 15(1) of the Money Laundering Order requires a relevant person to apply enhanced CDD measures on a risk-sensitive basis in the following circumstances:*
  - a. *if a customer has, or proposes to have, a business relationship or proposes to carry out a one-off transaction with the relevant person and the relevant person is not resident in the customer’s country of residence or in the same country as the country from which, or from within which, the customer is carrying on business;*
  - b. *if a customer has not been physically present for identification purposes;*
  - c. *if the relevant person has or proposes to have a business relationship or proposes to carry out a one-off transaction with a customer having a relevant connection with a country or territory (an “enhanced risk state”) in relation to which the FATF has called for the application of enhanced customer due diligence measures;*
  - d. *if the customer of the relevant person is a company with nominee shareholders or that issues shares in bearer form;*
  - e. *if the customer of the relevant person is –*
    - i. *a legal person established by an individual for the purpose of holding assets for investment purposes; or*
    - ii. *a person acting on behalf of a legal arrangement established for an individual for the purpose of holding assets for investment;*
  - f. *if the relevant person provides or proposes to provide a customer with private banking services;*
  - g. *Any situation which by its nature can present a higher risk of money laundering.*

## 7.3 Higher Risk Customer

### Overview

10. Section 3.3 of this Handbook explains the risk based approach to *identification measures*. It explains that a *relevant person* must, on the basis of information collected, assess the risk that a business relationship or one-off transaction will involve money laundering or the *financing of terrorism*.
11. Enhanced CDD measures must be applied where a *relevant person's* assessment is that there is a higher risk of money laundering or the *financing of terrorism* (i.e. a situation which by its nature can present a higher risk of money laundering or the *financing of terrorism*).
12. There are a number of reasons why a business relationship or one-off transaction might be assessed as presenting a higher risk. For this reason, there are a number of possible measures listed in this section to address that risk.

### Guidance Notes

13. A *relevant person* may demonstrate that it has applied enhanced *identification measures* to an individual who is a higher risk customer under Article 15 of the *Money Laundering Order*, where it obtains evidence that verifies a:
  - › former name (such as maiden name); or
  - › passport or national identity card number.
14. A *relevant person* may demonstrate that it has applied enhanced *identification measures* to a higher risk customer under Article 15 of the *Money Laundering Order* where it takes reasonable measures to find out the *source of funds* and *source of wealth* at the time that a business relationship is established or one-off transaction carried out which are commensurate with risk and include one or more of the following:
  - › commissioning an independent and reliable report from a specialist security agency about the *source of funds* involved and/ or customer's *source of wealth*.
  - › where a *relevant person* is part of a group, obtaining reliable information from the group's internal security department or business intelligence unit (or equivalent) about the *source of funds* involved and /or customer's *source of wealth*.
  - › where a *relevant person* is part of a group, obtaining reliable information from a part of the group which has an office in the country or territory with which the customer has a connection about the *source of funds* involved and/ or customer's *source of wealth*.
  - › obtaining reliable information directly from the customer concerned, for instance during (or subsequent to) a face to face meeting inside or outside Jersey, or via a telephone "welcome call" on a home or business number which has been verified or by obtaining certified copies of corroborating documentation such as contracts of sale, property deeds, salary slips, etc.
  - › obtaining reliable information from an external party (for instance a solicitor, accountant or tax advisor) which has an office in the country or territory with which the customer has the relevant connection about the *source of funds* involved and/or customer's *source of wealth*.
  - › obtaining reliable information from a person eligible to be an *obliged person* (for instance a solicitor, accountant or tax advisor) about the *source of funds* involved and/ or customer's *source of wealth*.

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- › where information is publicly available or available through subscription databases, obtaining reliable information from a public or private source about the *source of funds* involved and/or customer's *source of wealth*.
  - › obtaining reliable information through financial statements that have been prepared in accordance with generally accepted accounting principles and audited in accordance with generally accepted auditing standards.
15. Where a relevant connection is established during the course of an existing relationship, a *relevant person* may also demonstrate that it has taken reasonable measures to find out the *source of funds* and/or *source of wealth* where it reviews the relationship information that it already holds and concludes that it is reliable.
16. Where the measures set out in paragraphs 13 to 15 above are not sufficient to mitigate the risk associated with the customer, a *relevant person* may demonstrate that it has applied enhanced *identification measures* where it does one or more of the following in a way that is commensurate with risk:
- › In a case where a document that has been used to obtain evidence of identity for a higher risk customer, e.g. a passport, subsequently expires, a *relevant person* may demonstrate that documents, data or information obtained under *identification measures* are kept up to date and relevant where a copy of the document that replaces that originally used to obtain evidence of identity is requested and obtained.
  - › In a case where a relationship is to be established making use of a suitable certifier, it obtains confirmation that a photograph contained in the document certified bears a true likeness to the individual requesting certification (or words to that effect).
17. A *relevant person* may demonstrate that it has applied enhanced on-going monitoring to a higher risk customer where it:
- › reviews the business relationship on at least an annual basis, including all documents, data and information obtained under *identification measures* in order to ensure that they are kept up to date and relevant.
  - › where monitoring thresholds are used, sets lower thresholds for transactions connected with the business relationship.

## 7.4 Customer not physically present for *identification measures*

### Overview

18. On occasions, relationships will be established where there is no face to face contact with the customer to be identified or its beneficial owners or controllers, for example:
- › relationships established by individuals through the post, by telephone or via the internet where external data sources are used to obtain evidence of identity; and
  - › where identity is found out on persons who fall within Article 3(7) of the *Money Laundering Order* through a trustee or general partner, or on beneficial owners and controllers of a legal person through that legal person.
19. There may also be circumstances where there is face to face contact with a customer, but where documentary evidence is to be provided at a time when the customer is not present.

20. Such circumstances may increase the risk of money laundering or the *financing of terrorism* as it may be easier for criminals to conceal their true identity when there is no face to face contact with the *relevant person*. They may also increase the risk of impersonation or identity fraud being used to establish a relationship or conduct a one-off transaction for illegitimate purposes.
21. For the avoidance of doubt, this section does not cover a person whose identity has been verified through a suitable certifier, **where the certifier has met the person at the time the documents are certified.**

#### Statutory Requirements

22. *Under Article 15(1)(b) of the Money Laundering Order, if a customer has not been physically present for identification purposes, a relevant person must apply enhanced CDD measures on a risk-sensitive basis.*

#### AML/CFT Code of Practice

23. A *relevant person* must apply enhanced CDD measures on a risk-sensitive basis where a person who falls within Article 3(7) of the *Money Laundering Order*, or who is the beneficial owner or controller of a customer, or is a person who must otherwise be identified under Article 3 of the *Money Laundering Order* is not physically present for identification purposes.

#### Guidance Notes

24. A *relevant person* may demonstrate that it has applied enhanced *identification measures*: (i) under Article 15(1)(b) of the *Money Laundering Order*; and (ii) under the AML/CFT Code of Practice set in paragraph 23 above, where it finds out further information on a person (A), obtains an additional form of evidence of identity for A, or carries out some other additional measure in respect of A.
25. Additional forms of evidence of identity may include use of a further source listed in Section 4 (including independent data sources).
26. Other additional measures may include:
- › Where a *relevant person* is part of a group, confirmation from another part of that group that A has been met (face to face).
  - › Confirmation from a *relevant person* that carries on a regulated business or a person who carries on an equivalent business that A has been met (face to face).
  - › Confirmation from a *relevant person* that carries on trust company business or a person who carries on an equivalent business that A is known to the trust and company services provider, and the trust and company services provider is satisfied that the particular individual is the person whose identity is to be found out.
  - › A combination of other checks that adequately take into account the *relevant person's* risk assessment for A, including:
    - › requiring payment of funds to be drawn on an account in the customer's name at a bank that is a regulated person or carries on an equivalent business (refer to Section 1.7 of this Handbook).
    - › telephone contact with the customer prior to establishing a relationship on a home or business number which has been verified, or a "welcome call" to the customer before transactions are permitted, using the call to verify additional components of identity found out.

## 7.5 Customer with a relevant connection to an “enhanced risk state”

### Overview

27. The FATF has identified a number of countries and territories which have failed to address their own money laundering and the *financing of terrorism* risks and/or have in place insufficient AML/CFT regimes, in relation to which it has called for the application of countermeasures. These countries or territories are referred to in the *Money Laundering Order* as “**enhanced risk states**”. A person with a connection to these countries or territories presents a higher risk of being involved in money laundering or the *financing of terrorism* and doing business with such a person also poses an increased risk.
28. For the purpose of applying Article 15(1)(c) of the *Money Laundering Order*, countries or territories in relation to which the FATF has called for the application of enhanced CDD measures are those listed in Appendix D1.

### 7.5.1 Application of enhanced CDD measures to a customer with a relevant connection

#### Statutory Requirements

29. *Under Article 15(1)(c) of the Money Laundering Order, if the relevant person has or proposes to have a business relationship or proposes to carry out a one-off transaction with a customer having a relevant connection with a country or territory (an “enhanced risk state”) in relation to which the FATF has called for the application of enhanced customer due diligence measures, a relevant person must apply enhanced CDD measures on a risk-sensitive basis.*

*Under Article 15(2)(a), for the purpose of Article 15(1)(c), a **customer** includes any of the following –*

- a) a beneficial owner or controller of the customer,*
- b) a third party for whom the customer is acting,*
- c) a beneficial owner or controller of a third party described above,*
- d) a person acting, or purporting to act, on behalf of the customer; and*

*under Article 15(2)(b), a **person has a relevant connection with an enhanced risk state** if the person is –*

- a. the government or a public authority of that state,*
- b. in relation to that state, a foreign PEP (within the meaning of Article 15A),*
- c. a person resident in that state,*
- d. a person having an address for business in that state,*
- e. a customer, where the source of the customer’s funds is or derives from assets held in that state by the customer or by any person on behalf of the customer or income arising in that state.*

#### AML/CFT Code of Practice

30. The enhanced CDD measures applied to a customer with a relevant connection to an enhanced risk state must include:
- › requiring any new business relationship (and continuation thereof) or one-off transaction to be approved by senior management; and

- › where there is a relevant connection because a customer's *source of funds* is, or derives, from: (i) assets held in the state by the customer or by any person on behalf of the customer; or (ii) income arising in the state, taking reasonable measures to find out the source of the wealth of the customer.

### Guidance Notes

31. A *relevant person* may demonstrate that it has taken reasonable measures to find out the *source of wealth* at the time that a relationship is established or one-off transaction carried out, where measures taken are commensurate with risk and include one or more of the measures listed in paragraph 14 above.
32. Where a relevant connection is established during the course of an existing relationship, a *relevant person* may also demonstrate that it has taken reasonable measures to find out the *source of wealth* where it reviews the relationship information that it already holds and concludes that it is reliable.
33. A *relevant person* may demonstrate that it has otherwise applied enhanced CDD measures where it does all of the following:
  - › In a case where a document that has been used to obtain evidence of identity for a higher risk customer, e.g. a passport, subsequently expires, a *relevant person* may demonstrate that documents, data or information obtained under *identification measures* are kept up to date and relevant where a copy of the document that replaces that originally used to obtain evidence of identity is requested and obtained.
  - › In a case where a relationship is to be established making use of a suitable certifier, it obtains confirmation that a photograph contained in the document certified bears a true likeness to the individual requesting certification (or words to that effect).
  - › Reviews of the business relationship on at least an annual basis, including all documents, data and information obtained under *identification measures* in order to ensure that they are kept up to date and relevant.
  - › Where monitoring thresholds are used, sets lower thresholds for transactions connected with the business relationship.

## 7.6 Customer who is a politically exposed person (“PEP”)

### Overview

34. Corruption inevitably involves serious crime, such as theft or fraud, and is of global concern. The proceeds of such corruption are often transferred to other countries and territories and concealed through private companies, trusts or foundations, frequently under the names of relatives or close associates of the perpetrator.
35. By their very nature, money laundering investigations involving the proceeds of “grand” corruption generally gain significant publicity and are therefore very damaging to the reputation of both businesses and jurisdictions concerned. This is in addition to the possibility of criminal charges.
36. Indications that a customer may be connected with corruption include excessive revenue from “commissions” or “consultancy fees” or involvement in contracts at inflated prices, where unexplained “commissions” or other charges are paid to external parties.

37. The risk of handling the proceeds of corruption, or becoming engaged in an arrangement that is designed to facilitate corruption, is greatly increased where the arrangement involves a *PEP*. Where the *PEP* also has connections to countries or business sectors where corruption is widespread, the risk is further increased.
38. The nature of enhanced CDD measures applied will be commensurate with the risk that is identified and nature of the *PEP* connection. In particular, the measures to be applied by a *relevant person* to a *PEP*:
  - › Who is the Minister of Finance in a country that is prone to corruption may be very different to the measures to be applied to a senior politician with a limited portfolio in a country or territory that is not prone to corruption.
  - › The measures to be applied to a company that is a collective investment scheme, the securities of which are traded on a recognised market, and which has an investor who is a *PEP* with a 1% holding in the scheme, may be very different to a private company established exclusively to hold investments for a *PEP*.
39. There is no “one-size fits all” approach to applying enhanced CDD measures for *PEPs*.
40. The nature and scope of a *relevant person’s* activities will generally determine whether the existence of *PEPs* in its customer base is a practical issue for the business.

#### 7.6.1 Determining whether a customer is a politically exposed person (PEP)

##### Statutory requirements

41. Article 15A(3) of the Money Laundering Order provides the following definitions of *PEP* categories, which include an immediate family member or a close associate of the person:
 

**“domestic politically exposed person”** means a person who is an individual who is or has been entrusted with a prominent public function in Jersey including but not limited to –

  - › heads of state, heads of government, senior politicians;
  - › senior government, judicial or military officials;
  - › senior executives of state owned corporations; and
  - › important political party officials.

**“foreign politically exposed person”** means a person who is an individual who is or has been entrusted with a prominent public function in a country or territory outside Jersey including but not limited to –

  - › heads of state, heads of government, senior politicians;
  - › senior government, judicial or military officials;
  - › senior executives of state owned corporations; and
  - › important political party officials.

**“prominent person”** means a person who is an individual who is or has been entrusted with a prominent public function by an international organisation.

**“immediate family member”** includes any of the following –

  - › a spouse;
  - › a partner, that is someone considered by his or her national law as equivalent or broadly equivalent to a spouse;
  - › children and their spouses or partners (as defined above);

- › *parents;*
- › *grandparents and grandchildren;*
- › *siblings.*

*“close associate” of a person includes any person who is known to maintain a close business relationship with the person, including a person who is in a position to conduct substantial financial transactions on behalf of the person.*

42. *Under Article 15A(4) for the purpose of deciding whether a person is a close associate of a person, a relevant person need only have regard to information which is in that person’s possession or is publicly known.*

## 7.6.2 Enhanced customer due diligence measures in relation to politically exposed persons

### Statutory Requirements

43. *Article 15A of the Money Laundering Order applies to a relevant person:*
- › *who has or proposes to have a business relationship with, or proposes to carry out a one-off transaction with, a foreign politically exposed person; or*
  - › *who has or proposes to have a high risk business relationship, or proposes to carry out a high risk one-off transaction with, a domestic politically exposed person or prominent person; or*
  - › *if any of the following is a foreign politically exposed person or, in the case of a high risk business relationship or one-off transaction, a domestic politically exposed person or prominent person –*
    - i) *a beneficial owner or controller of the customer of the relevant person*
    - ii) *a third party for whom the customer of the relevant person is acting,*
    - iii) *a beneficial owner or controller of a third party described in clause (ii),*
    - iv) *a person acting or purporting to act on behalf of the customer of the relevant person.*
44. *A relevant person to whom this Article applies must apply enhanced customer due diligence measures on a risk-sensitive basis including –*
- › *unless the relevant person is a sole trader, measures requiring a new business relationship or continuation of a business relationship or a new one-off transaction to be approved by the senior management of the relevant person;*
  - › *measures to establish the source of the wealth of the politically exposed person and source of the funds involved in the business relationship or one-off transaction;*
  - › *measures to conduct the enhanced ongoing monitoring of that relationship; and*
  - › *if the relevant business relationship relates to a life insurance policy, measures requiring the senior management to be informed before any payment is made under the policy or any right vested under the policy is exercised.*
- “enhanced ongoing monitoring” means ongoing monitoring that involves specific and adequate measures to compensate for the higher risk of money laundering.*
- “high risk”, in relation to a business relationship or one-off transaction, means any situation which by its nature can present a higher risk of money laundering.*

**“source of the wealth”** means the source generating the total net worth of funds of the politically exposed person, whether those funds are used in the business relationship or one-off transaction.

### AML/CFT Code of Practice

45. Policies and procedures maintained in line with Article 11 of the *Money Laundering Order* must recognise that customers may subsequently acquire *PEP* status.

### Guidance Notes– foreign PEPs

46. Where the existence of foreign *PEPs* is considered to be a practical issue, a *relevant person* may demonstrate that it has appropriate policies and procedures for determining whether a customer or prescribed person is a *PEP* where it:
- › Assesses those countries and territories with which customers are connected, which pose the highest risk of corruption. See Section 3.3.4.1.
  - › Finds out who are the current and former holders of prominent public functions within those higher risk countries and territories and determines, as far as is reasonably practicable, whether or not customers have any connections with such individuals (including through immediate family or close associates). In determining who are the current and former holders of prominent public functions, it may have regard to information already held by the *relevant person* and to external information sources such as the UN, the European Parliament, the UK Foreign and Commonwealth Office, the Group of States against Corruption, and other external data sources. See Section 3.3.4.2.
  - › Exercises vigilance where customers are involved in business sectors that are vulnerable to corruption such as, but not limited to, oil or arms sales.
47. Where a *relevant person* runs the details of all its customers and prescribed persons through an external data source to determine whether any is a *PEP*, it should nevertheless assess those countries and territories which pose the highest risk of corruption and exercise particular vigilance where customers are involved in business sectors that are vulnerable to corruption such as, but not limited to, oil or arms sales.
48. In a case where a *PEP* is a director (or equivalent) of a customer, or person acting, or purporting to act for a customer, and where no property of that *PEP* is handled in the particular business relationship or one-off transaction, a *relevant person* may demonstrate that it applies specific and adequate measures under Article 15A(2) of the *Money Laundering Order* where it considers the nature of the *PEP*'s role and reason why the *PEP* has such a role.
49. Similarly, where a *PEP* is a trustee or a general partner that is a customer, or is a beneficiary or object of a power of a trust, and where no property of that *PEP* is handled in the particular business relationship or one-off transaction, a *relevant person* may demonstrate that it applies specific and adequate measures under Article 15A(2) of the *Money Laundering Order* where it considers the nature of the *PEP*'s connection and reason why the *PEP* has such a connection.

### Guidance Notes – domestic PEPs

50. In determining whether someone is a domestic *PEP*, a *relevant person* should consider the criterion set out at Article 15A(3) – namely that a *PEP* is an individual who is or has been entrusted with a prominent public function; for example –
- › heads of state, heads of government, senior politicians,
  - › senior government, judicial or military officials,
  - › senior executives of state owned corporations,

- › important political party officials.
51. In the context of Jersey, this will include (but is not limited to) the following:
- › Lieutenant-Governor
  - › Ministers (but not necessarily deputy Ministers)
  - › Chief Executive of the States of Jersey
  - › Director-Generals of the States of Jersey
  - › Attorney-General
  - › Solicitor-General
  - › Commissioners of the Jersey Financial Services Commission
  - › Director General of the Jersey Financial Services Commission
  - › Registrar of Companies
  - › Information Commissioner
  - › Comptroller and Auditor-General
  - › Bailiff
  - › Deputy Bailiff
  - › Judicial Greffier
  - › Comptroller of Revenue
  - › HM Receiver General
  - › Senior Executives of State Owned Body Corporates (or similar)
52. Note that this will also include immediate family members and close associates of individuals listed above.

### Higher Risk Domestic PEPs

53. Mandatory enhanced measures are only required in relation to higher risk relationships or transactions with domestic PEPs, as set out in Article 15A(1)(b)
54. Individuals entrusted with a prominent public function in Jersey may be considered to pose a low risk, unless a *relevant person* considers that other specific risk factors indicate a higher risk. Particular consideration should be given to the following characteristics that might indicate a higher risk:
- › responsibility for, or ability to influence, large public procurement exercises;
  - › responsibility for, or ability to influence, allocation of government licenses (or similar);
  - › personal wealth or lifestyle inconsistent with known legitimate sources of income or wealth;
  - › credible allegations of financial misconduct.
55. Similarly, immediate family or close associates of Individuals entrusted with a prominent public function in Jersey may be considered to pose a low risk, unless a *relevant person* considers that other specific risk factors indicate a higher risk. Particular consideration should be given to the following characteristics that might indicate a higher risk:

- › wealth or lifestyle inconsistent with known legitimate sources of income or wealth;
- › credible allegations of financial misconduct;
- › wealth derived from the granting of government licences (or similar);
- › wealth derived from preferential access to the privatisation of former state assets.

## 7.7 Non-resident customer

### Overview

56. Customers who are not resident in a country or territory but who nevertheless seek to form a business relationship or conduct a one-off transaction with a *relevant person* in that country or territory will typically have legitimate reasons for doing so. Some customers will, however, pose a risk of money laundering or the *financing of terrorism* and may be attempting to move illicit funds away from their country or territory of residence or attempting to further conceal funds sourced from that country or territory.

### Statutory Requirements

57. *Under Article 15(1)(a) of the Money Laundering Order, if a customer has, or proposes to have, a business relationship or proposes to carry out a one-off transaction with the relevant person and the relevant person is not resident in the customer's country of residence or in the same country as the country from which, or from within which, the customer is carrying on business, a relevant person must apply enhanced customer due diligence measures on a risk-sensitive basis.*

### Guidance Notes

58. A *relevant person* may demonstrate that it has applied enhanced *CDD* measures under Article 15(1)(a) of the *Money Laundering Order*, where it has applied additional measures that are commensurate with risk. Additional measures may include one or more of the following:
- › Determining the reasons why the customer is looking to establish a business relationship or carry out a one-off transaction other than in their home country or territory;
  - › The use of external data sources to collect information on the customer and the particular country risk in order to build a customer business and risk profile similar to that available for a resident customer.

## 7.8 Customer that is a personal asset holding vehicle

### Overview

59. Personal asset holding vehicles are legal persons or legal arrangements established by individuals for the specific purpose of holding assets for investment. The use of such persons or arrangements may make identification of ultimate beneficial owners more difficult since layering of ownership may conceal the true source or controller of the investment.
60. Article 15(1)(e) of the *Money Laundering Order* is intended to apply in two specific scenarios. Firstly, where the personal asset holding vehicle is the customer. Secondly, where the personal asset holding vehicle is the third party for whom a trustee or general partner (the customer) is acting.

**Guidance Notes**

61. A *relevant person* may demonstrate that it has applied enhanced CDD measures under Article 15(1)(e) of the *Money Laundering Order*, where it has applied additional measures that are commensurate with risk. Additional measures may include:
- › Understanding the structure of the vehicle, determining the purpose and rationale for making use of such a vehicle, and being satisfied that the customer's use of such an investment vehicle has a genuine and legitimate purpose.
  - › Taking reasonable measures to find out and document the *source of funds* and *source of wealth*.

**7.9 Customer that is a company with nominee shareholders or issues bearer shares****Overview**

62. Companies with nominee shareholders or bearer shares (or the ability to issue bearer shares in the future) may present a higher risk because such arrangements make it possible to hide the identity of the beneficial owner(s) and/or changes in beneficial ownership by separating legal and beneficial ownership, or because there is no trail of ownership, which introduces a degree of anonymity.
63. Notwithstanding this, nominee shareholders are often used for good and legitimate reasons, e.g. to ease administration and reduce customer costs by enabling a nominee to take necessary corporate actions, such as the passing of resolutions, in the day to day administration of a corporate structure.
64. Where one or more of the following circumstances apply, the customer should not be considered to be a customer that issues bearer shares for the purpose of Article 15(1) of the *Money Laundering Order*:
- › The bearer shares are issued by a company in a country or territory that has fully enacted appropriate legislation to require bearer shares to be registered in a public registry and the bearer shares are so registered; or
  - › The bearer shares are traded on an approved stock exchange; or
  - › All issued bearer shares are held in the custody of the *relevant person*, the customer or trusted external party along with an undertaking from that trusted external party or customer to inform the *relevant person* of any transfer or change in ownership.

**Guidance Notes**

65. A *relevant person* may demonstrate that it has applied enhanced CDD measures under Article 15(1)(d) of the *Money Laundering Order*, where it has applied additional measures that are commensurate with risk.
66. In the case of customers who are companies with nominee shareholders, additional measures may include:
- › Determining and being satisfied with the reasons why the customer is making use of nominees; and
  - › Using external data sources to collect information on the fitness and propriety of the nominee (such as its regulated status and reputation) and the particular country risk.
67. In the case of customers who are companies with bearer shares (or the ability to issue bearer shares in the future), additional measures may include:

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- › Determining and being satisfied with the reasons why the customer has issued bearer shares or retains the ability to do so;
- › Ensuring that any new or continued relationship or any one-off transaction is approved by the senior management of the *relevant person*; and
- › Reviewing the business relationship on at least an annual basis, including all documents, data and information obtained under *identification measures* in order to ensure that they are kept up to date and relevant.

## 7.10 Enhanced *CDD* measures - transitional arrangements

### Overview

68. Where amendments to the *Money Laundering Order* introduce new *CDD* requirements applicable to customer relationships and one-off transactions, these requirements do not apply retrospectively and no remediation project is required.
69. However, Article 13(1)(c)(ii) of the *Money Laundering Order* requires a *relevant person* to apply *identification measures* where the *relevant person* has doubts about the veracity or adequacy of documents, data or information previously obtained.
70. This means that where, during the course of its regular review of a business relationship (pursuant to Article 3(3)(b) of the *Money Laundering Order* and discussed at Section 3.4 of this Handbook) a *relevant person* becomes aware that documents, data or information previously obtained do not satisfy the additional *CDD* requirements set out in the *Money Laundering Order*, the *relevant person* will need to apply enhanced *CDD* measures to that customer at that time, in line with the requirement in Article 13(1)(c)(ii) of the *Money Laundering Order*.

## 7.11 Exemptions from *CDD* Requirements

### Overview

71. Part 3A of the *Money Laundering Order* provides for exemptions from *CDD* requirements that apply in some strictly limited circumstances, as set out in Articles 17B - D and 18.
72. Article 17A provides circumstances in which exemptions under this Part do not apply, namely where:
  - a) the *relevant person* suspects money laundering;
  - b) the *relevant person* considers that there is a higher risk of money laundering;
  - c) the relevant customer is resident in a country that is not compliant with the FATF recommendations; or
  - d) the relevant customer is a person in respect of whom Article 15(1)(c) applies.
73. In addition to above a *relevant person* is not exempt under Articles 17B - 17D from applying third party identification requirements if the relevant customer is a person in respect of whom Article 15B(1) applies with regard to a *relevant person* who has or proposes to have a banking or similar relationship with an institution whose address for that purpose is outside Jersey.
74. For the purpose of Part 3A, “**relevant customer**” means a customer of a *relevant person* that the *relevant person* knows or reasonably believes is –
  - a) a *relevant person* in respect of whose financial services business the Commission discharges supervisory functions, or a person carrying on equivalent business; or

- b) a person wholly owned by a *relevant person* specified in sub-paragraph (a) (the “parent”), but only if –
- i) the person is incorporated or registered in the same jurisdiction as the parent,
  - ii) the person has no customers who are not customers of the parent,
  - iii) the person’s activity is ancillary to the business in respect of which the Commission discharges supervisory functions, or to equivalent business carried on by the parent, and
  - iv) in relation to that activity, the person maintains the same policies and procedures as the parent.

“**third party identification requirements**” means the requirements of Article 13 or 15, 15A, 15B to apply the *identification measures* specified in Article 3(2)(b).

“**non-public fund**” means a scheme falling within the definition of “collective investment fund” in Article 3 of the Collective Investment Funds (Jersey) Law 1984, except that the offer of units in the scheme or arrangement is not an offer to the public within the meaning of that Article.

## 7.12 Exemption from applying third party identification requirements in relation to relevant customers acting in certain regulated, investment or fund services business

### Statutory requirements

75. Under Article 17B(1) of the Money Laundering Order, a relevant person is exempt from applying third party identification requirements in relation to a third party for which a relevant customer is acting where the relevant customer is acting in the course of a business –
- › that falls within paragraph (a), (b) or (d) in the definition of “regulated business”, or equivalent business; or
  - › that is an investment business or fund services business registered under the Financial Services (Jersey) Law 1998, or equivalent business.
76. Under Article 17B(2) of the Money Laundering Order, a relevant person must record the reasons for applying the exemption, having regard to the risk of money laundering inherent in the relevant customer’s business and the higher risk of money laundering associated with that type of business should the relevant customer fail to –
- › apply the identification measures specified in Article 3(2)(b) or if the relevant customer is not in Jersey, similar identification measures required to be applied to satisfy the requirements in Recommendation 10 of the FATF recommendations; or
  - › keep records, or keep them for the period required to be kept.
77. Under Article 17D(3), a relevant person must, as often as the relevant person considers appropriate, establish whether the relevant customer –
- 1) has appropriate policies and procedures in place to apply the identification measures described in Articles 13(1)(a), 13(1)(c)(ii) and 15 (or if the relevant customer is not in Jersey, similar identification measures that satisfy the FATF recommendations in respect of identification measures);
  - 2) obtains information in relation to the third party;
  - 3) keeps the information or evidence that has been obtained in relation to the third party; and

- 4) *provides the relevant person with that information or evidence without delay, if requested to do so by the relevant person,*
- and consider whether the relevant customer may be prevented, by application of a law, from providing that information or evidence.*
78. *If at any time the relevant person is unable to establish that the relevant customer complies with the requirements mentioned in paragraph (3)(b), (c) or (d), the relevant person must immediately apply the identification measures specified in Article 13(1)(a) and 13(1)(c)(ii).*

#### AML/CFT Code of Practice

79. A relevant person must be able to demonstrate that the conditions required by the *Money Laundering Order* are met.

### 7.13 Exemption from applying third party identification requirements in relation to certain relevant customers involved in unregulated or non-public funds, trust company business or the legal profession

#### Statutory Requirements

80. *Under Article 17C(1) of the Money Laundering Order a relevant person is exempt from applying third party identification requirements in relation to a third party for which a relevant customer is acting if the relevant customer –*
- a) is, or carries on business in respect of, an unregulated fund, within the meaning of the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008, or equivalent business;*
  - b) is, or carries on business in respect of, a fund that is a non-public fund, being a fund in respect of which a service is provided that is described in paragraph 7(1)(h) of Part B of Schedule 2 to the Law, or equivalent business;*
  - c) carries on trust company business and is registered to carry on such business under the Financial Services (Jersey) Law 1998, or equivalent business, but only if the relevant person is:*
    - i. carrying on deposit-taking business,*
    - ii. a lawyer carrying on business described in paragraph 1 of Part B of Schedule 2 to the Law, or*
    - iii. an accountant carrying on a business described in paragraph 2 of Part B of Schedule 2 to the Law; or*
  - d) is an independent legal professional carrying on a business described in paragraph 1 of Part B of Schedule 2 to the Law and is registered to carry on such business under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, but only if the relevant person is carrying on deposit-taking business.*
81. *Under Article 17C(2), a relevant person who, does not apply third party identification requirements must –*
- a) be satisfied, by reason of the nature of the relationship with the relevant customer, that there is little risk of money laundering occurring; and*
  - b) obtain adequate assurance in writing from the relevant customer that the relevant customer:*

- i. *has applied the identification measures specified in Article 3(2)(b) to the third party, or if the relevant customer is not in Jersey, has applied similar identification measures that would satisfy the requirements in Recommendations 10 and 12 of the FATF Recommendations,*
  - ii. *will provide the relevant person, without delay and in writing, with the information obtained from applying the identification measures, if so requested by the relevant person,*
  - iii. *will keep the evidence obtained during the course of applying the identification measures, and*
  - iv. *will provide the relevant person with that evidence without delay, if requested to do so by the relevant person.*
82. *Under Article 17C(3) the following requirements to adequate assurance apply:*
- a) *assurance is adequate if it is reasonably capable of being regarded as reliable and the person who relies on it is satisfied that it is reliable;*
  - b) *assurance may be given in relation to one or more business relationships and for more than one transaction; and*
  - c) *assurance need not be given before deciding not to comply with third party requirements if an assurance has previously been given by that customer to the relevant person in relation to a business relationship or transaction.*
83. *Article 17C(4) provides that a relevant person (including a person who was formerly a relevant person) who has given an assurance to another person under paragraph (2)(b) (or under an equivalent provision that applies outside Jersey) may, if requested by the other person, provide the person with the information or evidence obtained from applying the identification measures referred to in paragraph (2)(b)(i) (see paragraph 82 above).*

### Guidance Notes

84. A *relevant person* may demonstrate that it has found out the identity of a significant third party where:
- › For lower risk relationships, it has found out the identity of each third party whose financial interest in the product or arrangement offered to the customer is over a general threshold of 25%.
85. A *relevant person* may demonstrate that it has found out the identity of a third party where:
- › For third parties who are natural persons - it finds out the name, address and date of birth of the third party.
  - › For third parties who are legal persons or legal arrangements – it finds out the name, date and country of incorporation (or equivalent) and registered office address (or equivalent) of the third party.
86. In relation to the exemption set out at Article 17C(1)(a) or (b), a *relevant person* may be satisfied that there is little risk of money laundering or *financing of terrorism* occurring where a particular fund is closed-ended, has no liquid market for its units, and permits subscriptions and redemptions to come from and be returned only to unitholders
87. In relation to the exemption set out at Article 17C(1)(d), a *relevant person* may be satisfied that there is little risk of money laundering or *financing of terrorism* occurring where the deposit is in respect of a third party's registered contract within the meaning of the Control of Housing and Work (Jersey) Law 2012.

### 7.13.1 Assessment of risk

#### Overview

88. The risk factors that are set out in this section will also be relevant to a customer risk assessment that is conducted under Section 3.3.4.1 in the cases highlighted at Section 4.4 and Section 4.5.

#### Statutory requirements

89. *Immediately before applying the exemptions set out in Part 3A, Article 17B(2) and 17D(2) of the Money Laundering Order require a relevant person to conduct an assessment as to whether it is appropriate to do so, having regard to the customer's business and the higher risk of money laundering should the customer fail to:*
- › *Apply the necessary identification measures to its customer(s); or*
  - › *Keep records, or keep them for the period required to be kept.*
90. *Article 17B(2) and 17D(2) require a relevant person to prepare a written record of the reason why it is appropriate to apply exemptions.*

#### AML/CFT Code of Practice

91. In a case where, for a particular business relationship, testing under Article 17D(3) of the *Money Laundering Order* highlights that a customer has not found out information or obtained evidence of identity for a third party (or parties), does not keep that information or evidence of identity, or will not provide it on request and without delay when requested to do so, a *relevant person* must review the basis upon which it has applied CDD exemptions to other relationships with that particular customer (if any) in order to determine whether it is still appropriate to apply those measures.

#### Guidance Notes

92. Immediately before applying the exemptions under this Part, a *relevant person* may demonstrate that it has had regard to a customer's business where it considers the following factors:
- › the general risk appetite of its customer;
  - › the geographic location of its customer's client base;
  - › the general nature of the customer's client base, e.g. whether institutional or private client;
  - › the nature of the services that the customer provides to its clients;
  - › the extent to which its customer carries on business with its own clients on a non-face to face basis or clients are otherwise subject to enhanced CDD measures; and
  - › the extent to which clients of its customer may be *PEPs* or present a higher risk of money laundering or the *financing of terrorism*, and the *source of funds* of such *PEPs*.
93. Immediately before applying the exemptions under this Part, a *relevant person* may demonstrate that it has had regard for the higher risk of money laundering and the *financing of terrorism* should its customer fail to apply *identification measures*, keep records, or keep records for the required period where it considers the following factors:

- › The stature and regulatory track record of its customer.
  - › The adequacy of the framework to combat money laundering and the *financing of terrorism* (including, for the avoidance of doubt, financial sanctions) in place in the country or territory in which its customer is based and the period of time that the framework has been in place.
  - › The adequacy of the supervisory regime to combat money laundering and the *financing of terrorism* to which its customer is subject.
  - › The adequacy of *identification measures* applied by its customer to combat money laundering and the *financing of terrorism*.
  - › The extent to which the customer itself relies on obliged parties (however described) to identify its clients and to hold evidence of identity, and whether such obliged parties are *relevant persons* or carry on an equivalent business.
94. A *relevant person* may demonstrate that it has considered the adequacy of *identification measures* applied by its customer where it takes one or more of the following steps:
- › Reviews previous experience (if any) with the customer.
  - › Makes specific enquiries, e.g. through use of a questionnaire or series of questions.
  - › Reviews relevant policies and procedures.
  - › Where the customer is a member of a financial group, makes enquiries concerning the extent to which group standards are applied to and assessed by the group's internal audit function.
  - › Conducts (or commissions from an external expert) sample testing of the adequacy of the customer's policies and procedures to combat money laundering and the *financing of terrorism*, whether through onsite visits, or through requesting specific CDD information and/or copy documentation to be provided.

## 7.14 Further exemptions from applying identification requirements

### Overview

95. Article 18 of the *Money Laundering Order* provides specified circumstances where exemptions from applying identification requirements may be used.

#### Statutory Requirements

##### **Case 1. Insurance business**

96. Under Article 18(1), a *relevant person* is exempt from applying the identification measures specified in Article 13 in respect of insurance business if –
- a) *in the case of a policy of insurance in connection with a pension scheme taken out by virtue of a person's contract of employment or occupation, the policy contains no surrender clause and may not be used as collateral security for a loan;*
  - b) *a premium is payable in one instalment of an amount not exceeding £1,750; or*
  - c) *a periodic premium is payable and the total amount payable in respect of any calendar year does not exceed £750.*

##### **Case 2. Pension, superannuation, employee benefit, share option or similar scheme**

97. Under Article 18(2), a *relevant person* is exempt from applying the identification measures specified in Article 13 if –

- a) *the business relationship or one-off transaction relates to a pension, superannuation, employee benefit, share option or similar scheme;*
- b) *the contributions to the scheme are made by an employer or by way of deductions from wages;*
- c) *the rules of the scheme do not permit the assignment of an interest of a member of the scheme except after the death of the member; and*
- d) *the interest of a deceased member of the scheme is not being assigned.*

**Case 3. Regulated person and those carrying on equivalent business**

98. *Under Article 18(3), a relevant person is exempt from applying the identification requirements in Article 13 in respect of the measures specified in Article 3(2)(a), (aa) and (c) in relation to a customer if the customer is –*

- a) *a regulated person;*
- b) *a person who carries on equivalent business to any category of regulated business; or*
- c) *a person wholly owned by a person (the “parent”) mentioned in sub-paragraph (a) or (b), but only if –*
  - i. *the person is incorporated or registered in the same jurisdiction as the parent,*
  - ii. *the person has no customers who are not customers of the parent, the person’s activity is ancillary to the regulated business or equivalent business carried on by the parent,*
  - iii. *in relation to that activity, the person maintains the same policies and procedures as the parent.*

**Case 4. Public authority or body corporate with listed securities**

99. *Under Article 18(4), a relevant person is exempt from applying the identification requirements in Article 13 in respect of the measures specified in Article 3(2)(a) and (aa) (in so far as those measures require identifying any person purporting to act on behalf of the customer), 3(2)(c)(ii) and 3(2)(c)(iii) in relation to a customer if the customer is –*

- a) *a public authority acting in that capacity;*
- b) *a body corporate the securities of which are listed on an IOSCO-compliant market or on a regulated market (within the meaning of Article 2(5)); or*
- c) *a person wholly owned by a person mentioned in sub-paragraph (b).*

**Case 5. Person authorised to act on behalf of a customer**

100. *Under Article 18(5), a relevant person is exempt from applying the identification requirements in Article 13 in respect of the measures specified in Article 3(2)(aa) (in so far as those measures require identifying any person purporting to act on behalf of a customer) in relation to a person if –*

- a) *the person is authorised to act on behalf of the customer;*
- b) *the customer is not a relevant person;*
- c) *the person acts on behalf of the customer in the course of employment by a person carrying on a financial services business; and*
- d) *the financial services business is a regulated business or an equivalent business to a regulated business.*

**Case 6. Schedule 2 Business (Lawyers and Estate Agents)**

101. Under Article 18(6), a relevant person is exempt from applying the identification requirements in Article 13 to the extent that the measures require identification of a person within the meaning of Article 3(4)(b) if –
- a) the relevant person's business falls within paragraph 1 or 3 of Part B of Schedule 2 to the Law; and
  - b) that person enters into a business relationship or carries out a one-off transaction for the purpose of enabling a customer, directly or indirectly, to enter into a registered contract (within the meaning of the Control of Housing and Work (Jersey) Law 2012).

**AML/CFT Codes of Practice**

102. For each case described in Article 18 of the *Money Laundering Order*, a relevant person must obtain information on the purpose and intended nature of the business relationship or one-off transaction.
103. A relevant person must obtain and retain documentation establishing that the customer is entitled to benefit from an exemption in Article 18 of the *Money Laundering Order*.

**7.14.1 Pension, superannuation, employee benefit, share option or similar schemes****Overview**

104. Where a *relevant person* enters into a business relationship or carries out a one-off transaction relating to a pension, superannuation, employee benefit, share option or similar scheme, in some limited circumstances there is no requirement to apply *identification measures*.
105. However, the exemptions cannot be applied if a *relevant person* considers that there is a higher risk of money laundering or the *financing of terrorism*.

**Guidance Note**

106. A *relevant person* may demonstrate that it considers whether there is a higher risk of money laundering or the *financing of terrorism* when, inter alia, it considers the reputation of the sponsoring employer and adequacy of controls in place over membership.

**7.14.2 Jersey Public Authority****Overview**

107. Where a customer is a public authority in Jersey, then, in line with Article 18(4)(a) of the *Money Laundering Order*, there is no requirement to apply *identification measures* on that authority, on the beneficial owners and controllers of the authority, or those purporting to act on behalf of the authority.
108. However, the obligation to apply *identification measures* to any third party for which the authority may be acting and obligation to verify the authority of persons acting on behalf of the authority continue.
109. The following may be considered to be public authorities in Jersey:
- › A government department of the States of Jersey;
  - › A majority States-owned company;
  - › An agency established by a law of the States of Jersey; or
  - › A parish authority.

### 7.14.3 Body corporate with listed securities

#### Overview

110. Where a customer is a body corporate the securities of which are listed on a market that conforms to international standards set by IOSCO or on a regulated market (defined in Article 2(5) of the *Money Laundering Order*), then, in line with Article 18(4)(b) of the *Money Laundering Order*, there is no requirement to apply *identification measures* on that body corporate (or any wholly owned subsidiary), on the beneficial owners and controllers of the body (or any wholly owned subsidiary), or those purporting to act on behalf of the body corporate (or any wholly owned subsidiary).
111. However, the obligation to apply *identification measures* to any third party for which the body corporate (or wholly owned subsidiary) may be acting and obligation to verify the authority of persons acting on behalf of the body corporate (or wholly owned subsidiary) continue.
112. A market may be considered to be IOSCO compliant if it is operated in a country or territory that has been assessed as having “fully implemented” or “broadly implemented” IOSCO Principles 16 and 17. In order to be assessed as having “fully implemented” or “broadly implemented” Principle 17, a country or territory must require:
- › Information about the identity and holdings of persons who hold a substantial beneficial ownership interest to be disclosed on a timely basis.
  - › Material changes in such ownership and other required information to be disclosed in a timely manner.
113. Whilst there is not a list of countries and territories that “fully implement” or “broadly implement” IOSCO Principles 16 and 17, reference may be made to IMF compliance assessments at: <http://www.imf.org/external/NP/fsap/fsap.aspx>.
114. Guidance published by the UK’s Joint Money Laundering Steering Group addresses what may be considered to be a regulated market.

### 7.14.4 Regulated person and those carrying on equivalent business

#### Overview

115. Where a customer is: (i) a regulated person (defined in Article 1(1) of the *Money Laundering Order*); (ii) a person who carries on equivalent business to any category of regulated business; or (iii) wholly owned by a person listed in (i) or (ii) and which fulfils certain conditions (see Article 18(3)(c) of the *Money Laundering Order*), then, in line with Article 18(3) of the *Money Laundering Order*, there is no requirement to apply *identification measures* in respect of the customer, the beneficial owners and controllers of the customer, or those purporting to act on behalf of the customer. Nor is there a requirement to verify the authority of any person purporting to act for the customer.
116. However, these provisions do not also provide an exemption in respect of any third party (or parties) for whom the customer is acting, or for the beneficial owners and controllers of such a third party (or parties).

### 7.14.5 Person authorised to act on behalf of a customer

#### Guidance Notes

117. Where a person authorised to act on behalf of a customer holds this role by virtue of his employment by (or position in) a business that is a regulated person (or equivalent), a *relevant person* may demonstrate that this exception applies where it obtains:

- › the full name of the individual; and
- › an assurance from the employer that the individual is an officer or employee.

#### **7.14.6 Jersey property transactions passed before the Royal Court**

##### **Overview**

118. Article 18(6) of the *Money Laundering Order* provides that an estate agent which enters into a business relationship or carries on a one-off transaction for the purpose of enabling a customer directly or indirectly to enter into a registered contract within the meaning of the Control of Housing and Work (Jersey) Law 2012 (i.e. where it is to be passed before the Royal Court and registered in the Public Registry of Contracts), need not obtain evidence of identity of its customer.

##### **AML/CFT Code of Practice**

119. A *relevant person* that is an estate agent must obtain and retain documentation establishing that its customer is entitled to benefit from the concession in Article 18(6) of the *Money Laundering Order*.