

## 4 IDENTIFICATION MEASURES: FINDING OUT IDENTITY AND OBTAINING EVIDENCE

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.

### 4.1 Overview of Section

1. The purpose of this section of this Handbook is to explain what information on identity is to be found out when establishing a business relationship or carrying on a one-off transaction (or otherwise under Article 13 of the *Money Laundering Order*), and what evidence is to be obtained that is reasonably capable of verifying that the person to be identified is who the person is said to be and satisfies a *relevant person* that it does establish that fact.
2. This section does not address the information that must also be collected under Article 3(5) of the *Money Laundering Order* as part of *identification measures* in order to assess the risk that any business relationship or one-off transaction will involve *money laundering* or the *financing of terrorism*, which is covered by stage 1.4 in Section 3.3. Nor does it address the enhanced measures that will be required in order to address the case of a customer that is assessed as presenting a higher risk of *money laundering* or the *financing of terrorism*, which is covered in Section 7.
3. Guidance is also given on the timing of obtaining evidence of identity and, on what to do where it is not possible to complete *identification measures*. This guidance covers all elements of *identification measures*, including, where appropriate, the collection of information under Article 3(5) of the *Money Laundering Order*.
4. The requirement to find out identity and obtain evidence (part of the “*identification measures*” referred to in Article 3 of the *Money Laundering Order*) applies: at the outset of a business relationship or one-off transaction; where there is suspicion of *money laundering* or the *financing of terrorism*; where there is some doubt as to the veracity or adequacy of documents, data or information that are already held (including the circumstances set out in paragraph 5 below); and in respect of “existing customers”.
5. Inter alia, the requirement to find out identity and obtain evidence will apply when there is a:
  - › change in information found out for a customer, e.g. following marriage or change of nationality;
  - › change in beneficial ownership and control of a customer; or
  - › change in a third party (or parties) or beneficial ownership or control of a third party (or parties) on whose behalf a customer acts.
6. A customer may be an individual (or group of individuals) or legal person. Section 4.3 deals with a customer who is an individual (or group of individuals), Section 4.4 deals with a customer (an individual or legal person) who is acting for a legal arrangement, e.g. the trustee of an express trust, and Section 4.5 deals with a customer who is a legal person.

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

## 4.2 Obligation to Find Out Identity and Obtain Evidence

### Overview

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

### Statutory Requirements

11. *Requirements for identification measures are summarised in Section 3. Inter alia, identification measures must establish the persons who are concerned with a legal arrangement, and each beneficial owner and controller of a customer who is a legal person.*
12. *Under Article 3(2)(b) of the Money Laundering Order a relevant person must determine whether a customer is acting for a legal arrangement, Article 3(2)(a) requires the customer, e.g. the trustee of a trust or general partner of a limited partnership, to be identified.*
13. *Where a customer is acting for a legal arrangement, Article 3(2)(a) of the Money Laundering Order requires the customer, e.g. the trustee of a trust or general partner of a limited partnership, to be identified.*
14. *Article 3(2)(b)(iii) of the Money Laundering Order requires the identity of each person who falls within Article 3(7) of the Money Laundering Order to be found out and evidence of identity obtained, i.e.:*
- › *in the case of a trust, the settlor;*
  - › *in the case of a trust, the protector;*
  - › *having regard to risk, a person that has a beneficial interest in the legal arrangement, or who is the object of a trust power in relation to a trust;*
  - › *any other individual who otherwise exercises ultimate effective control over the third party.*
15. *In respect of each person falling within Article 3(7) who is not an individual, Article 3(2)(b)(iii) requires each individual who is that person’s beneficial owner or controller to be identified.*

### AML/CFT Code of Practice

16. Following FATF Recommendation 22, a relevant person that provides estate agency services as defined in Paragraph 3 of Part B of Schedule 2 to the *Proceeds of Crime Law*, must comply with CDD obligations with respect to both purchasers and vendors of the property.

## 4.3 Obligation to Find Out Identity and Obtain Evidence: Individuals

### Overview

17. The following paragraphs apply to situations where an individual is the customer or where the customer is more than one individual, such as a husband and wife.
18. The provisions also apply to situations where an individual is:
  - › a person connected to a legal arrangement, because of a requirement in Article 3(2)(b)(iii) of the *Money Laundering Order* to identify each person who falls within Article 3(7), and each individual who is that person's beneficial owner or controller;
  - › the beneficial owner or controller of a customer, because of a requirement in Article 3(2)(c)(iii) of the *Money Laundering Order* to identify the individuals who are the customer's beneficial owners or controllers;
  - › acting on behalf of a customer (e.g. is acting according to a power of attorney, or has signing authority over an account) because of a requirement in Article 3(2)(aa) of the *Money Laundering Order*; or
  - › a third party on whose behalf a customer is acting, because of a requirement in Article 3(2)(b)(ii) of the *Money Laundering Order* to identify the individuals who are the third party's beneficial owners or controllers.

### 4.3.1 Finding Out Identity

#### Guidance Notes

19. A *relevant person* may demonstrate that it has found out the identity of an individual who is a customer under Article 3(2)(a) of the *Money Laundering Order* where it collects all of the following:
  - › Legal name, name(s) currently used, any former legal name(s) (such as maiden name) and name(s) formerly used;
  - › Principal residential address;
  - › Date of birth;
  - › Place of birth;
  - › Nationality;
  - › Sex; and
  - › Government issued personal identification number or other government issued unique identifier.
20. However, in the case of a lower risk relationship, a *relevant person* may demonstrate that it has found out the identity of an individual who is a customer under Article 3(2)(a) of the *Money Laundering Order* where it collects the following: legal name, any former names (such as maiden name) and any other names used; principal residential address; and date of birth.

### 4.3.2 Obtaining Evidence of Identity

#### Overview

21. Evidence of identity may come from a number of sources, including:
  - › Original documents (see 4.3.2 below)
  - › Certified copies of documents (see 4.3.3)
  - › External data sources (see 4.3.4)

- › E-ID (see Part 4, 4.2).
22. These sources may differ in their integrity, reliability and independence. For example, some identification documents are issued after due diligence on an individual's identity has been undertaken, for example passports and national identity cards; others are issued on request, without any such checks being carried out. A *relevant person* should also recognise that some documents are more easily forged than others. Similarly, some smart phone or tablet applications may not sufficiently mitigate the risks inherent in using such technology and a *relevant person* will need to ensure that its *CDD systems and controls* include measures specifically designed to do so.
  23. Additionally, documents incorporating photographic confirmation of customer identity provide a higher level of assurance that an individual is the person who he or she claims to be.
  24. 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.
  25. Where evidence of identity obtained subsequently expires e.g. a passport, national identity card, or driving licence, it is not necessary to obtain further evidence under *identification measures* set out in Article 13 of the *Money Laundering Order*.

#### AML/CFT Codes of Practice

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

#### Guidance Notes

27. A *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that an individual to be identified is who the individual is said to be where that evidence covers the following components of identity and, where documentary evidence of identity is exclusively relied upon, uses at least two sources of evidence (see paragraph 27 below):
  - › Legal name and name(s) currently used;
  - › Principal residential address;
  - › Date of birth;
  - › Place of birth;
  - › Nationality;
  - › Passport or national identity number; and
  - › Sex.
28. However, in the case of a lower risk relationship with a customer who is resident in Jersey, a *relevant person* may demonstrate that it has obtained evidence that is reasonably capable of verifying under Article 3(2)(a) of the *Money Laundering Order* that an individual to be identified is who the individual is said to be where that evidence covers: legal name and other names used; and principal residential address (or, as an alternative, date of birth) using at least one source of evidence (see paragraph 29 below).
29. A *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that an individual to be identified is who the individual is said to be where that evidence is one of the following documents:

All elements of identity
<ul style="list-style-type: none"><li>› A current passport or copy of such a passport certified by a suitable certifier - providing photographic evidence of identity;</li><li>› A current national identity card or copy of such a national identity card certified by a suitable certifier- providing photographic evidence of identity; or</li><li>› A current driving licence or copy of such a driving licence certified by a suitable certifier - providing photographic evidence of identity - where the licensing authority carries out a check on the holder's identity before issuing.</li></ul>
Residential address:
<ul style="list-style-type: none"><li>› Correspondence from a central or local government department or agency (e.g. States and parish authorities);</li><li>› A letter of introduction confirming residential address from: (i) a <i>relevant person</i> that is regulated by the <i>Commission</i>; (ii) a person carrying on a <i>financial services business</i> which is regulated and operates in a well-regulated country or territory; or (iii) a branch or subsidiary of a group headquartered in a well-regulated country or territory which applies group standards to subsidiaries and branches worldwide, and tests the application of and compliance with such standards;</li><li>› A bank statement or utility bill; or</li><li>› A tenancy contract or agreement.</li></ul>

30. However, in the case of a lower risk relationship with a customer who is resident in Jersey, a *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that an individual to be identified is who the individual is said to be where that evidence is a: (i) Jersey driving licence; or (ii) birth certificate, in conjunction with a bank statement, or a utility bill, or document issued by a government source, or a letter of introduction from a *relevant person* that is regulated by the *Commission*.
31. A *relevant person* may also demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that an individual to be identified is who the individual is said to be where the data or information comes from an independent data source or (in the case of a residential address) personal visit to that address.
32. Where an individual's residential address changes, a *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that an individual to be identified is who the individual is said to be where the data or information is collected through on-going correspondence with that customer at the changed address.
33. A *relevant person* may demonstrate that a country or territory is well-regulated for the purpose of a letter of introduction, where it has regard to:
- › the development and standing of the country or territory's regulatory framework; and
  - › recent independent assessments of its regulatory environment, such as those conducted and published by the *IMF*.

### 4.3.3 Suitable Certification

#### Overview

34. "Suitable certification" is a process where, rather than requesting a person to present evidence of identity directly to the *relevant person*, the person is called on to present himself, herself or itself to a trusted external party along with original documentation that supports that person's identity (and which is current) specifically for the purpose of entering into a relationship or one-off transaction with a *relevant person*. The effect of this is to create an environment in which *identification measures* are applied through a trusted external party and where the customer (or other person) is seen on a face to face basis.
35. "Suitable certification" is not to be confused with a case where a *relevant person* uses Article 16 of the *Money Laundering Order* - which allows reliance to be placed on *reliance identification measures* that have already been completed by an *obliged person* where evidence of identity that may subsequently be provided by that *obliged person* may now be out of date, and where the *obliged person* has a continuing responsibility to the *relevant person* in respect of record-keeping and access to records - where Section 5 is relevant.
36. Nor should provisions in Section 4.4.5 and Section 4.5.7 for copy documentation to be provided by a regulated trust and company services provider be confused with "suitable certification".
37. For certification to be effective, a person will need to personally present an original document to an acceptable suitable certifier and that certifier will need to be subject to professional rules (or equivalent) providing for the integrity of the certifier's conduct.
38. Acceptable persons to certify evidence of identity may include:
  - › a member of the judiciary, a senior civil servant, or a serving police or customs officer;
  - › an officer of an embassy, consulate or high Commission of the country of issue of documentary evidence of identity;
  - › an individual who is a member of a professional body that sets and enforces ethical standards;
  - › an individual that is qualified to undertake certification services under authority of the Certification and International Trade Committee (in Jersey this service is available through the Jersey Chamber of Commerce); and
  - › a director, officer, or manager of: (i) a person carrying on a *financial services business* which is regulated and operates in a well-regulated country or territory; or (ii) a branch or subsidiary of a group headquartered in a well-regulated country or territory which applies group standards to subsidiaries and branches worldwide, and tests the application of and compliance with such standards.
39. In determining whether a country or territory is well-regulated, a *relevant person* may have regard to:
  - › the development and standing of the country or territory's regulatory framework; and
  - › recent independent assessments of its regulatory environment, such as those conducted and published by the *IMF*.
40. Best efforts should be exercised to secure an adequate quality copy of photographic evidence of identity that is certified.
41. A higher level of assurance will be provided where the relationship between the certifier and the subject is of a professional rather than personal nature.

### Guidance Notes

42. A *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that a person to be identified is who the person is said to be when it:
- › obtains a true copy, signed and dated by the suitable certifier (“wet signature”), of a document that is accompanied by confirmation on the matter set out in paragraph 43 and adequate information set out in paragraph 45 so that he may be contacted in the event of a query; and
  - › takes additional steps in line with paragraph 46 to validate the credentials of the suitable certifier, where that person is connected to a higher risk country or territory or based in a different country or territory to that of the individual, or there is reason to believe that certification may not be effective (see paragraphs 37 and 38).
43. The matter to be confirmed is that the copy of the document is a true copy of an original document (or extract thereof) that includes information on the identity and/ or residential address of an individual.
44. In a case where the document to be certified relates to a legal arrangement or legal person, then paragraphs 42 and 43 of this section apply, except that the documents to be certified will be those that provide evidence of identity of that legal arrangement or legal person
45. An adequate level of information to be provided by a certifier will include *his* or her name, position or capacity, *his* or her address and a telephone number or email address at which he or she can be contacted.
46. The additional steps to be taken to validate the credentials of the certifier may include considering factors such as: the stature and track record of the certifier; previous experience of accepting certifications from certifiers in that profession or country or territory; the adequacy of the framework to counter *money laundering* and the *financing of terrorism* in place in the country or territory in which the certifier is located; and the extent to which the framework applies to the certifier.

### 4.3.4 Obtaining Evidence of Identity - Independent Data Sources

#### Overview

47. Independent data sources can provide a wide range of confirmatory material on a customer, and are becoming increasingly accessible, for example, through improved availability of public information (registers of electors and telephone directories – to the extent permitted by data protection legislation) and the emergence of commercially available data sources such as those provided by data services providers, e.g. credit reference agencies and business information service providers.
48. Where a *relevant person* is seeking to obtain reliable and independent evidence of identity using an independent data source, whether by accessing the source directly or by using a data services provider, an understanding of the depth, breadth and quality of the data or information is important in order to determine that the source does in fact provide satisfactory evidence of identity and that the process of obtaining evidence is sufficiently robust to be relied upon.

### Guidance Notes

49. A *relevant person* may demonstrate that it is satisfied that data or information it has accessed directly from data source(s) is sufficiently extensive, reliable and accurate under Article 3(2)(a) of the *Money Laundering Order* where:
- › the source, scope and quality of the data or information accessed are understood;

- › the *relevant person* uses positive data or information source(s) that can be called upon to link a customer to both current and historical data and information; and
  - › processes allow the *relevant person* to capture and record the data or information.
50. A *relevant person* may demonstrate that it is satisfied that data or information supplied by the data service provider is sufficiently extensive, reliable and accurate where:
- › it understands the basis of the system used by the data service provider and is satisfied that the system is sufficiently robust; including knowing what checks have been carried out, knowing what the results of these checks were, and being able to determine the level of satisfaction provided by those checks;
  - › the data services provider is registered with a data protection authority in Jersey, the European Economic Area (the **EEA**), or country or territory that has similar data protection provisions to the **EEA**, e.g. Guernsey and the Isle of Man;
  - › the data services provider either:
    - › accesses: (i) a range of positive data or information sources that can be called upon to link a customer to both current and historical data and information; (ii) negative data and information sources such as databases relating to fraud and deceased persons; and (iii) a wide range of alert data sources; or
    - › otherwise ensures that its source(s) are sufficiently extensive, reliable and accurate; and
    - › processes allow the *relevant person* to capture and record the data information.

#### 4.3.5 Guarding against the Exclusion of Jersey Residents

##### Overview

51. On occasions, an individual may be unable to provide evidence of identity using the sources of evidence set out at Section 4.3.2. Examples of such individuals may include:
- › Seasonal workers whose principal residential address is not in Jersey.
  - › Individuals living in Jersey in accommodation provided by their employer, with family, or in care homes, who may not pay directly for utility services.
  - › Jersey students living in university, college, school, or shared accommodation, who may not pay directly for utility services.
  - › Minors.

##### AML/CFT Code of Practice

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

##### Guidance Notes

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

54. In the case of a lower risk individual who is resident in a Jersey nursing home or residential home and has a valid reason for being unable to produce more usual evidence of identity, and would otherwise be excluded from accessing estate agency services, a *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that a person to be identified is who the person is said to be where that evidence is a letter from a Jersey nursing home or residential home for the elderly, which a *relevant person* is satisfied that it can place reliance on, confirming the identity of the resident.
55. In other cases, where a lower risk individual has a valid reason for being unable to produce more usual evidence of identity, and would otherwise be excluded from accessing estate agency services, a *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* of residential address that is reasonably capable of verifying that a person to be identified is who the person is said to be where that evidence is:
- › A letter from a Jersey employer, which a *relevant person* is satisfied that it can place reliance on, that confirms residence of an individual at a stated Jersey address, and, in the case of a seasonal worker, indicates the expected duration of employment and gives the worker's principal residential address in his or her country of origin.
  - › A letter from the head of household at which the individual resides confirming that the individual lives at that Jersey address, setting out the relationship between the customer and the head of household, together with evidence that the head of household resides at the address.
  - › A letter from a principal of a university or college, which a *relevant person* is satisfied that it can place reliance on, that confirms residence of the individual at a stated address. In the case of a Jersey student studying outside the Island, a residential address in Jersey should also be collected.
56. Confirmatory letters should be written on appropriately headed notepaper.

#### **4.3.6 Residential Address: Overseas Residents**

##### **Overview**

57. On occasions, an individual resident abroad may be unable to provide evidence of their principal residential address using the sources set out at Section 4.3.2 of this Handbook. Examples of such individuals include residents of countries without postal deliveries and few street addresses, who rely upon post office boxes or employers for delivery of mail, and residents of countries where, due to social restraints, evidence of a private address may not be obtained through a personal visit.
58. It is essential for law enforcement purposes that a record of an individual's residential address (or details of how that individual's residential address may be reached) be recorded. As a result, it is not acceptable only to record a post office box number as an address.

##### **AML/CFT Codes of Practice**

59. A *relevant person* must determine that there is a valid reason for a customer being unable to provide more usual sources of evidence for an address, and must document that reason.
60. Where alternative methods to obtain evidence for an address are relied on, a *relevant person* must consider whether enhanced monitoring of activity and transactions is appropriate.

### Guidance Notes

61. Where an individual has a valid reason for being unable to produce more usual evidence for a residential address, a *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that a person to be identified is who the person is said to be where it receives written confirmation from an individual satisfying the criteria for a suitable certifier that he or she has visited the individual at that address.
62. Where an individual has a valid reason for being unable to produce more usual evidence for a residential address, a *relevant person* may demonstrate that it has found out the identity of that person under Article 3(2)(a) of the *Money Laundering Order* where, in addition to principal residential address, it collects a “locator” address. In such a case, a *relevant person* may demonstrate that it has obtained evidence that is reasonably capable of verifying that a person to be identified is who the person is said to be where it obtains evidence that the individual may normally be met or contacted at that address.
63. A “locator” address is an address at which it would normally be possible to physically meet or contact an individual (with or without prior arrangement), for example, an individual’s place of work.

## 4.4 Obligation to Find Out Identity and Obtain Evidence: Legal Arrangements

### Overview

64. Jersey law recognises two distinct forms of legal arrangement: the trust and the limited partnership.
65. Jersey trusts law comprises both the Trusts (Jersey) Law 1984, as amended and the Jersey customary law of trusts. Limited partnerships are established under the Limited Partnerships (Jersey) Law 1994.
66. There is a wide variety of trusts ranging from large, nationally and internationally active organisations subject to a high degree of public scrutiny and transparency, through to trusts set up under testamentary arrangements and trusts established for wealth management purposes. Trusts may also be established as a *collective investment scheme* – known as a unit trust.
67. A legal arrangement cannot form a business relationship or carry out a one-off transaction itself. It is the trustee(s) of the trust or general partner(s) of the limited partnership who will enter into a business relationship or carry out the one-off transaction with a *relevant person* on behalf of the legal arrangement and who will be considered to be the customer(s). In line with Article 3 of the *Money Laundering Order*, the trust or limited partnership will be considered to be the third party on whose behalf the trustee(s) or general partner(s) act(s).
68. In forming a business relationship or carrying out a one-off transaction with a trustee or general partner, a *relevant person* will be dependent on information provided by the trustee or general partner (a regulated trust and company services provider or otherwise) relating to the legal arrangement and persons concerned with the legal arrangement (set out in Article 3(7) of the *Money Laundering Order*). When determining the risk assessment for a legal arrangement (Section 3.3 of this Handbook), the risk factors set out in Section 3.3.4.1 and Section 7.13.1 of this Handbook will be relevant in deciding whether it is appropriate to use information provided by the trustee or general partner. In addition, the monitoring measures maintained by a *relevant person* (see Section 6 of this Handbook) may provide additional comfort that relevant and up to date information on identity has been found out.
69. In the case of a unit trust which is a third party, individual investors into the unit trust are not considered to be settlors for the purpose of Article 3(7)(a).

70. The following provisions apply to situations where a trustee of an express trust or general partner of a limited partnership is the customer of a *relevant person*.
71. The following provisions will also assist with the identification of ultimate beneficial owners and controllers and will be relevant in situations where a legal arrangement (through the trustee or general partner) is:
- › the owner or controller of a customer, because of a requirement in Article 3(2)(c)(iii) of the *Money Laundering Order* to identify the individuals who are the customer's beneficial owners or controllers; or
  - › a third party on whose behalf a customer is acting, because of a requirement in Article 3(2)(b)(ii) of the *Money Laundering Order* to identify the individuals who are the third party's beneficial owners or controllers.
72. Where the trustee or general partner is a *relevant person carrying on regulated business* (defined in Article 1 of the *Money Laundering Order*) or is a person who carries on *equivalent business* to any category of *regulated business*, it may be possible to apply CDD exemptions under Article 17B and Article 18(3) of the *Money Laundering Order*. See Section 7.
73. The measures that must be applied by a *relevant person* where a third party is a trust need not include a settlor of a trust who is deceased.
74. The measures that must be applied to obtain evidence of identity of beneficiaries and persons who are the object of a power and that have been identified as presenting higher risk will necessarily reflect the verification methods that are available at a particular time to the trustee. For example, it may not be appropriate to request evidence directly from the beneficiary or object of a power.
75. Where a *relevant person* is not familiar with the form of the evidence of identity obtained to verify identity, appropriate measures may be necessary to satisfy itself that the evidence is genuine.
76. Notwithstanding the requirement to find out identity and obtain evidence in relation to the trustee, the trust and those individuals listed in Article 3(7) of the *Money Laundering Order*, a *relevant person* is not expected to collect information on the detailed terms of the trust, nor rights of the beneficiaries.

#### **4.4.1 Finding Out Identity – Legal Arrangement that is a Trust**

##### **Guidance Notes**

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

79. A *relevant person* may demonstrate that it has found out the identity of persons having a beneficial interest in a trust (other than a unit trust) which is a third party under Article 3(2)(b)(iii)(B) of the *Money Laundering Order* where it finds out the identity of each beneficiary with a vested right. This information may be provided by the trustee.
80. A *relevant person* may demonstrate that it has found out the identity of persons having a beneficial interest in a trust (other than a unit trust) which is a third party under Article 3(2)(b)(iii)(B) of the *Money Laundering Order* where it finds out the identity of each beneficiary who has been identified as presenting higher risk. This information may be provided by the trustee.
81. A *relevant person* may demonstrate that it has found out the identity of the object of a trust power in a trust which is a third party under Article 3(2)(b)(iii)(B) of the *Money Laundering Order* where it finds out the identity of each person who is the object of a power, who has been identified as presenting higher risk. This information may be provided by the trustee.
82. A *relevant person* may demonstrate that it has found out the identity of any other individual who otherwise exercises ultimate effective control over the third party under Article 3(2)(b)(iii)(B) of the *Money Laundering Order* where it finds out the identity of each co-trustee. This information may be provided by the trustee.
83. In any case where a settlor, protector, beneficiary, object of a power or other person referred to in paragraphs 76 to 80 (the **person**) is not an individual, a *relevant person* may demonstrate that it has identified each individual who is the person's beneficial owner or controller under Article 3(2)(b)(iii)(C) of the *Money Laundering Order* where it has identified:
- › Each individual with a **material controlling ownership interest** in the capital of the person (through direct or indirect holdings of interests or voting rights) or who exerts **control through other ownership means**.
  - › To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising **control** over the person **through other means**.
  - › Where no individual is otherwise identified under this section, individuals who exercise **control** of the person **through positions held** (who have and exercise strategic decision-making powers or have and exercise executive control through senior management positions).
84. For lower risk relationships, a general threshold of 25% is considered to indicate a material controlling ownership interest in capital. Where the distribution of interests is uneven, the percentage where effective control may be exercised (a material interest) may be less than 25% when the distribution of other interests is taken into account, i.e. interests of less than 25% may be material interests.

#### 4.4.2 Obtaining Evidence of Identity – Legal Arrangement that is a Trust

##### AML/CFT Codes of Practice

85. All key documents (or parts thereof) obtained as evidence of identity must be understandable (i.e. in a language understood by the employees of the *relevant person*), and must be translated into English at the request of the *JFCU* or the *Commission*.
86. A *relevant person* must obtain evidence that any person purporting to act as the trustee of a trust which is a third party has authority so to act.

### Guidance Notes

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

### 4.4.3 Finding Out Identity – Legal Arrangement that is a Limited Partnership

#### Guidance Notes

88. A *relevant person* may demonstrate that it has found out the identity of a limited partnership which is a third party under Article 3(2)(b)(i) of the *Money Laundering Order* where it collects all of the following:
- › Name of partnership.
  - › Any trading names.
  - › Date and country of registration/establishment.
  - › Official identification number.
  - › Registered office/business address.
  - › Mailing address (if different).
  - › Principal place of business/operations (if different).
  - › Names of all general partners and those limited partners that participate in management (if any).
89. A *relevant person* may demonstrate that it has found out the identity of a person who has a beneficial interest in a limited partnership which is a third party under Article 3(2)(b)(iii)(B) of the *Money Laundering Order* where it finds out the identity of limited partners holding a **material controlling ownership interest** in the capital of the partnership (through direct or indirect holdings of interests or voting rights) or any other person exercising **control through other ownership means**, e.g. partnership agreements, power to appoint senior management, or any outstanding debt that is convertible into voting rights.
90. To the extent that there is doubt as to whether the persons exercising control through ownership are beneficial owners, or where no person exerts control through ownership, a *relevant person* may demonstrate that it has found out the identity of a person who has a beneficial interest in a limited partnership which is a third party under Article 3(2)(b)(iii)(B) of the *Money Laundering Order* where it finds out the identity of those who exercise **control through other means**, e.g. those who exert control through personal connections, by participating in financing, because of close and intimate family relationships, historical or contractual associations or as a result of default on certain payments.
91. Where no person is otherwise identified under this section, a *relevant person* may demonstrate that it has found out the identity of a person who has a beneficial interest in a limited partnership which is a third party under Article 3(2)(b)(iii)(B) of the *Money Laundering Order* where it finds out the identity of persons who **exercise control through positions held** (who have and exercise strategic decision-making powers or have and exercise executive control through senior management positions, e.g. general partner or limited partner that participates in management). This information may be provided by the general partner.

92. In any case where a partner or other person referred to in paragraphs 89 to 91 is not an individual, a *relevant person* may demonstrate that it has identified each individual who is that person's beneficial owner or controller under Article 3(2)(b)(iii)(C) of the *Money Laundering Order* where it has identified:
- › Each individual with a **material controlling ownership interest** in the capital of the partnership (through direct or indirect holdings of interests or voting rights) or who exerts **control** of the partnership **through other ownership means**.
  - › To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising **control** over the partnership through **other means**.
  - › Where no individual is otherwise identified under this section, individuals who exercise **control** of the partnership **through positions held** (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions).
93. In the case of a lower risk relationship, partners who have and exercise authority to operate a business relationship or one-off transaction will be those who exercise control through positions held.
94. For lower risk relationships, a general threshold of 25% is considered to indicate a material controlling ownership interest in the capital of a limited partnership. Where the distribution of interests is uneven the percentage where effective control may be exercised (a material interest) may be less than 25% when the distribution of other interests is taken into account, i.e. interests of less than 25% may be material interests.

#### 4.4.4 Obtaining Evidence of Identity – Legal Arrangement that is a Limited Partnership

##### AML/CFT Codes of Practice

95. All key documents (or parts thereof) obtained as evidence of identity must be understandable (i.e. in a language understood by the employees of the business), and must be translated into English at the request of the *JFCU* or the *Commission*.
96. A *relevant person* must obtain evidence that any person purporting to act as general partner of a partnership which is a third party has authority so to act.

##### Guidance Notes

97. A *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(b)(i) of the *Money Laundering Order* that is reasonably capable of verifying that a limited partnership which is a third party to be identified is who the partnership is said to be where the evidence covers all of the following components of identity:
- › Name of partnership.
  - › Date and country of registration/establishment.
  - › Official identification number.
  - › Registered office/business address.
  - › Principal place of business/operations (if different).

98. However, in the case of a lower risk relationship, a *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(b)(i) of the *Money Laundering Order* that is reasonably capable of verifying that a limited partnership which is a third party to be identified is who the partnership is said to be where the evidence covers the following components of identity: name of partnership; date and country of registration/establishment; and official identification number.
99. A *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(b)(i) of the *Money Laundering Order* that is reasonably capable of verifying that a limited partnership which is a third party to be identified is who the partnership is said to be where it obtains, in every case, the partnership agreement or a copy of such an agreement certified by a suitable certifier and one or more sources of further evidence (one source for lower risk customers):
- › Certificate of registration (where a partnership is registered) or copy of such a certificate certified by a suitable certifier.
  - › Latest audited financial statements or copy of such statements certified by a suitable certifier.
100. A *relevant person* may also demonstrate that it has obtained evidence under Article 3(2)(b)(i) of the *Money Laundering Order* that is reasonably capable of verifying that a partnership which is a third party is who the partnership is said to be where the data or information comes from an independent data source or (in the case of a principal place of business) personal visit to that address. An independent data source may include a registry search, which confirms that the partnership is not in the process of being dissolved, struck off, wound up or terminated.
101. Where a partner holds this role by virtue of *his* employment by (or position in) a business that is a regulated Jersey trust and company services provider, a *relevant person* may demonstrate that it has taken reasonable measures to find out the identity of that person and to obtain evidence under Article 3(2)(b)(iii)(B) of the *Money Laundering Order* where it obtains the following:
- › the full name of the partner; and
  - › an assurance from the trust and company services provider that the individual is an officer or employee.

#### **4.4.5 Copy Documentation Provided by Regulated Trust and Company Services Provider**

##### **Guidance Notes**

102. Where information is provided by a trust and company service provider that is regulated by the *Commission*, the Guernsey Financial Services Commission or the Isle of Man Financial Services Authority (“a regulated trust and company services provider”) on a person listed in Article 3(7) of the *Money Laundering Order* (following an assessment of risk in line with paragraph 66), a *relevant person* may demonstrate that it has taken reasonable measures to obtain evidence of identity for that person under Article 13 of the *Money Laundering Order* where it obtains a copy of a document that is listed in paragraph 27 from the regulated trust and company services provider, along with confirmation on certain matters.
103. The matters to be confirmed are that:
- › the regulated trust and company services provider has seen the original document that it has copied to the *relevant person*, or the document that has been copied to the *relevant person* was provided to the regulated trust and company services provider by a suitable certifier;

- › the regulated trust and company services provider is satisfied that the original document seen, or document provided to it by a suitable certifier, provides evidence that the individual is who he or she is said to be; and
  - › the document provided to the *relevant person* is a true copy of a document that is held by the regulated trust and company services provider.
104. This will be different to a case where a *relevant person* decides to make use of Article 16 of the *Money Laundering Order* - which allows reliance to be placed on *reliance identification measures* that have already been completed by an obliged party where evidence of identity may be held by the obliged party, and where the obliged party has a continuing responsibility to the *relevant person* in respect of record-keeping and access to records – Section 5 is relevant.
105. In both cases, the risk of placing reliance on another person to have carried out *identification measures* must be considered – either as part of an assessment of customer risk under Article 13, or assessment of risk under Article 16 of the *Money Laundering Order*.
106. Nor should provision for copy documentation to be provided by a regulated trust and company services provider be confused with “suitable certification”, which is explained in Section 4.3.3.

## 4.5 Obligation to Find Out the Identity and Obtain Evidence: Legal Persons

### Overview

107. Jersey law recognises a number of distinct forms of legal person, in particular: the company; the foundation; the limited liability partnership; the separate limited partnership; and the incorporated limited partnership.
108. Companies are established under the Companies (Jersey) Law 1991 (the **Companies Law**). Foundations are established under the Foundations (Jersey) Law 2009. Limited liability partnerships are established under the Limited Liability Partnerships (Jersey) Law 1997. Separate Limited Partnerships are established under the Separate Limited Partnerships (Jersey) Law 2011. Incorporated Limited Partnerships are established under the Incorporated Limited Partnerships (Jersey) Law 2011.
109. The following provisions apply to situations where a legal person is the **customer**.
110. The provisions will also assist with the identification of ultimate beneficial owners and controllers and will be relevant in situations where a legal person is:
- › a person connected to a legal arrangement, because of a requirement in Article 3(2)(b)(iii) to identify each person who falls within Article 3(7) of the *Money Laundering Order*, and each individual who is that person’s beneficial owner or controller;
  - › the owner or controller of a customer, because of a requirement in Article 3(2)(c)(iii) of the *Money Laundering Order* to identify the individuals who are the customer’s beneficial owners or controllers;
  - › Acting on behalf of a customer (e.g. is acting according to a power of attorney, or has signing authority over an account); or
  - › A third party on whose behalf a customer is acting, because of a requirement in Article 3(2)(b)(ii) of the *Money Laundering Order* to identify the individuals who are the third party’s beneficial owners or controllers.
111. The *Companies Law* allows for the incorporation of cell companies: incorporated cell companies (**ICCs**) and protected cell companies (**PCCs**).
112. Each of these types of cell companies may establish one or more cells.

113. In the case of a *PCC*, each cell, despite having its own memorandum of association, shareholders and directors, as well as being treated for the purposes of the *Companies Law* as if it were a company, does not have a legal personality separate from the cell company. Accordingly, where a cell wishes to contract with another party, it does so through the cell company acting on its behalf. In order to ensure that creditors and third parties are aware of this position, a director of the cell company is under a duty to notify the counterparties to a transaction that the cell company is acting in respect of a particular cell.
114. Where a *relevant person* establishes a business relationship or enters into a one-off transaction with a cell of a *PCC*, because the cell does not have the ability to enter into arrangements or contract in its own name, for the purposes of Article 3 of the *Money Laundering Order*, the *PCC* will be taken to be a customer acting for a third party and the particular cell will be taken to be the third party that is a person other than an individual.
115. By contrast, in the case of an *ICC*, each cell has its own separate legal personality, with the ability to enter into arrangements or contracts and to hold assets and liabilities in its own name. Where a *relevant person* establishes a business relationship or enters into a one-off transaction with a cell of an *ICC*, the cell (a company) will be taken to be the customer.
116. In a case where the ownership structure of a legal person to be identified (A) includes other legal persons, the beneficial owners and controllers of A will include those individuals **ultimately** holding a material controlling ownership interest in A. See paragraph 132.
117. The *identification measures* to be applied to a company are set out in Sections 4.5.1 and 4.5.2. The *identification measures* to be applied to a foundation are set out in Sections 4.5.3 and 4.5.4. The *identification measures* to be applied to a partnership are set out in Sections 4.5.5 and 4.5.6.
118. For the purposes of this Section, provisions that are said to apply to a company are to be taken to apply, with appropriate modification, to: any other body that can establish a business relationship with a *relevant person* or otherwise own property; an anstalt; an incorporated and unincorporated association, club, society, charity, church body, or institute; a mutual or friendly society; a co-operative; and a provident society.
119. Where information relating to a legal person is not available from a public source, a *relevant person* will be dependent on the information that is provided by the legal person. When determining the risk assessment for a legal person (see Section 3.3 of this Handbook), the risk factors set out in Section 3.3.4.1 of this Handbook will be relevant. The risk factors set out in Section 7.13.1 of this Handbook will also be relevant in determining whether it is appropriate to use information on a legal person provided through a trust and company (or other) services provider. In addition, the monitoring measures maintained by a *relevant person* (see Section 6) may provide additional comfort that relevant and up to date information on identity has been found out.
120. Where a director of a company holds this role by virtue of *his* employment by (or position in) a regulated Jersey trust company business, separate provision is made for obtaining evidence of identity. Similar provision is made for a council member of a foundation and for a partner of a partnership.
121. Article 2 of the *Money Laundering Order*, which describes those persons to be considered to be beneficial owners of a body corporate, provides that no individual is to be treated as a beneficial owner of a person that is a body corporate, the securities of which are listed on a regulated market.

122. The measures that must be applied to obtain evidence of identity of beneficiaries and persons in whose favour the council of a foundation may exercise discretion and that have been identified as presenting higher risk will necessarily reflect the verification methods that are available at a particular time to the *relevant person*. For example, it may not be appropriate to request evidence directly from a person in whose favour discretion may be exercised.
123. Where a *relevant person* is not familiar with a document obtained to verify identity, appropriate measures may be necessary to satisfy itself that the evidence is genuine.

#### 4.5.1 Finding Out Identity - Legal Person that is a Company

##### Guidance Notes

124. A *relevant person* may demonstrate that it has found out the identity of a company which is a customer under Article 3(2)(a) of the *Money Laundering Order* where it collects all of the following:
- › Name of company.
  - › Any trading names.
  - › Date and country of incorporation/registration.
  - › Official identification number.
  - › Registered office address.
  - › Mailing address (if different).
  - › Principal place of business/operations (if different).
  - › Names of all directors persons having a senior management position<sup>1</sup>.
125. A *relevant person* may demonstrate that it has found out the identity of a person who is the customer's beneficial owner or controller under Article 3(2)(c)(iii) of the *Money Laundering Order* where it finds out the identity of persons holding a **material controlling ownership interest** in the capital of the company (through direct or indirect holdings of interests or voting rights) or who **exert control through other ownership interests**, e.g. shareholders' agreements, power to appoint senior management, or through holding convertible stock or any outstanding debt that is convertible into voting rights.
126. To the extent that there is doubt as to whether the persons exercising **control through ownership** are beneficial owners, or where no person exerts control through ownership, a *relevant person* may demonstrate that it has found out the identity of a person who is the customer's beneficial owner or controller under Article 3(2)(c)(iii) of the *Money Laundering Order* where it finds out the identity of those who exercise **control through other means**, e.g. those who exert control through personal connections, by participating in financing, because of close and intimate family relationships, historical or contractual associations or as a result of default on certain payments.

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<sup>1</sup> Individuals having a senior management position means those who have and exercise strategic decision-taking powers or who have and exercise executive control.

127. Where no person is otherwise identified under this section, a *relevant person* may demonstrate that it has found out the identity of a person who is the customer's beneficial owner or controller under Article 3(2)(c)(iii) of the *Money Laundering Order* where it finds out the identity of persons who **exercise control through positions held** (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions, e.g. directors<sup>2</sup>).
128. This information may be provided by the company.
- 129.
130. In any case where a person identified under paragraphs 125 to 127 is not an individual, a *relevant person* may demonstrate that it has identified each individual who is that person's beneficial owner or controller under Article 3(2)(c)(iii) of the *Money Laundering Order* where it has identified:
- › Each individual with a **material controlling ownership interest** in the capital of the company (through direct or indirect holdings of interests or voting rights) or who exerts **control** of the company **through other ownership means**.
  - › To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising **control** over the company **through other means**.
  - › Where no individual is otherwise identified under this section, individuals who exercise control of the company **through positions held** (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions).
131. In the case of a lower risk relationship, person/s having a senior management position who have and exercise authority to operate a business relationship or one-off transaction will be those who exercise control through positions held.
132. For lower risk relationships, a general threshold of 25% is considered to indicate a material controlling ownership interest in the capital of a company. Where the distribution of interests is uneven the percentage where effective control may be exercised (a material interest) may be less than 25% when the distribution of other interests is taken into account, i.e. interests of less than 25% may be material interests.

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<sup>2</sup> This information may be provided by the company. In the case of other bodies, anstalts, associations, clubs, societies, charities, church bodies, institutes, mutual or friendly societies, co-operatives and provident societies, senior individuals will often include members of the governing body or committee plus executives

## 4.5.2 Obtaining Evidence of Identity – Legal Person that is a Company

### AML/CFT Codes of Practice

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

### Guidance Notes

134. A *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that a company which is a customer to be identified is who the company is said to be where the evidence covers all of the following components of identity:
- › Name of company.
  - › Date and country of incorporation.
  - › Official identification number.
  - › Registered office address.
  - › Principal place of business/operations (where different to registered office).
135. However, in the case of a lower risk relationship, a *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that a company which is a customer to be identified is who the company is said to be where the evidence covers the following components of identity: name of company; date and country of incorporation/registration; and official identification number.
136. A *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that a company which is a customer to be identified is who the company is said to be where it obtains, in every case, the Memorandum and Articles of Association (or equivalent) or copy of such documents certified by a suitable certifier, and one or more sources of further evidence (one source for lower risk customers);:
- › Memorandum and Articles of Association (or equivalent) or copy of such documents certified by a suitable certifier.
  - › Latest audited financial statements or copy of such statements certified by a suitable certifier.
137. A *relevant person* may also demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that a company which is a customer is who the company is said to be where the data or information comes from an independent data source or (in the case of a principal place of business) personal visit to that address. An independent data source may include a company registry search which confirms that the company is not in the process of being dissolved, struck off, wound up or terminated.
138. Where a person/s having a senior management position holds this role by virtue of their employment by (or position in) a business that is a regulated Jersey trust and company services provider, a *relevant person* may demonstrate that it has taken reasonable measures to find out the identity of that person and to obtain evidence under Article 3(2)(c)(iii) of the *Money Laundering Order* where it obtains the following:
- › the full name of the director; and
  - › an assurance from the trust and company service provider that the individual is an officer or employee.

### 4.5.3 Finding Out Identity – Legal Person that is a Foundation

#### Guidance Notes

139. A *relevant person* may demonstrate that it has found out the identity of a foundation which is a customer under Article 3(2)(a) of the *Money Laundering Order* where it collects all of the following:
- › Name of foundation.
  - › Date and country of incorporation.
  - › Official identification number.
  - › Business address. In the case of a foundation incorporated under the *Foundations (Jersey) Law 2009*, this will be the business address of the qualified member of the council.
  - › Mailing address (if different).
  - › Principal place of business/operations (if different).
  - › Name of all council members and, if any decision requires the approval of any other person, the name of that person.
140. A *relevant person* may demonstrate that it has found out the identity of the foundation's beneficial owners and controllers under Article 3(2)(c)(iii) of the *Money Laundering Order* where it finds out the identity of:
- › the founder, a person (other than the founder of the foundation) who has endowed the foundation (directly or indirectly), and, if any rights a founder of the foundation had in respect of the foundation and its assets have been assigned to some other person, that person.
  - › the guardian (who takes such steps as are reasonable to ensure that the council of the foundation carries out its functions).
  - › all council members and, if any decision requires the approval of any other person, that person.
  - › any beneficiary entitled to a benefit under the foundation in accordance with the charter or the regulations of the foundation.
  - › any other beneficiary and person in whose favour the council may exercise discretion under the foundation in accordance with its charter or regulations and that have been identified as presenting higher risk.
  - › any other person exercising ultimate effective control over the foundation.
141. This information may be provided by the foundation.
142. In any case where a founder, guardian, beneficiary or other person listed in paragraph 140 (the **person**) is not an individual. a *relevant person* may demonstrate that it has identified each individual who is the person's beneficial owner or controller under Article 3(2)(c)(iii) of the *Money Laundering Order* where it has identified:
- › Each individual with a **material controlling ownership interest** in the capital of the person (through direct or indirect holdings of interests or voting rights) or who exerts control through **other ownership means**.
  - › To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising **control over the person through other means**.

- › Where no individual is otherwise identified under this section, individuals who **exercise control** of the person **through positions held** (who are responsible for strategic decision-taking or exercising executive control through senior management positions).
143. In the case of a lower risk relationship, as an alternative to finding out the identity of all council members and, if any decision requires the approval of any other person, that person, a *relevant person* may find out the identity of council members who have and exercise authority to operate a business relationship or one-off transaction.
144. For lower risk relationships, a general threshold of 25% is considered to indicate a material controlling ownership interest in capital. Where the distribution of interests is uneven the percentage where effective control may be exercised (a material interest) may be less than 25% when the distribution of other interests is taken into account, i.e. interests of less than 25% may be material interests.

#### 4.5.4 Obtaining Evidence of Identity – Legal Person that is a Foundation

##### AML/CFT Codes of Practice

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

### Guidance Notes

146. A *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that a foundation which is a customer is who the foundation is said to be where the evidence covers all of the following components of identity:
- › Name of foundation.
  - › Date and country of incorporation.
  - › Official identification number.
  - › Business address.
  - › Principal place of business/operations (if different).
147. However, in the case of a lower risk relationship, a *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that a foundation which is a customer to be identified is who the foundation is said to be where the evidence covers the following components of identity: name of foundation, date and country of incorporation, and official identification number.
148. A *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that a foundation to be identified is who the foundation is said to be where it obtains, in every case, the foundation Charter (or equivalent) or a copy of such document certified by a suitable certifier, and further evidence (one source for lower risk customers):
- › Latest audited financial statements or copy of such statements certified by a suitable certifier.
149. A *relevant person* may also demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that a foundation which is a customer is who the foundation is said to be where the data or information comes from an independent data source or (in the case of a principal place of business) personal visit to that address. An independent data source may include a registry search on the *Commission's* website (for the business address of the qualified member of the council).
150. Where a council member who is an individual holds this role by virtue of their employment by (or position in) a business that is a regulated Jersey trust and company services provider, a *relevant person* may demonstrate that it has taken reasonable measures to find out the identity of that person and to obtain evidence under Article 3(2)(c)(iii) of the *Money Laundering Order* where it obtains the full name of the council member and an assurance from the trust and company services provider that the individual is an officer or employee.

#### 4.5.5 Finding Out Identity – Legal Person that is a Partnership

### Guidance Notes

151. A *relevant person* may demonstrate that it has found out the identity of a partnership which is a customer under Article 3(2)(a) of the *Money Laundering Order* where it collects all of the following:
- › Name of partnership.
  - › Any trading names.
  - › Date and country of incorporation/registration.
  - › Official identification number.
  - › Registered office/business address.

- › Mailing address (if different).
  - › Principal place of business/operations (if different).
  - › Names of all partners (except any limited partners that do not participate in management).
152. A *relevant person* may demonstrate that it has found out the identity of a person who is the customer's beneficial owner or controller under Article 3(2)(c)(iii) of the *Money Laundering Order* where it finds out the identity of limited partners holding a **material controlling ownership interest** in the capital of the partnership (through direct or indirect holdings of interests or voting rights) or any other person exercising **control through other ownership means**, e.g. partnership agreements, power to appoint senior management, or any outstanding debt that is convertible into voting rights.
153. To the extent that there is doubt as to whether the persons exercising control through ownership are beneficial owners, or where no person exerts control through ownership, a *relevant person* may demonstrate that it has found out the identity of a person who is the customer's beneficial owner or controller under Article 3(2)(c)(iii) of the *Money Laundering Order* where it finds out the identity of those who exercise **control through other means**, e.g. those who exert control through personal connections, by participating in financing, because of close and intimate family relationships, historical or contractual associations or as a result of default on certain payments.
154. Where no person is otherwise identified under this section, a *relevant person* may demonstrate that it has found out the identity of a person who is the customer's beneficial owner or controller under Article 3(2)(c)(iii) of the *Money Laundering Order* where it finds out the identity of persons who exercise **control through positions held** (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions, e.g. general partner or limited partner that participates in management).
155. This information may be provided by the partnership.
156. In any case where a partner or other person referred to in paragraphs 151 to 153 is not an individual, a *relevant person* may demonstrate that it has identified each individual who is that person's beneficial owner or controller under Article 3(2)(c)(iii) of the *Money Laundering Order* where it has identified:
- › Each individual with a **material controlling ownership interest** in the capital of the partnership (through direct or indirect holdings of interests or voting rights) or who exerts **control** of the partnership **through other ownership means**.
  - › To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising **control** over the partnership **through other means**.
  - › Where no individual is otherwise identified under this section, individuals who **exercise control** of the partnership **through positions held** (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions).
157. In the case of a lower risk relationship, partners who have and exercise authority to operate a business relationship or one-off transaction will be those who exercise control through positions held.

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

#### 4.5.6 Obtaining Evidence of Identity – Legal Person that is a Partnership

##### AML/CFT Codes of Practice

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

##### Guidance Notes

160. A *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that a partnership which is a customer to be identified is who the partnership is said to be where the evidence covers all of the following components of identity:
- › Name of partnership.
  - › Date and country of incorporation/registration/establishment.
  - › Official identification number.
  - › Registered office/business address.
  - › Principal place of business/operations (if different).
161. However, in the case of a lower risk relationship, a *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that a partnership which is a customer to be identified is who the partnership is said to be where the evidence covers the following components of identity: name of partnership, date and country of incorporation/registration, and official identification number.
162. A *relevant person* may demonstrate that it has obtained evidence under Article 3(2)(a) of the *Money Laundering Order* that is reasonably capable of verifying that a partnership which is a customer to be identified is who the partnership is said to be where it obtains, in every case, the Partnership agreement or a copy of such an agreement certified by a suitable certifier, and one or more sources of further evidence (one source for lower risk customers):
- › Certificate of registration (where a partnership is registered) or copy of such a certificate certified by a suitable certifier.
  - › Latest audited financial statements or copy of such statements certified by a suitable certifier.
163. A *relevant person* may also demonstrate that it has obtained evidence that is reasonably capable of verifying that a partnership which is a customer is who the partnership is said to be under Article 3(2)(a) of the *Money Laundering Order* where the data or information comes from an independent data source or (in the case of a principal place of business) personal visit to that address. An independent data source may include a registry search, which confirms that the partnership is not in the process of being dissolved, struck off, wound up or terminated.

164. Where a partner holds this role by virtue of their employment by (or position in) a business that is a regulated Jersey trust and company services provider, a *relevant person* may demonstrate that it has taken reasonable measures under Article 3(2)(c)(iii) of the *Money Laundering Order* to find out the identity of that person and to obtain evidence where it obtains the following:
- › the full name of the partner; and
  - › an assurance from the trust and company services provider that the individual is an officer or employee.

#### **4.5.7 Copy Documentation provided by Regulated Trust and Company Services Provider**

##### **Guidance Notes**

165. Where information is provided by a trust and company services provider that is regulated by the *Commission*, the Guernsey Financial Services Commission or the Isle of Man Financial Services Authority (“a regulated trust and company services provider”) on a person who is a beneficial owner or controller of a legal person (following an assessment of risk in line with paragraph 117), a *relevant person* may demonstrate that it has taken reasonable measures to obtain evidence for that person under Article 13 of the *Money Laundering Order* where it obtains a copy of a document that is listed in paragraph 27 from the regulated services provider, along with confirmation on certain matters.
166. The matters to be confirmed are that:
- › the regulated trust and company services provider has seen the original document that it has copied to the *relevant person*, or the document that has been copied to the *relevant person* was provided to the regulated services provider by a suitable certifier;
  - › the regulated trust and company services provider is satisfied that the original document seen, or document provided to it by a suitable certifier, provides evidence that the individual is who he or she is said to be; and
  - › the document provided to the *relevant person* is a true copy of a document that is held by the regulated trust and company services provider.
167. This will be different to a case where a *relevant person* decides to make use of Article 16 of the *Money Laundering Order* - which allows reliance to be placed on *identification measures* that have already been completed by an obliged party where evidence of identity may be held by the obliged party, and where the obliged party has a continuing responsibility to the *relevant person* in respect of record-keeping and access to records - Section 5 of this Handbook is relevant.
168. In both cases, the risk of placing reliance on another person to have carried out *identification measures* must be considered – either as part of an assessment of customer risk under Article 13, or assessment of risk under Article 16 of the *Money Laundering Order*.
169. Nor should provision for copy documentation to be provided by a regulated trust and company services provider be confused with “suitable certification”, which is explained in Section 4.3.3.

## 4.6 Obligation to Find out Identity and Obtain Evidence: Authorised Agents of Customers

### Statutory Requirements

170. *Under Article 3(2)(aa) of the Money Laundering Order, a relevant person must identify any person purporting to act on behalf of the customer and verify the authority of any person purporting so to act.*

### AML/CFT Codes of Practice

171. In a case where another person purports to act on behalf of a customer, a *relevant person* must obtain a copy of the power of attorney or other authority or mandate that provides the persons representing the customer with the right to act on its behalf.
172. In the case of a legal arrangement that is a trust, a *relevant person* must obtain evidence that any person purporting to act as the trustee has authority so to act.
173. In the case of a legal arrangement that is a limited partnership, a *relevant person* must obtain evidence that any person purporting to act as general partner has authority so to act.

### Guidance Notes

174. A *relevant person* may demonstrate that it has taken reasonable measures to obtain evidence of identity where it takes into account factors such as the risk posed by the relationship and the materiality of the authority delegated to individuals.
175. In the case of a lower risk relationship, a *relevant person* may demonstrate that it has taken reasonable measures to obtain evidence of identity where it does so for a minimum of two individuals that have purported authority to act on behalf of a customer.

## 4.7 Timing of Identification Measures

### Statutory Requirements

#### Initial

176. *Article 13(1) of the Money Laundering Order requires identification measures to be applied before the establishment of a relationship or before carrying out a one-off transaction.*
177. *However, Article 13(4) of the Money Laundering Order permits evidence of identity to be obtained after the establishment of a business relationship in three cases:*
178. *The first – set out in Article 13(6) and (7) of the Money Laundering Order - is a business relationship that relates to a life insurance policy if the identification measure relates to a beneficiary under the policy and the relevant person is satisfied that there is a little risk of money laundering or the financing of terrorism occurring. Where identification measures are not completed before the establishment of a business relationship, they must be completed before any payment is made under the policy or any right vested under the policy is exercised.*
179. *The second – set out in Article 13(8) and (9) of the Money Laundering Order - is a business relationship that relates to a trust or foundation if the identification measure relates to a person who has a beneficial interest in the trust or foundation by virtue of property or income having been vested and the relevant person is satisfied that there is a little risk of money laundering or the financing of terrorism occurring. Where identification measures are not completed before the establishment of a business relationship, they must be completed before any distribution of trust property or income is made.*
180. *The third – set out in Article 13(4) of the Money Laundering Order – is where:*
- › *it is necessary not to interrupt the normal course of business;*

- › *there is little risk of money laundering or the financing of terrorism occurring as a result of obtaining evidence of identity after establishing the relationship;*
- › *the risk of money laundering and the financing of terrorism is effectively managed; and*
- › *evidence of identity is obtained as soon as reasonably practicable*

181. *Under Articles 11(3)(fa) and 11(3)(fb) of the Money Laundering Order, policies and procedures must be in place to: assess the risk of money laundering or the financing of terrorism and to manage the risks in relation to the conditions under which a customer may utilise a business relationship with the relevant person before the identification of the customer has been completed; as referred to in Article 13(4); and ensure that there is periodic reporting to senior management to allow it to assess that appropriate arrangements are in place to address risk and to ensure that identification measures are completed as soon as reasonably practicable.*

#### During business relationship

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

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

#### Existing customers

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

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

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

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

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

#### All cases

188. *Article 14(6) of the Money Laundering Order provides that a relevant person is not required to apply any identification measures if the relevant person*

- › *suspects money laundering in respect of any business or transaction with a person;*
- › *reasonably believes that the application of identification measures is likely to alert the person to the relevant person’s suspicions of money laundering;*
- › *has made a report under procedures maintained under Article 21 to a designated police officer or a designated customs officer; and*

- › *acting with the consent of that officer, terminates or does not establish that business relationship or does not complete or carry out that transaction.*

## Overview

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

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190. In a case where Article 13(4) of the *Money Laundering Order* applies, a *relevant person* may obtain evidence of identity after the initial establishment of a relationship if, in addition, the following conditions are met:
- › it highlights to its customer its obligation to terminate the relationship at any time on the basis that evidence of identity is not obtained; and
  - › *money laundering* and the *financing of terrorism* risk is effectively managed.
191. In any event, a *relevant person* must not permit final agreements to be signed or pay away funds to an external party (or to another account in the name of the customer), other than to deposit the funds on behalf of the customer, until such time as evidence of identity has been obtained.

## Guidance Notes

192. A *relevant person* may demonstrate that it has highlighted to a customer the obligation to terminate a relationship where terms of business, which govern its relationships with its customer: (i) encompass the termination of relationships when evidence of identity is not obtained; and (ii) clearly state that termination may lead to a customer suffering losses.
193. A *relevant person* may demonstrate that *money laundering* and the *financing of terrorism* risk is effectively managed where:
- › *policies and procedures* establish timeframes for obtaining evidence of identity;
  - › the establishment of any relationship benefiting from this concession has received appropriate authorisation, and such relationships are appropriately monitored so that evidence of identity is obtained as soon as is reasonably practicable; and
  - › appropriate limits or prohibitions are placed on the number, type and amount of transactions in respect of the relationship.
194. A *relevant person* may demonstrate that periodic reporting is in line with Article 11(3)(fa) of the *Money Laundering Order* where it highlights to the Board:
- › the number of customers for which evidence of identity has not been obtained during a reporting period (also expressed as a percentage of the total number of business relationships established during the reporting period) and summarises reasons; and
  - › in any case where the delay is for more than a particular period of time, the name of the customer, the reason for the delay, the extent to which evidence of identity has not been obtained, the risk rating given to that customer, and action that is to be taken to obtain evidence or terminate the relationship (and by when).
195. Guidance as to appropriate steps to take where a *relevant person* is unable to complete *identification measures* is provided in Section 4.8 of this Handbook.

#### 4.7.1 Timing of Identification Measures during Business Relationship – Obtaining Evidence

##### Guidance Notes

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

#### 4.7.2 Timing for “Existing Customers”

##### Overview

200. *FATF Recommendation 10* states that “financial institutions” should be required to apply that Recommendation (which deals with *CDD* measures) to “existing customers” on the basis of materiality and risk, and should conduct *CDD* measures on such existing relationships at appropriate times. This is based on the presumption that *identification measures* applied historically to existing customers will have been less effective than those to be applied in line with *FATF Recommendation 10*.
201. For the purposes of the *Money Laundering Order*, an existing customer means a business relationship established before the *Money Laundering Order* came into force for estate agents and high value dealers on 1 May 2008 and which continues.
202. For the avoidance of doubt, the *identification measures* (finding out identity and obtaining evidence) to be applied to existing customers include the collection of information that is necessary to assess the risk that a business relationship involves *money laundering* or the *financing of terrorism* (in line with Article 3(5) of the *Money Laundering Order*). This is likely to be self-evident for an existing customer on the basis that a relationship will have been established on, or before, 30 April 2008.
203. Except with the agreement of the *Commission*, the effect of Article 13(3A) of the *Money Laundering Order* is to require the identity of a customer to have been found out by 31 December 2014. There is no similar deadline for obtaining evidence of identity.

204. Once an existing relationship has been “remediated”, then Article 13(1)(c)(ii) of the *Money Laundering Order* will apply to such a relationship in the same way as a relationship established on or after 1 May 2008 (on the basis that documents, data or information will have been obtained under the *CDD* measures prescribed in Article 3).
205. In line with Article 13(3)(a)(ii) of the *Money Laundering Order*, *identification measures* must always be applied to an existing customer as soon as a *relevant person* suspects *money laundering* or the *financing of terrorism*.
206. A *relevant person* may meet its obligation to apply *identification measures* by placing reliance on an *obliged person*. See Section 5.

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

#### Guidance Notes

208. Where it does not suspect *money laundering* or the *financing of terrorism*, a *relevant person* may demonstrate that it has **found out identity** at an appropriate time for a **higher risk** existing customer where it does so at the earlier of the following dates:
- › As soon as is practicable after the date that a *relevant person* has assessed a customer to present a higher *money laundering* or the *financing of terrorism* risk; and
  - › 31 December 2014 (or later date agreed with the *Commission*).
209. Where it does not suspect *money laundering* or the *financing of terrorism*, a *relevant person* may demonstrate that it has **found out identity** at an appropriate time for a **standard or lower risk** existing customer where it does so at the earlier of the following dates:
- › The date when a transaction of significance takes place;
  - › The date when a *relevant person’s* customer documentation standards change substantially; and
  - › 31 December 2014 (or later date agreed with the *Commission*).
210. Where it does not suspect *money laundering* or the *financing of terrorism*, a *relevant person* may demonstrate that it has obtained **evidence of identity** at an appropriate time for an existing customer where it does so as soon as is practicable after the customer has been assessed as presenting a higher risk of *money laundering* or the *financing of terrorism*.
211. A *relevant person* may demonstrate that it has applied **identification measures** where it does so in accordance with measures applied to new business relationships and one-off transactions, taking into account any factors that are relevant to an existing relationship. Such factors could include existing knowledge of the customer built up through the historical conduct of the relationship, etc.

## 4.8 Failure to Complete Identification Measures

### Overview

212. Where *identification measures* cannot be completed, a *relevant person* must not establish a business relationship or carry out a one-off transaction. In the case of an established customer, the relationship must be terminated.
213. The timing of the termination of an established relationship will depend on the underlying nature of the business relationship.
214. Wherever possible, a *relevant person* should return assets or funds directly to the customer.

215. In a case where the customer requests that assets or funds be transferred to an external party, a *relevant person* should assess whether this provides grounds for knowledge or suspicion, or reasonable grounds for knowledge or suspicion, of *money laundering* or the *financing of terrorism*.
216. Where contact has been lost with a customer so that it is not possible to complete termination of a business relationship, assets or funds held should be “blocked” or placed on a “suspense” account until such time as contact is re-established.

#### **Statutory Requirements**

217. *If a relevant person is unable to apply identification measures before the establishment of a relationship or before carrying out a one-off transaction (except for circumstances set out in Article 13(4) of the Money Laundering Order, Article 14(1) of the Money Laundering Order requires that a relevant person shall not establish that business relationship or carry out that one-off transaction.*
218. *Article 14(2) of the Money Laundering Order requires a relevant person that is unable to apply identification measures in the circumstances described in Article 13(4) of the Money Laundering Order, to terminate the relationship.*
219. *Article 14(5) of the Money Laundering Order requires a relevant person to terminate a business relationship or a one-off transaction where it cannot apply on-going identification measures.*
220. *Article 14(7) of the Money Laundering Order state that, if a relevant person is unable to apply identification measures to an existing customer at the appropriate time, it must terminate that particular business relationship.*
221. *Article 14(11) of the Money Laundering Order provides that a business relationship or one-off transaction may proceed or continue where a suspicious activity report has been made and the relevant person is acting with the consent of a designated police or customs officer.*