

5 IDENTIFICATION MEASURES: RELIANCE ON OBLIGED PERSONS

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.

5.1 Overview of Section

1. In some strictly limited cases, a *relevant person* may meet its obligation to comply with Article 13(1)(a) or (c)(ii), Article 15(1)(a), (b), (d), (e) or (g) or Article 15A of the *Money Laundering Order* and *AML/CFT Codes of Practice* by placing reliance on measures that have already been applied by an **obliged person** to find out the identity of a mutual customer and to obtain evidence of identity.
2. In order to consider what reliance might be placed on an *obliged person*, a *relevant person* will first need to determine what elements of identity must be found out and what evidence of identity is to be obtained for its customer. It will do so in accordance with Article 3 of the *Money Laundering Order* and *AML/CFT Codes of Practice* set in Sections 3, 4 and 7, and will take into account its risk assessment for the customer. Once it has determined what *identification measures* it is to apply, a *relevant person* can then consider whether those measures have already been applied by an *obliged person*.
3. Where an *obliged person* has met its customer, who is resident in the same country as the *obliged person*, the measures that it has taken to find out identity and to obtain evidence of identity will be different to the *identification measures* that must be applied by the *relevant person* in a case where the *relevant person* is resident in a different country to the *obliged person* and customer, and where it has not met its customer. Even in a case where the *relevant person* and *obliged person* have met a customer and are resident in the same country, the measures taken by the *obliged person* may still differ to those to be applied by the *relevant person* to the extent that other factors are different, for example the nature of the product or service to be provided.
4. The effect of this is that the *obliged person* may not have found out all of the same information on identity as the *relevant person* needs, and may have obtained evidence of identity using different documents, data or information. This means that, in practice, the scope to place reliance may sometimes be quite limited, and that it may be necessary for a *relevant person* to find out more information on identity and obtain evidence for that aspect of identity itself.
5. However, it is not necessary that the *obliged person* will have found out identity or obtained evidence of identity exactly in line with *policies and procedures* applied by the *relevant person*, since guidance in Section 4 provides that there are different ways in which to apply *identification measures*. Also, where the *obliged person* is outside Jersey, different requirements and guidance will be applicable.
6. Where an *obliged person* meets the requirements outlined in Article 16 of the *Money Laundering Order*, a *relevant person* is permitted to place reliance on the *obliged person* to have found out the identity and to have obtained evidence of the identity of: (i) the *relevant person's* customer; (ii) any beneficial owner or controller of that customer; (iii) any third party for which that customer is acting; (iv) any beneficial owner or controller of a third party for whom that customer is acting; and/or (v) any person purporting to act on behalf of that customer.

7. It is not possible to place reliance on an *obliged person* to obtain information on the purpose and intended nature of a business relationship or one-off transaction, nor to apply on-going monitoring during a business relationship.
8. Further, Article 16 of the *Money Laundering Order* cannot be applied in any case where a *relevant person* suspects *money laundering* or the *financing of terrorism*, in any case where a *relevant person* considers that there is a higher risk of *money laundering* or the *financing of terrorism* on the basis of a risk assessment carried out under Article 16(4) of the *Money Laundering Order* (see Section 5.1.1), or where the *obliged person* has a relevant connection to a country or territory that is subject to a *FATF* call to apply enhanced *CDD* measures (see Section 7.5).
9. Whilst the information on identity found out by the *obliged person* must be provided to the *relevant person* immediately before establishing a business relationship or carrying out a one-off transaction, a *relevant person* is not also required to immediately obtain evidence of identity. Evidence of identity may be held by an *obliged person*, so long as the *relevant person* is satisfied that the *obliged person* will provide the evidence that it holds on request and without delay. However, it is not uncommon for evidence of identity to be called for at the same time as information on identity is provided by the *obliged person*.
10. Inter alia, an *obliged person* may be:
 - › a law firm that is a *relevant person* carrying on Schedule 2 business.
 - › a trust and company services provider.
11. A *relevant person* will remain responsible for the satisfactory performance of all elements of **reliance identification measures**. Under Article 16 of the *Money Laundering Order*, in this section “*reliance identification measures*” means:
 - › The *identification measures* specified in Article 3(2)(a), (aa), (b) or (c) of the *Money Laundering Order*; or
 - › If the *obliged person* is not in Jersey, similar *identification measures* that the *obliged person* applies that satisfy Recommendation 10 of the *FATF* Recommendations.
12. However, where the measures taken by a *relevant person* are reasonable, it will have a defence should the *obliged person* fail to have performed satisfactory measures.
13. Outsourcing arrangements are not included within the scope of this section, as these are distinct from circumstances in which reliance is placed on an *obliged person*. In an outsourcing arrangement, the customer will have a direct relationship with a *relevant person* but not with the delegate carrying on the outsourced activity. Although the delegate may have substantial contact with the customer, the customer is a customer of the *relevant person* and not of the delegate. The delegate will be carrying on the outsourced activity for the *relevant person* according to the terms of a contract with the *relevant person*.
14. Where information on identity found out or evidence of that identity is passed by an *obliged person* to a *relevant person* in order to comply with requirements to counter *money laundering* and the *financing of terrorism*, the Data Protection (Jersey) Law 2018 restricts the use of the information to that purpose, except where another condition for processing personal data applies.
15. A customer may be an individual (or group of individuals) or legal person. Section 4.3 deals with a customer who is an individual (or group of individuals), Section 4.4 deals with a customer (an individual or legal person) who is acting for a legal arrangement, and Section 4.5 deals with a customer who is a legal person.

16. 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.
17. Under Article 16(1) of the *Money Laundering Order*, in this section “customer of the obliged person” means:
 - › a customer of the obliged person;
 - › a beneficial owner or controller of that customer;
 - › a third party for whom that customer is acting;
 - › a beneficial owner or controller of a third party for whom that customer is acting; or
 - › a person purporting to act on behalf of that customer.

Statutory Requirements

18. *In some strictly limited circumstances, Article 16(2) of the Money Laundering Order provides that a relevant person may be considered to have applied the reliance identification measures specified in Article 3(2)(a), (b) and (c) where such measures have already been applied by an obliged person. Obligated person means a person who the relevant person knows or has reasonable grounds for believing is:*
 - › *A relevant person in respect of whom the Commission discharges supervisory functions that is overseen for AML/CFT compliance in Jersey; or*
 - › *A person who carries on equivalent business (refer to Section 1.7).*
19. *Reliance must always be subject to a number of conditions.*
20. *The **first condition** (Article 16(2)(a) of the Money Laundering Order) is that the obliged person consents to being relied upon.*
21. *The **second condition** (Article 16(4) of the Money Laundering Order) is that identification measures have been applied by the obliged person in the course of an established business relationship or one-off transaction.*
22. *The **third condition** (Article 16(4)(a), (b), (c) and (d) of the Money Laundering Order) is that the relevant person obtains adequate assurance in writing that the obliged person:*
 - › *has applied reliance identification measures in relation to the customer;*
 - › *has not itself relied upon another party to have applied any of reliance identification measures;*
 - › *has not, in reliance on any provision in Part 3A (or if the obliged person is not in Jersey, a provision of similar effect), applied measures that are less than equivalent to the reliance identification measures; and*
 - › *is required to keep, and does keep, evidence of the identification as described in Article 3(4)(b) of the Money Laundering Order relating to each of the obliged person’s customers, including a record of such evidence.*
23. *The **fourth condition** (Article 16(2)(b) of the Money Laundering Order) is that, the obliged person immediately provides the relevant person with the information obtained from applying the reliance identification measures.*
24. *To the extent that reliance is placed on an obliged person to keep hold of the evidence obtained under reliance identification measures, the **fifth condition** (Article 16(5) of the Money Laundering Order) is that the relevant person obtains adequate assurance in writing that the obliged person will:*

- › *Keep that evidence until the evidence has been provided to the relevant person, or until notification is received from the relevant person that the evidence is no longer required to be kept; and*
 - › *Provide that evidence to the relevant person at its request, and without delay.*
25. *The **sixth condition** (Article 16(3) of the Money Laundering Order) is that, immediately before placing reliance, the relevant person assesses the risk of placing reliance and makes a written record as to the reason why it is appropriate for it to place reliance on the obliged person, having regard to: (i) the higher risk of money laundering or the financing of terrorism should the obliged person fail to carry out any action specified in the assurances obtained under paragraphs 22 and 24 above; and (ii) the risk that an obliged person will fail to provide the relevant person with evidence without delay if requested to do so by the relevant person. See Section 5.1.1 below.*
26. *Under Article 16(8) of the Money Laundering Order a relevant person who relies on an obliged person under this Article must conduct tests in such manner and at such intervals as the relevant person considers appropriate in all the circumstances in order to establish whether:*
- › *the obliged person has appropriate and consistent policies and procedures in place to apply reliance identification measures;*
 - › *if the obliged person has not already provided the evidence to the relevant person, the obliged person does keep the evidence he has obtained during the course of applying reliance identification measures in respect of a person; and*
 - › *will provide that evidence without delay if requested to do so.*
27. *Under Article 16(8)(c) of the Money Laundering Order, testing should take into consideration whether a customer may be prevented, by application of law, from providing information or evidence, e.g. secrecy legislation.*
28. *If, as a result of carrying out any such test, a relevant person is not satisfied that the obliged person has appropriate and consistent policies and procedures in place, keeps evidence, or will provide it without delay if requested to do so, in that particular case, Article 16(9) of the Money Laundering Order requires the relevant person to apply reliance identification measures immediately.*
29. *Article 16(6)(a) of the Money Laundering Order provides that a written assurance will be adequate if it is reasonably capable of being regarded as reliable and a relevant person is satisfied that it is reliable.*
30. *Article 16(6)(b) of the Money Laundering Order provides that written assurances may be provided each time that reliance is placed or through a more general arrangement with an obliged person that has an element of duration, e.g. terms of business.*
31. *Article 16(7) states that a relevant person (including a person who was formerly a relevant person) who has given an assurance to another person under Article 16(5) (or under an equivalent provision that applies outside Jersey) must, if requested by the other person, provide the person with the evidence obtained from applying the reliance identification measures.*
32. *Article 16(11) of the Money Laundering Order states that nothing in this Article permits a relevant person to rely on the reliance identification measures of an obliged person if:*
- › *The relevant person suspects money laundering or the financing of terrorism;*
 - › *The relevant person considers that there is a higher risk of money laundering on the basis of the assessment made under Article 16(3) of the Money Laundering Order; or*
 - › *The obliged person is a person having a relevant connection with an enhanced risk state (within the meaning of Article 15 of the Money Laundering Order).*

33. *Notwithstanding that reliance may be placed on an obliged person, Article 16(10) of the Money Laundering Order states that a relevant person is liable for any failure to apply reliance identification measures.*

AML/CFT Codes of Practice

34. To the extent that reliance is placed on an *obliged person*, a *relevant person* must be able to demonstrate that the conditions required by the *Money Laundering Order* are met.
35. All evidence of identity passed by the *obliged person* to a *relevant person* (on request) must be confirmed by the *obliged person* as being a true copy of either an original or copy document held on its file.

Guidance Notes

Assurance in writing about reliance identification measures

36. A *relevant person* may demonstrate that it has obtained adequate assurance in writing from an *obliged person* under Article 16(4)(a) of the *Money Laundering Order* that it has applied *reliance identification measures* to the customer, where the *obliged person*:
- › provides information on identity that it has found out using an information template, such as that published in Appendix C; and
 - › explains what evidence of identity it has obtained.
37. An assurance that addresses the matters listed in paragraph 36 above will be considered to be reasonably capable of being regarded as reliable under Article 16(6)(a) of the *Money Laundering Order*.
38. Where, as a result of Article 16(6)(b) of the *Money Laundering Order*, a *relevant person* has a more general arrangement with an *obliged person*, such as terms of business, that more general arrangement may be used to explain what evidence of identity will routinely be obtained by the *obliged person*.

Access to evidence of identity

39. A *relevant person* will have demonstrated that an *obliged person* is providing evidence of identity without delay if it is provided within two working days. If it is provided later than five working days, it is not provided without delay. If it is provided between two and five working days, the entity must be able to show why this constitutes provision without delay based on the nature of its client base. In order to demonstrate the reasons for the delay the *relevant person* is expected to provide detail of the reasons as to what led to the delay, how many days evidence remained outstanding, how many times a delay has occurred previously across the *relevant person's* practice, as well as the decision-makers' considerations.

5.1.1 Assessment of Risk

Overview

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

Statutory Requirements

41. *Before relying upon the obliged person the relevant person must assess the risk of doing so and make a written record of the reasons the relevant person considers that it is appropriate to do so, having regard to two risks.*
42. *The first is the higher risk of money laundering or the financing of terrorism should an obliged person fail to carry out any actions specified in the assurances obtained under Articles 16(4) and (5) of the Money Laundering Order.*

43. *The second is the risk that an obliged person will fail to provide the relevant person with evidence without delay if requested to do so by the relevant person.*
44. *Article 16(3) of the Money Laundering Order requires a relevant person to prepare a written record of the reason why it is appropriate to place reliance on an obliged person.*

AML/CFT Codes of Practice

45. In a case where, for a particular business relationship, testing under Articles 16(8) and (9) of the *Money Laundering Order* highlights that an *obliged person*: (i) has not applied the necessary *reliance identification measures*; (ii) does not provide adequate, accurate and current information; (iii) does not keep evidence of identity for as long as is necessary; or (iv) will not provide that evidence without delay when requested to do so, a *relevant person* must review the basis upon which it has placed reliance on that *obliged person* for other relationships (if any) in order to determine whether it is still appropriate to do so.

Guidance Notes

46. Immediately before relying upon an *obliged person*, a *relevant person* may demonstrate that it has had regard for the higher risk of *money laundering* and the *financing of terrorism*, and the risk that an *obliged person* will fail to provide the *relevant person* with evidence of identity without delay if requested to do so where it considers the following factors:
- › the stature and regulatory track record of the *obliged person*;
 - › The risks posed by the country or territory in which the *obliged person* is based. Factors to consider include those found at Section 3.3.4.1.;
 - › the adequacy of the framework to combat *money laundering* and the *financing of terrorism* in place in the country or territory in which the *obliged person* is based and the period of time that the framework has been in place;
 - › the adequacy of the supervisory regime to combat *money laundering* and the *financing of terrorism* to which the *obliged person* is subject;
 - › the adequacy of *identification measures* applied by the *obliged person* to combat *money laundering* and the *financing of terrorism*.
47. A *relevant person* may demonstrate that it has considered the adequacy of *identification measures* applied by an *obliged person* where it takes one or more of the following steps:
- › reviews previous experience (if any) with the *obliged person*, in particular the adequacy and accuracy of information on identity found out by the *obliged person* and whether that information is current;
 - › makes specific enquiries, e.g. through use of a questionnaire or series of questions;
 - › reviews relevant *policies and procedures*;
 - › where the *obliged person* is a member of a financial group, makes enquiries concerning the extent to which group standards are applied to and assessed by the group's internal audit function.