

3 IDENTIFICATION MEASURES

3 – OVERVIEW

3.1 Overview of section

1. This section explains the *identification measures* required under Article 13 of the *Money Laundering Order*, and the framework under which a *supervised person* is required to apply a risk based approach to the application of such measures.
2. This section should be read and understood in conjunction with the following sections:
 - section 4 – which explains the basis for finding out identity and obtaining evidence of identity
 - section 5 – which considers the circumstances in which reliance might be placed on another party to have applied *reliance identification measures*
 - section 7 – which explains the application of enhanced *CDD* measures (including the case of a *customer* that is assessed as presenting a higher risk) and simplified *identification measures*.
3. Sound *identification measures* are vital because they:
 - help to protect the *supervised person* and the integrity of the financial sector in which it operates by reducing the likelihood of the business becoming a vehicle for, or a victim of, financial crime, *including money laundering and the financing of terrorism*
 - assist law enforcement, by providing available information on *customers* or activities and transactions being investigated
 - constitute an essential part of sound risk management, e.g. by providing the basis for identifying, limiting and controlling risk
 - help to guard against identity fraud.
4. The inadequacy or absence of *identification measures* can *expose* a *supervised person* to serious *customer* and counterparty risks, as well as reputational, operational, legal, regulatory and concentration risks, any of which can result in significant financial cost to the business. Documents, data or information held also assist the *MLRO* (or *deputy MLRO*) and *other* employees to determine whether a *SAR* is appropriate.
5. A *customer* may be an individual (or group of individuals) or legal person. Section 4.3 deals with a *customer* who is an individual (or group of individuals), Section 4.4 deals with a *customer* (an individual or legal person) who is acting for a legal arrangement, and Section 4.5 deals with a *customer* who is a legal person.
6. *The term customer, as used in this Handbook, is defined in the Glossary above. As noted in the definition, customers can include a prospective customers (i.e. applicants for business).*

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3.2 Obligation to apply identification measures

Statutory requirements (paraphrased wording)

7. Article 13(1) of the Money Laundering Order requires a relevant person to apply CDD measures. CDD measures comprise identification measures and on-going monitoring. Identification measures must be applied:

- › subject to Article 13(4) to (11) of the Money Laundering Order, before the establishment of a business relationship or before carrying out a one-off transaction
- › where a relevant person suspects money laundering
- › where a relevant person has doubts about the veracity of documents, data or information previously obtained under CDD measures.

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Identification Measures

8. Article 3(2) of the Money Laundering Order sets out what **identification measures** are to involve:

- › finding out the identity of a customer and obtaining evidence of identity from a reliable and independent source that is reasonably capable of verifying that the person to be identified is who the person is said to be and satisfies the person responsible for the identification of a person that the evidence does establish that fact (referred to as "**obtaining evidence**"). See Article 3(2)(a) of the Money Laundering Order.
- › finding out the identity of any person purporting to act on behalf of the customer and verifying the authority of any person purporting so to act. See Article 3(2)(aa) of the Money Laundering Order.
- › **where the customer is a legal person**, understanding the ownership and control structure of that customer and the provisions under which the customer can enter into contracts, or other similarly legal binding arrangements, with third parties. See Article 3(2)(c)(ii) of the Money Laundering Order.
- › **where the customer is a legal person**, finding out the identity of individuals who are the beneficial owners or controllers of the customer and obtaining evidence of the identity of those individuals. See Article 3(2)(c)(iii) of the Money Laundering Order.
- › determining whether the customer is acting for a third party (or parties), whether directly or indirectly. See Article 3(2)(b) of the Money Laundering Order.
- › finding out the identity of any **third party** (or parties) on whose behalf the customer is acting and obtaining evidence of the identity of those persons. See Article 3(2)(b)(i) of the Money Laundering Order.
- › **where the third party is a legal person**, understanding the ownership and control of that third party, finding out the identity of the individuals who are the beneficial owners or controllers of the third party and obtaining evidence of the identity of those individuals. See Article 3(2)(b)(ii) of the Money Laundering Order.
- › **where the third party is a legal arrangement**, e.g. a trust, understanding the nature of the legal arrangement under which the third party is constituted. See Article 3(2)(b)(iii)(A) of the Money Laundering Order.

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› **where the third party is a legal arrangement**, e.g. a trust, finding out the identity of the persons who are listed in Article 3(7) of the Money Laundering Order. See Article 3(2)(b)(iii)(B) of the Money Laundering Order.

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› **where the third party is a legal arrangement**, e.g. a trust, where any person listed in Article 3(7) is not an individual, finding out the identity of the individuals who are the beneficial owners or controllers of the person and obtaining evidence of the identity of those individuals. See Article 3(2)(b)(iii)(C) of the Money Laundering Order.

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› obtaining information on the purpose and intended nature of the business relationship or one-off transaction. See Article 3(2)(d) of the Money Laundering Order.

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9. Article 3(5) of the Money Laundering Order requires identification measures to include the assessment (i.e. **customer risk assessment**) by a relevant person of the risk that a business relationship or one-off transaction will involve money laundering. This must include obtaining appropriate information for assessing that risk.

10. Article 3(6) requires, in cases where a **customer** is acting for a third party, and where the **customer** is a legal person, measures for obtaining evidence of identity for third parties, persons purporting to act on behalf of the **customer**, and individuals who are the **customer's** beneficial owners or controllers, to involve reasonable measures having regard to all the circumstances of the case, including the degree of risk assessed.

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11. For persons who are not individuals, Article 2 of the Money Laundering Order describes:

› beneficial owners as individuals with ultimate beneficial ownership of that person.

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› beneficial controllers as individuals who ultimately control that person or otherwise exercise control over the management of that person.

12. The description of a beneficial owner or controller will apply whether the individual satisfies the description alone or jointly with other persons.

13. Article 2 of the Money Laundering Order 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.

On-going Monitoring

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14. Article 3(3) of the Money Laundering Order sets out what **on-going monitoring** is to involve:

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› scrutinising transactions undertaken throughout the course of a business relationship to ensure that the transactions being conducted are consistent with the relevant person's knowledge of the **customer**, including the **customer's** business and risk profile. See Article 3(3)(a) of the Money Laundering Order.

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› keeping documents, data or information up to date and relevant by undertaking reviews of existing records, particularly in relation to higher risk categories of customers. See Article 3(3)(b) of the Money Laundering Order.

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Policies and Procedures

15. **Among other things**, Article 11(1) and (2) of the Money Laundering Order requires a relevant person to maintain **policies and procedures** for the application of CDD measures that are appropriate and consistent having regard to the degree of risk of money laundering and the financing of terrorism taking into account:

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› the level of risk identified in a national or sector-specific risk assessment in relation to money laundering carried out in respect of Jersey.

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- › the type of customers, business relationships, products and transactions with which the relevant person's business is concerned.

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16. Among other things, Article 11(3) of the Money Laundering Order requires that the appropriate and consistent policies and procedures include policies and procedures which:

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- › determine whether a customer (and others connected to the customer) is a PEP, has a connection with a country or territory that does not apply, or insufficiently applies the FATF Recommendations, or is subject to or connected with a country, territory or organization that is subject to AML/CFT counter-measures
- › determine whether a transaction is with a person connected with a country or territory that does not apply, or insufficiently applies the FATF Recommendations, or is subject to or connected with a country, territory or organisation that is subject to AML/CFT counter-measures
- › assess and manage the risk of money laundering or the financing of terrorism occurring as a result of completing identification measures after the establishment of a business relationship (where permitted), and ensure periodic reporting to senior management in such cases.

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17. Article 13(10) to (12) provides that a relevant person that is a collective investment scheme shall not be required to apply customer due diligence measures to a person that becomes a unitholder through a secondary market transaction, so long as:

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- › a person carrying on investment business has applied identification measures; or
- › a person carrying on equivalent business to investment business has applied identification measures in line with FATF Recommendation 10.

18. A "secondary market" is a financial market in which previously issued units are bought and sold.

19. Where a relationship between a relevant person and a customer has no "element of duration" and is not a one-off transaction within the meaning of Article 4 of the Money Laundering Order, identification measures within the meaning of Article 13 of the Money Laundering Order are not required unless:

- › the relevant person suspects money laundering or financing of terrorism; or
- › the relevant person has doubts about the veracity or adequacy of any documents, data or information previously obtained under the CDD measures.

3.3 Risk-based approach to Identification Measures

Overview

20. A risk-based approach to the application of *identification measures* is one that involves a number of discrete stages in assessing the most effective and proportionate way to manage the *money laundering* and the *financing of terrorism* risk faced by a supervised person. While these stages must be incorporated into *policies and procedures*, they do not need to take place in the sequence outlined below, and may occur simultaneously.

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21. The risk assessment of a particular customer (customer risk assessment) will determine the extent of information which will be requested, what evidence of identity will be obtained, the extent to which the resulting relationship will be scrutinised, and how often documents, data or information held will be reviewed.

22. Section 2.3 of this Handbook requires the Board (or where the supervised person is not a company, the senior management function) of a supervised person to conduct (and keep up-to-date) a business risk assessment, which considers the supervised person's risk appetite, activities and structure and concludes on the supervised person's exposure to money laundering and the financing of terrorism risk.

23. This business risk assessment will enable a supervised person to determine its initial approach to performing Stage 1 of the identification process as set out below, depending on the type of customer, product or service involved. The remaining stages of the process require a supervised person to consider whether the specific circumstances of the customer will necessitate the application of further measures.

24. Part 3A of the Money Laundering Order sets out exemptions from CDD requirements, including circumstances in which exemptions do not apply (See Article 17A), exemptions from applying third party and other identification requirements (See Articles 17B, 17C, 18) and the obligations of a supervised person who is exempt from applying third party identification requirements (See Article 17D).

25. The following are the stages in the identification process:

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Stage	Identification measure	Article(s)	Guidance
1.1	In the case of a <i>customer</i> that is a legal person, a <i>supervised person</i> must understand the ownership and control structure of the <i>customer</i> (and provisions under which the <i>customer</i> can enter into contracts).	3(2)(c)(ii)	Section 3.3.1
1.2	A <i>supervised person</i> must find out the identity of: <ul style="list-style-type: none"> › the <i>customer</i>; › any <i>beneficial owners and controllers</i> of the <i>customer</i>; › any third party (or parties)¹ – including a legal arrangement - on whose behalf the <i>customer</i> acts. Whether directly or indirectly (and <i>beneficial owners and controllers</i> of the third party (or parties)); and others listed in Article 3(2).	3(2)(a) to (c) 3(4)(a)	Section 4
1.3	A <i>supervised person</i> must obtain information on the purpose and intended nature of the <i>business relationship</i> or <i>one-off transaction</i> .	(2)(d)	Sections 3.3.2 and 3.3.3 Section 7
1.4	A <i>supervised person</i> must obtain appropriate information for assessing the risk that a <i>business relationship</i> or <i>one-off transaction</i> will involve <i>money laundering</i> or the <i>financing of terrorism</i> risk. It may be necessary to repeat this stage following an assessment of risk under stage 2.1.	3(5) 15(1)	Sections 3.3.2 and 3.3.3 Section 7
2.1	A <i>supervised person</i> must, on the basis of information collected at stage 1, assess the risk that a <i>business relationship</i> or <i>one-off transaction</i> will involve <i>money laundering</i> or the <i>financing of terrorism</i> risk (risk profile).	3(5)	Section 3.3.4
2.2	A <i>supervised person</i> must prepare and record a <i>customer</i> business and risk profile.	3(3)(a)	Section 3.3.5
3	A <i>supervised person</i> must obtain evidence of the identity of those whose identity is found out at stage 1.2.	3(2)(a) to (c) 3(4)(b) 15(1)	Section 4 Section 7

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26. By virtue of *on-going* monitoring, *particularly in relation to higher risk categories of customers*, under Article 3(3)(b) of the *Money Laundering Order*, a *supervised person* must keep documents, data and information obtained under Stages 1 and 3 up to date and relevant. See *Section 3.4 of this Handbook*.

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¹ For the avoidance of doubt, this will include any person who is a named beneficiary of a life assurance policy entered into by the customer.

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27. *Systems and controls* (including *policies and procedures*) will not detect and prevent all instances of *money laundering* or the *financing of terrorism*. A risk-based approach will, however, serve to balance the cost burden placed on a *supervised person* and on *customers* with the risk that the *business* may be used in *money laundering* or *the financing of terrorism* by focusing resources on higher risk areas.

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28. Care has to be exercised under a risk based approach. Being identified as carrying a higher risk of *money laundering* or the *financing of terrorism* does not automatically mean that a *customer* is a money launderer or is financing terrorism. Similarly, identifying a *customer* as carrying a lower risk of *money laundering* or *the financing of terrorism* does not mean that the *customer* is not a money launderer or a *financier of terrorism*.

AML/CFT Codes of Practice

29. A *supervised person* must apply a risk-based approach to determine the extent and nature of the measures to be taken when undertaking the identification process set out above.

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3.3.1 Understanding ownership structure – Stage 1.1

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Overview

30. Article 3(2)(c)(ii) of the *Money Laundering Order* requires a *supervised person* to understand who owns and controls a *customer that is a* legal person. Without such an understanding, it will not be possible to identify the individuals who are the *customer's beneficial owners and controllers*.

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31. Understanding ownership involves taking three separate steps:

requesting information from the *customer* (or a professional)

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validating that information

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checking that information held makes sense.

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Guidance notes

32. **Step 1** – A *supervised person* may demonstrate that it understands the ownership and control structure of a *customer* that is a legal person where it applies one of the following *identification measures*:

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it requests the *customer* to provide a statement of legal and *beneficial ownership and control* as part of its application to become a *customer*. In the case of a legal person that is part of a group, this will include a group structure

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to the extent that a *customer* is, or has been, provided with professional services by a *lawyer or accountant*, or is “administered” by a Trust and Company Services provider, it requests that lawyer, accountant or Trust and Company Services provider to provide a statement of legal and *beneficial ownership and control*. In the case of a legal person that is part of a group, this will include a group structure.

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33. **Step 2** – A *supervised person* may demonstrate that it understands the legal ownership and control structure of a *customer* that is a legal person where it takes into account information that is held:

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by the *customer*, e.g. recorded in its share register

by a *lawyer, accountant* or Trust and Company Services provider

by a trusted external party, in the case of a legal person with bearer shares, where bearer certificates have been lodged with that trusted external party.

publicly, e.g. information that is held in a central register in the country of establishment.

34. A *supervised person* may demonstrate that it understands the *beneficial ownership and control* structure of a *customer* that is a legal person where it takes into account information that is:

held by the *customer*, e.g. in line with company law, AML/CFT requirements, or listing rules, e.g. a declaration of trust in respect of shares held by a nominee shareholder.

held by a *lawyer, accountant* or Trust and Company Services provider, e.g. in order to meet AML/CFT requirements.

held in a public register, e.g. information that is held in a central register of *beneficial ownership* in the country of establishment, information that is published in financial statements prepared under generally accepted accounting principles, or information available as a result of a listing of securities on a stock exchange.

provided directly by the ultimate beneficial owner(s) of the legal person.

publicly available, e.g. in commercial databases and press reports.

35. **Step 3** – A *supervised person* may demonstrate that it understands the ownership and control structure of a *customer* that is a legal person where it applies one or more of the following *identification measures*:

it considers the purpose and rationale for using an entity with a separate legal personality.

in the case of a legal person that is part of a group, it considers whether the corporate structure makes economic sense, taking into account complexity and multi-jurisdictional aspects.

3.3.2 Information for assessing risk – Stage 1.4

Guidance notes

36. A *supervised person* may demonstrate that it has obtained appropriate information for assessing the risk that a business relationship or one-off transaction will involve *money laundering* or the *financing of terrorism* risk where it collects the following information:

All <i>customer</i> types	
All <i>customer</i> types	Type, volume and value of activity expected (having regard for the <i>JFSC's Sound Business Practice Policy</i>). <i>Source of funds</i> , e.g. nature and details of occupation or employment. Details of any existing relationships with the <i>supervised person</i> .

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Additional relationship information	
Express trusts	Type of trust (e.g. fixed interest, discretionary, testamentary). Classes of beneficiaries, including any charitable causes named in the trust instrument.
Foundations	Classes of beneficiaries, including any charitable objects.
Legal persons and legal arrangements (including express trusts and foundations)	Ownership structure of any underlying legal persons. Type of activities undertaken by any underlying legal persons (having regard for the JFSC's Sound Business Practice Policy and trading activities). Geographical sphere of activities and assets. Name of regulator, if applicable.

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37. The extent of information sought in respect of a particular [customer](#), or type of [customer](#), will depend upon the country or territory with which the [customer](#) is connected, the characteristics of the [product](#) or service requested, how the [product](#) or service will be delivered, as well as factors specific to the [customer](#).

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3.3.2.1 Terms of Business

Overview

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38. It may be helpful to:

- › [explain to the *customer* the reason for requiring CDD information and for the *customer* identification procedures. This can be achieved by including an additional paragraph in the terms of business or in pre-engagement communications.](#)
- › [inform *customers* of the *supervised person's* reporting responsibilities under the primary legislation and the restrictions created by the 'tipping-off' rule on the *supervised person's* ability to discuss such matters with its *customers*.](#)

39. Whether or not to advise the [customer](#) of these issues is a decision to be taken by individual [supervised persons](#). However, if it is to be done it is important that the policy should apply consistently for all [customers](#). A decision only to do so once a suspicion has arisen could result in the [supervised person](#) committing a tipping-off offence (see Section 8.5 of this Handbook).

3.3.2.2 Issues that might be covered when drawing up a profile

Guidance notes

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40. To assist in drawing up a customer profile, supervised persons may wish to obtain information via a questionnaire. Supervised persons should be mindful that the questionnaire requests information they are legally obligated to obtain. *Supervised persons* should amend the questions and focus to suit their own *customer* base and products/services offered.

41. The *supervised person* may also be able to obtain further information prior the start of a *business relationship* or one-off transaction from other sources. Examples include:

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- › carrying out background searches and database screening and
- › communicating with existing or previous providers of professional accountancy, banking and legal services to the customer.

3.3.3 Source of Funds – Stage 1.4

Overview

42. The ability to follow the audit trail for criminal funds and transactions flowing through the professional and financial sector is a vital law enforcement tool in *money laundering* and the *financing of terrorism* investigations. Understanding the *source of funds* and, in higher risk relationships, the *customer's source of wealth* is also an important aspect of CDD.

43. *Source of funds* is defined in the Glossary above. Information concerning the geographical sphere of the activities generating the *source of funds* may also be relevant.

44. *Supervised persons* should monitor whether funds received from *customers* are from credible sources. If funding is from a source other than a *customer*, a *supervised person* may need to make further enquiries. If it is decided to accept funds from a third party, perhaps because time is short, *supervised persons* should ask how and why the third party is helping with the funding.

45. In some circumstances, cleared funds will be essential for transactions and *customers* may want to provide cash to meet a deadline. *Supervised persons* should assess the risk in these cases and ask more questions if necessary.

46. The *Money Laundering Order* and the *AML/CFT Handbook* stipulate record-keeping requirements for transaction records. *These* require information concerning the remittance of funds to be recorded (e.g. the name of the bank and the name and account number of the account from which the funds were remitted). This *remittance information* is the source of transfer and not to be confused with *source of funds information*.

47. *Source of wealth* is defined in the Glossary above. It should also be reiterated that *source of wealth* is distinct from *source of funds*. Information concerning the geographical sphere of the activities that have generated a *customer's* wealth may also be relevant.

48. In finding out a *customer's source of wealth* it *may* not be necessary to determine the monetary value of *their* net worth.

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3.3.4 Assessment of risk – Stage 2.1

49. The following factors – country risk, *product/service* risk, *delivery* risk, and *customer-specific* risk – will be relevant when assessing and evaluating the CDD information collected at Stage 1, and are not intended to be exhaustive. A *supervised person* should consider whether other variables are appropriate factors to consider in the context of the products and services that it provides and its *customer* base.

50. In assessing *customer* risk, the presence of one factor that might indicate higher risk will not automatically mean that a *customer* is *in fact* higher risk. Equally, the presence of one lower risk factor should not automatically lead to a determination that a *customer* is lower risk.

51. The sophistication of the risk assessment process may be determined according to factors supported by the business risk assessment.

52. Inconsistencies between information obtained may also assist in assessing risk. For example, a supervised person might identify inconsistencies between specific information concerning source of funds (or source of wealth), and the nature of the customer's expected activity.

53. A supervised person may demonstrate that it has assessed the risk that a business relationship or one-off transaction will involve money laundering or the financing of terrorism where it takes into account the factors set out at Section 3.3.4.1 below.

54. A supervised person may demonstrate that it has assessed the risk that a business relationship or one-off transaction will involve money laundering or the financing of terrorism where it takes into account other factors that are relevant in the context of the products and services that it provides and its customer base.

55. A supervised person may demonstrate that it has assessed the risk that a business relationship or one-off transaction will involve money laundering or financing of terrorism where it takes into account the effect of a combination of several factors – e.g. the use of complex structures by a customer who is a non-resident high-net worth individual making use of wealth management services – which may increase the cumulative level of risk beyond the sum of each individual risk element. The accumulation of risk is itself a factor to take into account.

56. Notwithstanding the above, where it is appropriate to do so, a supervised person may demonstrate that it has assessed the risk that a business relationship or one-off transaction will involve money laundering or financing of terrorism where it assesses that risk “generically” for customers falling into similar categories. For example:

- › the business of some supervised persons, their products, and customer base, can be relatively simple, involving few products, with most customers falling into similar risk categories. In such circumstances a simple approach, building on the risk that the supervised person's products are assessed to present, may be appropriate for most customers, with the focus being on those customers who fall outside the norm
- › other supervised persons may have a greater volume of business, but large numbers of their customers may be predominantly “retail”, served through delivery channels that offer the possibility of adopting a standardised approach to many procedures. Here too, the approach for most customers may be relatively straight forward - building on product risk
- › in the case of Jersey residents seeking to establish retail relationships, and in the absence of any information to indicate otherwise, such customers may be considered to present a lower risk.

3.3.4.1 Factors to consider

57. Country Risk – A connection to a country or territory that presents a higher risk of money laundering or financing of terrorism. The following types of countries or territories may be considered to present a higher risk:

- › those with strategic deficiencies in the fight against money laundering and the financing of terrorism, e.g. those identified by the FATF as having strategic deficiencies
- › those identified as major illicit drug producers or through which significant quantities of drugs are transited, e.g. those listed by the US Department of State in its annual International Narcotics Control Strategy Report

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- › those that do not take efforts to confront and eliminate human trafficking, e.g. those listed in Tier 3 of the US Department of State's annual Trafficking in Persons Report
- › those that have strong links (such as funding or other support) with terrorist activities, e.g. those designated by the US Secretary of State as state sponsors of terrorism; and those physical areas identified by the US (in its annual report entitled Country Reports on Terrorism) as ungoverned, under-governed or ill-governed where terrorists are able to organise, plan, raise funds, communicate, recruit, train, transit and operate in relative security because of inadequate governance capability, political will or both
- › those that are involved in the proliferation of nuclear and other weapons, e.g. those that are the subject of sanctions measures in place in Jersey, or, as appropriate, elsewhere
- › those that are vulnerable to corruption, e.g. those with poor ratings in Transparency International's Corruption Perception Index or highlighted as a concern in the Worldwide Governance Indicators project, or whose companies engage in bribery when doing business abroad, e.g. those with poor ratings in Transparency International's Bribe Payers Index
- › those in which there is no, or little, confidence in the rule of law, in particular the quality of contract enforcement, property rights, the police and the courts, e.g. those highlighted as a concern in the Worldwide Governance Indicators project
- › those in which there is no, or little, confidence in government effectiveness, including the quality of the civil service and the degree of its independence from political pressures, e.g. those highlighted as a concern in the Worldwide Governance Indicators project
- › those that are politically unstable, e.g. those highlighted as a concern in the Worldwide Governance Indicators project, or which may be considered to be a "failed state", e.g. those listed in the Failed State Index (central government is so weak or ineffective that it has little practical control over much of its territory; non-provision of public services; widespread corruption and criminality; refugees and involuntary movement of populations; sharp economic decline)
- › those that are the subject of sanctions measures that are in place in Jersey or elsewhere, e.g. those dealing with the abuse of human rights or misappropriation of state funds
- › those that lack transparency or which have excessive secrecy laws, e.g. those identified by the OECD as having committed to internationally agreed tax standards but which have not yet implemented those standards
- › those with inadequate regulatory and supervisory standards on international cooperation and information exchange, e.g. those identified by the Financial Stability Board as just making material progress towards demonstrating sufficiently strong adherence, or being non-cooperative, where it may not be possible to investigate the provenance of funds introduced into the financial system.

58. In addition to the above, *supervised persons* should also consider whether a *customer* has a relevant connection to a country or territory named in Appendix D1 of this Handbook (countries or territories for which a FATF call for action applies), as well as those that are generally considered to be un-cooperative in the fight against *money laundering* and the *financing of terrorism*.

59. **Country risk** – A connection to a country or territory that presents a lower risk of *money laundering* or the *financing of terrorism*. The following factors may be considered to be indicative of lower risk:

- › a favourable rating in the Worldwide Governance Indicators project
- › the application of national financial reporting standards that follow international financial reporting standards, e.g. those countries identified by the European Commission as having generally accepted accounting principles that are equivalent to International Financial Reporting Standards
- › a commitment to **international export control regimes** (Missile Technology Control Regime, the Australia Group, the Nuclear Suppliers Group, Wassenaar Arrangement and the Zangger Committee)
- › a favourable assessment by the Financial Stability Board concerning adherence to regulatory and supervisory standards on international cooperation and information exchange
- › familiarity of a *supervised person* with a country or territory, including knowledge of its local legislation, regulations and rules, as well as the structure and extent of regulatory oversight, for example as a result of a *supervised person's* own or group operations within that country or territory.

60. **Product or Service risk** – Features that may be attractive to *money launderers* or those *financing terrorism*:

- › ability to make payments to, or receive funds from, external parties
- › ability to pay in or withdraw cash
- › ability to migrate from one product or service to another
- › use of numbered accounts (without reference to the name of the *customer*)
- › ability to use “hold mail” facilities and “care of” addresses which are not temporary arrangements
- › ability to place funds in client, pooled, nominee or other accounts, where funds are mingled with those of other persons
- › ability to place sealed parcels or sealed envelopes in safe custody boxes.

61. **Product or Service risk** – Features that may indicate a higher risk of *money laundering* or *financing of terrorism*:

- › work which is outside the *supervised person's* normal range of expertise – the *money launderer* might be targeting the *supervised person* to avoid answering too many questions

62. Instructions that are unusual in themselves or that are unusual for the *supervised person* or the *customer* may give rise to concern, particularly where no rational or logical explanation can be given. Additional service area vulnerabilities and risk factors specific to certain types of *supervised business* are set out in the sector-specific Sections 14.4, 15.3 and 16.2 below.

63. An additional Section covering the issuance of **Prepaid Cards** and their associated risks is set out as Section 3.3.6 below.

64. **Delivery risk** – Features that may be attractive to *money launderers* or those *financing terrorism*.

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- › non-face to face relationships - product or service delivered exclusively by post, telephone, internet, video call etc. where there is no physical contact with the customer
- › indirect relationship with the customer - use of reliance on obliged persons or other third parties
- › availability of “straight-through processing” of customer transactions (where payments may be made electronically without the need for manual intervention by a supervised person).

65. Customer-specific risk – Features that may indicate whether a customer is a money launderer or is financing terrorism:

- › type of customer, e.g. an individual who meets any of the definitions of a PEP may present a higher risk
- › nature and scope of business activities generating the funds/assets. The below examples may indicate higher risk:
 - a customer conducting “sensitive” activities (as defined by the JFSC’s Sound Business Practice Policy) or conducting activities which are prohibited if carried on with certain countries
 - a customer engaged in higher risk trading activities
 - a customer engaged in a business which involves handling significant amounts of cash
- › transparency of customer. For example:
 - may indicate lower risk
 - customers where the structure or nature of the entity or relationship makes it difficult to identify the true beneficial owners and controllers may indicate higher risk, for example those with nominee directors, nominee shareholders or which have issued bearer shares
- › behaviour by the customer may indicate a higher risk. For example:
 - whilst face-to-face contact with customers is not always necessary or possible, an excessively obstructive or secretive customer may be a cause for concern
 - where a customer requests undue levels of secrecy, a customer is reluctant or unwilling to provide adequate explanations or documents, or where it appears that an “audit trail” has been deliberately broken or unnecessarily layered
 - where there is no commercial rationale or logical explanation for use of the products or services that are being sought
- › reputation of customer. For example a well-known, reputable person, with a long history in their industry, and with abundant independent and reliable information about it and its beneficial owners and controllers may indicate lower risk
- › jurisdiction of customer. If the customer is based outside Jersey, supervised persons will need to consider the rationale as to why the customer is seeking services outside of their home jurisdiction. The lack of an appropriate rationale may indicate higher risk

Deleted: persons that are subject to public disclosure rules, e.g. on exchanges or regulated markets (or majority-owned and consolidated subsidiaries of such persons), or subject to licensing by a statutory regulator, e.g. the Jersey Competition Regulatory Authority; **Client Risk**¶

Features that may indicate whether a client is a money launderer or is financing terrorism:¶

Type of client. For example, an individual who has been entrusted with a prominent public function (or immediate family member or close associate of such an individual) may present a higher risk (as may a domestic politician);¶

Nature and scope of business activities generating the funds/assets. For example, a client conducting “sensitive” activities (as defined by the Commission in its Sound Business Practice policy) or conducting activities which are prohibited if carried on with certain countries; a client engaged in higher risk trading activities; or a client engaged in a business which involves handling significant amounts of cash may indicate higher risk;¶

Transparency of client. For example, persons that are subject to public disclosure rules, e.g. on exchanges or regulated markets (or majority-owned and consolidated subsidiaries of such persons), or subject to licensing by a statutory regulator, e.g. the Channel Islands Competition & Regulatory Authority may indicate lower risk. Clients where the structure or nature of the entity or relationship makes it difficult to identify the true beneficial owners and controllers may indicate higher risk e.g. those with nominee directors or nominee shareholders or which have issued bearer shares;¶

Secretive clients. Whilst face to face contact with clients is not always necessary or possible, an excessively obstructive or secretive client may be a cause for concern;¶

Reputation of client. For example, a well-known, reputable person, with a long history in its industry, and with abundant independent and reliable information about it and its beneficial owners and controllers may indicate lower risk;¶

Behaviour of client. For example, where there is no commercial rationale for the service that is being sought, or where undue levels of secrecy are requested by a client, or where a client is reluctant or unwilling to provide adequate explanations or documents, or where it appears that an “audit trail” has been deliberately broken or unnecessarily layered, this may indicate higher risk;¶

The regularity or duration of the relationship. For example, longstanding relationships involving frequent client contact that result in a high level of understanding of the client relationship may indicate lower risk;¶

Type and complexity of relationship. For example, the use of overly complex or opaque structures with different layers of entities situated in two or more countries and cross border transactions involving counterparts in different parts of the world, the unexplained use of corporate structures and express trusts, and the use of nominee and bearer shares may indicate higher risk;¶

Value of assets e.g. higher value;¶

Value and frequency of cash or other “bearer” transactions (e.g. travellers’ cheques and electronic money purses), e.g. higher value and/or frequency;¶

Delegation of authority by the applicant or client. For example, the use of powers of attorney, mixed boards and representative offices may indicate higher risk;¶

Involvement of persons other than beneficial owners and controllers in the operation of a business relationship; and¶

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- › the regularity or duration of the *business relationship*. For example, longstanding *business relationships* involving frequent *customer* contact that result in a high level of understanding of the *customer* may indicate lower risk
- › type and complexity of relationship. The below examples may indicate higher risk:
 - the use of overly complex or opaque structures with different layers of entities situated in two or more countries
 - cross-border transactions involving counterparties in different parts of the world
 - the unexplained use of corporate structures and express trusts
 - the use of nominee and bearer shares
- › value of assets handled, e.g. higher value assets may indicate higher risk
- › value and frequency of cash or other “bearer” transactions (e.g. travellers’ cheques and electronic money purses), e.g. a higher value and/or frequency may indicate higher risk
- › delegation of authority by the *customer*. For example, the use of powers of attorney, mixed boards and representative offices may indicate higher risk
- › involvement of persons other than *beneficial owners* and *controllers* in the operation of a *business relationship* may indicate higher risk
- › in the case of an express trust, the nature of the relationship between the settlor(s) and beneficiaries with a vested interest, other beneficiaries and persons who are the object of a power. For example, a trust that is established for the benefit of the close family of the settlor may indicate a lower risk.

3.3.4.2 External data sources

66. In assessing the risk that countries and territories may present a higher risk, objective data published by the *IMF*, *FATF*, World Bank and the *Egmont Group of Financial Intelligence Units* will be relevant, as will objective information published by national governments (such as the World Factbook published by the US Central Intelligence Agency) and other reliable and independent sources, such as those referred to in Section 3.3.4.1 above. Often, this information may be accessed through country or territory profiles provided on electronic subscription databases and on the internet. Some profiles, such as those available through *KnowYourCountry*, are free to use.
67. Information on sanctions may be found on the *JFSC’s website*.
68. *Appendix D2* of the *AML/CFT Handbook* lists a number of countries and territories that are identified by reliable and independent external sources as presenting a higher risk. When assessing country risk for *AML/CFT* purposes, in addition to considering the particular features of a *customer*, it will be relevant to take account of the number of occasions that a particular country or territory is listed for different reasons.
69. There are also a number of providers of country risk “league tables” that rate countries according to risk (e.g. lower, medium or higher). Some of these are free to use, e.g. *KnowYourCountry* and the *Basel AML Index*. These are based on weighted data published by external sources. Before placing reliance on country risk “league tables”, care should be taken to review the methodology that has been used, including the basis followed for selecting sources, weighting applied to those sources and approach that is taken where data for a country or territory is missing.

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70. External data sources may also assist in establishing customer-specific risk. For example, electronic subscription databases list individuals entrusted with prominent public functions who may therefore meet the definition of a PEP. The list of sanctions in force in Jersey may be accessed through the JFSC's website.

3.3.5 Customer business and risk profile – Stage 2.2

71. A supervised person may demonstrate that it has prepared a customer business and risk profile where the profile enables it to:

- › identify a pattern of expected transactions and activity within each business relationship.
- › recognise unusual transactions and activity, unusually large transactions or activity, and unusual patterns of transactions or activity.

72. For certain types of products or services, a supervised person may demonstrate that it has prepared a customer business and risk profile where it does so on the basis of generic attributes, so long as this enables it to recognise the transactions and activity referred to in Paragraph 71 above. For more complex products or services, however, tailored profiles will be necessary.

3.3.6 Prepaid cards

Overview

73. This section provides assistance to supervised persons using prepaid cards in Jersey (issuers), whether directly or indirectly through an agent or a distributor. It covers:

- › what electronic money is and the features of prepaid cards
- › the various operators involved in a prepaid card programme
- › examples of risk factors inherently associated with prepaid cards
- › examples of how prepaid cards have been used in Jersey by money launderers and
- › the relevant regulatory and supervisory framework in place in Jersey in respect of the provision of prepaid cards.

3.3.6.1 Electronic money

Overview

74. Electronic money is defined at Paragraph 5(d)(15) of the Schedule to the Wire Transfers Regulations as “electronically (including magnetically) stored monetary value, as represented by a claim on the issuer, which is issued on receipt of funds for the purpose of making a payment transaction, and which is accepted by a person other than the issuer of the electronic money”.

75. Examples of electronic money products and services include online payment services, card-based products (including prepaid cards), vouchers and mobile payment services.

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76. Monetary value will be stored in an **online account** or held on a **stored-value card** (where the value is stored on a microchip embedded in the card). Both may be reloadable or non-reloadable. A **reloadable** account or stored-value card can be recharged after the initial funds have been loaded, usually for an unlimited number of times. A **non-reloadable** account or stored-value card can be charged only once and does not permit any other funds to be added.

77. Electronic money which is card-based uses the card for authentication in order to permit a customer to access their funds.

78. Where electronic money is not used it can instead be redeemed. **Redemption** is a process whereby a customer presents electronic money to the issuer and receives money in exchange at par value. Redemption should not be confused with the spending of electronic money when a prepaid card is used for purchase of goods or services from merchants.

79. Card-based electronic money may be used in an open or closed loop system. In an **open loop system** cards may be used to purchase goods and services from any merchant or withdraw cash at ATMs operated by any merchant that is participating in the payment network. These cards provide access to the global ATM and payment network through the logo that the card is branded with (e.g. VISA, MasterCard and American Express). In a **closed loop system**, cards may be used only to purchase goods and services from a single merchant or a limited, closed network of merchants (e.g. gift cards, gift vouchers and gift certificates). These cards typically do not provide access to the global ATM network, cannot be recharged and have no "cash back" function.

3.3.6.2 What is a prepaid card?

Overview

80. Prepaid cards are a type of electronic money. The FATF has classified such cards as a type of New Payment Products and Services (NPPS). These are considered to be new and innovative payment products and services that offer an alternative to traditional financial services. Other types of NPPS include mobile payment services and internet-based payment services – these are not covered by this section.

81. Prepaid cards provide the holder with an authenticated access to pre-loaded funds. These funds can be held in an online account or on a stored-value card.

82. Prepaid cards can be utilised for a range of purposes, including transactions in other countries or territories. Some cards can be funded by cash or other electronic payment instruments and can be used for online shopping or to receive "cash back". Newer prepaid card features that are becoming increasingly common include making onward transfers of money from a prepaid card account to other accounts (known as person-to-person transfers) and setting up standing orders.

83. Prepaid cards are considered to be a retail product and are mostly used for making small value payments. Despite this, the range of functions which prepaid cards currently offer can make them attractive to criminals.

3.3.6.3 Who is involved in a prepaid card programme?

Overview

84. A number of operators are normally involved in a prepaid card programme. These include:

Operator	Description
<u>acquirer</u>	The person which maintains the relationship with the retailer, provides the infrastructure needed for accepting a card payment (e.g. access to the point of sale (POS) terminal or the payment services supporting an e-commerce website) and normally operates the account in which the proceeds of the sale transaction are deposited.
<u>distributor/retailer</u>	The person that sells, provides, or arranges for the sale of, prepaid cards on behalf of the issuer to customers. Distributors may also offer a separate range of services to these customers.
<u>payment network operator</u>	The person that provides the technical platform to perform transactions with the card at ATMs or points of sale at merchants.
<u>issuer</u>	The person that issues prepaid cards and against which the customer has a claim for redemption or withdrawal of funds.
<u>programme manager</u>	The person responsible for establishing and managing the prepaid card programme in cooperation with a bank or electronic money institution. The programme manager usually markets the prepaid cards and establishes relationships with banks and distributors or customers, and in many cases provides the data processing capability. Some prepaid card issuers manage their card programmes themselves (i.e. without using programme managers).
<u>agent</u>	For the purposes of this section, the agent is any person that issues prepaid cards on behalf of the issuer (the principal), whether by contract with, or under the direction of, the principal.

85. Article 1 of the EU Electronic Money Directive 2009 (defined in this section as the **Directive**) stipulates that the activity of issuing electronic money falls within the scope of the Directive. Categories of electronic money issuers include:

- › credit institutions
- › electronic money institutions (defined in Article 2 of the Directive as a legal person that has been granted authorisation to issue electronic money) and
- › post office giro institutions.

86. An issuer will be considered to carry on a *supervised business* in or from within Jersey where it does so through a physical presence on the island or through a Jersey-based agent.

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3.3.6.4 Risks associated with prepaid cards

Overview

87. The FATF issued a guidance paper in June 2013 regarding the application of a risk-based approach towards prepaid cards, mobile payments and internet-based payment services. This paper highlights the importance of taking a more enhanced and focused approach in areas where there are higher risks.

88. Whilst prepaid cards do not automatically present a higher risk of *money laundering or terrorist financing*, issuers will need to consider the specific risk factors of each card issued and determine its risk assessment based on the same. The risk of a prepaid card being misused will also depend on the product design and use and the effectiveness of systems and controls (including policies and procedures). Issuers are expected to exercise greater caution and **apply enhanced CDD measures** in instances where there is a **greater money laundering or financing of terrorism risk** or where a product is designed and used in a way that is similar to a bank account.

89. The risk assessment of a prepaid card issuer will need to cover all relevant risk factors (e.g. *customer profile, product design and functionalities, geographical location of main card funding and card spending activities*).

Guidance notes

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90. Prepaid cards are mostly used for making small value payments and transactions. They leave an audit trail in the system, unlike cash transactions. However, if certain risk factors are not adequately or effectively managed and mitigated, prepaid cards can become attractive or susceptible to *money launderers and terrorist financiers*.

91. The risk factors listed below do not constitute an exhaustive list and should not be considered in isolation. An accumulation of multiple risk factors will increase the overall risk level—such an accumulation is often seen in cases where prepaid cards have been used to facilitate criminal activities.

- › Prepaid cards are **portable** and easily transported **cross-border**. The current definition of cash and bearer negotiable instruments in the *Customs and Excise (Jersey) Law 1999* does not extend to prepaid cards and there is no requirement to report mailing or shipping such cards abroad. Furthermore, it can be difficult for law enforcement, customs or border guards to determine and potentially seize the monetary value stored on a prepaid card. This is particularly relevant when prepaid cards have high load limits and are used to transport the proceeds of criminal activities
- › Ownership of the card may be transferred to an **unidentified bearer** (i.e. from the customer to another person)
- › Prepaid cards may be purchased, and funds loaded, reloaded, redeemed, or withdrawn on a **non-face-to-face basis**
- › Prepaid cards may be **funded by cash** which could be the proceeds of criminal activity. Cards also provide **access to cash** by way of ATMs, “**cash back**” functionality or redemption
- › Prepaid cards may be **funded by unidentified third parties** and by other electronic products

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- › The card may have a **high transaction limit** or **no transaction limit** at all. Prepaid cards that allow high values to be loaded, have high or no transaction value limits and high or no transaction frequency limits increase the risk of *money laundering* or the *financing of terrorism*
- › Individual customers or groups of customers may hold, have access to, or control **multiple cards**. Multiple cards can be transported or sent across borders in an attempt to circumvent the usual controls of cross-border cash movements
- › Prepaid cards may be used to make **frequent or high value cross-border transactions** by allowing customers to use funds loaded on their cards to be transferred onwards to other persons (person to person or business to business transfers)
- › Most prepaid card programmes involve a number of agents which may be based in several different countries and territories. As a result of this segmentation there may be a **lack of consistent CDD measures** being applied across the issuer's business
- › Prepaid card operators typically **outsource business and compliance functions** to overseas locations, where the legislation **may not necessarily follow international standards**.

3.3.6.5 Case Study – Use of prepaid cards to launder the proceeds of crime

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Guidance notes

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92. Prepaid currency cards have been used by individuals in Jersey to launder the proceeds of drug trafficking. For example, prosecutions in 2013 were connected with the laundering of criminal proceeds, amounting to £157,000, in Jersey through foreign currency exchange operators and through multiple loadings of criminal funds onto prepaid cards. In the case of the latter method, funds loaded locally were then withdrawn overseas, over a period of 34 months.

93. Evidence demonstrated that individuals hired by the drug dealer were asked to “bank” the proceeds of illicit drugs sales by obtaining prepaid cards (two individuals held two cards each in their own names), loading cash onto these prepaid cards in Jersey, and subsequently withdrawing these funds in the UK and Spain.

94. This case shows that criminals will exploit the different functionalities offered by prepaid cards. The ability to obtain multiple cards and load them with third party cash, the portability of such cards, and the ability to withdraw cash abroad have proved attractive to criminals.

3.3.6.6 Regulatory framework – prudential and conduct of business

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Overview

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95. There is currently no prudential or conduct of business regime in place in Jersey covering prepaid card issuers. However, in certain circumstances it is possible that prepaid card activity may fall within other regulatory regimes established, for example under the *BB(J) Law* (deposit-taking) or the *FS(J) Law* (where funds loaded on to a card are held by a card issuer in a trustee capacity).

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3.3.6.7 Regulatory Framework – AML/CFT

Overview

96. The activity of issuing prepaid cards is listed in Paragraph 7(1)(e) of Part B of Schedule 2 to the *Proceeds of Crime Law*: “issuing and administering means of payment (such as credit and debit cards, cheques, travellers’ cheques, money orders and bankers’ drafts, and electronic money)”.

97. As a result, any person issuing electronic money (including prepaid cards) in or from within Jersey (directly or through an agent) or through a legal person established under Jersey law:

- › becomes a *supervised person* for the purposes of the *Money Laundering Order* and is required to apply CDD measures, keep records, appoint an MLCO and MLRO, and to have policies and procedures in place to prevent and detect money laundering and the financing of terrorism
- › is required to register with the JFSC under the *Supervisory Bodies Law* or, where the person carries on a regulated business as defined in the *Supervisory Bodies Law*, to notify the JFSC that it is issuing prepaid cards and
- › is subject to supervision by the JFSC under the *Supervisory Bodies Law* for compliance with the *Money Laundering Order* and AML/CFT Codes of Practice.

98. The *Money Laundering Order* therefore applies to prepaid card issuers with no physical presence in Jersey that issue cards through Jersey-based agents.

99. The *Money Laundering Order* does not provide for the application of simplified identification measures to prepaid card customers. Prepaid card issuers are required to apply CDD measures to each customer and each third party on whose behalf the customer acts.

100. Where a business relationship is established with a customer, a prepaid card issuer is required to monitor customer transactions undertaken throughout the course of that business relationship.

101. By virtue of Article 2(3) of the *EU Regulation*, payment cards (among other methods of transfer) are exempt from the scope of the *Wire Transfers Regulations* where they are used exclusively for the purchase of goods or services and the number of the card accompanies all transfers. However, Article 2(3) of the *EU Regulation* also states that the use of a payment card in order to effect a person-to-person transfer of funds falls within the scope of the *EU Regulation*.

102. This means that where they satisfy the conditions set out in Article 2(3) of the *EU Regulation*, a person carrying on activities listed in Paragraph 7(1)(e) of Part B of Schedule 2 to the *Proceeds of Crime Law* is exempt from the obligation to include information on the payer in a wire transfer.

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3.4 On-going monitoring: ensuring that documents, data and information are up to date and remain relevant

Overview

103. Article 3(3)(b) of the *Money Laundering Order* explains that *on-going* monitoring includes ensuring that documents, data or information obtained under *identification measures* are kept up-to-date and relevant by undertaking reviews of existing records, particularly in relation to higher risk categories of *customers*, including reviews where any inconsistency has been disclosed as a result of scrutiny.

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104. *Among other things*, where there is a change to information found out about the *customer*, the *customer* acts for a new third party, a new person purports to act for the *customer*, or the *customer* has a new *beneficial owner or controller*, Article 13(1)(c)(ii) of the *Money Laundering Order* requires that the identity of that person is found out and evidence obtained.

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Guidance notes

105. A *supervised person* may demonstrate that documents, data or information obtained under *identification measures* are kept up-to-date and relevant under Article 3(3)(b) of the *Money Laundering Order* where the *customer* is requested to, and does provide, an assurance that *they* will update the information provided on a timely basis in the event of a subsequent change.

106. A *supervised person* may demonstrate that documents, data and information obtained under *identification measures* are kept up-to-date and relevant under Article 3(3)(b) of the *Money Laundering Order* where they are reviewed on a risk-sensitive basis, including where additional “factors to consider” *occur which may impact the customer business and risk profile*.

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107. Trigger events, e.g. *the opening of a new account, the purchase of a further product or a meeting with a customer*, may also present a convenient opportunity to review documents, data and information obtained under *identification measures*.

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3.5 Identification measures – taking on a book of business

Overview

108. Rather than establishing a *business relationship* directly with a *customer*, a *supervised person* may establish that relationship through the transfer of a block of *customers* from another business. The transfer may be *effected* through legislation or with the agreement of the *customer*.

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109. A *supervised person* may demonstrate that it has applied *identification measures* before establishing a *business relationship* taken on through the acquisition of a book of business where each of the following criteria are met:

- › the vendor is a *supervised person* or carries on *equivalent business* (refer to Section 1.8 of this Handbook);
- › the *supervised person* has concluded that the vendor's *CDD policies and procedures* are satisfactory. This assessment must either involve sample testing or alternatively an assessment of all relevant documents, data or information for the *business relationship* to be acquired;
- › before, or at the time of the transfer, the *supervised person* obtains from the vendor all of the relevant documents, data or information (or copy thereof) held for each *customer* acquired.

110. In *cases* where:

- › the vendor is not a *supervised person*; or
 - › the vendor is not carrying on *equivalent business* (refer to Section 1.8 of this Handbook); and
 - › deficiencies *are identified* in the vendor's *CDD policies and procedures* (either at the time of transfer or subsequently)
- a *supervised person* may demonstrate that it has applied *identification measures* before establishing a *business relationship* where it determines and implements a programme to apply *identification measures* on each *customer* and *remediate any* deficiencies, *provided the programme* is agreed in advance with the *JFSC*.

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