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5 IDENTIFICATION MEASURES – RELIANCE ON OBLIGED PERSONS

5.1 Overview of section

1. In some strictly limited cases, a *supervised person* may meet its obligation to comply with Article 13(1)(a) or (c)(ii) (*CDD*); Article 15(1)(a), (b), (d), (e) or (g) (*Enhanced CDD measures*); or Article 15A (*Enhanced CDD Measures* in relation to *PEPs*) of the *Money Laundering Order*, and *AML/CFT/CPF 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.

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2. In order to consider what reliance might be placed on an *obliged person*, a *supervised 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 the *AML/CFT/CPF Codes of Practice* set out in Sections 3, 4 and 7, and will also take into account its risk assessment for the *customer*. Once it has determined what *identification measures* it is to apply, a *supervised person* can then consider whether those measures have already been applied by an *obliged person*.

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3. Where an *obliged person* has met its *customer*, who is resident in the same country or territory 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 *supervised person* in a case where the *supervised person* is resident in a different country or territory to the *obliged person* and *customer*, and where it has not met its *customer*. Even in a case where the *supervised person* and *obliged person* have met a *customer* and are resident in the same country or territory, the measures taken by the *obliged person* may still differ to those to be applied by the *supervised 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 *supervised 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 *supervised person* to find out more information on identity and obtain evidence for that aspect of identity itself.

5. However, it is not necessary for the *obliged person* to have found out identity or obtained evidence of identity exactly in line with *policies and procedures* applied by the *supervised person*, since *guidance notes* in Section 4 provide 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 *supervised 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:

› the supervised person's customer

› any beneficial owner or controller of that customer

› any third party for which that customer is acting

› any beneficial owner or controller of a third party for whom that customer is acting

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› 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. As noted above, overall CDD is always required to be undertaken by the supervised person. However, set out below are two tables summarising the elements of *CDD* that, in the absence of other provisions, the *supervised person* is required to undertake itself:

CDD Element	Always required to be undertaken by the supervised person
Identification measures	Risk assessment
	Obtain information on purpose/nature
On-going monitoring	Scrutinising transactions/activity
	Keep documents/information up-to-date

CDD Element	Article 16(2) allows reliance upon an obliged person	
Identification measures	ID *customer*	
	ID third parties	
	ID person acting for *customer*	Verify authority to act
	Where *customer* not individual:	Understand ownership/control structure
		ID *beneficial owners/controllers*

9. Further, Article 16 of the Money Laundering Order cannot be applied in any case where:

› a supervised person suspects money laundering or the financing of terrorism

› a *supervised 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

› the *obliged person* has a relevant connection to an *enhanced risk state* (see Section 7.5).

10. Whilst the information on **identity found out** by the *obliged person* must be provided to the *supervised person* immediately before establishing a *business relationship* or carrying out a *one-off transaction*, a *supervised 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 *supervised 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*.

11. **Examples of *obliged persons*** include, but are not limited to:

› an investment advisor who arranges for a *customer* to invest in a financial product provided by a *supervised person*, where the investment is to be held in the name of the *customer* and not that of the investment advisor

› a trust company business who establishes a bank or investment account for a client company, trust or foundation

› a law firm that is a *supervised person* carrying on *specified Schedule 2 business*

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- an accountancy firm that is a *supervised person* carrying on *specified Schedule 2 business*.

12. A *supervised person* will remain responsible for the satisfactory performance of all elements of *reliance identification measures*. As noted in the Glossary above, in this Handbook *reliance identification measures* has the meaning set out in Article 16(1) of the *Money Laundering Order*.
13. However, where the measures taken by a *supervised person* are reasonable, it will have a defence should the *obliged person* fail to have performed satisfactory measures.
14. 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 *supervised person* and not with the provider of the outsourced services. Although the provider of the outsourced services may have substantial contact with the *customer*, the *customer* is a *customer* of the *supervised person* and not of the provider of the outsourced services. The provider of the outsourced services will be carrying on the outsourced activity for the *supervised person* according to the terms of a contract with the *supervised person*. An example of a typical outsourcing arrangement is where a trustee of a *collective investment scheme* outsources the management of the scheme to an external party.
15. Where information on identity found out or evidence of that identity is passed by an *obliged person* to a *supervised 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.
16. A *customer* may be an individual (or group of individuals) or legal person. Section 4.3 of this Handbook 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. The Glossary above provides a definition of *customer* for the purposes of this Handbook.
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
- a person purporting to act on behalf of that *customer*.

Statutory requirements (paraphrased wording)

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 where such measures have already been applied by an obliged person. Obliged person means a person who the relevant person knows or has reasonable grounds for believing is:*

- *a relevant person in respect of whom the JFSC discharges supervisory functions that is overseen for AML/CFT compliance in Jersey*

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- *a person who carries on equivalent business (refer to Section 1.8).*

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 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

› 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*
- *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:*

- *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*
- *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*

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- *if the obliged person has not already provided the evidence to the relevant person, the obliged person does keep the evidence they have obtained during the course of applying reliance identification measures in respect of a person*
- *the obliged person 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 the obliged person 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*
    - *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/CPF Codes of Practice

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34. To the extent that reliance is placed on an *obliged person*, a *supervised 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 *supervised 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*

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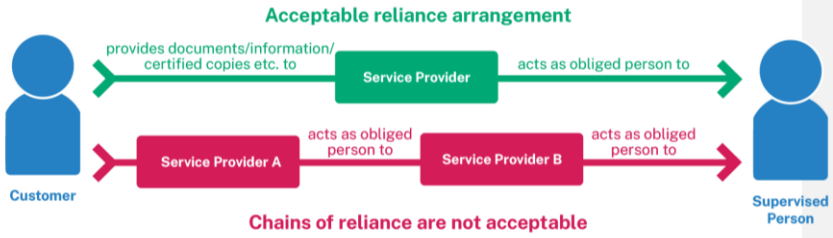
36. A *supervised person* may demonstrate that it has obtained adequate assurance in writing from an *obliged person* under Article 16(4)(a) of the Money Laundering Order that it has applied *reliance identification measures* to the *customer*, where the *obliged person*:

› provides information on **identity** that it has **found out** using an information template 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. As stated at Article 16(4)(b) of the *Money Laundering Order* and referenced in the *statutory requirements* section above, a *supervised person* must not rely on an *obliged person* who is in turn relying on someone else (also known as a chain of reliance). See the diagram below for a graphical explanation of this point.



39. Where, as a result of Article 16(6)(b) of the Money Laundering Order, a *supervised 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

40. A *supervised 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 *supervised person* must be able to show why this constitutes provision without delay based on the nature of its *customer* base. In order to demonstrate that it has adequately assessed a delay, the *supervised person* is expected to provide detail of the reasons for the delay, how many days evidence remained outstanding, how many times a delay has occurred previously across the *supervised person's* practice, as well as the Board/*senior management's* considerations.

5.1.1 Assessment of Risk

Overview

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

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Statutory requirements (paraphrased wording)

42. *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.*
43. *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.*
44. *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.*
45. *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.*

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46. 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*:

› has not applied the necessary *reliance identification measures*

› does not provide adequate, accurate and current information

› does not keep evidence of identity for as long as is necessary or

› will not provide that evidence without delay when requested to do so,

a *supervised 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

47. Immediately before relying upon an *obliged person*, a *supervised person* may demonstrate that it has had regard for the higher risk of *money laundering*, the *financing of terrorism*, and the *financing of proliferation*, and risk that an *obliged person* will fail to provide the *supervised person* with evidence of identity without delay if requested to do so, where it considers the following factors:

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› the stature and regulatory track record of the *obliged person*

› the risks posed by the country/territory in which the *obliged person* is based. Factors to consider include those found at Section 3.3.4.1 of this Handbook

› the adequacy of the framework to combat *money laundering*, the *financing of terrorism*, and the *financing of proliferation* in place in the country/territory in which the *obliged person* is based and the period of time that the framework has been in place

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› the adequacy of the supervisory regime to combat *money laundering*, the *financing of terrorism*, and the *financing of proliferation* to which the *obliged person* is subject

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› the adequacy of identification measures applied by the obliged person to combat money laundering, the *financing of terrorism*, and the *financing of proliferation*

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48. A *supervised 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:

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- 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 to combat *money laundering*, the *financing of terrorism*, and the *financing of proliferation* in place at the *obliged person*

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- 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.

5.2 Group Reliance

Overview

49. In some strictly limited cases, a *supervised person* may meet its obligation to comply with Article 13(1)(a) or (c)(ii) (*CDD*); Article 15(1)(a), (b), (d), (e) or (g) (*Enhanced CDD Measures*); or Article 15A (*Enhanced CDD Measures* in relation to *PEPs*) of the Money Laundering Order, and the *AML/CFT Codes of Practice* by placing reliance on *similar identification measures* that have already been applied by a party outside Jersey who is a member of the same financial group as the *supervised person,* but is not also an *obliged person*.

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50. The effect of Article 16A of the Money Laundering Order is therefore to extend the application of Article 16 to an 'external person' who could not otherwise be relied on, and the six conditions and provisions for testing outlined in Section 5.1 apply to an external person in the same way as to an *obliged person*.
51. Under the definitions provided in Article 16A(1) of the Money Laundering Order, in this section 'external person' means a person outside Jersey, who:

- is not an *obliged person*
- is a member of the same financial group as the *supervised person* and
- carries on a business which, if that business were carried on in Jersey, would be a *supervised business*.

Statutory requirements (paraphrased wording)

52. *In some strictly limited circumstances, Article 16A of the Money Laundering Order provides that a relevant person may be considered to have applied similar identification measures specified in Article 3(2)(a), (aa), (b) and (c) of the Money Laundering Order where such measures have already been applied by an external person.*
53. *Under Article 16A(2)(c-f) of the Money Laundering Order, in order to place reliance on an external person, the financial group to which the relevant person and external person belong must:*

- *apply CDD measures and record-keeping requirements in line with the Money Laundering Order or in line with FATF Recommendations 10, 11 and 12*

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- *maintain a programme against money laundering and the financing of terrorism which includes policies and procedures by which every member of the group who carries on a financial services business (or equivalent) shares information that is appropriate for the purpose of preventing and detecting money laundering and the financing of terrorism (an AML/CFT programme)*
- *adequately mitigate any higher risk of money laundering and the financing of terrorism through its policies and procedures*
- *be supervised by an overseas regulatory authority in its implementation of CDD measures and record-keeping requirements, and its AML/CFT programme.*

54. *Article 16(A)(2), (3), (4), (5) and (6) of the Money Laundering Order states that reliance is always subject to a number of conditions. These are outlined at Paragraphs 20 to 25 above, where references to "obliged person" should be read as referring to "external person".*

55. *Articles 16(A)(7) and (8) of the Money Laundering Order state that reliance must always be subject to testing. Provisions in this respect are outlined at Paragraphs 26 to 28 above, where references to "obliged person" should be read as referring to "external person".*

56. *Article 1(5) of the Money Laundering Order explains that a person is a member of the same financial group as another person if there is, in relation to the group, a parent company or other legal person that exercises control over every member of that group for the purposes of applying group supervision under:*

- *the Core Principles for Effective Banking Supervision published by the Basel Committee*
- *the Objectives and Principles for Securities Regulation issued by IOSCO or*
- *the Insurance Supervisory Principles issued by the IAIS.*

AML/CFT/CPF Codes of Practice

57. A *supervised person* may not rely on an 'external person' where it suspects *money laundering*, the *financing of terrorism*, or the *financing of proliferation*, 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(3) of the *Money Laundering Order*, or where the *external person* has a relevant connection to an *enhanced risk state*.

58. Despite a *supervised person's* reliance on an 'external person' under Article 16A(9) of the *Money Laundering Order*, a *supervised person* is liable for any failure to apply similar identification measures.

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