Jersey Financial Services Commission

8 EXEMPTIONS FROM *CDD* REQUIREMENTS

Overview

1. Part 3A of the *Money Laundering Order* provides for exemptions from *CDD* requirements that apply in some strictly limited circumstances, as set out in Articles 17B - D and 18 of the *Money Laundering Order*.

MLO Article	Exemption	*Handbook* section
17B	Exemptions from applying third party identification requirements in relation to relevant *customer*s acting in certain regulated, investment or fund services business.	Section 8.2
17C & 17D	Exemptions from applying third party identification requirements in relation to certain relevant *customer*s involved in unregulated or non-public funds, Trust Company Business or the legal profession.	Section 8.3
18	Further exemptions from applying identification requirements to *customers*.	Section 8.4

2. **All exemptions under Articles 17A-D and Article 18 still require a level of *CDD*** to be performed. Requirements are outlined in the above referenced section of *this handbook*.

8.1 Limits to applying exemptions

3. Article 17A of the *Money Laundering Order* provides pre-requisite circumstances in which exemptions under Part 3A do not apply. See the table below:

Circumstances in which exemptions under Part 3A of the *Money Laundering Order* do not apply (Article 17A *of the Money Laundering Order*)	
Exemptions under Articles 17 B-D of the *Money Laundering Order*	**Exemptions under Article 18 of the *Money Laundering Order***
› the *supervised person* **suspects *money laundering***	› the *supervised person* **suspects *money laundering***
› the *supervised person* **considers that there is a higher risk of *money laundering***, including the risk of *money laundering* if fail to apply appropriate *identification measures* or keep records	› the *supervised person* **considers that there is a higher risk of *money laundering***
› the *customer* is resident in a **country that is not compliant with the *FATF Recommendations***	› the *customer* is resident in a **country that is not compliant with the *FATF Recommendations***
› the *customer* is a person in respect of whom Article 15(1)(c) of the *Money Laundering Order* applies [specified persons having a *relevant connection* to **country/territory in relation to which *FATF* has called for *enhanced CDD* measures**].	› the *customer* is a person in respect of whom Article 15(1)(c) of the *Money Laundering Order* applies [specified persons having a *relevant connection* to **country/territory in relation to which *FATF* has called for *enhanced CDD* measures]**.

4. It is important to note that these specific scenario-based exemptions should only be applied when all conditions or criteria are met. For the exemption that requires a risk assessment, it should only be used where the risk is assessed as low. If there is higher risk of money laundering the exemptions should not apply.

Guidance notes

5. Definitions for various terms used within Part 3A of the *Money Laundering Order* and this section are set out below (save that *relevant person* is replaced with *supervised person*):

- ***Relevant customer*** means a *customer* of a *supervised person* that the *supervised person* knows or reasonably believes is:
  - a *supervised person* in respect of whose *financial services business* the *JFSC* discharges supervisory functions, or a person carrying on *equivalent business;* or
  - a person wholly owned by a *supervised person* described in the above point (the "parent"), but only if:
    - the person is incorporated or registered in the same jurisdiction as the parent;
    - the person has no *customer*s who are not *customer*s of the parent;
    - the person's activity is ancillary to the business in respect of which the *JFSC* discharges supervisory functions, or to *equivalent business* carried on by the parent; and
    - in relation to that activity, the person maintains the same *policies and procedures* as the parent.
- ***third party identification requirements*** mean the requirements of Articles 13 or 15, 15A, 15B of the *Money Laundering Order to* apply the *identification measures* specified in Article 3(2)(b) of the *Money Laundering Order.*
- **non-public fund** means a scheme falling within the definition of "collective investment fund" in Article 3 of the *CIF(J) Law*, except that the offer of units in the scheme or arrangement is not an offer to the public within the meaning of that Article.

6. Exemptions from *identification measures* may only be applied in appropriate circumstances. Where specified, this will require an assessment of the risk of applying the exemption, in addition to a *CRA*.

8.1.1 Exemption from applying third party identification requirements in relation to relevant customers acting in certain regulated, investment or fund services business (Article 17B)

Statutory requirements (paraphrased wording)

7. Under Article 17B(1) of the Money Laundering Order, a relevant person is exempt from applying third party identification requirements in relation to a third party for which a relevant customer is acting where the relevant customer is acting in the course of a business:

- *that falls within paragraphs (a), (b) or (d) in the definition of "regulated business" in Article 1, or equivalent business; or*

- *that is an investment business or fund services business registered under the FS(J) Law, or equivalent business.*

8. *Under Article 17B(2) of the Money Laundering Order, a relevant person must record the reasons for applying the exemption, having regard to the risk of money laundering inherent in the relevant customer's business and the higher risk of money laundering associated with that type of business should the relevant customer fail to:*

a) apply the identification measures specified in Article 3(2)(b) of the Money Laundering Order, or if the relevant customer is not in Jersey, similar identification measures required to be applied to satisfy the requirements in Recommendation 10 of the FATF Recommendations; or

b) keep records, or keep them for the period required to be kept.

AML/CFT/CPF Codes of Practice

[COP74] A *supervised person* must be able to demonstrate that the exemption conditions required by the *Money Laundering Order* and summarised in the *statutory requirements* above are being met.

Guidance notes

8.1.2 Assessment of risk

Overview

9. The risk factors that are set out in this section will also be relevant to a *CRA* that is conducted under section 3.3.4.1 of *this Handbook* in the cases highlighted at sections 4.3 and 4.5 of *this Handbook*.

Statutory requirements (paraphrased wording)

10. *Immediately before applying the exemptions set out in Article 17B(1), Article 17B(2) of the Money Laundering Order requires a relevant person to conduct an assessment as to whether it is appropriate to do so, having regard to the relevant customer's business and the higher risk of money laundering should the relevant customer fail to:*

- *apply the necessary identification measures to its customer(s); or*
- *keep records, or keep them for the period required to be kept.*

11. *Article 17B(2) of the Money Laundering Order requires a relevant person to prepare a written record of the reason why it is appropriate to apply CDD exemptions.*

Guidance notes

12. Immediately before applying the exemptions set out in Article 17B(1) of the *Money Laundering Order*, a *supervised person* may demonstrate that it has had regard to a *relevant customer*'s business where it considers the following factors:

- the general risk appetite of the relevant customer;
- the geographic location of the relevant customer's client base;
- the general nature of the relevant customer's client base, e.g., whether institutional or private client;

- the nature of the services that the relevant customer provides to its clients;
- the extent to which the relevant customer carries on business with its clients on a non-face to face basis or clients are otherwise subject to enhanced CDD measures; and
- the extent to which clients of the relevant customer may be PEPs or present a higher risk of money laundering, the financing of terrorism, or the financing of proliferation, and the sources of funds of such PEPs.

13. Immediately before applying the exemptions set out in Article 17B(1) of the *Money Laundering Order*, 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* should a *relevant customer* fail to apply *identification measures*, keep records, or keep records for the required period where it considers the following factors:

- the stature and regulatory track record of the relevant customer;
- the adequacy of the framework to combat money laundering, the financing of terrorism, and the financing of proliferation (including targeted financial sanctions) in place in the country or territory in which the relevant customer is based and the period of time that the framework has been in place;
- the adequacy of the supervisory regime to combat money laundering, the financing of terrorism, and the financing of proliferation to which the relevant customer is subject;
- the adequacy of identification measures applied by the relevant customer to combat money laundering, the financing of terrorism, and the financing of proliferation;
- the extent to which the relevant customer itself relies on other obliged persons to identify its clients and to hold evidence of identity, and whether such parties are supervised persons or carry on an equivalent business.

14. A *supervised person* may demonstrate that it has considered the adequacy of *identification measures* applied by a *relevant customer* where it takes one or more of the following steps:

- reviews its previous experience (if any) with the relevant customer;
- makes specific enquiries, e.g., through use of a questionnaire;
- reviews relevant policies and procedures of the relevant customer;
- where the relevant customer is a member of a financial group, makes enquiries concerning the extent to which group standards are applied to and assessed by the group's internal audit function;
- conducts (or commissions from an external expert) sample testing of the adequacy of the relevant customer's policies and procedures to combat money laundering, the financing of terrorism, or the financing of proliferation, whether through onsite visits, or through requesting specific CDD information and/or copy documentation to be provided.

8.1.3 *CDD* requirements under Article 17B exemption

15. Article 17B of the *Money Laundering Order* can be applied to the same *customer* relationship, as they apply to separate identification requirements, however there are some elements of *CDD* that the *supervised person* will always be required to undertake – see the tables below:

***CDD* element**	**Always required to be undertaken by the *supervised person***	
Identification measures	Risk assessment.	
	Obtain information on purpose/nature.	
Identification measures	Identify *customer.*	
	Identify person acting for *customer.*	Verify authority to act.
	Where *customer* is not an individual:	Understand ownership/control structure.
		Identify *Beneficial owners and/or controllers.*
Ongoing monitoring	Scrutinising transactions/activity.	
	Keep documents/information up to date.	
***CDD* element**	**Articles 17B-D of the *Money Laundering Order* provide an exemption from this obligation**	
Identification measures	Identify third parties.	

16. Articles 17B of the *Money Laundering Order* **can** be applied to third parties which would, for example, encompass the investors in a limited partnership or a unit trust.

8.2 Exemption from applying *third party identification requirements* in relation to certain *relevant customers* involved in unregulated or non-public funds, *Trust Company Business* or the legal profession (Article 17C & 17D)

Statutory requirements (paraphrased wording)

17. *Under Article 17C(1) of the Money Laundering Order a relevant person is exempt from applying third party identification requirements in relation to a third party for which a relevant customer is acting if the relevant customer:*

a) is, or carries on business in respect of, an unregulated fund, within the meaning of the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008, or equivalent business;

b) is, or carries on business in respect of, a fund that is a non-public fund, being a fund in respect of which a service is provided that is described in paragraph 9 of Part 2 of Schedule 2 *to the Proceeds of Crime Law, or equivalent business;*

c) carries on Trust Company Business and is registered to carry on such business under the FS(J) Law, or equivalent business, but only if the relevant person is:

i. carrying on deposit-taking business;

ii. a Lawyer carrying on business described in paragraph 21 of Part 3 of Schedule 2 *to the Proceeds of Crime Law; or*

iii. an Accountant carrying on a business described in paragraph 22 of Part 3 of Schedule 2 *to the Proceeds of Crime Law; or*

d) is an independent legal professional carrying on a business described in paragraph 21 of Part 3 of Schedule 2 *to the Proceeds of Crime Law and is registered to carry on such business under the Supervisory Bodies Law, but only if the relevant person is carrying on deposit-taking business.*

18. Under Article 17C(2) of the *Money Laundering Order*, a relevant person who, by virtue of Article 17C(1) of the Money Laundering Order, does not apply third party identification requirements must:

a) be satisfied, by reason of the nature of the relationship with the relevant customer, that there is little risk of money laundering occurring; and

b) obtain adequate assurance in writing from the relevant customer that the relevant customer:

i. has applied the identification measures specified in Article 3(2)(b) of the *Money Laundering Order* to the third party, or if the relevant customer is not in Jersey, has applied similar identification measures that would satisfy the requirements in recommendations 10 and 12 of the FATF Recommendations;

ii. will provide the relevant person, without delay and in writing, with the information obtained from applying the identification measures, if so requested by the relevant person;

iii. will keep the evidence obtained during the course of applying the identification measures; and

iv. will provide the relevant person with that evidence without delay, if requested to do so by the relevant person.

19. Under Article 17C(3) of the *Money Laundering Order* the following requirements to adequate assurance apply:

a) assurance is adequate if it is reasonably capable of being regarded as reliable and the person who relies on it is satisfied that it is reliable;

b) assurance may be given in relation to one or more business relationships and for more than one transaction; and

c) assurance need not be given before deciding not to comply with third party requirements if an assurance has previously been given by that customer to the relevant person in relation to a business relationship or transaction.

20. Article 17C(4) of the *Money Laundering Order* provides that a relevant person (including a person who was formerly a relevant person) who has given an assurance to another person under Article 17C(2)(b) of the *Money Launder Order* (or under an equivalent provision that applies outside Jersey) may, if requested by the other person, provide the person with the information or evidence obtained from applying the identification measures referred to in Article 17C(2)(b)(i) of the *Money Laundering Order* (see paragraph 147 above).

Guidance notes

21. In relation to the exemption set out at Article 17C(1)(a) or (b) of the *Money Laundering Order*, a *supervised person* may be satisfied that there is little risk of *money laundering,* the *financing of terrorism,* or the *financing of proliferation* occurring where a particular fund is closed-ended, has no liquid market for its units, and permits subscriptions and redemptions to come from and be returned only to unitholders.

22. In relation to the exemption set out at Article 17C(1)(c)(i) of the *Money Laundering Order*, a *supervised person* may be satisfied that there is little risk of *money laundering,* the *financing of terrorism,* or the *financing of proliferation* occurring where:

- deposited funds are held only temporarily for one or more third parties in a client account operated by a person carrying on Trust Company Business, pending the transfer to a designated account for a third party, where the funds are not to be held on an undisclosed basis for longer than 40 days;
- deposited funds are held only temporarily for one or more third parties in a client account operated by a person carrying on Trust Company Business, pending the receipt of instructions when exiting a customer relationship, where the funds are not to be held on an undisclosed basis for longer than 40 days;
- deposited funds are held only temporarily for one or more third parties in a client account operated by a person carrying on Trust Company Business, to facilitate ad hoc (not routine) cheque payments where designated accounts do not otherwise have this facility;
- deposited funds are held only temporarily for one or more third parties in a client account operated by a person carrying on Trust Company Business, to facilitate the aggregation of statutory fees for onward payment;
- deposited funds are held only temporarily for one or more third parties in a client account operated by a person carrying on Trust Company Business, to receive fees payable to the customer which have been paid in advance;
- deposited funds are held only temporarily for one or more third parties in a client account operated by a person carrying on Trust Company Business, to receive customer money on an ad hoc basis paid to the customer in error;
- deposited funds are held for one or more third parties in a client account operated by a person carrying on Trust Company Business, where the number and value of third party transactions effected is low, e.g., to provide third parties with access to low-cost banking facilities where third parties' liquid assets are of insufficient value and volume for the establishment of a Designated relationship (e.g., balances of £1,000 or less per relationship, with little activity); or
- deposited funds are aggregated by a person carrying on Trust Company Business in order to attract a better return on investment for third parties, and where the aggregated deposit is received from and paid back (including income or profit

generated) to an account held with another person carrying on deposit-taking business who is registered to do so by the JFSC, the Guernsey Financial Services Commission or the Isle of Man Financial Services Authority.

23. In relation to the exemption set out at Article 17C(1)(d) of the *Money Laundering Order*, a *supervised person* may be satisfied that there is little risk of *money laundering,* the *financing of terrorism,* or the *financing of proliferation* occurring where the deposit is in respect of a third party's registered contract within the meaning of the *Control of Housing and Work (Jersey) Law 2012*.

24. In relation to the exemptions set out at Article 17C(1)(c)(ii) and (iii) of the *Money Laundering Order*, guidance on when a *supervised person* may be satisfied that there is little risk of *money laundering,* the *financing of terrorism,* or the *financing of proliferation* occurring is provided in sections 20.4.1 and 21.3.4 of *this Handbook*.

8.2.1 Assessment of risk (Article 17D)

Overview

25. The risk factors that are set out in this section will also be relevant to a *CRA* that is conducted under section 3.3.4.1 of *this Handbook* in the cases highlighted at sections 4.3 and 4.5 of *this Handbook*.

Statutory requirements (paraphrased wording)

26. Immediately before applying the exemptions set out in Article 17C, Article 17D(2) of the *Money Laundering Order* requires a relevant person to conduct an assessment as to whether it is appropriate to do so, having regard to the relevant customer's business and the higher risk of money laundering should the relevant customer fail to:

- apply the necessary identification measures to its customer(s); or
- keep records, or keep them for the period required to be kept.

27. Article 17D(2) of the *Money Laundering Order* requires a relevant person to prepare a written record of the reason why it is appropriate to apply CDD exemptions.

28. Article 17D(3) of the *Money Laundering Order* also sets out testing requirements for application of CDD exemptions under Article 17C of the *Money Laundering Order*. Under Article 17D(3) of the *Money Laundering Order* a relevant person must, in the manner, and as often as, the relevant person considers appropriate in all the circumstances, conduct tests in order to establish whether the relevant customer:

a) has appropriate policies and procedures in place to apply the identification measures described in Articles 13(1)(a), 13(1)(c)(ii) and 15 of the *Money Laundering Order* (or if the relevant customer is not in Jersey, similar identification measures that satisfy the FATF Recommendations in respect of identification measures);

b) obtains information in relation to the third party;

c) keeps the information or evidence that has been obtained in relation to the third party; and

d) provides the relevant person with that information or evidence without delay, if requested to do so by the relevant person.

In conducting such tests, the relevant person must consider whether the relevant customer may be prevented, by application of a law, from providing that information or evidence.

29. If, as a result of conducting the tests referenced above, the relevant person is unable to establish that the relevant customer complies with the above requirements under Article 17D (3)(b), (c) or (d) of the *Money Laundering Order*, the relevant person must immediately apply the identification measures specified in Article 13(1)(a) and 13(1)(c)(ii) of the *Money Laundering Order*.

AML/CFT/CPF Codes of Practice

[COP75] In a case where, for a particular *business relationship*, testing under Article 17D(3) of the *Money Laundering Order* highlights that a *relevant customer* has not found out information or obtained evidence of identity for a third party (or parties), does not keep that information or evidence of identity, or will not provide it on request and without delay when requested to do so, a *supervised person* must review the basis upon which it has applied *CDD* exemptions to other relationships with that particular *relevant customer* (if any) to determine whether it is still appropriate to apply those measures.

Guidance notes

30. Immediately before applying the exemptions set out in Article 17C of the *Money Laundering Order*, a *supervised person* may demonstrate that it has had regard to a *relevant customer*'s business where it considers the following factors:

- the general risk appetite of the relevant customer;
- the geographic location of the relevant customer's client base;
- the general nature of the relevant customer's client base, e.g., whether institutional or private client;
- the nature of the services that the relevant customer provides to its clients;
- the extent to which the relevant customer carries on business with its clients on a non-face to face basis or clients are otherwise subject to enhanced CDD measures; and
- the extent to which clients of the relevant customer may be PEPs or present a higher risk of money laundering, the financing of terrorism, or the financing of proliferation, and the sources of funds of such PEPs.

31. Immediately before applying the exemptions set out in Article 17C of the *Money Laundering Order*, 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* should a *relevant customer* fail to apply *identification measures*, keep records, or keep records for the required period where it considers the following factors:

- the stature and regulatory track record of the relevant customer;
- the adequacy of the framework to combat money laundering, the financing of terrorism, and the financing of proliferation (including targeted financial sanctions) in place in the country or territory in which the relevant customer is based and the period of time that the framework has been in place;

- the adequacy of the supervisory regime to combat money laundering, the financing of terrorism, and the financing of proliferation to which the relevant customer is subject;
- the adequacy of identification measures applied by the relevant customer to combat money laundering, the financing of terrorism, and the financing of proliferation;
- the extent to which the relevant customer itself relies on other obliged persons to identify its clients and to hold evidence of identity, and whether such parties are supervised persons or carry on an equivalent business.

32. A *supervised person* may demonstrate that it has considered the adequacy of *identification measures* applied by a *relevant customer* where it takes one or more of the following steps:

- reviews its previous experience (if any) with the relevant customer;
- makes specific enquiries, e.g., through use of a questionnaire;
- reviews relevant policies and procedures of the relevant customer;
- where the relevant customer is a member of a financial group, makes enquiries concerning the extent to which group standards are applied to and assessed by the group's internal audit function;
- conducts (or commissions from an external expert) sample testing of the adequacy of the relevant customer's policies and procedures to combat money laundering, the financing of terrorism, or the financing of proliferation, whether through onsite visits, or through requesting specific CDD information and/or copy documentation to be provided.

8.2.2 *CDD* requirements under Article 17C-D exemption

33. Article 17C-D of the *Money Laundering Order* can be applied to the same *customer* relationship, as they apply to separate identification requirements, however there are some elements of *CDD* that the *supervised person* will always be required to undertake – see the tables below:

<table>
<tr><th>CDD element</th><th colspan="2">Always required to be undertaken by the supervised person</th></tr>
<tr><td rowspan="2">Identification measures</td><td colspan="2">Risk assessment.</td></tr>
<tr><td colspan="2">Obtain information on purpose/nature.</td></tr>
<tr><td rowspan="4">Identification measures</td><td colspan="2">Identify customer.</td></tr>
<tr><td>Identify person acting for customer.</td><td>Verify authority to act.</td></tr>
<tr><td rowspan="2">Where customer is not an individual:</td><td>Understand ownership/control structure.</td></tr>
<tr><td>Identify Beneficial owners and/or controllers.</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td rowspan="2">Ongoing monitoring</td><td colspan="2">Scrutinising transactions/activity.</td></tr>
<tr><td colspan="2">Keep documents/information up to date.</td></tr>
</table>

CDD element	Articles 17B-D of the *Money Laundering Order* provide an exemption from this obligation
Identification measures	Identify third parties.

34. Articles 17C-D of the *Money Laundering Order* **can** be applied to third parties which would, for example, encompass the investors in a limited partnership or a unit trust.

8.3 Further exemptions from applying identification requirements

Statutory requirements (paraphrased wording)

35. *Article 18 of the Money Laundering Order provides further specific circumstances where exemptions from applying identification measures may be used.*

Insurance Business

36. *Under Article 18(1) of the Money Laundering Order, a relevant person is exempt from applying the identification measures specified in Article 13of the Money Laundering Order in respect of insurance business if:*

a) in the case of a policy of insurance in connection with a pension scheme taken out by virtue of a person's contract of employment or occupation, the policy contains no surrender clause and may not be used as collateral security for a loan;

b) a premium is payable in one instalment of an amount not exceeding £1,750; or

c) a periodic premium is payable and the total amount payable in respect of any calendar year does not exceed £750.

Pension, superannuation, employee benefit, share option or similar scheme

37. *Under Article 18(2) of the Money Laundering Order, a relevant person is exempt from applying the identification measures specified in Article 13 of the Money Laundering Order if:*

a) the business relationship or one-off transaction relates to a pension, superannuation, employee benefit, share option or similar scheme;

b) the contributions to the scheme are made by an employer or by way of deductions from wages;

c) the rules of the scheme do not permit the assignment of an interest of a member of the scheme except after the death of the member; and

d) the interest of a deceased member of the scheme is not being assigned.

Regulated person and those carrying on equivalent business

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

a) a regulated person;

b) a person who carries on equivalent business to any category of regulated business; or

c) a person wholly owned by a person (the "parent") mentioned in sub-paragraph (a) or (b), but only if:

i. the person is incorporated or registered in the same jurisdiction as the parent;

ii. the person has no customers who are not customers of the parent, the person's activity is ancillary to the regulated business or equivalent business carried on by the parent;

iii. in relation to that activity, the person maintains the same policies and procedures as the parent.

Public authority or body corporate/limited liability company with listed securities

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

a) a public authority acting in that capacity;

b) a body corporate or limited liability company the securities of which are listed on an IOSCO-compliant market or on a regulated market; or

c) a person wholly owned by a person mentioned in sub-paragraph (b).

Person authorised to act on behalf of customer

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

a) the person is authorised to act on behalf of the customer;

b) the customer is not a relevant person;

c) the person acts on behalf of the customer in the course of employment by a person carrying on a financial services business; and

d) the financial services business is a regulated business or an equivalent business to a regulated business.

Specified business (Lawyers and real estate agents)

41. *Under Article 18(6) of the Money Laundering Order, a relevant person is exempt from applying the identification requirements in Article 13 of the Money Laundering Order to the extent that the measures require identification of a person within the meaning of Article 3(4)(b) of the Money Laundering Order if:*

a) the relevant person's business falls within paragraph 21 [Lawyers] or 19 [Real estate agents] of Part 3 of Schedule 2 *to the Proceeds of Crime Law; and*

b) that person enters into a business relationship or carries out a one-off transaction for the purpose of enabling a customer, directly or indirectly, to enter into a registered contract (within the meaning of the Control of Housing and Work (Jersey) Law 2012.

AML/CFT/CPF Codes of Practice

[COP76] For each case described in Article 18 of the *Money Laundering Order*, a *supervised person* must obtain information on the purpose and intended nature of the business relationship or one-off transaction.

[COP77] A *supervised person* must obtain and retain documentation establishing that the *customer* is entitled to benefit from an exemption in Article 18 of the *Money Laundering Order*.

8.3.1 *CDD* requirements under Article 18 exemptions

42. Article 18 of the *Money Laundering Order* can be applied to the same *customer* relationship, as they apply to separate identification requirements, however there are some elements of *CDD* that the *supervised person* will always be required to undertake – see the tables below:

***CDD* element**	**Always required to be undertaken by the *supervised person***
Identification measures	Risk assessment.
	Obtain information on purpose/nature.
	Identify third parties.
Ongoing monitoring	Scrutinising transactions/activity.
	Keep documents/information up to date.

***CDD* element**	**Article 18 of the *Money Laundering Order* provides an exemption from this obligation (N.B: Does not apply to third parties)**	
Identification measures	Identify *customer.*	
	Identify person acting for *customer.*	Verify authority to act.
	Where *customer* is not an individual:	Understand ownership/control structure.
		Identify *Beneficial owners and/or controllers.*

43. Article 18 of the *Money Laundering Order* only applies to the *customer* and **does not** extend to third parties. For example, it would apply to a general partner of a limited partnership or a trustee of a trust, but not to the limited partnership or trust itself.

8.3.2 Pension, superannuation, employee benefit, share option or similar schemes

Overview

44. Where a *supervised person* enters into a *business relationship* or carries out a *one-off transaction* relating to a pension, superannuation, employee benefit, share option or similar scheme, in some limited circumstances there is no requirement to apply *identification measures*.

45. However, the exemption cannot be applied if a *supervised person* considers that there is a higher risk of *money laundering,* the *financing of terrorism,* or the *financing of proliferation*.

Guidance notes

46. A *supervised person* may demonstrate that it considers whether there is a higher risk of *money laundering,* the *financing of terrorism,* or the *financing of proliferation* when, among other things, it considers the reputation of the sponsoring employer and adequacy of controls in place over membership.

8.3.3 Jersey public authority

Overview

47. Where a *customer* is a *public authority* then, in line with Article 18(4)(a) of the *Money Laundering Order*, there is no requirement to apply *identification measures* on that *customer*, on the *Beneficial owners and/or controllers* of the *customer*, or those purporting to act on behalf of the *customer*.

48. However, in the above scenario the obligation to apply *identification measures* to any third party for which the *customer* may be acting and to verify the authority of persons acting on behalf of the *customer* remain in force.

49. The following may be considered to be public authorities in Jersey:

- a government department of the States of Jersey;
- a majority States-owned company;
- an agency established by a law of the States of Jersey;
- a parish authority.

8.3.4 Body Corporate/*limited liability company* with listed securities

Overview

50. Where a *customer* is a body corporate or *limited liability company*, the securities of which are listed on a market that conforms to international standards set by *IOSCO* or on a *regulated market*, then in line with Article 18(4)(b) of the *Money Laundering Order*, there is no requirement to apply *identification measures* on that *customer* (or any wholly owned subsidiary), on the *Beneficial owners and/or controllers* of the *customer* (or any wholly owned subsidiary), or those purporting to act on behalf of the *customer* (or any wholly owned subsidiary).

51. However, in the above scenario the obligations to apply *identification measures* to any third party for which the *customer* (or wholly owned subsidiary) may be acting and to verify the authority of persons acting on behalf of the *customer* (or wholly owned subsidiary) remain in force.

52. A market may be considered to be *IOSCO*-compliant if it is operated in a country or territory that has been assessed as having "fully implemented" or "broadly implemented" *IOSCO* Principles 16 and 17. In order to be assessed as having "fully implemented" or "broadly implemented" Principle 17, a country or territory must require:

- information about the identity and holdings of persons who hold a substantial beneficial ownership interest to be disclosed on a timely basis;
- material changes in such ownership and other required information to be disclosed in a timely manner.

53. Whilst there is not a global list of countries and territories that "fully implement" or "broadly implement" *IOSCO* Principles 16 and 17, reference may be made to *IMF* Financial System Stability Assessment reports, prepared as part of the *IMF* Financial Sector Assessment Program.

54. Guidance published by the UK's Joint *Money Laundering* Steering Group addresses what may be considered to be a *regulated market*. The only list of exchanges currently available is for *EU-regulated market*s (follow the link provided in the glossary entry for *regulated market*).

8.3.5 Regulated persons and those carrying on equivalent business

Overview

55. Where a *customer* is:

- a regulated person (defined in Article 1(1) of the Money Laundering Order);
- a person who carries on equivalent business to any category of regulated business; or
- wholly owned by a person listed above and which fulfils certain conditions (see Article 18(3)(c) of the Money Laundering Order)

Then in line with Article 18(3) of the *Money Laundering Order*, there is no requirement to apply *identification measures* in respect of the *customer*, the *Beneficial owners and/or controllers* of the *customer*, or those purporting to act on behalf of the *customer*. Nor is there a requirement to verify the authority of any person purporting to act for the *customer*.

56. However, these provisions do not also provide an exemption in respect of any third party (or parties) for whom the *customer* is acting, or for the *Beneficial owners and/or controllers* of such a third party (or parties).

8.3.6 Person authorised to act on behalf of a *customer*

Guidance notes

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

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

8.3.7 Jersey property transfers

Overview

58. This section relates to the exemption available under Article 18(6) of the *Money Laundering Order*, which provides that a *supervised person* that is a *Lawyer* or a *real estate agent*, which enters into a *business relationship* or carries out a *one-off transaction* for the purpose of enabling a *customer*, directly or indirectly, to enter into a registered contract within the meaning of the Control of Housing and Work (Jersey) Law 2012 (i.e. where it is to be passed before the Royal Court and registered in the Public Registry of Contracts), need not obtain **evidence of identity** of its *customer*. See also section 20.4.2.

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[COP78] For each case described in Article 18 of the *Money Laundering Order*, a *supervised person* must obtain information on the purpose and intended nature of the *business relationship* or *one-off transaction*.

[COP79] A *supervised person* that is a *lawyer* or *real estate agent* must obtain and retain documentation establishing that its *customer* is entitled to benefit from the exemption set out in Article 18(6) of the *Money Laundering Order*.

8.3.8 Exemption from applying *third party identification requirements* in relation to certain *relevant customer*s involved in *Trust Company Business*

59. This section is supplemental to and should be read in conjunction with section 20.4.1 and 21.3.4 of *this Handbook*.

60. Article 17C(1)(c)(ii) of the *Money Laundering Order* provides that a *supervised person* that is a *Lawyer/Accountant* is exempt from applying third party identification requirements in relation to a third party for which a relevant *customer* is acting if the relevant *customer* carries on Trust Company Business and is registered to carry on such business under the FS(J) Law, or equivalent business.

61. Article 17C(2) of the *Money Laundering Order* requires that a *supervised person* who does not apply *third party identification requirements* must be satisfied, by reason of the nature of the relationship with the *relevant customer*, that there is little risk of *money laundering, terrorism financing ,* or *proliferation financing* occurring.

8.4 Exemptions from *CDD* requirements where there is outsourcing or an *AMLSP* is appointed

62. Exemptions from *CDD* requirements can still be used by *supervised person*s where their *customer* is a *supervised person* in receipt of outsourced services and/or *AMLSP* services:

- Can a supervised person using an Outsourced service provider/AMLSP still use the exemptions even if the AMLSP/outsourced service provider is applying CDD measures on their behalf? Yes, subject to consideration of criteria of exemption and Article 17A of the Money Laundering Order;
- Can another supervised person (Supervised person 1) with a Supervised person 2 as their customer, where Supervised person 2 is using an outsourced service

provider/AMLSP (who will apply CDD measures for Supervised person 2 as part of the outsourced services/AMLSP) apply exemptions from CDD measures to that Supervised person? Yes, subject to consideration of criteria of exemption and Article 17A of the Money Laundering Order;

- Can an outsourced service provider/AMLSP apply Article 18 of the Money Laundering Order identification exemptions to the customer of the supervised person on its own behalf? No, A customer relationship with a supervised person does not create a customer relationship with the AMLSP or the outsourcing service provider;
- Can an outsourced service provider/AMLSP contracted to provide CDD measures for the supervised person apply Article 17 of the Money Laundering Order third party identification exemptions to the customers of the supervised persons or the third parties for whom they act? The JFSC would not expect the AMLSP or outsourcing service provider to apply Article 17 of the Money Laundering Order third party identification exemptions to the customers of the supervised persons or the third parties for whom they act to avoid undertaking its contractual obligations to apply CDD measures as AMLSP or outsourcing service provider on behalf of that supervised person.

8.5 Simplified *identification measures* – Obtaining evidence of identity for very low risk products/services

Overview

63. Where funds involved in a *business relationship*:

- have been received from a bank that is a regulated person or carries on equivalent business to deposit-taking (see section 1.8 of this Handbook regarding equivalent business); and
- have come from an account in the sole or joint name of the customer who is an individual (or are individuals);

Then the receipt of funds from such an account may be considered to be reasonably capable of verifying that the person to be identified is who they are said to be where the product or service requested by the *customer* is considered to present a very low risk of *money laundering,* the *financing of terrorism,* or the *financing of proliferation*. This will be the case where funds may only be received from, and paid to, an account in the *customer's* name, i.e., a product or service where funds may not be paid in by, or paid out to, external parties.

64. In the event that any of the conditions set below are breached, evidence of identity for the *customer* must be obtained at that time in accordance with section 4 of *this Handbook* and this section 7 of *this Handbook*.

AML/CFT/CPF Codes of Practice

[COP80] The concession referred to above must not be applied in the following circumstances:

- where a *supervised person* suspects *money laundering*, the *financing of terrorism*, or the financing of proliferation;
- in any situation which by its nature can present a higher risk of *money laundering*, the *financing of terrorism*, or the financing of proliferation;

- where the *customer* has a relevant connection to an enhanced risk state; or
- where the *customer* is resident in a country or territory that is not compliant with the FATF Recommendations.

[COP81] To benefit from the concession, the product or service must satisfy the following conditions:

- all initial and future payments must be received from an account at a bank that is a *regulated person* or carries on an equivalent business to deposit-taking (see section 1.8 of *this Handbook*), where the account can be confirmed as belonging to the *customer*;
- *no* initial or future payments may be received from external parties;
- cash withdrawals are not permitted, with the exception of face-to-face withdrawals by the *customer*, where they are required to produce evidence of identity before the withdrawal can be made;
- no payments may be made, other than to an account at a bank that is a *regulated person* or carries on an *equivalent business* to deposit-taking (see section 1.8 of *this Handbook*), where the account can be confirmed as belonging to the *customer*, or on the death of the *customer* to a personal representative named in the grant of probate or the letters of administration; and
- no future changes must be made to the product or service that enable funds to be received from or paid to external parties.

[COP82] A *supervised person* must obtain and retain evidence confirming that payment has been received from an account at a bank that is a *regulated person* or carries on an *equivalent business* to deposit-taking (see section 1.8 of *this Handbook*), and, where a request for a withdrawal or transfer to another bank account is received, confirmation that this account is also in the *customer*'s name and held at a bank that is a *regulated person* or carries on an *equivalent business* to deposit-taking.

[COP83] If a *supervised person* has reason to suspect that the motive behind a particular transaction, or the way a business is being structured, is to avoid standard *identification measures*, it must not use this concession.