Jersey Financial Services Commission

Part II: SECTOR SPECIFIC GUIDANCE

Industry	Section
Trust Company Service Providers (TCSPs)	12
Fund and Security Services Activities	13
Wire Transfers and prepaid cards	14
*AMLSP*s	15
Virtual Asset Service Providers (VASPs)	16
Prescribed Non-Profit Organisations	*No longer contained within this Handbook, refer to guidance on the JFSC website.*

Sections 1 - 11 are applicable to all entities/sectors classified as *supervised persons* and sections 12 – 16 apply to specific Sectors.

12 TRUST COMPANY SERVICE PROVIDERS (TCSPS)

12.1 Overview

1. This section applies to all *supervised persons* who *are TCSPs* as described in the *Guideline*s, including *Trust Company Businesses.* The activity of *TCSP* is described in the *FATF* definition of *Designated Non-Financial Businesses and Professionals (DNFBPs)* which is contained in paragraph 23 of part 3 of Schedule 2 to the *Proceeds of Crime Law,* therefore all TCSPs are *DNFBPs*. TCB is a defined term in Article 2 of the FS(J)L which is directly referenced in paragraph 23 of Part 3 of Schedule 2 to the POC(J)L therefore all those registered as a TCB are also a TCSP but will be referred to as a TCB these have AML/prudential/conduct regulation and supervision. Where a person is a TCSP but not a TCB and therefore has to register under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.

2. Except for the limited exemption to the Money Laundering Order referred to below all TCSPs (including those regulated as TCBs and not) are *supervised persons* and have to comply with the AML/CFT/CPF obligations set out in this Handbook.

3. Directors who are registered as *TCSPs* and who are not regulated as *TCBs* are considered to be low risk financial services business and certain Articles of the *Money Laundering Order* have been disapplied to them as set out in Proceeds of Crime (Low Risk Financial Services Business) (Jersey) Order 2024 (*Exemption Order*).

4. The purpose of this section is to assist with the application of *identification measures* to a *customer* where a *supervised person* established a *business relationship* or carries out a *one-off transaction* in the course of being a *Trust Company Service Provider.*

Jersey Financial Services Commission

12.2 *Identification measures*

5. This section applies where a *supervised person* carries on a business under Article 2(3) of the *FS(J) Law* and, in the course of providing those services, the person provides any of the services specified in Article 2(4) of the *FS(J) Law (a regulated business, namely a Trust Company Business (TCB))*.

6. This section also applies where a *supervised person* carries on a business that is described in paragraph 23(1)(b)(i) of Part 3 of Schedule 2 to the *Proceeds of Crime Law (a Trust company service provider that may include a TCB but may not)*.

7. Directors subject to the *Exemption Order* are not exempt from the obligation to apply *Identification measures.*

8. This section **does not** deal with the provision of any service to a '**COBO-only** fund'. A COBO-only fund is a scheme that would be a collective investment fund (as defined in the *CIF(J) Law*) except for the fact that the capital, the collective investment of which is the object or one of the objects of the scheme or arrangement, is not acquired by means of an offer to the public of *units* for subscription, sale, or exchange.

12.2.1 Obligation to apply *identification measures*

9. Among other things, Article 13 of the *Money Laundering Order* requires a *supervised person* to apply *identification measures*:

- before the establishment of a *business relationship* or before carrying out a *one-off transaction*; and
- in the course of a *business relationship*, where the *supervised person* has doubts about the adequacy of information previously obtained under *identification measures*.

10. A *supervised person* (**Person A**) that provides, acts as or fulfils one or more of the functions listed in Article 2(4) of the *FS(J) Law*, or arranges for another person (**Person B**) to do so (where Person B is an officer or *Employee* of Person A) will be considered to have established a *business relationship* under the *Money Laundering Order*.

11. Where Person B is not an officer or *Employee* of Person A, then Person A will not be considered to have established a *business relationship* each time that it arranges for another person to act as or fulfil such function. However, a *supervised person* will need to consider whether such an arrangement (a transaction) is a *one-off transaction* as defined in Article 4 of the *Money Laundering Order*.

12. A *supervised person* that acts only as a formation agent will not be considered to have established a *business relationship* with its *customer*. However, a *supervised person* will need to consider whether they provide the service of forming a legal arrangement or legal person as a business as defined in Schedule 2, Part 3, paragraph 23 of the *Proceeds of Crime Law.*

13. The requirement to apply *identification measures* also applies where the relationship that a *supervised person* has with its *customer* is conducted through another service provider, e.g., the *supervised person* provides a director to a client company that is administered by another person carrying on *Trust Company Business*.

12.2.2 Information for assessing risk – Stage 1.4

14. This section must be read in conjunction with and is supplemental to, section 3.3.2 of *this Handbook*, which explains how 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,* the *financing of terrorism,* or the *financing of proliferation*.

12.2.2.1 *Supervised person* providing limited services

Overview

15. Where a *supervised person* provides **only:**

- registered office services; and/or
- secretarial services (defined in this section as **limited services**).

That *supervised person* is unlikely to have any oversight of, or control over, the activities of the legal arrangement or legal person in the way that it would if it also provided one or more directors (or equivalent) or provided full administration services. The absence of oversight or control increases the risk that a legal arrangement or legal person may be used for *money laundering,* the *financing of terrorism,* or the *financing of proliferation*.

16. The presence of this additional risk therefore requires a *supervised person* to request additional information on its *customer*, and on the activities of the legal arrangement or legal person to which it is to provide only limited services, for the purpose of countering *money laundering,* the *financing of terrorism,* and the *financing of proliferation*.

17. The risk that a legal arrangement or legal person may be used for *money laundering,* the *financing of terrorism,* or the *financing of proliferation* is likely to be mitigated where a *customer* to whom only limited services are provided is a body corporate, the securities of which are listed on an *IOSCO* compliant market or on a *regulated market*, or where a *customer* is a *regulated person* (or person who carries on *equivalent business* to any category of *regulated business*).

Guidance notes

18. In the case of a *supervised person* that provides **only** limited services to a legal arrangement or legal person, 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,* the *financing of terrorism,* or the *financing of proliferation* where it collects (at the time that a limited service is first provided and then on an ongoing basis thereafter) information on activities by reference to:

- copies of minutes of directors' and members' meetings that must be kept by a company (including, in the case of a *PCC*, copies of minutes of directors' and members' meetings of the cell company and each of its cells) under Part 15 of the *Companies Law* (or equivalent for other legal persons or legal arrangements); and
- copies of accounts that must be prepared by the directors of a company (including, in the case of a *PCC*, copies of accounts that must be prepared by the directors of the cell company and each of its cells) under Part 16 of the *Companies Law* (or equivalent for other legal persons or legal arrangements); or

- where accounts are not required to be prepared, underlying financial records that are maintained by the directors of that company (or equivalent for other legal persons or legal arrangements).

12.2.2.2 Co-trustees and additional general partners

Overview

19. In some cases, an *express trust* or limited partnership may have more than one trustee or general partner respectively. In such cases, it will be necessary for a *supervised person* that is to act as trustee or general partner to obtain information on each co-trustee or additional general partner (or limited partner that participates in the management of the limited partnership) to fully consider *money laundering, financing of terrorism,* and *financing of proliferation* risk.

Guidance notes

20. A *supervised person* that is to act as a trustee of an *express trust* may demonstrate that it has obtained appropriate information for assessing the risk that a *business relationship* or *one-off transaction* will involve *money laundering,* the *financing of terrorism,* or the *financing of proliferation* where it collects information on any co-trustees of the trust.

21. A *supervised person* that is to act as a general partner of a limited partnership may demonstrate that it has obtained appropriate information for assessing the risk that a *business relationship* or *one-off transaction* will involve *money laundering,* the *financing of terrorism,* or the *financing of proliferation* where it collects information on any additional general partners or limited partners that participate in the management of the limited partnership.

22. The information requested may include why it is necessary to have more than one trustee or general partner, and the stature and regulatory track-record of the co-trustee or additional general partner.

12.2.3 Assessment of risk – Stage 2.1

Overview

23. This section must be read in conjunction with and is supplemental to section 3.3.4 of *this Handbook*, which sets out several factors that are to be taken into account by a *supervised person* when assessing the risk that a *business relationship* or *one-off transaction* will involve *money laundering,* the *financing of terrorism,* or the *financing of proliferation*.

Guidance notes

24. A *supervised person* that is a TCSP may demonstrate that it has assessed the risk that a *business relationship* or *one-off transaction* will involve *money laundering*, the *financing of terrorism*, or the *financing of proliferation* where it considers the following additional risk factors:

- any failure on the part of a *customer* to be open about the *source of funds*. In the case of a trust, this could indicate that, for example, a settlor is in fact a “dummy” settlor who is using another’s funds and not their own;
- any failure to be open about the purpose and intended nature of the *business relationship* or *one-off transaction*. In the case of a trust, this could indicate that, for example, a settlor is withholding information on the persons who are actually intended to benefit from the trust, e.g., a settlor only nominates charities as beneficiaries of a

trust, but they do not intend that the charity will in fact benefit (known as a "blind" trust);

- any request to include unusual or non-standard clauses in a trust instrument or other constitutional document that might indicate that the disclosed purpose of the structure is not genuine; and
- any request for unusually close supervision or control of assets by a person other than the *supervised person*.

12.2.4 *Identification measures*: Finding out identity and obtaining evidence

Overview

25. The meaning of *identification measures* within *this Handbook* is set out in the Glossary *of this Handbook*. *Identification measures* include determining who the *customer* is.

26. Where a *supervised person* is to act as the trustee of an *express trust*, *customers* will include the settlor, protector (if any), beneficiaries with a vested right and any other beneficiaries and persons who are the object of a power and that have been identified as presenting a higher risk (see section 12.2.4.1 of *this Handbook*).

27. Where a *supervised person* is to act as the general partner of a limited partnership, *customers* will include the limited partners of the partnership (see section 12.2.4.4 of *this Handbook*).

28. Where a *supervised person* is to provide a non-management service, such as registered office, in respect of a limited partnership, the *customer* will be the general partner acting for the limited partnership – a third party (see section 4.3.3 of *this Handbook*).

29. Where a *supervised person* is to provide a service to a company, the *customer* will be the company (see section 4.5.1 of *this Handbook*).

30. Where a *supervised person* is to provide a service to a foundation, the *customer* will be the foundation (see section 4.5.3 of *this Handbook*).

31. Where a *supervised person* is to provide a service to a separate limited partnership, incorporated limited partnership or limited liability partnership, the *customer* will be the partnership (see Section 4.5.5 of *this Handbook*).

32. Where a *supervised person* is to form a company, partnership or foundation, the *customer* will be the persons who are the *Beneficial owners and/or controllers* of the legal person (see sections 4.2.2 and 4.5 of *this Handbook*).

12.2.4.1 Finding out identity – Legal arrangement that is a trust

Guidance notes

33. A *supervised person* that is to act as the trustee of an *express trust* may demonstrate that it has applied *identification measures* under Article 3(2)(a) of the *Money Laundering Order* to its *customer*, where it applies those measures to:

- the settlor, including any person subsequently settling funds into the trust (except if deceased) and any person who directly or indirectly provides trust property or makes a testamentary disposition on trust or to the trust;
- any co-trustee;
- any protector;

- any beneficiary with a vested right;
- any other beneficiary or person who is the object of a power and that has been identified as presenting a higher risk; and
- any other person exercising **ultimate effective control** over the trust.

34. In any case where a settlor, protector, beneficiary, object of a power or other person referred to in paragraph 30 (the **person**) is not an individual, a *supervised person* may demonstrate that it has identified each individual who is the person's *Beneficial owner and/or controller* under Article 3(2)(c)(iii) of the *Money Laundering Order* where it has identified:

- each individual with a **material controlling ownership interest** in the capital of the person (through direct or indirect holdings of interests or voting rights) or who exerts **control through other ownership means**;
- to the extent that there is doubt as to whether the individuals exercising control through ownership are *Beneficial owners*, or where no individual exerts control through ownership, any other individual exercising **control** of the person **through other means**;
- where no individual is otherwise identified under this section, individuals who **exercise control** of the person **through positions held** (e.g., those who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions).

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

12.2.4.2 Finding out identity – Legal arrangement that is a charitable trust (capital markets)

Guidance notes

36. A *supervised person* that is to act as the trustee of a charitable trust which is established to hold an investment in a security-issuing vehicle, or to hold security (as bare trustee for security-holders) over assets held within such a vehicle, may demonstrate that it has applied *identification measures* under Article 3(2)(a) of the *Money Laundering Order* to its *customer*, where it applies those measures to:

- the originator or instigator of the capital market transaction; and
- each security-holder that can exercise **effective control** over the underlying security-issuing vehicle.

12.2.4.3 Obtaining evidence of identity – Legal arrangement that is a trust

Overview

37. The measures that must be applied to obtain evidence of identity of beneficiaries and persons who are the object of a power and that have been identified as presenting higher risk will reflect the verification methods that are available at a particular time to the trustee. For example, it may not be appropriate to request evidence directly from the beneficiary or object of a power.

38. Where a *supervised person* is not familiar with a document obtained as evidence of identity, additional appropriate measures may be necessary to satisfy itself that the evidence is genuine.

AML/CFT/CPF Codes of Practice

[COP123] All key documents (or parts thereof) obtained as evidence of identity must be in a language understood by the employees of the business and must be translated into English at the request of the *FIU* or of the *JFSC*.

12.2.4.4 Finding out identity – Legal arrangement that is a limited partnership

Guidance notes

39. A *supervised person* that is to act as the general partner of a limited partnership may demonstrate that it has applied *identification measures* under Article 3(2)(a) of the *Money Laundering Order* to its *customer* where it applies those measures to limited partners holding a **material controlling ownership interest** in the capital of the partnership (through holdings of interests or voting rights) or any other person exercising **control through other ownership means**, e.g. partnership agreements, power to appoint *senior management*, or any outstanding debt that is convertible into voting rights.

40. To the extent that there is doubt as to whether the persons exercising control through ownership are *Beneficial owners*, or where no person exerts control through ownership, a *supervised person* that is to act as the general partner of a limited partnership may demonstrate that it has applied *identification measures* under Article 3(2)(a) of the *Money Laundering Order* to its *customer* where it applies those measures to any other person exercising **control** over the partnership **through other means**, e.g., those who exert control through personal connections, by participating in financing, because of close family relationships, historical or contractual associations or as a result of default on certain payments.

41. Where no person is identified under this section, a *supervised person* that is to act as the general partner of a limited partnership may demonstrate that it has applied *identification measures* under Article 3(2)(a) of the *Money Laundering Order* to its *customer* where it applies those measures to persons who exercise **control through positions held** (e.g. those who have or exercise strategic decision-taking powers or have or exercise executive control through senior management positions, e.g. general partner or limited partner that participates in management).

42. In any case where a partner or other person is not an individual, a *supervised person* may demonstrate that it has identified each individual who is that person's *Beneficial owner and/or controller* under Article 3(2)(c)(iii) of the *Money Laundering Order* where it has identified:

- each individual with a **material controlling ownership interest** in the capital of the partnership (through direct or indirect holdings of interests or voting rights) or who exerts **control through other ownership means**;
- to the extent that there is doubt as to whether the individuals exercising control through ownership are *beneficial owners*, or where no individual exerts control through ownership, any other individual exercising **control over the partnership through other means**; and
- where no individual is otherwise identified under this section, individuals who exercise **control** of the partnership **through positions held** (e.g., those who have and

exercise strategic decision-taking powers or have or exercise executive control through *senior management positions*).

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

12.2.4.5 Obtaining evidence of identity – Legal arrangement that is a limited partnership

44. Where a *supervised person* is not familiar with a document obtained as evidence of identity, additional appropriate measures may be necessary to satisfy itself that the evidence is genuine.

AML/CFT/CPF Codes of Practice

[COP124] All key documents (or parts thereof) obtained as evidence of identity must be in a language understood by the employees of the business and must be translated into English at the request of the *FIU* or of the *JFSC*.

12.2.4.6 Finding out identity – Legal person that is a PCC

Overview

45. This section must be read in conjunction with and is supplemental to sections 4.5.1 and 4.5.2 of *this Handbook*.

46. Under Article 127YDA(1) of the *Companies Law*, in the case of both *PCCs* and *ICCs*, a cell shall have the same registered office and secretary as the cell company. The registered office must also be in Jersey.

47. As a result, where a *supervised person* provides a registered office or secretary to a *PCC,* **it will do so for each cell of that *PCC* as well**. Because the cell of a *PCC* does not have the ability to enter into arrangements or contract in its own name, for the purposes of Article 3 of the *Money Laundering Order*, the *PCC* will be taken to be a *customer* acting for a third party and each cell will be taken to be a third party that is a person other than an individual. *Identification measures* must therefore be applied under Article 13 of the *Money Laundering Order* to the ***PCC*** (the *customer*) and **each cell** of the *PCC* (a third party).

12.2.5 Timing of *identification measures*

48. This section must be read in conjunction with and is supplemental to sections 4.1 and 4.7 of *this Handbook*.

49. In line with Article 13(8) of the *Money Laundering Order*, a *supervised person* that is to act as a trustee may delay obtaining evidence of the identity of a *customer* after the time that a *business relationship* is established so long as:

- it obtains evidence of identity at the time of, or before, distribution of trust property or income; and
- it is satisfied that there is little risk of *money laundering,* the *financing of terrorism,* or the *financing of proliferation* occurring because of obtaining evidence after entitlement is conferred.

50. Similar provisions should apply in a case where the *customer* of the *supervised person* changes during the course of a *business relationship*.

Guidance notes

51. During a *business relationship*, a *supervised person* that is the trustee of an *express trust* may demonstrate that it has obtained evidence that is reasonably capable of verifying the identity of each beneficiary with a vested right where:

- it obtains evidence of identity at the time of, or before, distribution of trust property or income; and
- it is satisfied that there is little risk of *money laundering*, the *financing of terrorism, or the financing of proliferation* occurring because of obtaining evidence after entitlement is conferred.

52. During the course of a *business relationship*, a *supervised person* that is the trustee of an *express trust* may demonstrate that it has obtained evidence that is reasonably capable of verifying the identity of a beneficiary or person who is the object of a trust power, where it does so at the time that the person is **identified as presenting a higher risk**.

12.2.6 Failure to complete *identification measures*

53. This section must be read in conjunction with and is supplemental to section 4.8 of *this Handbook*.

54. Under Article 14 of the *Money Laundering Order*, if a *supervised person* is unable to apply *identification measures* when required to do so, then it must terminate that *business relationship* or not carry out that *one-off transaction* and consider whether to make a *SAR* to the *FIU*.

55. This requirement may cause conflicts where a *supervised person* is acting as a trustee, its *customer* is the beneficiary or object of a power of a trust and:

- the relationship between a *supervised person* and its *customer* is governed by other legislation, e.g., the Trusts (Jersey) Law 1984; and
- the termination of a relationship with a *customer* (a beneficiary or object of a power) may have a prejudicial effect on the interests of other *customers*.

56. This requirement may also cause conflicts where a *supervised person* is acting as a council member, its *customer* is a foundation, and the foundation is governed by the *Foundations Law*. Under Article 12(3) of the *Foundations Law* the retirement or removal of the qualified member of a foundation does not take effect until **immediately before** the appointment of a new qualified person to be the qualified member of the council has taken effect.

57. In order to address such potential issues, termination of a *business relationship* may be **delayed** until such time as compliance with Article 14 of the *Money Laundering Order* does not conflict with another legal requirement, and/or does not have any prejudicial effect on the interests of other *customers*, so long as the risk of *money laundering,* the *financing of terrorism,* or the *financing of proliferation* is effectively managed.

12.2.7 Provision of information by trustees

Statutory requirements (paraphrased wording)

58. *Article 2 of the Information Order requires a person who is acting as a trustee of a trust to state that that person is acting in their capacity as trustee of that trust (and not in that person's personal capacity) when:*

- *forming a business relationship with a relevant business; or*
- *conducting a one-off transaction with a relevant business.*

59. *Article 3(1) of the Information Order states that despite any provision of any trust document, or any other enactment, the trustee of a trust:*

- *must provide to a competent authority any information requested by that competent authority; and*
- *may provide to a relevant business with which the trust has a business relationship, on request by that business, information regarding:*
    - *the beneficial ownership of the trust;*
    - *the settlor, protector or enforcer of the trust, if any; or*
    - *the assets of the trust that are to be held or managed by the relevant business under the terms of the business relationship.*

60. *Article 3(2) of the Information Order states that a request for information by an external competent authority must be made via a competent authority under an appropriate international co-operation request.*

Article 3(3) of the Information Order states that on receipt of a request for information from an external competent authority under paragraph (2), a competent authority may request all or any of that information from the trust.