

**CONSULTATION PAPER
NO. 10 2009**

**AML/CFT HANDBOOK FOR REGULATED
FINANCIAL SERVICES BUSINESS**

Sector specific section for trust company business

CONSULTATION PAPER

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this consultation paper. Comments should reach the Commission by 11 December 2009.

If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, please contact Andrew Le Brun.

Responses should be sent directly to:

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It is the policy of the Commission to make the content of all responses available for public inspection unless specifically requested otherwise.

Glossary of terms

the AML/CFT Handbook	means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Financial Services Business regulated under the Regulatory Laws
the AML/CFT Steering Group	means the Commission's Steering Group for countering money laundering and the financing of terrorism
the Commission	means the Jersey Financial Services Commission
the Commission Law	means the Financial Services Commission (Jersey) Law 1998, as amended
the Financial Services Law	means the Financial Services (Jersey) Law 1998, as amended
the IMF	means the International Monetary Fund
the JFCU	means the Joint Financial Crimes Unit
the Money Laundering Order	means the Money Laundering (Jersey) Order 2008, as amended
the Proceeds of Crime Law	means the Proceeds of Crime (Jersey) Law 1999, as amended
a relevant person	means a person that is subject to the Money Laundering Order
the sector specific section	means the sector specific section for trust company business
the Supervisory Bodies Law	means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended

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1 EXECUTIVE SUMMARY

1.1 Overview

- 1.1.1 The Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Financial Services Business Regulated under the Regulatory Laws¹ (the “**AML/CFT Handbook**”) came into force on 4 February 2008. Since that date, a number of amendments have been made to the AML/CFT Handbook, which are summarised in Part 4 thereof.
- 1.1.2 The AML/CFT Handbook includes provisions that are applicable where a trustee of an express trust, or a legal body (including a foundation) is the applicant for business or customer of a person that is subject to the Money Laundering (Jersey) Order 2008, as amended (the “**Money Laundering Order**”), referred to hereafter as a “**relevant person**”.
- 1.1.3 However, there are currently no specific provisions in the AML/CFT Handbook to assist with the application of customer identification measures where a business relationship is established or one-off transaction carried out by a relevant person in the course of “trust company business”.

1.2 What is proposed and why?

- 1.2.1 The purpose of the sector specific section for trust company business (“**sector specific section**”) is to interpret, and assist with the application of, the customer identification measures that must be conducted under Articles 3 and 13 of the Money Laundering Order, where a relevant person is carrying on trust company business. The sector specific section includes Regulatory Requirements and Guidance Notes and is attached to this paper as Appendix B.
- 1.2.2 The sector specific section describes the identification measures that are to be applied where a service is provided in respect of a trust, a legal body (excluding a foundation), and a foundation. The identification measures that are described are based on those that are set out in Section 4 of the AML/CFT Handbook and will already be familiar to relevant persons.
- 1.2.3 For each of the services that are described in section 1.3 below, the sector specific section clarifies:
 - 1.2.3.1 Whether the nature of the service is such that a business relationship is formed or one-off transaction is carried out.
 - 1.2.3.2 Who is to be considered the “customer”.
- 1.2.4 In the case of a service that is provided to a trust, the customer(s) will be the person(s) who are “concerned with the trust”. In the case of a legal body, the customer(s) will be the person(s) who are the “beneficial owners and controllers of the legal body”. In the case of a foundation, the customer(s) will be the persons who are “concerned with the foundation”. What is meant by each of

¹ The Regulatory Laws are: the Banking Business (Jersey) Law 1991; the Collective Investment Funds (Jersey) Law 1988; the Financial Services (Jersey) Law 1998; and the Insurance Business (Jersey) Law 1996.

these terms is set out in paragraphs 26, 56, and 76 respectively of the sector specific section.

- 1.2.5 Following its recent review of Jersey's framework to counter money laundering and the financing of terrorism, the International Monetary Fund (the "IMF") has said that customer due diligence requirements and guidance should be amended to ensure that trusts and other legal arrangements are adequately and consistently addressed.

1.3 Who would be affected?

- 1.3.1 The sector specific section will affect a relevant person who carries on a business under Article 2(3) of the Financial Services (Jersey) Law 1998, as amended (the "**Financial Services Law**") that involves the provision of company administration services, the provision of trustee or fiduciary services or the provision of services to foundations and, in the course of providing those services, the person provides any of the services specified in Article 2(4) of the Financial Services Law.
- 1.3.2 *Inter alia*, those services are:
 - 1.3.2.1 acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, trustee of an express trust;
 - 1.3.2.2 acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, director or alternate director of a company;
 - 1.3.2.3 acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, a partner of a partnership;
 - 1.3.2.4 acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, a member of the council of a foundation;
 - 1.3.2.5 acting as a company formation agent, a partnership formation agent, or a foundation formation agent;
 - 1.3.2.6 acting, or arranging for another person to act, as secretary, alternate, assistant or deputy secretary of a company;
 - 1.3.2.7 providing a registered office or business address for a company, a partnership, a foundation, or for any other person; and
 - 1.3.2.8 providing an accommodation, correspondence or administrative address for any person.
- 1.3.3 The sector specific section will also affect a relevant person who carries on a business that is described in paragraph 8 of Part B of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999, as amended (the "**Proceeds of Crime Law**").
- 1.3.4 The sector specific section does not deal with a case where a relevant person is acting as a shareholder or unitholder as nominee (or intermediary) for another person. The identification measures that are to be applied are already adequately addressed through Sections 3 and 4 of Part 1 of the AML/CFT Handbook.
- 1.3.5 The sector specific section does not deal with the provision of any service to a so called "COBO-only" fund. This will be addressed separately in a sector specific section for fund services business (which will also cover certified funds).

1.3.6 For the avoidance of doubt, the sector specific section does **not** apply to any activity that is excluded from the scope of Part A of Schedule 2 of the Proceeds of Crime Law. Relevant exclusions are listed in Appendix E of Part 1 of the AML/CFT Handbook. In particular, the sector specific section does **not** apply to a director who acts in the course of employment by: (i) a trading company (that is not administered by a trust company); or (ii) a company that is prudentially supervised by the Commission under the regulatory laws.

2 CONSULTATION

2.1 Basis for consultation

2.1.1 The Commission has issued this consultation paper in accordance with Article 8(3) of the Financial Services Commission (Jersey) Law 1998, as amended (the “**Commission Law**”), under which the Commission “*may, in connection with the carrying out of its functions - ...consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate*”.

2.2 Responding to the consultation

2.2.1 The Commission invites comments in writing from interested parties on the proposals included in this consultation paper. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.

2.2.2 To assist in analysing responses to the consultation paper, respondents are asked to:

2.2.2.1 prioritise comments and to indicate their relative importance; and

2.2.2.2 respond as specifically as possible and, where they refer to costs, to quantify those costs.

2.3 Next steps

2.3.1 The proposals set out in this consultation paper have already been discussed with the Commission’s Steering Group for countering money laundering and the financing of terrorism (the “**AML/CFT Steering Group**”), made up of representatives from the Commission, Jersey Finance Limited, the Joint Financial Crimes Unit (the “**JFCU**”) and industry. A [full list of current members](#) can be found on the Commission’s website.

2.3.2 A full list of representative bodies that have been sent this consultation paper is available at Appendix A.

2.3.3 Following consultation, and once any necessary changes have been made to the sector specific section, the AML/CFT Handbook will be updated to incorporate this new section.

3 THE COMMISSION

3.1 Overview

3.1.1 The Commission is a statutory body corporate established under the Commission Law. It is responsible for the supervision and development of financial services provided in or from within Jersey.

3.2 Commission's functions

- 3.2.1 The Commission Law prescribes that the Commission shall be responsible for:
- 3.2.1.1 the supervision and development of financial services provided in or from within Jersey;
 - 3.2.1.2 providing the States, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
 - 3.2.1.3 preparing and submitting to the Minister for Economic Development recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
 - 3.2.1.4 such functions in relation to financial services or such incidental or ancillary matters:
 - as are required or authorised by or under any enactment, or
 - as the States may, by Regulations, transfer; and
 - 3.2.1.5 such other functions as are conferred on the Commission by any other Law or enactment.
- 3.2.2 The Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended (the "**Supervisory Bodies Law**") prescribes that the Commission shall be responsible for monitoring compliance by a supervised person with any requirement to which that person is subject under the Supervisory Bodies Law, the Money Laundering Order, and any Code of Practice that applies to that person or the supervised business carried on by that person.
- 3.2.3 In the case of a person carrying on trust company business, the relevant Code of Practice will be the AML/CFT Handbook.

3.3 Guiding principles

- 3.3.1 The Commission's guiding principles require it to have particular regard to:
- 3.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;
 - 3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
 - 3.3.1.3 the best economic interests of Jersey; and
 - 3.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

4 KEY AREAS

4.1 Introduction

4.1.1 This part of the consultation paper highlights matters on which feedback is particularly requested.

4.2 Providing a registered office address

4.2.1 The nature of the service of providing **only** a registered office address is such that a relevant person is unlikely to have any oversight of, or control over, the legal body's activities (in the way that it would if it also provided one or more directors (or equivalent) to the legal body and/or provided full administration services). The absence of oversight or control increases the risk that a legal body may be used to launder money or finance terrorism.

4.2.2 The effect of this additional risk will be to require a relevant person to request substantially more information on its customer, and on the activities of the legal body to which it is to provide a registered office service, for the purpose of countering money laundering and terrorist financing than is strictly necessary to provide a registered office address.

4.2.3 Section 1.2.2 of the sector specific section provides guidance on how a customer risk assessment should be applied to a relationship that involves only the provision of a registered office address.

4.2.4 Paragraph 54 of the sector specific section includes a requirement to collect relevant identification information on the persons who are the beneficial owners and controllers of the legal body (the customer) before the time that the address is first provided and then subsequent to the provision of that address.

4.2.4.1 Do you agree that the application of identification measures in the sector specific section is proportionate to the risks that are presented by the provision of "registered-office only" services? If you do not, please explain what you consider would be proportionate.

4.3 Termination of a relationship

4.3.1 Under Article 14 of the Money Laundering Order, if a relevant person is unable to apply identification measures when required to do so then it must terminate its relationship and consider whether to make a suspicious activity report to the JFCU.

4.3.2 This provision works well where there is a direct contractual relationship between a relevant person and its customer. It does not work quite so well when the customer of a relevant person is the beneficiary or object of a power of a trust or foundation, where (cumulatively):

4.3.2.1 the relationship between a relevant person and its customer is governed by other legislation – e.g. the Trusts (Jersey) Law 1984 or Foundations (Jersey) Law 2009 (see 4.3.3 for further explanation); and

- 4.3.2.2 there may be no or very little connection between the customers of a relevant person and each customer may respond independently and differently to the performance of identification measures, in a way that might prejudice the interests of other customers.
- 4.3.3 For example, the Foundations (Jersey) Law 2009 provides that the retirement or removal of a qualified member of a council does not take effect until immediately before the appointment of a new qualified person to be the qualified member of the council. In the event that no new qualified person is appointed, then a qualified member cannot terminate its relationship with a foundation.
- 4.3.4 In order to address the tension that is highlighted at 4.3.2, paragraphs 21 and 69 of the sector specific section explain that termination of a relationship may be delayed until such time as compliance with the Money laundering Order does not conflict with another legal requirement, and does not have any prejudicial effect on the interests of other customers. Termination may be delayed only where a relevant person resolves to postpone making a distribution to a particular beneficiary until the deficiency has been, or can be, addressed.
- 4.3.4.1 Do you agree that Article 14 of the Money Laundering Order should be applied in the way that is described? Please provide support for your response.**
- 4.3.5 No mention is made in the sector specific section of the current difficulty that a person carrying on trust company business may have in terminating the provision to a company of a registered office address. This is because this particularly difficulty will be addressed by an amendment to the Companies (Jersey) Law 1991 which, it is expected, will be in force by the time that the sector specific section is published².

4.4 Employee benefit schemes

- 4.4.1 Article 18(3) of the Money Laundering Order provides that identification measures are not required in the case where a relevant person that is a trustee enters into a business relationship with the settlor of a pension, superannuation or similar scheme (a sponsoring employer) - in the circumstances that are set out in that Article. In particular, the effect of this is that the trustee is not required to verify the identity of employees of the settlor (the sponsoring employer).
- 4.4.2 No similar provision is made for schemes that are used to otherwise remunerate employees.
- 4.4.3 As a result, paragraph 37 of the sector specific section provides that, in certain cases, the measures that must be applied by a trustee of an employee benefit scheme under Article 3(4)(b) of the Money Laundering Order to verify the identity of the members of such a scheme (beneficiaries) may be limited to confirming that members are *bona fide* employees of the sponsoring employer.
- 4.4.4 This will be appropriate where the money laundering and terrorist financing risk that is presented by a particular trust is considered to be lower. This may be the case where:

² The Companies (Amendment No. 10) (Jersey) Law 200-.

- 4.4.4.1 a trust is settled by a sponsoring employer that has been assessed by a relevant person as having a good reputation and adequate controls in place over membership of the scheme;
 - 4.4.4.2 the trust is funded only by the sponsoring employer or by deductions from employee remuneration; and
 - 4.4.4.3 only members or members' immediate family may benefit from the scheme.
- 4.4.5 Other factors may also be relevant to determining that the risk that a scheme may be used to launder money or finance terrorism is lower.
- 4.4.5.1 **In the case of a trust that is considered to be lower risk, do you agree that it should be possible to limit verification of the identity of the members of such a scheme to confirming that members are *bona fide* employees of the sponsoring employer?**
 - 4.4.5.2 **Should paragraph 38 of the sector specific section be expanded to include other relevant factors? If so, what factors should be added?**
 - 4.4.5.3 **Do you consider that Article 18 of the Money Laundering Order should be extended to cover employee benefit schemes other than pension schemes?**

4.5 Other matters

- 4.5.1.1 **Do you have any other comments on the sector specific section? If so, please set out those comments.**

5 COST BENEFIT ANALYSIS

5.1 Costs to industry

- 5.1.1 It is not thought that the introduction of the sector specific section will involve significant costs.
- 5.1.2 The Money Laundering Order already provides for identification measures to be applied by a relevant person to any relationship or one-off transaction carried out in the course of trust company business, and the provisions that are included in the sector specific section are based on requirements and guidance that apply where a trustee of an express trust, legal body (excluding a foundation), or foundation is the applicant for business or customer of a relevant person.

5.2 Costs to the Commission

- 5.2.1 Publication of the sector specific section will involve some limited internal training of Commission staff.

5.3 Benefits

- 5.3.1 The changes that are proposed will provide greater clarity in the application of identification measures set in the Money Laundering Order.
- 5.3.2 The inclusion of explicit provisions dealing with trusts, legal bodies (excluding foundations), and foundations provides a clear message to the international community that Jersey will do all that it can to prevent the use of legal persons and legal arrangements in money laundering or the financing of terrorism.
- 5.3.3 Publication of the sector specific section will partly address a recommendation that is made in the IMF's final report.

6 SUMMARY OF QUESTIONS

REFERENCE QUESTION

- 4.2.4.1 Do you agree that the application of identification measures in the sector specific section is proportionate to the risks that are presented by the provision of “registered-office only” services? If you do not, please explain what you consider would be proportionate.
- 4.3.4.1 Do you agree that Article 14 of the Money Laundering Order should be applied in the way that is described? Please provide support for your response.
- 4.4.5.1 In the case of a trust that is considered to be lower risk, do you agree that it should be possible to limit verification of the identity of the members of such a scheme to confirming that members are bona fide employees of the sponsoring employer?
- 4.4.5.2 Should paragraph 38 of the sector specific section be expanded to include other relevant factors? If so, what factors should be added?
- 4.4.5.3 Do you consider that Article 18 of the Money Laundering Order should be extended to cover employee benefit schemes other than pension schemes?
- 4.5.1.1 Do you have any other comments on the sector specific section? If so, please set out those comments.

APPENDIX A

List of representative bodies who have been sent this consultation paper.

The consultation paper has been sent to all members of the Commission's AML/CFT Steering Group, including the Jersey Association of Trust Companies and Society of Trust and Estate Practitioners. Members are listed on the Commission's website under [AML/CFT Steering Group](#).

In addition, copies of this paper have been sent to:

- Citizens Advice Bureau
- Institute of Directors
- Jersey Compliance Officers Association

APPENDIX B

Sector specific section for trust company business

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1 TRUST COMPANY BUSINESS

1. This section must be read in conjunction with the main body of the Handbook.

1.1 OVERVIEW

2. Section 4 of Part 1 of the Handbook sets out the requirements that are applicable where a trustee of an express trust, legal body, or foundation is the applicant for business or customer of a relevant person.
3. This section deals with the requirements that are to apply where a relevant person carries on a business under Article 2(3) of the Financial Services (Jersey) Law 1998 (the “**Financial Services Law**”) that involves the provision of company administration services, the provision of trustee or fiduciary services or the provision of services to foundations and, in the course of providing those services, the person provides any of the services specified in Article 2(4) of the Financial Services Law (except any activity that is explicitly excluded from the scope of Part A of Schedule 2 of the Proceeds of Crime Law - see paragraph 7). Inter alia, those services are:
 - acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, trustee of an express trust;
 - acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, director or alternate director of a company;
 - acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, a partner of a partnership;
 - acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, a member of the council of a foundation;
 - acting as a company formation agent, a partnership formation agent, or a foundation formation agent;
 - acting, or arranging for another person to act, as secretary, alternate, assistant or deputy secretary of a company;
 - providing a registered office or business address for a company, a partnership, a foundation, or for any other person; and
 - providing an accommodation, correspondence or administrative address for any person.
4. This section also deals with the requirements that are to apply where a relevant person carries on a business that is described in paragraph 8 of Part B of Schedule 2 of the Proceeds of Crime Law. This paragraph extends the provisions that are summarised at paragraph 3 above to legal persons and arrangements that are not otherwise covered by the Financial Services Law. For the purpose of this section, such business is covered by the term “trust company business”.
5. This section does **not** deal with the case where a relevant person is acting as a shareholder or unitholder as nominee for another person. This is addressed through Sections 3 and 4 of Part 1 of the Handbook.
6. This section does **not** deal with the provision of any service to a so called “COBO-only” fund. A COBO-only fund is a scheme that would be a collective investment fund (a term that is defined in the Collective Investment Funds (Jersey) Law 1988) except for the fact that the capital, the collective investment of which is the object of 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.

7. For the avoidance of doubt, this section does **not** apply to any activity that is excluded from the scope of Part A of Schedule 2 of the Proceeds of Crime Law. Relevant exclusions are listed in Appendix E of Part 1 of the Handbook. In particular, this section does **not** apply to a director who acts in the course of employment by: (i) a trading company (that is not administered by a trust company); or (ii) a company that is prudentially supervised by the Commission under the regulatory laws.
8. The provisions that are set out in this section do not apply where a relevant person acquires a portfolio of existing business relationships. In such a case, Section 3.5 of Part 1 of the Handbook will be applicable.
9. Finally, Section 1.6 summarises one case where a person that would otherwise be subject to the requirements of the Money Laundering Order and regulatory requirements set out in Part 1 of the Handbook is exempt from those requirements.

1.2 CUSTOMER DUE DILIGENCE REQUIREMENTS

1.2.1 Customer risk assessment

OVERVIEW

10. Section 3 of Part 1 of the Handbook sets out a number of factors that are to be taken into account when assessing and evaluating the risk that a particular business relationship or one-off transaction presents. These factors will be relevant to a relevant person that carries on trust company business.

GUIDANCE NOTES

11. A relevant person that carries on trust company business may demonstrate that it has properly assessed customer risk where it also takes into account:
 - Any failure to be open about the source of funds. In the case of a trust, this could, amongst other things, indicate that a settlor is in fact a “dummy” settlor who is using another’s funds, and not his own.
 - Any failure to be open about the purpose of a legal person or legal arrangement. In the case of a trust, this could, for example, indicate that a settlor is withholding information on persons really intended to benefit from a discretionary trust, e.g. a settlor nominates only charities as beneficiaries of a trust, where he does not intend that the charity will in fact benefit (known as “blind” trusts).
 - Any request to include unusual or non standard clauses in a trust instrument or other constitutive document that might indicate that the disclosed purpose of the structure is not genuine.
 - Any request for unusually close supervision or control of assets, other than by the relevant person.

1.2.2 Providing a registered office address

OVERVIEW

12. The nature of the service of providing **only** a registered office address is such that a relevant person is unlikely to have any oversight of, or control over, the legal body’s activities (in the way that it would if it also provided one or more directors (or equivalent) to the legal body and/or provided full administration services). The absence of oversight or control increases the risk that a legal body may be used to launder money or to finance terrorism.

13. The effect of this additional risk will be to require a relevant person to request substantially more information on its customer, and on the activities of the legal body to which it is to provide a registered office service, for the purpose of countering money laundering and terrorist financing than is strictly necessary to provide a registered office address.

GUIDANCE NOTES

14. In the case of a relevant person that provides **only** a registered office address to a legal body, a relevant person may demonstrate that it has properly assessed product risk where it takes into account the “passive” nature of the service that it provides.
15. In the case of a relevant person that provides **only** a registered office address to a legal body, a relevant person may demonstrate that it has collected relevant relationship information where it collects the information that is set out in Section 3.3.1 of Part 1 of the Handbook for a legal body (at the time that an address is first provided and then on an ongoing basis thereafter) and then corroborates this information by reference to:
- Copies of minutes of directors’ and members’ meetings that must be kept by the company under Part 15 of the Companies (Jersey) Law 1991 (the “**Companies Law**”) (or equivalent for other legal bodies).
 - Copies of accounts that must be prepared by the directors of the company under Part 16 of the Companies Law (or equivalent for other legal bodies).

1.3 IDENTIFICATION AND VERIFICATION OF IDENTITY: EXPRESS TRUSTS

OVERVIEW

16. Inter alia, Article 13 of the Money Laundering Order requires a relevant 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 relevant person has doubts about the adequacy of information previously obtained under identification measures.
17. A relevant person (“**A**”) that acts as or fulfils the function of trustee of an express trust, or arranges for another person (“**B**”) to act as or fulfil the function of trustee (where B is an officer or employee of A) will be considered to have established a business relationship under the Money Laundering Order.
18. Where B is not an officer or employee of A, then A will be considered to have carried out a one-off transaction each time that it arranges for another person to act as or fulfil the function of trustee.
19. Under Article 13(1)(a) of the Money Laundering Order, identification measures must be applied by a trustee to the trustee’s “customer” - the persons who are concerned with the trust at the time that a trust is settled or at the time of the subsequent appointment of that trustee. However, in line with Article 13(4) of the Money Laundering Order, it will be possible to delay verification of the identity of beneficiaries with a vested right until the time that trust property or income is distributed.
20. Where there is any subsequent change in the persons who are concerned with the trust then - under Article 13(1)(c) of the Money Laundering Order - there is an obligation to apply identification measures to the persons who have subsequently become concerned, as the information that is held by the trustee for that relationship will no longer be considered to be adequate.

21. Under Article 14 of the Money Laundering Order, if a relevant person is unable to apply identification measures when required to do so then it must terminate its relationship and consider whether to make a suspicious activity report to the Joint Financial Crimes Unit (the “JFCU”). In the case of a beneficiary that deliberately withholds identification information and/or evidence of identity, a relevant person may avoid termination of a relationship where it resolves to postpone making a distribution to that beneficiary until the deficiency has been, or can be, addressed.
22. The provisions that follow apply equally to trusts that are designated as regulated non-profit organizations under the Non-Profit Organizations (Jersey) Law 2008 (the “NPO Law”).
23. As part of its ongoing risk assessment of a customer, a relevant person will need to take account of the relationship information that is set out in Section 3.3.1 of Part 1 of the Handbook for an express trust.

1.3.1 Establishing identity

REGULATORY REQUIREMENTS

24. A relevant person that is to become a trustee must collect relevant identification information on the persons who are concerned with the trust before the time that the trust is settled and then subsequent to settlement (when there is a change in the persons who are concerned with the trust or where there is a change to information previously provided).
25. A relevant person that is to become a trustee upon retirement of another trustee must collect relevant identification information on the persons who are concerned with the trust before the time of appointment and then subsequent to appointment (when there is a change in the persons who are concerned with the trust or where there is a change to information previously provided).

GUIDANCE NOTES

26. A relevant person may demonstrate the collection of relevant identification information where it requests and receives information (described below) from the following persons who are concerned with a trust.

All trusts
<ul style="list-style-type: none"> • Identification information on settlor(s)¹ - in line with guidance for individuals and legal bodies (Sections 4.3 and 4.5 of Part 1 of the Handbook). • Identification information on protector(s) - in line with guidance for individuals and legal bodies (Sections 4.3 and 4.5 of Part 1 of the Handbook). • Identification information on beneficiaries <u>with a vested right</u> - in line with guidance for individuals and legal bodies (Sections 4.3 and 4.5 of Part 1 of the Handbook). • Identification information on any other beneficiaries and persons who are the object of a power <u>and that have been identified as presenting higher risk</u> - in line with guidance for individuals and legal bodies (Sections 4.3 and 4.5 of Part 1 of the Handbook). • Identification information on any co-trustees - in line with guidance for individuals and legal bodies (Sections 4.3 and 4.5 of Part 1 of the Handbook) - subject to any exemption that may be available under Article 18 of the Money Laundering Order. In the case of a

co-trustee, it will be relevant to collect information on the regulatory status of the co-trustee².

Refer to [Section 3.4](#) of Part 1 of the Handbook for enhanced due diligence requirements for higher risk relationships.

1.3.2 Capital market transactions

GUIDANCE NOTES

27. Where a relevant person acts as a trustee to a charitable trust which is established to hold an investment in a debt-issuing vehicle, or to hold security (as bare trustee for debt-holders) over assets held within such a vehicle, then the “originator” of the transaction is likely to be a person who is concerned with the trust.
28. Except to the extent that any debt-holder is able to exercise effective control over the underlying debt-issuing vehicle, debt-holders will not be considered to be persons who are concerned with the trust (nor will they be considered to be beneficial owners and controllers of the underlying debt-issuing vehicle).

1.3.3 Verifying identity

REGULATORY REQUIREMENTS

29. Except as provided for in paragraph 30, a relevant person that is to become a trustee must verify the identity of the persons who are concerned with the trust (in line with guidance for individuals and legal bodies in Sections 4.3 and 4.5 of Part 1 of the Handbook) at the times that are described in paragraphs 24 and 25.
30. Verification of the identity of a beneficiary with a vested right may take place at a time after a particular right vests if the following conditions are met:
 - all other necessary customer due diligence information (including identification information) has been obtained;
 - verification is carried out at the time of, or before, distribution of trust property or income (a time that is considered to be reasonably practicable); and
 - money laundering risk is effectively managed.
31. Verification of the identity of beneficiaries and persons who are the object of a power and that have been identified as presenting higher risk must take place at the time that the risk is identified.
32. All key documents (or parts thereof) used to verify identity must be understandable (i.e. in a language understood by the employees of the relevant person), and must be translated into English at the request of the JFCU or the Commission.

GUIDANCE NOTES

33. The measures that must be applied to verify the identity of beneficiaries and persons who are the object of a power and that have been identified as presenting higher risk will necessarily 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.

¹ The settlors of a trust include the initial settlors and any persons subsequently settling funds into a trust.

² Subject to certain threshold tests that are set out in the Financial Services Law, the provision of a trustee service in or from within Jersey is a regulated activity.

34. The measures that must be applied by a relevant person that is appointed trustee subsequent to the settlement of a trust need not extend to the settlor of a trust who is deceased.
35. Where a relevant person verifies the identity of persons who are concerned with a trust on a non-face to face basis, reference should be made to the requirements and guidance set out in Section 4.8 of Part 1 of the Handbook for non-face to face identification and verification.
36. Where a relevant person is not familiar with the form of the evidence obtained to verify identity, appropriate measures may be necessary to satisfy itself that the evidence is genuine.

1.3.4 Employee benefit schemes

OVERVIEW

37. Article 18(3) of the Money Laundering Order provides that identification measures are not required in the case where a relevant person that is a trustee enters into a business relationship with the settlor of a pension, superannuation or similar scheme (a sponsoring employer) - in the circumstances that are set out in that article. In particular, the effect of this is that the trustee is not required to verify the identity of employees of the settlor (the sponsoring employer).

GUIDANCE NOTES

38. Whilst no similar provision is made for schemes that are used to otherwise remunerate employees, in certain cases, the measures that must be applied by a trustee of an employee benefit scheme under Article 3(4)(b) of the Money Laundering Order to verify the identity of the members of such a scheme (beneficiaries) may be limited to confirming that members are bona fide employees of the sponsoring employer.
39. This will be appropriate where the money laundering and terrorist financing risk that is presented by a trust can be considered to be lower. This may be the case where:
 - a trust is settled by a sponsoring employer that has been assessed by a relevant person as having a good reputation and adequate controls in place over membership of the scheme;
 - the trust is funded only by the sponsoring employer or by deductions from employee remuneration; and
 - only members or members' immediate family may benefit from the scheme.

1.4 IDENTIFICATION AND VERIFICATION OF IDENTITY: LEGAL BODIES (EXCEPT FOUNDATIONS)

OVERVIEW

40. Inter alia, Article 13 of the Money Laundering Order requires a relevant 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 relevant person has doubts about the adequacy of information previously obtained under identification measures.
41. A relevant person that acts as or fulfils the function of a director (or alternate director) or secretary of a company, or partner of a partnership, will be considered to have established a business relationship under the Money Laundering Order.

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42. A relevant person (“A”) that arranges for another person (“B”) to act as or fulfil the function of a director (or alternate director) or secretary of a company, or partner of a partnership (where B is an officer or employee of A) will be considered to have established a business relationship under the Money Laundering Order.
 43. Where B is not an officer or employee of A, then A will be considered to have carried out a one-off transaction each time that it arranges for another person to act as or fulfil the particular function.
 44. A relevant person that provides a registered office, business, accommodation, correspondence or administrative address to a legal body will be considered to have established a business relationship under the Money Laundering Order.
 45. A relevant person that acts as a company formation agent or partnership formation agent will be considered to carry out a one-off transaction each time that it forms a company or partnership, irrespective of the capital paid up or fee that is charged.
 46. Under Article 13(1)(a) of the Money Laundering Order, identification measures must be applied to the relevant person’s customer - the persons who are to be the beneficial owners and controllers of the legal body that is to be incorporated or constituted (or the persons who are the beneficial owners and controllers of a body that has already been incorporated or constituted). For the avoidance of doubt, this will be the case even where the relationship that a relevant person has with its customer is conducted through another service provider, e.g. a relevant person providing a service that is outlined in paragraph 44 to a customer that is administered by another service provider.
 47. In the course of a business relationship, where there is any subsequent change in the persons who are the beneficial owners and controllers of the legal body there is an obligation - under Article 13(1)(c) of the Money Laundering Order - to apply identification measures to the persons who have subsequently become beneficial owners and controllers, as the information that is held by the relevant person for that relationship will no longer be considered to be adequate.
 48. Under Article 14 of the Money Laundering Order, if a relevant person is unable to apply identification measures when required to do so then it must terminate its relationship.
 49. Article 2 of the Money Laundering Order, which describes those persons to be considered to be beneficial owners and controllers, excludes persons who are the beneficial owners of bodies corporate the securities of which are listed on a regulated market.
 50. For the purpose of this section, a legal body is to include a general partnership, a limited partnership (and derivations), and a limited liability partnership.
 51. The provisions that follow also apply equally to legal bodies that are designated as regulated non-profit organizations under the NPO Law.
 52. As part of its ongoing risk assessment of a customer, a relevant person will need to take account of the relationship information that is set out in Section 3.3.1 of Part 1 of the Handbook for a legal body. In addition, the following information will also be relevant to an assessment of customer risk: name of body and any trading names; date and country of incorporation or constitution of body; official identification number of body; and registered office address and mailing address (if different) of body.

1.4.1 Establishing identity

REGULATORY REQUIREMENTS

53. Save in the case set out in paragraph 49, a relevant person that is to incorporate or constitute a legal body must collect relevant identification information on the persons who are to be the beneficial owners and controllers of the legal body before the time that it is incorporated or constituted.
54. Save in the case set out in paragraph 49, a relevant person that is to act as or fulfil the function of a director of a company, secretary of a company, partner of a partnership, or equivalent function for other legal bodies must collect relevant identification information on the persons who are the beneficial owners and controllers of the legal body before the time that the service is first provided and then subsequent to provision of that service (when there is a change in the persons who are the beneficial owners and controllers of the legal body or where there is a change to information previously provided).
55. Save in the case set out in paragraph 49, a relevant person that is to provide an address to a legal body must collect relevant identification information on the persons who are the beneficial owners and controllers of the legal body before the time that the address is first provided and then subsequent to provision of that address (when there is a change in the persons who are the beneficial owners and controllers of the legal body or where there is a change to information previously provided).

GUIDANCE NOTES

56. A relevant person may demonstrate collection of relevant identification information where it requests and receives information (described below) from the following persons who are the beneficial owners and controllers.

All legal bodies
<ul style="list-style-type: none"> • Identification information on persons with ultimate effective control over the legal body's assets, including the persons comprising the mind and management of the legal body, e.g. directors - in line with guidance for individuals and legal bodies (Sections 4.3 and 4.5 of Part 1 of the Handbook). • Identification information on persons ultimately holding an interest in the capital of the legal body - in line with guidance for individuals and legal bodies (Sections 4.3 and 4.5 of Part 1 of the Handbook). <p>Refer to Section 3.4 of Part 1 of the Handbook for enhanced due diligence requirements for higher risk relationships.</p>

1.4.2 Verifying identity

REGULATORY REQUIREMENTS

57. A relevant person that is described at paragraphs 53 to 55 above must verify the identity of the persons who are the beneficial owners and controllers of the legal body (in line with guidance for individuals and legal bodies in Sections 4.3 and 4.5 of Part 1 of the Handbook) at the times that are described in those paragraphs.
58. All key documents (or parts thereof) used to verify identity must be understandable (i.e. in a language understood by the employees of the relevant person), and must be translated into English at the request of the JFCU or the Commission.

GUIDANCE NOTES

59. Where a relevant person verifies the identity of persons who are the beneficial owners and controllers of the legal person on a remote basis, reference should be made to the requirements and guidance set out in Section 4.8 of Part 1 of the Handbook for non-face to face identification and verification.
60. Where a relevant person is not familiar with the form of the evidence obtained to verify identity, appropriate measures may be necessary to satisfy itself that the evidence is genuine.

1.5 IDENTIFICATION AND VERIFICATION OF IDENTITY: FOUNDATIONS**OVERVIEW**

61. Inter alia, Article 13 of the Money Laundering Order requires a relevant 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 relevant person has doubts about the adequacy of information previously obtained under identification measures.
62. A person that acts as or fulfils the function of a council member of a foundation will be considered to have established a business relationship under the Money Laundering Order.
63. A relevant person (“A”) that arranges for another person (“B”) to act as or fulfil the function of a council member of a foundation (where B is an officer or employee of A) will be considered to have established a business relationship under the Money Laundering Order.
64. Where B is not an officer or employee of A, then A will be considered to have carried out a one-off transaction each time that it arranges for another person to act as or fulfil the particular function.
65. A relevant person that provides a business, accommodation, correspondence or administrative address to a foundation will be considered to have established a business relationship under the Money Laundering Order.
66. A person that acts as a foundation formation agent will be considered to carry out a one-off transaction each time that it forms a foundation irrespective of the value of the property that is settled into the foundation or fee that is charged.
67. Under Article 13(1)(a) of the Money Laundering Order, identification measures must be applied to the relevant person’s customer - the persons that are to be concerned with a foundation that is to be incorporated (or the persons who are concerned with a foundation that has already been incorporated). However, in line with Article 13(4) of the Money Laundering Order, it will be possible to delay verification of the identity of beneficiaries entitled to benefit under the foundation until the time that property or income is distributed.
68. In the course of a business relationship, where there is any subsequent change in the persons who are concerned with a foundation there is an obligation - under Article 13(1)(c) of the Money Laundering Order - to apply identification measures to the persons who have subsequently become concerned, as the information that is held by the relevant person for that relationship will no longer be considered to be adequate.

69. Under Article 14 of the Money Laundering Order, if a relevant person is unable to apply identification measures when required to do so then it must terminate its relationship and consider whether to make a suspicious activity report to the JFCU. In the case of a beneficiary that deliberately withholds identification information and/ or evidence of identity, a relevant person may avoid termination of a relationship where it resolves to postpone making a distribution to that beneficiary until the deficiency has been, or can be, addressed.
70. The terms that are used in this section to describe the persons concerned with a foundation are based on those used in the Foundations (Jersey) Law 2009. Where persons are concerned with a foundation that is incorporated or established under the law of a jurisdiction other than Jersey, then the terms that are used below are to be understood as applying to equivalent or similar persons described in foreign legislation.
71. The provisions that follow also apply equally to foundations that are designated as regulated non-profit organizations under the NPO Law.
72. As part of its ongoing risk assessment of a customer, a relevant person will need to take account of the relationship information that is set out in Section 3.3.1 of Part 1 of the Handbook for a foundation. In addition, the following information will also be relevant to an assessment of customer risk: name of foundation; date and country of incorporation of foundation; official identification number of foundation; business address, mailing address (if different to business address) and principal place of business/ operation (if different to business address). In the case of a foreign entity that has been continued in Jersey as a foundation, then the certificate that is provided to the Commission at the time of that entity's application to continue in Jersey will also be relevant to the assessment of customer risk.

1.5.1 Establishing identity

REGULATORY REQUIREMENTS

73. A relevant person that is to incorporate a foundation must collect relevant identification information on the persons who are to be concerned with the foundation before the time that it is incorporated.
74. A relevant person that is to act as or fulfil the function of a council member of a foundation must collect relevant identification information on the persons who are concerned with the foundation before the time that the service is first provided and then subsequent to the provision of that service (when there is a change in the persons who are concerned with the foundation or where there is a change to the information previously provided).
75. A relevant person that is to provide an address to a foundation must collect relevant identification information on the persons who are concerned with the foundation before the time that the address is first provided and then subsequent to the provision of that address (when there is a change in the persons who are concerned with the foundation or where there is a change to the information previously provided).

GUIDANCE NOTES

76. A relevant person may demonstrate collection of relevant identification information where it requests and receives information (described below) from the following persons who are concerned with the foundation.

All foundations
<ul style="list-style-type: none"> • Identification information on the founder(s), a person (other than the founder of the foundation) who has endowed the foundation, and, if any rights a founder of the foundation had in respect of the foundation and its assets have been assigned to some other person, that person - in line with guidance for individuals and legal bodies

(Sections 4.3 and 4.5 of Part 1 of the Handbook).

- Identification information on any beneficiaries entitled to benefit under the foundation in accordance with the charter or the regulations of the foundation - in line with guidance for individuals and legal bodies (Sections 4.3 and 4.5 of Part 1 of the Handbook).
- Identification information on any other beneficiaries and persons in whose favour the council may exercise discretion under the foundation in accordance with its charter or regulations and that have been identified as presenting higher risk - in line with guidance for individuals and legal bodies (Sections 4.3 and 4.5 of Part 1 of the Handbook).
- Identification information on all council members (other than the relevant person) and, if any decision requires the approval of any other person, that person - in line with guidance for individuals and legal bodies (Sections 4.3 and 4.5 of Part 1 of the Handbook).
- Identification information on the guardian - in line with guidance for individuals and legal bodies (Sections 4.3 and 4.5 of Part 1 of the Handbook).

Refer to [Section 3.4](#) of Part 1 of the Handbook for enhanced due diligence requirements for higher risk relationships.

1.5.2 Verifying identity

REGULATORY REQUIREMENTS

77. Except as provided for in paragraph 78, a relevant person that is described at paragraphs 73 to 75 above must verify the identity of the persons who are concerned with the foundation (in line with guidance for individuals and legal bodies in Sections 4.3 and 4.5 of Part 1 of the Handbook) at the times that are described in those paragraphs.
78. Verification of the identity of a beneficiary entitled to benefit under the foundation may take place at a time after a particular right vests if the following conditions are met:
- all other necessary customer due diligence information (including identification information) has been obtained;
 - verification is carried out at the time of, or before, distribution of property or income (a time that is considered to be reasonably practicable); and
 - money laundering risk is effectively managed.
79. Verification of the identity of other beneficiaries and persons in whose favour the council may exercise discretion and that have been identified as presenting higher risk must take place at the time that the risk is identified.
80. All key documents (or parts thereof) used to verify identity must be understandable (i.e. in a language understood by the employees of the relevant person), and must be translated into English at the request of the JFCU or the Commission.

GUIDANCE NOTES

81. The measures that must be applied to verify the identity of beneficiaries and persons in whose favour the council may exercise discretion and that have been identified as presenting higher risk will necessarily reflect the verification methods that are available at a particular time to the relevant person. For example, it may not be appropriate to request evidence directly from a person in whose favour discretion may be exercised.

82. The measures that must be applied by a relevant person that provides a service to a foundation subsequent to its incorporation need not extend to the founder of a foundation who is deceased.
83. Where a relevant person verifies the identity of persons who are concerned with a foundation on a remote basis, reference should be made to the requirements and guidance set out in Section 4.8 of Part 1 of the Handbook for non-face to face identification and verification.
84. Where a relevant person is not familiar with the form of the evidence obtained to verify identity, appropriate measures may be necessary to satisfy itself that the evidence is genuine.

1.6 EXEMPTION FROM REQUIREMENTS

1.6.1 Private trust company business

OVERVIEW

85. Schedule 2 of the Proceeds of Crime Law provides that a private trust company business (a “PTC”) - a company the purpose of which is to provide trust company business services in respect of a specific trust or trusts, that does not solicit from or provide trust company business services to the public, and the administration of which is carried out by a person that is registered to carry out trust company business - is not subject to the Money Laundering Order. The basis for this concession is that customer due diligence measures will be applied by the person that is registered to carry out trust company business (a relevant person) to the specific trust or trusts that are serviced by the PTC - in line with Article 13 of the Money Laundering Order (and 1.3 of this section).

REGULATORY REQUIREMENT

86. A relevant person that administers a PTC must apply the requirements of Sections 1.3 and 1.4 to the trusts or legal bodies that are owned by the trusts for which the PTC acts as trustee.