

5 IDENTIFICATION MEASURES: RELIANCE ON OBLIGED PERSONS

5.1 OVERVIEW OF SECTION

1. In some strictly limited cases, a firm may meet its obligation to apply identification measures under Articles 13 and 15 of the [Money Laundering Order](#) and AML/CFT Codes of Practice by placing reliance on measures that have already been applied by another party (referred to as an “**obliged person**”) to find out the identity of a mutual client and to obtain evidence of identity.
2. In order to consider what reliance might be placed on an obliged person, a firm will first need to determine what elements of identity must be found out and what evidence of identity is to be obtained for its client. It will do so in accordance with Article 3 of the [Money Laundering Order](#) and AML/CFT Codes of Practice set in Sections 3, 4 and 7, and will take into account its risk assessment for the client. Once it has determined what identification measures it is to apply, a firm can then consider whether those measures have already been applied by an obliged person.
3. Where an obliged person has met its client, who is resident in the same country as the obliged person, the measures that it has taken to find out identity and to obtain evidence of identity will be different to the identification measures that must be applied by the firm in a case where the firm is resident in a different country to the obliged person and client, and where it has not met its client. Even in a case where the firm and obliged person have met a client and are resident in the same country, the measures taken by the obliged person may still differ to those to be applied by the firm to the extent that other factors are different, for example the nature of the product or service to be provided.
4. The effect of this is that the obliged person may not have found out all of the same information on identity as the firm needs, and may have obtained evidence of identity using different documents, data or information. This means that, in practice, the scope to place reliance may sometimes be quite limited, and that it may be necessary for a firm person to find out more information on identity and obtain evidence for that aspect of identity itself.
5. However, it is not necessary that the obliged person will have found out identity or obtained evidence of identity exactly in line with policies and procedures applied by the firm, since guidance in Section 4 provides that there are different ways in which to apply identification measures. Also, where the obliged person is outside Jersey, different requirements and guidance will be applicable.
6. Where an obliged person meets the requirements outlined in Article 16 of the [Money Laundering Order](#), a firm is permitted to place reliance on the obliged person to have found out the identity and to have obtained evidence of the identity of: (i) the firm’s client; (ii) any beneficial owner or controller of that client; (iii) any third party for which that client is acting; (iv) any beneficial owner or controller of a third party for whom that client is acting; and/or (v) any person purporting to act on behalf of that client.
7. It is not possible to place reliance on an obliged person to obtain information on the purpose and intended nature of a business relationship or one-off transaction, nor to apply on-going monitoring during a business relationship.
8. Further, Article 16 of the [Money Laundering Order](#) cannot be applied in any case where a firm suspects money laundering or financing or terrorism, in any case where a firm considers that there is a higher risk of money laundering or financing of terrorism (see [Section 5.1.1](#)), or where the obliged person has a relevant connection to a country or territory that is subject to a FATF call to apply enhanced CDD measures (see Section 7.5).
9. Whilst the information on identity found out by the obliged person must be provided to the firm immediately before establishing a business relationship or carrying out a one-off transaction, a firm is not also required to immediately obtain evidence of identity. Evidence of identity may be held by an obliged person, so long as the firm is satisfied that the obliged person will provide the evidence that it holds on request and without delay. However, it is not uncommon for evidence of identity to be called for at the same time as information on identity is provided by the obliged person.

10. Inter alia, an obliged person may be:
 - Another law firm that is a relevant person carrying on Schedule 2 business.
 - A trust and company services provider.
11. A firm will remain responsible for the satisfactory performance of all elements of identification measures. However, where the measures taken by a firm are reasonable, it will have a defence should the obliged person fail to have performed satisfactory measures.
12. Outsourcing arrangements are not included within the scope of this section, as these are distinct from circumstances in which reliance is placed on an obliged person. In an outsourcing arrangement, the client will have a direct relationship with a firm but not with the delegate carrying on the outsourced activity. Although the delegate may have substantial contact with the client, the client is a client of the firm but not of the delegate. The delegate will be carrying on the outsourced activity for the firm according to the terms of a contract with the firm. An example of a typical outsourcing arrangement is where a trustee of a collective investment fund outsources the management of the fund to an external party.
13. Where information on identity found out or evidence of that identity is passed by an obliged person to a firm in order to comply with requirements to counter money laundering and the financing of terrorism, the [Data Protection \(Jersey\) Law 2005](#) restricts the use of the information to that purpose, except where another condition for processing personal data applies.
14. A client may be an individual (or group of individuals) or legal person. Section 4.3 deals with a client who is an individual (or group of individuals), Section 4.4 deals with a client (an individual or legal person) who is acting for a legal arrangement, and Section 4.5 deals with a client who is a legal person.
15. Throughout this section, references to “client” (or “customer”) include, where appropriate, a prospective client or customer (an applicant for business). A client is a person with whom a business relationship has been formed or one-off transaction conducted.

STATUTORY REQUIREMENTS

16. *In some strictly limited circumstances, Article 16(1) of the [Money Laundering Order](#) provides that a relevant person may be considered to have applied the identification measures specified in Article 3(2)(a), (b) and (c) where such measures (or similar identification measures that satisfy former FATF Recommendation 5) have already been applied by a person who is known to be, or in respect of whom there are reasonable grounds for belief is, an obliged person, i.e.:*
 - *A relevant person in respect of whom the Commission discharges supervisory functions that is overseen for AML/CFT compliance in Jersey; or*
 - *A person who carries on equivalent business (refer to Section 1.7).*
17. *Reliance must always subject to a number of conditions.*
18. *The **first condition** (Article 16(3)(a) of the [Money Laundering Order](#)) is that the obliged person consents to being relied upon.*
19. *The **second condition** (Article 16(3)(b) of the [Money Laundering Order](#)) is that identification measures have been applied by the obliged person in the course of an established business relationship or one-off transaction.*
20. *The **third condition** (Article 16(3)(b) of the [Money Laundering Order](#)) is that the relevant person obtains adequate assurance in writing that the obliged person:*
 - *has applied the identification measures specified in Article 3(2)(a) to (c) of the [Money Laundering Order](#) (or, in the case of an obliged person outside Jersey, similar identification measures that satisfy former FATF Recommendation 5);*
 - *has not itself relied upon another party to have applied any of those measures;*
 - *has not applied simplified identification measures; and*
 - *is required to keep, and does keep, evidence of identity for all of its customers.*

21. *The **fourth condition** (Article 16(3)(c) of the [Money Laundering Order](#)) is that, to the extent that reliance is placed on the obliged person to find out information on identity, the obliged person immediately provides in writing the information found out as a result of it having applied the identification measures specified in Article 3(2)(a) to (c) of the [Money Laundering Order](#) (or in the case of an obliged person outside Jersey, similar identification measures that satisfy former FATF Recommendation 5).*
22. *To the extent that reliance is placed on an obliged person to keep hold of the evidence obtained under identification measures, the **fifth condition** (Article 16(3)(d) of the [Money Laundering Order](#)) is that the relevant person obtains adequate assurance in writing that the obliged person will:*
 - *Keep that evidence until agreed otherwise with the relevant person; and*
 - *Provide to the relevant person at its request, and without delay, the evidence.*
23. *The **sixth condition** (Article 16(4) of the [Money Laundering Order](#)) is that, immediately before placing reliance, the relevant person assesses the risk of placing reliance and makes a written record as to the reason why it is appropriate for it to place reliance on the obliged person, having regard to: (i) the risk of money laundering or financing of terrorism; and (ii) risk that an obliged person will fail to provide the relevant person with evidence without delay if requested to do so by the relevant person. See [Section 5.1.1](#) below.*
24. *To the extent that reliance is placed on an obliged person, Article 16(5) of the [Money Laundering Order](#) states that a relevant person must conduct tests in such manner and at such intervals as the relevant person deems appropriate in all the circumstances in order to establish whether the obliged person:*
 - *has appropriate policies and procedures in place to apply the identification measures set out in Article 13(1) and Article 15 of the [Money Laundering Order](#) (or, in the case of an obliged person who is outside Jersey, similar identification measures that satisfy the FATF Recommendations in respect of identification measures);*
 - *does keep the evidence of identity; and*
 - *will provide that evidence without delay if requested to do so.*
25. *Under Article 16(6)(b) of the [Money Laundering Order](#), testing should take into consideration whether a customer may be prevented, by application of law, from providing information or evidence, e.g. secrecy legislation.*
26. *Where, as a result of a test carried out, a relevant person is not satisfied that the obliged person has appropriate policies and procedures in place, keeps evidence, or will provide it without delay if requested to do so, in that particular case, Article 16(7) of the [Money Laundering Order](#) requires identification measures to be applied in line with Article 13(1)(a) or 13(1)(c)(ii) of the [Money Laundering Order](#).*
27. *Article 16(8)(a) of the [Money Laundering Order](#) provides that a written assurance will be adequate if it is reasonably capable of being regarded as reliable and a relevant person is satisfied that it is reliable.*
28. *Article 16(8)(b) of the [Money Laundering Order](#) provides that written assurances may be provided each time that reliance is placed or through a more general arrangement with an obliged person that has an element of duration, e.g. terms of business.*
29. *Article 16(9) of the [Money Laundering Order](#) states that a relevant person may not rely on an obliged person where it suspects money laundering or financing of terrorism, considers that there is a higher risk of money laundering financing of terrorism on the basis of a risk assessment carried out under Article 16(4), or where the obliged person has a relevant connection to a country or territory that is subject to a FATF call to apply enhanced CDD measures.*
30. *Notwithstanding that reliance may be placed on an obliged person, Article 16(10) of the [Money Laundering Order](#) states that a relevant person will remain liable for any failure of the obliged person to apply identification measures.*

AML/CFT CODES OF PRACTICE

31. To the extent that reliance is placed on an obliged person, a firm must be able to demonstrate that the conditions required by the Money Laundering Order are met.
32. All evidence of identity passed by the obliged person to a firm (on request) must be confirmed by the obliged person as being a true copy of either an original or copy document held on its file.

GUIDANCE NOTES**Assurance in writing about identification measures**

33. A firm may demonstrate that it has obtained adequate assurance in writing from an obliged person under Article 16(3)(b)(i) of the [Money Laundering Order](#) that it has applied identification measures specified in Article 3(2)(a), (b) or (c), or measures that otherwise satisfy former FATF Recommendation 5, where the obliged person:
 - provides information on identity that it has found out using an information template, such as that published in Appendix C; and
 - explains what evidence of identity it has obtained.
34. An assurance that addresses the matters listed in paragraph 33 above will be considered to be reasonably capable of being regarded as reliable under Article 16(8)(a)(i) of the [Money Laundering Order](#).
35. Where, as a result of Article 16(8)(b) of the [Money Laundering Order](#), a firm has a more general arrangement with an obliged person, such as terms of business, that more general arrangement may be used to explain what evidence of identity will routinely be obtained by the obliged person.

Access to evidence of identity

36. A firm may demonstrate that an obliged person will provide evidence of identity without delay where it is made available within 5 working days of a request.

5.1.1 Assessment of risk**OVERVIEW**

37. The risk factors that are set out in this section will also be relevant to a client risk assessment that is conducted under Section 3.3.4.1 in the cases highlighted at Sections 4.4 (paragraph 66) and 4.5 (paragraph 115).

STATUTORY REQUIREMENTS

38. *Immediately before relying upon an obliged person, Article 16(4) 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 two risks.*
39. *The first is the higher risk of money laundering or financing of terrorism should an obliged person fail to:*
 - *Apply the necessary identification measures to its customer(s);*
 - *Provide adequate, accurate and current information to the relevant person; or*
 - *Keep evidence of identity until such time as the obliged person has provided the relevant person with that evidence, or has been notified that the relevant person no longer requires that evidence to be kept.*
40. *The second is the risk that an obliged person will fail to provide the relevant person with evidence without delay if requested to do so by the relevant person.*
41. *Article 16(4) of the [Money Laundering Order](#) requires a relevant person to prepare a written record of the reason why it is appropriate to place reliance on an obliged person.*

AML/CFT CODE OF PRACTICE

42. In a case where, for a particular business relationship, testing under Article 16(5) of the [Money Laundering Order](#) highlights that an obliged person: (i) has not applied the necessary identification measures; (ii) does not provide adequate, accurate and current information; (iii) does not keep evidence of identity for as long as is necessary; or (iv) will not provide that evidence without delay when requested to do so, a firm must review the basis upon which it has placed reliance on that obliged person for other relationships (if any) in order to determine whether it is still appropriate to do so.

GUIDANCE NOTES

43. Immediately before relying upon an obliged person, a firm may demonstrate that it has had regard for the higher risk of money laundering and financing of terrorism, and risk that an obliged person will fail to provide the firm with evidence of identity without delay if requested to do so where it considers the following factors:
- the stature and regulatory track record of the obliged person;
 - the adequacy of the framework to combat money laundering and financing of terrorism in place in the country or territory in which the obliged person is based and the period of time that the framework has been in place;
 - the adequacy of the supervisory regime to combat money laundering and financing of terrorism to which the obliged person is subject;
 - the adequacy of identification measures applied by the obliged person to combat money laundering and financing of terrorism.
44. A firm may demonstrate that it has considered the adequacy of identification measures applied by an obliged person where it takes one or more of the following steps:
- reviews previous experience (if any) with the obliged person, in particular the adequacy and accuracy of information on identity found out by the obliged person and whether that information is current;
 - makes specific enquiries, e.g. through use of a questionnaire or series of questions;
 - reviews relevant policies and procedures to combat money laundering and the financing of terrorism in place at the intermediary or introducer;
 - where the obliged person is a member of a financial group, makes enquiries concerning the extent to which group standards are applied to and assessed by the group's internal audit function.