

3 IDENTIFICATION MEASURES: OVERVIEW

Please Note:

- › Regulatory requirements are set within this section as *AML/CFT Codes of Practice*.
- › This section contains references to Jersey legislation which may be accessed through the [JFSC website](#).
- › Where terms appear in the Glossary this is highlighted through the use of italic text. The Glossary is available from the [JFSC website](#).

3.1 Overview of Section

1. This section explains the *identification measures* required under Article 13 of the *Money Laundering Order*, and the framework under which a firm is required to apply a risk-based approach to the application of such measures.
2. This section should be read and understood in conjunction with the following sections:
 - › Section 4- which explains the basis for finding out identity and obtaining evidence of identity;
 - › Section 5 – which considers the circumstances in which reliance might be placed on another party to have applied *identification measures*; and
 - › Section 7 – which explains the application of enhanced *CDD* measures (including the case of a client that is assessed as presenting a higher risk) and simplified *identification measures*.
3. Sound *identification measures* are vital because they:
 - › help to protect the firm and the integrity of the professional and financial sector in which it operates by reducing the likelihood of the business becoming a vehicle for, or a victim of, financial crime;
 - › assist law enforcement, by providing available information on clients or activities and transactions being investigated;
 - › constitute an essential part of sound risk management e.g. by providing the basis for identifying, limiting and controlling risk; and
 - › help to guard against identity fraud.
4. The inadequacy or absence of *identification measures* can subject a law firm to serious client and counterparty risks, as well as reputational, operational, legal, regulatory and concentration risks, any of which can result in significant financial cost to the business. Documents, data or information held also assist the MLRO (or *deputy MLRO*) and business employees to determine whether a SAR is appropriate.
5. 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.
6. Throughout this section, references to “client” include, where appropriate, a prospective client (an applicant for business). A “client” is a person with whom a business relationship has been formed or one-off transaction conducted.

3.2 Obligation to Apply Identification Measures

Statutory Requirements

7. *Article 13(1) of the Money Laundering Order requires a relevant person to apply CDD measures. CDD measures comprise identification measures and ongoing monitoring. Identification measures must be applied:*

- › Subject to Article 13(4) to (11) of the *Money Laundering Order*, before the establishment of a business relationship or before carrying out a one-off transaction.
- › Where a *relevant person* suspects *money laundering*.
- › Where a *relevant person* has doubts about the veracity of documents, data or information previously obtained under CDD measures.

Identification measures

8. *Article 3(2) of the Money Laundering Order sets out what identification measures are to involve:*

- › *Finding out the identity of a client and obtaining evidence of identity from a reliable and independent source that is reasonably capable of verifying that the person to be identified is who the person is said to be and satisfies the person responsible for the identification of a person that the evidence does establish that fact (referred to as **obtaining evidence**). See Article 3(2)(a) of the Money Laundering Order.*
- › ~~*Where the client is a legal person, finding out the identity of any person purporting to act on behalf of the client and obtaining evidence of identity of that person, and verifying the authority of that any person purporting so to act. See Article 3(2)(aa)(i) of the Money Laundering Order.*~~
- › *Where the client is a legal person, understanding the ownership and control structure of that client and the provisions under which the client can enter into contracts, or other similarly legal binding arrangements, with third parties. See Article 3(2)(c)(ii) of the Money Laundering Order.*
- › *Where the client is a legal person, finding out the identity of individuals who are the beneficial owners or controllers of the client and obtaining evidence of the identity of those individuals. See Article 3(2)(c)(iii) of the Money Laundering Order.*
- › *Determining whether the client is acting for a third party (or parties), whether directly or indirectly. See Article 3(2)(b) of the Money Laundering Order.*
- › *Finding out the identity of any third party (or parties) on whose behalf the client is acting and obtaining evidence of the identity of those persons. See Article 3(2)(b)(i) of the Money Laundering Order.*
- › *Where the third party is a legal person, understanding the ownership and control of that third party, finding out the identity of the individuals who are the beneficial owners or controllers of the third party and obtaining evidence of the identity of those individuals. See Article 3(2)(b)(ii) of the Money Laundering Order.*
- › *Where the third party is a legal arrangement, e.g. a trust, understanding the nature of the legal arrangement under which the third party is constituted. See Article 3(2)(b)(iii)(A) of the Money Laundering Order.*
- › *Where the third party is a legal arrangement, e.g. a trust, finding out the identity of the persons who are listed in Article 3(7) of the Money Laundering Order. See Article 3(2)(b)(iii)(B) of the Money Laundering Order.*

- › *Where the third party is a legal arrangement, e.g. a trust, where any person listed in Article 3(7) is not an individual, finding out the identity of the individuals who are the beneficial owners or controllers of the person and obtaining evidence of the identity of those individuals. See Article 3(2)(b)(iii)(C) of the Money Laundering Order.*
 - › *Obtaining information on the purpose and intended nature of the business relationship or one-off transaction. See Article 3(2)(d) of the Money Laundering Order.*
9. *Article 3(5) of the Money Laundering Order requires identification measures to include the assessment by a relevant person of the risk that a business relationship or one-off transaction will involve money laundering. This must include obtaining appropriate information for assessing that risk.*
10. *Article 3(6) of the Money Laundering Order requires, in cases where a client is acting for a third party, and where the client is a legal person, measures for obtaining evidence of identity for third parties, persons purporting to act on behalf of the client, and individuals who are the client's beneficial owners or controllers to involve reasonable measures having regard to all the circumstances of the case, including the degree of risk assessed.*
11. *For persons who are not individuals, Article 2 of the Money Laundering Order describes:*
- › *beneficial owners as individuals with ultimate beneficial ownership of that person; and*
 - › *beneficial controllers as individuals who ultimately control that person or otherwise exercise control over the management of that person.*
12. *The description of a beneficial owner or controller will apply whether the individual satisfies the description alone or jointly with other persons.*
13. *Article 2 of the Money Laundering Order provides that no individual is to be treated as a beneficial owner of a person that is a body corporate, the securities of which are listed on a regulated market.*
- Ongoing monitoring
14. *Article 3(3) of the Money Laundering Order sets out what ongoing monitoring is to involve:*
- › *Scrutinising transactions undertaken throughout the course of a business relationship to ensure that the transactions being conducted are consistent with the relevant person's knowledge of the client, including the client's business and risk profile. See Article 3(3)(a) of the Money Laundering Order.*
 - › *Keeping documents, data or information up to date and relevant by undertaking reviews [of existing records, particularly in relation to higher risk categories of customers](#). See Article 3(3)(b) of the Money Laundering Order.*
- Policies and procedures
15. *Inter alia, Article 11(1) and (2) of the Money Laundering Order requires a relevant person to maintain policies and procedures for the application of CDD measures that are appropriate and consistent having regard to the degree of risk of money laundering [and the financing of terrorism taking into account](#):*
- › *[the level of risk identified in a national or sector-specific risk assessment in relation to money laundering carried out in respect of Jersey; and](#)*
 - › *[the type of customers, business relationships, products and transactions with which the law firm's business is concerned.](#)*
- 15-16. *Inter alia, Article 11(3) of the Money Laundering Order requires that the appropriate and consistent policies and procedures include policies and procedures which:*

- › *Determine whether a customer (and others connected to the customer) is a PEP, has a connection with a country or territory that does not apply, or insufficiently applies the FATF Recommendations, or is subject to or connected with a country, territory or organization that is subject to AML/CFT counter-measures.*
- › *Determine whether a transaction is with a person connected with a country or territory that does not apply, or insufficiently applies the FATF Recommendations, or is subject to or connected with a country, territory or organization that is subject to AML/CFT counter-measures.*
- › *Assess [and manage](#) the risk of money laundering or [the](#) financing of terrorism occurring as a result of completing identification measures after the establishment of a business relationship (where permitted), and ensure period reporting to senior management in such cases.*

[16-17.](#) Article 13(10) to (12) of the Money Laundering Order provides that a relevant person that is a collective investment scheme shall not be required to apply customer due diligence measures to a person that becomes a unitholder through a secondary market transaction, so long as:

- › *a person carrying on investment business has applied identification measures; or*
- › *a person carrying on equivalent business to investment business has applied identification measures in line with ~~former~~ FATF Recommendation [105](#).*

[17-18.](#) A “secondary market” is a financial market in which previously issued units are bought and sold.

3.3 Risk Based Approach to Identification Measures

Overview

[18-19.](#) A risk-based approach to the application of *identification measures* is one that involves a number of discrete stages in assessing the most effective and proportionate way to manage the *money laundering* and [the](#) *financing of terrorism* risk faced by a firm. While these stages must be incorporated into a firm’s *policies and procedures*, they do not need to take place in the sequence outlined below, and occur simultaneously.

[19-20.](#) The risk assessment of a particular client will determine the extent of information that will be requested, what evidence of identity will be obtained, the extent to which the resulting relationship will be scrutinised, and how often documents, data or information held will be reviewed.

[20-21.](#) Section 2.3 of this Handbook requires senior management to conduct (and keep up to date) a business risk assessment, which considers the business’ risk appetite, activities and structure and concludes on the business’ exposure to *money laundering* and [the](#) *financing of terrorism* risk.

[21-22.](#) This business risk assessment will enable a firm to determine its initial approach to performing Stage 1 of the identification process set out below, depending on the type of client, or service involved. The remaining stages of the process require consideration as to whether the specific circumstances of the client will necessitate the application of further measures.

~~22-23. Part 3A~~Articles 17 and 18 of the *Money Laundering Order* set out exemptions from customer due diligence requirements, including circumstances in which exemptions do not apply (See Article 17Aa), exemptions from applying third party and other identification requirements (See Articles 17B, 17C, 18) and the obligations of relevant person who is exempt from applying third party identification requirements (See Article 17D).~~cases where identification measures may be simplified. In the case of Article 17, the application of simplified measures is limited to measures specified in Article 3(2)(b) (measures concerning third parties).~~

23-24. The following are stages in the identification process:

Stage	Identification measure	Article(s)	Guidance
1.1	In the case of a client that is a legal person, a firm must understand the ownership and control structure of the client (and provisions under which the client can enter into contracts).	3(2)(c)(ii)	Section 3.3.1
1.2	A firm must find out the identity of: › the client; › any beneficial owners and controllers of the client; › any third party (or parties)¹ – including a legal arrangement - on whose behalf the client acts. Whether directly or indirectly (and beneficial owners and controllers of the third party (or parties)); and › others listed in Article 3(2).	3(2)(a) to (c) 3(4)(a)	Section 4
1.3	A firm must obtain information on the purpose and intended nature of the business relationship or one-off transaction.	3(2)(d)	
1.4	A firm must obtain appropriate information for assessing the risk that a business relationship or one-off transaction will involve <i>money laundering</i> or <u>the financing of terrorism</u> risk. It may be necessary to repeat this stage following an assessment of risk under stage 2.1.	3(5) 15(1)	Sections 3.3.2 and 3.3.3 Section 7
2.1	A firm must, on the basis of information collected at stage 1, assess the risk that a business relationship or one-off transaction will involve <i>money laundering</i> or <u>the financing of terrorism</u> risk (risk profile).	3(5)	Section 3.3.4
2.2	A firm must prepare and record a client business and risk profile.	3(3)(a)	Section 3.3.5
3	A firm must obtain evidence of the identity of those whose identity is found out at stage 1.2.	3(2)(a) to (c) 3(4)(b) 15(1)	Section 4 Section 7

¹ For the avoidance of doubt, this will include any person who is a named beneficiary of a life assurance policy entered into by the customer.

24-25. By virtue of ongoing monitoring under Article 3(3)(b) of the *Money Laundering Order*, particularly in relation to higher risk categories of clients, a firm must keep documents, data and information obtained under Stages 1 and 3 up to date and relevant. (See 3.4.)

25-26. *Systems and controls* (including *policies and procedures*) will not detect and prevent all instances of *money laundering* or the *financing of terrorism*. A risk-based approach will, however, serve to balance the cost burden placed on a firm and on clients with the risk that the firm may be used in *money laundering* or to finance terrorism by focusing resources on higher risk areas.

26-27. Care has to be exercised under a risk-based approach. Being identified as carrying a higher risk of *money laundering* or the financing of terrorism does not automatically mean that a client is a money launderer or is financing terrorism. Similarly, identifying a client as carrying a lower risk of *money laundering* or *financing of terrorism* does not mean that the client is not a money launderer or the financing of terrorism.

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27-28. A firm must apply a risk based approach to determine the extent and nature of the measures to be taken when undertaking the identification process set out above.

3.3.1 Understanding Ownership Structures – Stage 1.1

Overview

28-29. Article 3(2)(c)(ii) of the *Money Laundering Order* requires a firm to understand who owns and controls a legal person that is a client. Without such an understanding, it will not be possible to identify the individuals who are the client's beneficial owners and controllers.

29-30. Understanding ownership involves taking three separate steps: requesting information from the client (or a professional); validating that information; and checking that information held makes sense.

Guidance Notes

Step 1

30-31. A firm may demonstrate that it understands the ownership and control structure of a client that is a legal person where it applies one of the following *identification measures*:

- › it requests the client to provide a statement of legal and beneficial ownership and control as part of its application to become a client. In the case of a legal person that is part of a group, this will include a group structure.
- › to the extent that a client is, or has been, provided with professional services by a lawyer or accountant, or is “administered” by a trust and company services provider, it requests that lawyer, accountant or trust and company services provider to provide a statement of legal and beneficial ownership and control. In the case of a legal person that is part of a group, this will include a group structure.

Step 2

31-32. A firm may demonstrate that it understands the legal ownership and control structure of a client that is a legal person where it takes into account information that is held: (i) by the client, e.g. recorded in its share register; (ii) by a lawyer, accountant or trust and company services provider; (iii) by a trusted external party, in the case of a legal person with bearer shares, where bearer certificates have been lodged with that trusted external party; or (iv) publicly, e.g. information that is held in a central register in the country of establishment.

32-33. A firm may demonstrate that it understands the beneficial ownership and control structure of a customer that is a legal person where it takes into account information that is:

- › held by the client, e.g. in line with company law, *AML/CFT* requirements, or listing rules, e.g. a declaration of trust in respect of shares held by a nominee shareholder;
- › held by a lawyer, accountant or trust and company services provider e.g. in order to meet *AML/CFT* requirements;
- › held in a public register, e.g. information that is held in a central register of beneficial ownership in the country of establishment, information that is published in financial statements prepared under generally accepted accounting principles, or information available as a result of a listing of securities on a stock exchange;
- › provided directly by the ultimate beneficial owner(s) of the legal person; or
- › publicly available, e.g. in commercial databases and press reports.

Step 3

33-34. A firm may demonstrate that it understands the ownership and control structure of a client that is a legal person where it applies one or more of the following *identification measures*:

- › it considers the purpose and rationale for using an entity with a separate legal personality.
- › in the case of a legal person that is part of a group, it considers whether the corporate structure makes economic sense, taking into account complexity and multi-jurisdictional aspects.

3.3.2 Information for Assessing Risk – Stage 1.4

Guidance Notes

34-35. A firm may demonstrate that it has obtained appropriate information for assessing the risk that a business relationship or one-off transaction will involve *money laundering* or *the financing of terrorism* risk where it collects the following information:

All client types	
All client types	› Type, volume and value of activity expected (having regard for the <i>Commission's</i> Sound Business Practice Policy²). › <i>Source of funds</i>, e.g. nature and details of occupation or employment. › Details of any existing relationships with the firm.
Additional relationship information: legal arrangements and legal persons	
Express trusts	› Type of trust (e.g. fixed interest, discretionary, testamentary). › Classes of beneficiaries, including any charitable causes named in the trust instrument.
Foundations	› Classes of beneficiaries, including any charitable objects.

² <https://www.jerseyfsc.org/media/1901/ps-sound-business-practice-policy-august-2018.pdf>

Legal persons and legal arrangements (including express trusts and foundations)	› Ownership structure of any underlying legal persons. › Type of activities undertaken by any underlying legal persons (having regard for the <i>Commission's</i> sound business practice policy and trading activities). › Geographical sphere of activities and assets. › Name of regulator, if applicable.
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[35-36.](#) The extent of information sought in respect of a particular client, or type of client, will depend upon the country or territory with which the client is connected, the characteristics of the service requested, how the service will be delivered, as well as factors specific to the client.

3.3.3 Source of Funds – Stage 1.4

Overview

[36-37.](#) The ability to follow the audit trail for criminal funds and transactions flowing through the professional and financial sector is a vital law enforcement tool in *money laundering* and *the financing of terrorism* investigations. Understanding the *source of funds* and, in higher risk relationships, the client's *source of wealth* is also an important aspect of *CDD*.

[37-38.](#) Firms should monitor whether funds received from clients are from credible sources. If funding is from a source other than a client, a firm may need to make further enquiries. If it is decided to accept funds from a third party, perhaps because time is short, firms should ask how and why the third party is helping with the funding.

[38-39.](#) In some circumstances, cleared funds will be essential for transactions and clients may want to provide cash to meet a completion deadline. Firms should assess the risk in these cases and ask more questions if necessary.

[39-40.](#) **Source of funds** is the activity which generates the funds for a relationship e.g. a client's occupation or business activities. Information concerning the geographical sphere of the activities may also be relevant.

[40-41.](#) The *Money Laundering Order* and this Handbook stipulate record-keeping requirements for transaction records which require information concerning the remittance of funds also to be recorded (e.g. the name of the bank and the name and account number of the account from which the funds were remitted). **This is the source of transfer and is not to be confused with source of funds.**

[41-42.](#) **Source of wealth** is distinct from *source of funds*, and describes the activities which have generated the total net worth of a person both within and outside of a relationship, i.e. those activities which have generated a client's funds and property. Information concerning the geographical sphere of the activities that have generated a client's wealth may also be relevant.

[42-43.](#) In finding out a *source of wealth* it will often not be necessary to determine the monetary value of an individual's net worth.

3.3.4 Assessment of Risk – Stage 2.1

Overview

[43-44.](#) The following factors – client risk, country risk, service risk and delivery risk - will be relevant when assessing and evaluating the *CDD* information collected at Stage 1, and are not intended to be exhaustive. A firm should consider whether other variables are appropriate factors to consider in the context of the products and services that it provides and its client base.

[44-45.](#) In assessing client risk, the presence of one factor that might indicate higher risk will not automatically mean that a client is higher risk. Equally, the presence of one lower risk factor should not automatically lead to a determination that a client is lower risk.

[45-46.](#) The sophistication of the risk assessment process may be determined according to factors supported by the business risk assessment.

[46-47.](#) Inconsistencies between information obtained, for example, between specific information concerning *source of funds* (or *source of wealth*), and the nature of expected activity may also assist in assessing risk.

Guidance Notes

[47-48.](#) A firm may demonstrate that it has assessed the risk that a business relationship or one-off transaction will involve *money laundering* or *the financing of terrorism* where it takes into account the factors set out below.

[48-49.](#) A firm may demonstrate that it has assessed the risk that a business relationship or one-off transaction will involve *money laundering* or *the financing of terrorism* where it takes into account other factors that are relevant in the context of the services that it provides and its client base.

[49-50.](#) A firm may demonstrate that it has assessed the risk that a business relationship or one-off transaction will involve *money laundering* or *the financing of terrorism* where it takes into account the effect of a combination of a number of factors, e.g. the use of complex structures by a client who is a non-resident high-net worth individual in the course of wealth management, which may increase the cumulative level of risk beyond the sum of each individual risk element. The accumulation of risk is itself a factor to take into account.

[50-51.](#) Notwithstanding the above, where it is appropriate to do so, a firm may demonstrate that it has assessed the risk that a business relationship or one-off transaction will involve *money laundering* or *the financing of terrorism* where it assesses that risk “generically” for clients falling into similar categories. For example:

- › The business of some firms, their products, and client base, can be relatively simple, involving few products, with most clients falling into similar risk categories. In such circumstances, a simple approach, building on the risk that the business’ products are assessed to present, may be appropriate for most clients, with the focus being on those clients who fall outside the norm.
- › Others may have a greater level of business, but large numbers of their clients may be predominantly retail, served through delivery channels that offer the possibility of adopting a standardised approach to many procedures. Here too, the approach for most clients may be relatively straight forward - building on product risk.
- › In the case of Jersey residents seeking to establish retail relationships, and in the absence of any information to indicate otherwise, such clients may be considered to present a lower risk.

3.3.4.1 Factors to Consider

Client Risk

[51-52.](#) Features that may indicate whether a client is a money launderer or is financing terrorism:

- › Type of client. For example, an individual who has been entrusted with a prominent public function (or immediate family member or close associate of such an individual) may present a higher risk (as may a domestic politician);

- › Nature and scope of business activities generating the funds/assets. For example, a client conducting “sensitive” activities (as defined by the *Commission* in its Sound Business Practice policy) or conducting activities which are prohibited if carried on with certain countries; a client engaged in higher risk trading activities; or a client engaged in a business which involves handling significant amounts of cash may indicate higher risk;
- › Transparency of client. For example, persons that are subject to public disclosure rules, e.g. on exchanges or regulated markets (or majority-owned and consolidated subsidiaries of such persons), or subject to licensing by a statutory regulator, e.g. the Channel Islands Competition & Regulatory Authority may indicate lower risk. Clients where the structure or nature of the entity or relationship makes it difficult to identify the true beneficial owners and controllers may indicate higher risk e.g. those with nominee directors or nominee shareholders or which have issued bearer shares;
- › Secretive clients. Whilst face to face contact with clients is not always necessary or possible, an excessively obstructive or secretive client may be a cause for concern;
- › Reputation of client. For example, a ~~well-known~~well-known, reputable person, with a long history in its industry, and with abundant independent and reliable information about it and its beneficial owners and controllers may indicate lower risk;
- › Behaviour of client. For example, where there is no commercial rationale for the service that is being sought, or where undue levels of secrecy are requested by a client, or where a client is reluctant or unwilling to provide adequate explanations or documents, or where it appears that an “audit trail” has been deliberately broken or unnecessarily layered, this may indicate higher risk;
- › The regularity or duration of the relationship. For example, longstanding relationships involving frequent client contact that result in a high level of understanding of the client relationship may indicate lower risk;
- › Type and complexity of relationship. For example, the use of overly complex or opaque structures with different layers of entities situated in two or more countries and cross border transactions involving counterparts in different parts of the world, the unexplained use of corporate structures and express trusts, and the use of nominee and bearer shares may indicate higher risk;
- › Value of assets e.g. higher value;
- › Value and frequency of cash or other “bearer” transactions (e.g. travellers’ cheques and electronic money purses), e.g. higher value and/or frequency;
- › Delegation of authority by the applicant or client. For example, the use of powers of attorney, mixed boards and representative offices may indicate higher risk;
- › Involvement of persons other than beneficial owners and controllers in the operation of a business relationship; and
- › In the case of an express trust, the nature of the relationship between the settlor(s) and beneficiaries with a vested right, other beneficiaries and persons who are the object of a power and the nature of classes of beneficiaries and classes within an expression of wishes. For example, a trust that is established for the benefit of the close family of the settlor may indicate a lower risk.
- › In the case of an express trust, the nature of classes of beneficiaries and classes within an expression of wishes. For example, a trust that is established for the benefit of the close family of the settlor may indicate a lower risk.

Country Risk

[52-53.](#) Relevant connection to a country or territory that presents a higher risk of *money laundering* or *the financing of terrorism*, where the following types of countries or territories may be considered to present a higher risk:

- › those that are generally considered to be un-cooperative in the fight against *money laundering* and the *financing of terrorism*;
- › those with strategic deficiencies in the fight against *money laundering* and the *financing of terrorism*, e.g. those identified by the FATF as having strategic deficiencies;
- › those identified as major illicit drug producers or through which significant quantities of drugs are transited, e.g. those listed by the US Department of State in its annual International Narcotics Control Strategy Report;
- › those that do not take efforts to confront and eliminate **human trafficking**, e.g. those listed in Tier 3 of the US Department of State's annual Trafficking in Persons Report;
- › those that have strong links (such as funding or other support) with **terrorist activities** e.g. those designated by the US Secretary of State as state sponsors of terrorism; and those physical areas identified by the US (in its annual report entitled Country Reports on Terrorism) as ungoverned, under-governed or ill-governed where terrorists are able to organise, plan, raise funds, communicate, recruit, train, transit and operate in relative security because of inadequate governance capability, political will or both;
- › those that are involved in the **proliferation of nuclear and other weapons**, e.g. those that are the subject of United Nations (**UN**) or *EU* sanctions measures in place in Jersey, or, as appropriate, elsewhere;
- › those that are vulnerable to **corruption**, e.g. those with poor ratings in Transparency International's Corruption Perception Index or highlighted as a concern in the Worldwide Governance Indicators project, or whose companies engage in **bribery** when doing business abroad, e.g. those with poor ratings in Transparency International's Bribe Payers Index;
- › those in which there is no, or little, confidence in the **rule of law**, in particular the quality of contract enforcement, property rights, the police and the courts, e.g. those highlighted as a concern in the Worldwide Governance Indicators project;
- › those in which there is no, or little, confidence in **government effectiveness**, including the quality of the civil service and the degree of its independence from political pressures, e.g. those highlighted as a concern in the Worldwide Governance Indicators project;
- › those that are **politically unstable**, e.g. those highlighted as a concern in the Worldwide Governance Indicators project, or which may be considered to be a "failed state", e.g. those listed in the Failed State Index (central government is so weak or ineffective that it has little practical control over much of its territory; non-provision of public services; widespread corruption and criminality; refugees and involuntary movement of populations; sharp economic decline);
- › those that are the subject of **sanctions** measures that are in place in Jersey or elsewhere, e.g. those dealing with the abuse of human rights or misappropriation of state funds;
- › those that **lack transparency** or which have excessive secrecy laws, e.g. those identified by the OECD as having committed to internationally agreed tax standards but which have not yet implemented those standards; and

- › those with inadequate regulatory and supervisory standards on international **cooperation and information exchange**, e.g. those identified by the Financial Stability Board as just making material progress towards demonstrating sufficiently strong adherence, or being non-cooperative, where it may not be possible to investigate the provenance of funds introduced into the financial system.

53-54. Relevant connection to a country or territory that presents a lower risk of *money laundering* or *the financing of terrorism*, where the following factors may be considered to be indicative of lower risk:

- › A favourable rating in the Worldwide Governance Indicators project.
- › The application of national financial reporting standards that follow international **financial reporting standards**, e.g. those countries identified by the European *Commission* as having generally accepted accounting principles that are equivalent to International Financial Reporting Standards.
- › A commitment to **international export control regimes** (Missile Technology Control Regime, the Australia Group, the Nuclear Suppliers Group and the Wassenaar Arrangement).
- › A favourable assessment by the Financial Stability Board concerning adherence to regulatory and supervisory standards on international **cooperation and information exchange**.

54-55. Familiarity of a firm with a country or territory, including knowledge of its local legislation, regulations and rules, as well as the structure and extent of regulatory oversight, for example, as a result of a firm's own or group operations within that country.

Service Risk

55-56. Features that may be attractive to money launderers or those financing terrorism:

- › Instructions that are unusual in themselves or that are unusual for the firm or the client may give risk to concern, particularly where no rational or logical explanation can be given.
- › Taking on work which is outside the firm's normal range of expertise can present additional risks because money launderer might be using the firm to avoid answering too many questions. An inexperienced lawyer might be influenced into taking steps which a more experienced lawyer would not contemplate. Lawyers should be wary of niche areas of work in which the firm has no background, but in which the client claims to be an expert.
- › If the client is based outside Jersey, consider why you have been instructed. For example, have the firm's services been recommended by another client or is the matter based near your firm? The ability to pool the funds of clients increases the risk. Placing money through a lawyer's client account can clean it whether it is the money is sent back to the client, on to a third party, or invested in some way.
- › Firms should be wary of unusual retainers e.g.:
 - › disputes which are settled too easily may indicate sham litigation;
 - › loss making transactions where the loss is avoidable;
 - › dealing with money or property where there are suspicions that it is being transferred to avoid the attention of either a trust in a bankruptcy case, a revenue authority, or a law enforcement agency; or

Service Risk

- › settlements which are to be paid in cash, particularly where cash is to be passed directly between sellers and buyers without adequate explanation.
- › The following characteristics increase the service risk:
 - › where there is an ability to make payments to third parties;
 - › holding boxes, parcels or sealed envelopes in safe custody;
 - › the provision of “hold mail” facilities and “care of” addresses (other than temporary arrangements) for clients;
 - › accepting funds in client, nominee or other accounts, where funds are mingled with others’ funds;
 - › accepting sealed parcels or sealed envelopes for safe custody; and
 - › accepting large amounts of cash into the firm’s client account.

Delivery Risk

56-57. Features that may be attractive to money launderers or those financing terrorism:

- › Indirect relationship with the client - use of reliance on *obliged persons* or other third parties.
- › Non-face to face relationships - service delivered exclusively by post, telephone, internet etc. where there is no physical contact with the client.

3.3.5 External Data Sources

Overview

57-58. In assessing the risk that countries and territories may present a higher risk, objective data published by the *IMF*, *FATF*, World Bank and the Egmont Group of Financial Intelligence Units will be relevant, as will objective information published by national governments (such as the World Factbook published by the US Central Intelligence Agency) and other reliable and independent sources, such as those referred to in Section 3.3.4.1 above. Often, this information may be accessed through country or territory profiles provided on electronic subscription databases and on the internet. Some profiles, such as those available through KnowYourCountry, are free to use.

58-59. Information on the proliferation of nuclear and other weapons, and sanctions may be found on the *Commission’s* website.

59-60. Appendix D2 of the *AML/CFT Handbook* lists a number of countries and territories that are identified by reliable and independent external sources as presenting a higher risk. In assessing country risk for *AML/CFT* purposes, in addition to considering the particular features of a client, it will be relevant to take account of the number of occasions that a particular country or territory is listed for different reasons. Where a country or territory is identified as presenting a higher risk for different reasons by three or more, or four or more, separate external sources, it is more prominently highlighted in the appendix.

60-61. There are now also a number of providers of country risk “league tables” that rate countries according to risk (e.g. as lower, medium or higher risk), some of which are free to use, e.g. KnowYourCountry and the Basel AML Index. These are based on weighted data published by external sources. Before placing reliance on country risk “league tables”, care should be taken to review the methodology that has been used, including the basis followed for selecting sources, weighting applied to those sources, and approach that is taken where data for a country or territory is missing.

[61-62.](#) External data sources may also assist in establishing client specific risk. For example, electronic subscription databases list individuals entrusted with prominent public functions and a list of persons that are subject to financial sanctions may be accessed through the *Commission* website (UK Consolidated List).

3.3.53.3.6 Client Business Profile – Stage 2.2

Guidance Notes

[62-63.](#) A firm may demonstrate that it has prepared a client business profile where it enables it to:

- › identify a pattern of expected transactions and activity within each business relationship; and
- › recognise unusual transactions and activity, unusually large transactions or activity, and unusual patterns of transactions or activity.

[63-64.](#) For certain types of services, a firm may demonstrate that it has prepared a client business profile where it does so on the basis of generic attributes, so long as this enables it to recognise the transactions and activity referred to in paragraph 63 above. For more complex services, however, tailored profiles will be necessary.

3.4 On-Going Monitoring: Ensuring that Documents, Data and Information are Up to Date and Remain Relevant

Overview

[64-65.](#) Article 3(3)(b) of the Morgan Laundering Order explains that ongoing monitoring includes ensuring that documents, data or information obtained under *identification measures* are kept up to date and relevant by undertaking reviews of existing records, [particularly in relation to higher risk categories of clients](#), including reviews where any inconsistency has been disclosed as a result of scrutiny.

[65-66.](#) Inter alia, where there is a change to information found out about the client, the client acts for a new third party, a new person purports to act for the client, or the client has a new beneficial owner or controller, Article 13(1)(c)(ii) of the *Money Laundering Order* requires that the identity of that person is found out and evidence obtained.

Guidance Notes

[66-67.](#) A firm may demonstrate that documents, data or information obtained under *identification measures* are kept up to date and relevant under Article 3(3)(b) of the *Money Laundering Order* where the client is requested to, and does provide, an assurance that he, she or it will update the information provided on a timely basis in the event of a subsequent change.

[67-68.](#) A firm may demonstrate that documents, data and information obtained under *identification measures* are kept up to date and relevant under Article 3(3)(b) of the *Money Laundering Order* where they are reviewed on a risk sensitive basis, including where additional “factors to consider” become apparent.

[68-69.](#) Trigger events e.g. when taking new instructions from a client, or meeting with a client may also present a convenient opportunity to review documents, data and information obtained under *identification measures*.

3.5 Identification Measures – Taking on a Book of Business

Overview

~~69-70.~~ Rather than establishing a business relationship directly with a client, a firm may establish that relationship through the transfer of a block of clients from another business. The transfer may be affected through legislation or with the agreement of the client.

Guidance Notes

~~70-71.~~ A firm may demonstrate that it has applied *identification measures* before establishing a business relationship taken on through the acquisition of a book of business where each of the following criteria are met:

- › the vendor is a *relevant person* or carries on *equivalent business* as defined by Article 5 of the *Money Laundering Order* (refer to Section 1.8 of this Handbook);
- › the firm has concluded that the vendor's *CDD policies and procedures* are satisfactory. This assessment must either involve sample testing, or alternatively an assessment of all relevant documents, data or information for the business relationship to be acquired; and
- › before, or at the time of the transfer, the firm obtains from the vendor all of the relevant documents, data or information (or copy thereof) held for each client acquired.

~~71-72.~~ In a case where the vendor is not a *relevant person* ~~carrying on a regulated business~~, or is not carrying on *equivalent* ~~business to any category of regulated business~~ (refer to Section 1.7 of this Handbook), or where deficiencies in the vendor's *CDD policies and procedures* are identified (either at the time of transfer or subsequently), a firm may demonstrate that it has applied *identification measures* before establishing a business relationship where it determines and implements a programme to apply *identification measures* on each client and to remedy deficiencies which is agreed in advance with the *Commission*.