

13 TRUST COMPANY BUSINESS

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](#).

13.1 Overview of Section

1. The purpose of this section is to assist with the application of customer *identification measures* where a *relevant person* establishes a business relationship or carries out a one-off transaction in the course of carrying on trust company business.
2. This section applies where a *relevant person* carries on a business under Article 2(3) of the *FS(J) Law* that involves the provision of company administration services, the provision of trustee or fiduciary services, the provision of services to foundations or the provision of services to partnerships and, in the course of providing those services, the person provides any of the services specified in Article 2(4) of the *FS(J) Law* (except any activity that is explicitly excluded from the scope of Part A of Schedule 2 of the *Proceeds of Crime Law*). 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, 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, 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 member of the council of a foundation;
 - › acting as a partnership formation agent, a company 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 partnership, a company, a foundation, or for any other person; and
 - › providing an accommodation, correspondence or administrative address for any person.
3. This section also applies 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*. Paragraph 8 extends the provisions that are summarised at paragraph 1 above to legal persons and legal arrangements that are not otherwise covered by the *FS(J) Law*. For the purpose of this section, such business is covered by the term “trust company business”.
4. 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 *CIF(J) Law*) except for the fact that the capital, the collective investment of which is the object or one of the objects of the scheme or arrangement, is not acquired by means of an offer to the public of *units* for subscription, sale or exchange.

5. Activity that is excluded from the scope of Part A of Schedule 2 of the *Proceeds of Crime Law* is listed in section 1 of Part 4 of the *AML/CFT Handbook*. This list includes an individual who:
- (i) acts as a director in the course of employment by a trading company (that is not administered by a person carrying on trust company business);
 - (ii) acts as a director of a company that is prudentially supervised by the *Commission* under the *Regulatory Laws*; and
 - (iii) acts as, or fulfils the function of, a director to six or less companies.

13.2 Overview of Section

13.2.1 Obligation to Apply Identification Measures

Overview

6. 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*.
7. A *relevant person* (“**A**”) that provides, acts as or fulfils one or more of the functions listed in paragraph 1 above, or arranges for another person (“**B**”) to do so (where B is an officer or employee of A) will be considered to have established a business relationship under the *Money Laundering Order*.
8. Where B is not an officer or employee of A, then A will not be considered to have established a business relationship each time that it arranges for another person to act as or fulfil such function. However, a *relevant person* will need to consider whether such an arrangement (a transaction) is a one-off transaction as defined in Article 4 of the *Money Laundering Order*.
9. A *relevant person* that acts only as a formation agent will not be considered to have established a business relationship with its customer. However, a *relevant person* will need to consider whether forming a legal arrangement or legal person (a transaction) is a one-off transaction as defined in Article 4 of the *Money Laundering Order*.
10. For the avoidance of doubt, the requirement to apply *identification measures* will apply where the relationship that a *relevant person* has with its customer is conducted through another service provider, e.g. the *relevant person* provides a director to a company that is administered by another person carrying on trust company business.

13.2.2 Information for Assessing Risk – Stage 1.4

Note: This section must be read in conjunction with, and is supplemental to, section 3.3.2 of Part 1 of the *AML/CFT Handbook*.

Overview

Limited Services

11. Section 3.3.2 of Part 1 of the *AML/CFT Handbook* explains how a *relevant person* carrying on trust company business 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 *financing of terrorism*.
12. Where a *relevant person* provides **only**:
- › registered office services; or
 - › secretarial services,

or a combination of the two (hereinafter referred to as “limited services”), that *relevant person* is unlikely to have any oversight of, or control over, the activities of the legal arrangement or legal person in the way that it would if it also provided one or more directors (or equivalent) or provided full administration services. The absence of oversight or control increases the risk that a legal arrangement or legal person may be used ~~to launder for~~ money *laundering* or ~~to finance the~~ *financing of* terrorism.

13. The effect of this additional risk will be to require a *relevant person* to request more information on its customer, and on the activities of the legal arrangement or legal person to which it is to provide only limited services, for the purpose of countering *money laundering* and *financing of terrorism* than is strictly necessary to provide only limited services.
14. The risk that a legal arrangement or legal person may be used ~~to launder for~~ money *laundering* or ~~to finance the~~ *financing of* terrorism is likely to be mitigated where a customer to whom only limited services are provided is a body corporate the securities of which are listed on an IOSCO compliant market or on a regulated market, or where a customer is a *regulated person* (or person who carries on *equivalent business* to any category of *regulated business*).

Co-trustees and Other General Partners

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

Guidance notes

Limited Services

16. In the case of a *relevant person* that provides **only** limited services to a legal arrangement or legal person, a *relevant person* may demonstrate that it has obtained appropriate information for assessing the risk that a business relationship or one-off transaction will involve *money laundering* or *financing of terrorism* where it collects (at the time that a limited service is first provided and then on an ongoing basis thereafter) information on activities by reference to:
 - › copies of minutes of directors’ and members’ meetings that must be kept by a company (including, in the case of a protected cell company, copies of minutes of directors’ and members’ meetings of the cell company and each of its cells) under Part 15 of the *Companies Law* (or equivalent for other legal persons or legal arrangements); and
 - › copies of accounts that must be prepared by the directors of a company (including, in the case of a protected cell company, copies of accounts that must be prepared by the directors of the cell company and each of its cells) under Part 16 of the *Companies Law* (or equivalent for other legal persons or legal arrangements); or
 - › where accounts are not required to be prepared, underlying financial records that are maintained by the directors of that company (or equivalent for other legal persons or legal arrangements).

Co-trustees and Other General Partners

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

18. In the case of a *relevant person* that is to act as a general partner of a limited partnership, a *relevant person* may demonstrate that it has obtained appropriate information for assessing the risk that a business relationship or one-off transaction will involve *money laundering* or *financing of terrorism* where it collects information on any other general partners or limited partners that participate in the management of the limited partnership.
19. Information requested may include information about why it is necessary to have more than one trustee or general partner, and the stature and regulatory track-record of the trustee or general partner.

13.2.3 Assessment of Risk – Stage 2.1

Note: This section must be read in conjunction with, and is supplemental to, section 3.3.4 of Part 1 of the *AML/CFT Handbook*.

Overview

20. Section 3.3.4 of Part 1 of the *AML/CFT Handbook* sets out a number of factors that are to be taken into account by a *relevant person* carrying on trust company business when assessing the risk that a business relationship or one-off transaction will involve *money laundering* or *financing of terrorism*.

Guidance notes

21. A *relevant person* that carries on trust company business may demonstrate that it has assessed the risk that a business relationship or one-off transaction will involve *money laundering* or *financing of terrorism* where it also takes into account:
 - › Any failure on the part of a customer 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 and intended nature of the business relationship or one-off transaction. 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 a “blind” trust).
 - › 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*.

13.3 Identification Measures: finding out identity and obtaining evidence

Overview

22. The meaning of *identification measures* is set out in Article 3 of the *Money Laundering Order*. Inter alia, *identification measures* are measures for identifying the customer, so the **first step** will be to determine who the customer is.
23. In the case of a *relevant person* that carries on trust company business and is to act as the trustee of an express trust, customers will include the settlor, protector (if any), beneficiaries with a vested right, any other beneficiaries and persons who are the object of a power and that have been identified as presenting a higher risk (see section 13.3.1).

24. In the case of a *relevant person* that carries on trust company business and is to act as the general partner of a limited partnership, customers will include the limited partners of the partnership (see section [13.3.4](#)).
25. In the case of a *relevant person* that carries on trust company business and is to provide a service, e.g. registered office, in respect of a limited partnership, the customer will be the general partner acting for the limited partnership – a third party (see section 4.4.3 of Part 1 of the *AML/CFT Handbook*).
26. In the case of a *relevant person* that carries on trust company business and is to provide a service to a company, the customer will be the company (see section 4.5.1 of Part 1 of the *AML/CFT Handbook*).
27. In the case of a *relevant person* that carries on trust company business and is to provide a service to a foundation, the customer will be the foundation (see section 4.5.3 of Part 1 of the *AML/CFT Handbook*).
28. In the case of a *relevant person* that carries on trust company business and is to provide a service to a separate limited partnership, incorporated limited partnership or limited liability partnership, the customer will be the partnership (see section 4.5.5 of Part 1 of the *AML/CFT Handbook*).
29. In the case of a *relevant person* that carries on trust company business and is to form a company, partnership or foundation, the customer will be the persons who are to be the beneficial owners and controllers of the legal person (see section 4.3.1 and 4.5 of Part 1 of the *AML/CFT Handbook*).

13.3.1 Finding Out Identity – legal arrangement that is a trust

Guidance notes

30. A *relevant person* that is to act as trustee of an express trust may demonstrate that it has applied *identification measures* under Article 3(2)(a) of the *Money Laundering Order* to its customer, where it applies those measures to:
 - › the settlor (including any person subsequently settling funds into the trust) (except if deceased) and any person who directly or indirectly provides trust property or makes a testamentary disposition on trust or to the trust.
 - › any co-trustee;
 - › any protector;
 - › any beneficiary with a vested right;
 - › any other beneficiary or person who is the object of a power and that has been identified as presenting a higher risk; and
 - › any other person exercising ultimate effective control over the trust.
31. In any case where a settlor, protector, beneficiary, object of a power or other person referred to in paragraph 30 (the “**person**”) is not an individual, a *relevant person* may demonstrate that it has identified each individual who is the person’s beneficial owner or controller under Article 3(2)(c)(iii) of the *Money Laundering Order* where it has identified:
 - › Each individual with a **material controlling ownership interest** in the capital of the person (through direct or indirect holdings of interests or voting rights) or who exerts **control through other ownership means**.

- › To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising **control** of the person **through other means**.
 - › Where no individual is otherwise identified under this section, individuals who **exercise control** of the person **through positions held** (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions).
32. For lower risk relationships, a general threshold of 25% is considered to indicate a material controlling ownership interest in capital. Where the distribution of interests is uneven the percentage where effective control may be exercised (a material interest) may be less than 25% when the distribution of other interests is taken into account i.e. interests of less than 25% may be material interests.

13.3.2 Finding Out Identity – legal arrangement that is a charitable trust (capital markets)

Guidance notes

33. A *relevant person* that is to act as the trustee of a charitable trust which is established to hold an investment in a security-issuing vehicle, or to hold security (as bare trustee for security-holders) over assets held within such a vehicle, may demonstrate that it has applied *identification measures* under Article 3(2)(a) of the *Money Laundering Order* to its customer, where it applies those measures to:
- › the originator or instigator of the capital market transaction; and
 - › each security-holder that is able to exercise effective control over the underlying security-issuing vehicle.

13.3.3 Obtaining Evidence of Identity - legal arrangement that is a trust

Overview

34. The measures that must be applied to obtain evidence of identity of beneficiaries and persons who are the object of a power and that have been identified as presenting higher risk will 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.
35. Where a *relevant person* is not familiar with a document obtained to verify identity, appropriate measures may be necessary to satisfy itself that the evidence is genuine.

AML/CFT Codes of Practice

36. All key documents (or parts thereof) obtained as evidence of identity must be understandable (i.e. in a language understood by the employees of the business), and must be translated into English at the request of the *JFCU* or of the *Commission*.

13.3.4 Finding Out Identity – legal arrangement that is a limited partnership

Guidance notes

37. A *relevant person* that is to act as the general partner of a limited partnership may demonstrate that it has applied *identification measures* under Article 3(2)(a) of the *Money Laundering Order* to its customer where it applies those measures to limited partners holding a **material controlling ownership interest** in the capital of the partnership (through holdings of interests or voting rights) or any other person exercising **control through other ownership**

means, e.g. partnership agreements, power to appoint senior management, or any outstanding debt that is convertible into voting rights.

38. To the extent that there is doubt as to whether the persons exercising control through ownership are beneficial owners, or where no person exerts control through ownership, a *relevant person* that is to act as the general partner of a limited partnership may demonstrate that it has applied *identification measures* under Article 3(2)(a) of the *Money Laundering Order* to its customer where it applies those measures to any other person exercising **control** over the partnership **through other means**, e.g. those who exert control through personal connections, by participating in financing, because of close and intimate family relationships, historical or contractual associations or as a result of default on certain payments.
39. Where no person is identified under this section, a *relevant person* that is to act as the general partner of a limited partnership may demonstrate that it has applied *identification measures* under Article 3(2)(a) of the *Money Laundering Order* to its customer where it applies those measures to persons who exercise **control through positions held** (who have or exercise strategic decision-taking powers or have or exercise executive control through senior management positions, e.g. general partner or limited partner that participates in management).
40. In any case where a partner or other person is not an individual, a *relevant person* may demonstrate that it has identified each individual who is that person's beneficial owner or controller under Article 3(2)(c)(iii) of the *Money Laundering Order* where it has identified:
- › Each individual with a **material controlling ownership interest** in the capital of the partnership (through direct or indirect holdings of interests or voting rights) or who exerts **control through other ownership means**.
 - › To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising **control over the partnership through other means**.
 - › Where no individual is otherwise identified under this section, individuals who exercise **control** of the partnership **through positions held** (who have and exercise strategic decision-taking powers or have or exercise executive control through senior management positions).
41. For lower risk relationships, a general threshold of 25% is considered to indicate a material controlling ownership interest in the capital of a limited partnership. Where the distribution of interests is uneven, the percentage where effective control may be exercised (a material interest) may be less than 25% when the distribution of other interests is taken into account i.e. interests of less than 25% may be material interests.

13.3.5 Obtaining Evidence of Identity - legal arrangement that is a limited partnership

Overview

42. Where a *relevant person* is not familiar with a document obtained to verify identity, appropriate measures may be necessary to satisfy itself that the evidence is genuine.

AML/CFT Codes of Practice

43. All key documents (or parts thereof) obtained as evidence of identity must be understandable (i.e. in a language understood by the employees of the business), and must be translated into English at the request of the *JFCU* or of the *Commission*.

13.3.6 Finding out Identity - legal person that is a protected cell company

Note: This section must be read in conjunction with, and is supplemental to, sections 4.5.1 and 4.5.2 of Part 1 of the *AML/CFT Handbook*.

Overview

44. Under Article 127YDA(1) of the *Companies Law*, in the case of both *PCCs* and *ICCs*, a cell shall have the same registered office and secretary as the cell company, and the registered office must be in Jersey.
45. Where a *relevant person* carrying on trust company business provides a registered office or secretary to a *PCC*; **it will also do so for each cell of that *PCC***. Because the cell of a *PCC* does not have the ability to enter into arrangements or contract in its own name, for the purposes of Article 3 of the *Money Laundering Order*, the *PCC* will be taken to be a customer acting for a third party and each cell will be taken to be a third party that is a person other than an individual. It follows that *identification measures* must be applied under Article 13 of the *Money Laundering Order* to the *PCC* (the customer) and **each cell** of the *PCC* (a third party).

13.3.7 Finding Out Identity - legal person that is a private trust company

Overview

46. Schedule 2 of the *Proceeds of Crime Law* provides that a private trust company (a “**PTC**”) - a company the purpose of which is to provide trust company business services in respect of a specific trust or trusts or foundation or foundations, 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 on trust company business - is not subject to the *Money Laundering Order*.
47. The basis for this concession is that *CDD* measures will be applied by the person that is registered to carry on 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* - since the PTC is administered by the *relevant person*.
48. A *relevant person* will consider the PTC to be its customer and each of the trusts to be third parties (which are not a person).

AML/CFT Codes of Practice

49. A *relevant person* that administers a PTC must apply *CDD* measures, record-keeping and reporting requirements to that PTC in line with the *Money Laundering Order*.

13.4 Timing of Identification Measures

Note: This section must be read in conjunction with, and is supplemental to, section 4.7 of Part 1 of the *AML/CFT Handbook*.

Overview

50. In line with Article 13(8) of the *Money Laundering Order*, a *relevant person* that is to act as trustee may delay obtaining evidence of the identity of a customer after the time that a business relationship is established so long as:
 - › it does so at the time of, or before, distribution of trust property or income; and
 - › it is satisfied that there is little risk of *money laundering* or *financing of terrorism* occurring as a result of obtaining evidence after entitlement is conferred.
51. Similar provisions should apply in a case where the customer of a *relevant person* that is a trustee changes during a business relationship.

Guidance notes

52. During a business relationship, a *relevant person* that is the trustee of an express trust may demonstrate that it has obtained evidence that is reasonably capable of verifying the identity of each beneficiary with a vested right where:
- › it does so at the time of, or before, distribution of trust property or income; and
 - › it is satisfied that there is little risk of *money laundering* or *financing of terrorism* occurring as a result of obtaining evidence after entitlement is conferred.
53. During a business relationship, a *relevant person* that is the trustee of an express trust may demonstrate that it has obtained evidence that is reasonably capable of verifying the identity of a beneficiary or person who is the object of a trust power where it does so at the time that the person is identified as presenting a higher risk.

13.5 Failure to Complete Identification Measures

Note: This section must be read in conjunction with, and is supplemental to, section 4.8 of Part 1 of the *AML/CFT Handbook*.

Overview

54. 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 that relationship and consider whether to make a *SAR* to the *JFCU*.
55. Such a requirement can be problematic in the case of a *relevant person* that is a trustee where its customer is the beneficiary or object of a power of a trust and where:
- › the relationship between a *relevant person* and its customer is governed by other legislation - e.g. the *Trusts (Jersey) Law 1984*; and
 - › the termination of a relationship with a customer (a beneficiary or object of a power) may have a prejudicial effect on the interests of other customers.
56. Such a requirement can also be problematic in the case of a *relevant person* that is a council member where its customer is a foundation and the foundation is governed by the *Foundations Law*. In particular, under Article 12(3) of the *Foundations Law*, the retirement or removal of the qualified member of a foundation does not take effect until immediately before the appointment of a new qualified person to be the qualified member of the council has taken effect.
57. In order to address such tension, termination of a business relationship may be **delayed** until such time as compliance with Article 14 of the *Money Laundering Order* does not conflict with another legal requirement, and/or does not have any prejudicial effect on the interests of other customers, so long as the risk of *money laundering* or *financing of terrorism* is effectively managed.