



**Jersey Financial  
Services Commission**

# **Consultation Paper Feedback**

## **Proposed Funds Section of the AML/CFT Handbook**

### **No.8 2016**

Feedback to a consultation on proposals to provide additional guidance on the application of AML/CFT requirements to Funds and Fund Operators (regulated and non-regulated).

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## Consultation Feedback

This paper reports on responses received by the Jersey Financial Services Commission (JFSC) in respect of Consultation Paper No. 8 2016. Further enquiries regarding the consultation and this feedback paper may be directed to the following contacts:

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## Glossary of Terms

AIF Regulations	means the Alternative Investment Funds (Jersey) Regulations 2012
AML/CFT	means anti-money laundering and countering the <i>Financing of Terrorism</i>
BB(J)L	means the Banking Business (Jersey) Law 1991
Business Risk Assessment/BRA	means the assessment of a <i>Relevant Person's</i> exposure to money laundering and <i>Financing of Terrorism</i> risk that <i>Relevant Persons</i> are required to carry out on their business pursuant to the <i>Money Laundering Order</i> at Article 11(1)(f)
CDD Measures	means customer due diligence measures as set out in Article 3 of the <i>Money Laundering Order</i>
Certified Fund	means a fund issued with a certificate pursuant to the <i>CIF(J) Law</i>
Codes of Practice (or Codes) <sup>1</sup>	means, collectively, the <ul style="list-style-type: none"> <li>• Code of Practice for Certified Funds</li> <li>• Code of Practice for Deposit-taking Business</li> <li>• Code of Practice for Fund Services Business</li> <li>• Code of Practice for General Insurance Mediation Business</li> <li>• Code of Practice for Insurance Business</li> <li>• Code of Practice for Investment Business</li> <li>• Code of Practice for Money Service Business</li> <li>• Code of Practice for Trust Company Business</li> </ul>
CIF(J) Law	means the Collective Investment Funds (Jersey) Law, 1988
Commission Law	means the Financial Services Commission (Jersey) Law 1998
Companies Law	means the Companies (Jersey) Law, 1991
Customer Risk Assessment/CRA	means the assessment of the risk that a business relationship or one-off transaction will involve money laundering or <i>Financing of Terrorism</i> , including obtaining appropriate information for assessing that risk, that <i>Relevant Persons</i> are required to carry out on their customer pursuant to the <i>Money Laundering Order</i> at Articles 13 and 3(5)

<sup>1</sup> A code of practice may be prepared and issued; or revised by the JFSC pursuant to, the *Regulatory Laws* and the *Supervisory Bodies Law* (in respect of AML/CFT requirements). The *Codes* are available from the JFSC Website:

[http://www.jerseyfsc.org/the\\_commission/codes\\_of\\_practice/index.asp](http://www.jerseyfsc.org/the_commission/codes_of_practice/index.asp)

Enhanced Customer Due Diligence Measures/EDD	means those measures described in the <i>Money Laundering Order</i> at Article 15 Enhanced Customer Due Diligence
Financing of Terrorism	means: <ul style="list-style-type: none"> <li>• conduct which is an offence under any provision of Articles 15 (use and possession etc. of property for purposes of terrorism) and 16 (dealing with terrorist property) of the Terrorism (Jersey) Law 2002; or</li> <li>• conduct outside Jersey, which, if occurring in Jersey, would be an offence under Articles 15 and 16 of the Terrorism (Jersey) Law 2002.</li> </ul>
FS(J) Law	means the Financial Services (Jersey) Law 1998
Fund Operators	means all types of entities as set out in Section 14.1 paragraph 4 of the <i>Funds Section</i> providing services to funds
Fund Services Business	means the <i>Regulated Activity</i> , involving the provision of services in relation to certain types of <i>Funds</i> , which is described in Article 2(10) of the <i>FS(J) Law</i>
Funds	means all types of funds as set out in Section 14.1 paragraph 3 of the <i>Funds Section</i>
Funds Section	means the Section 14 of the <i>AML/CFT Handbook</i> in relation to <i>Funds</i> and <i>Fund Operators</i>
Group	means a body corporate that would be defined as a “subsidiary”, “wholly-owned subsidiary” or “holding body” of another body corporate, under the <i>Companies Law</i>
IB(J)L	means the Insurance Business (Jersey) Law 1996
Jersey Finance	means Jersey Finance Limited
JFSC	means the Jersey Financial Services Commission
Main AML/CFT Handbook	means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Regulated Financial Services Business (as may be amended by the <i>JFSC</i> , from time to time) <sup>2</sup>
Money Laundering	means <ul style="list-style-type: none"> <li>• conduct that is an offence under any provision of Articles 30 (dealing with criminal property) and 31 (concealment etc of criminal property) of the Proceeds of Crime Law;</li> <li>• conduct that is an offence under Articles 34A and 34D of the Proceeds of Crime Law;</li> </ul>

<sup>2</sup> <http://www.jerseyfsc.org/anti-money-laundering/Regulated-financial-services-businesses/aml-cft-handbook.asp>

	<ul style="list-style-type: none"> <li>conduct that is an offence under Article 7 (making funds available to a terrorist), Article 8 (failure to freeze terrorist funds) and Article 10 (failing to make a disclosure to the Chief Minister's Department) of the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002;</li> <li>conduct that is an offence under Articles 13 to 17 (failing to freeze terrorist funds and making things available to a terrorist) and 19 (licencing offences) of the Terrorist Asset-Freezing (Jersey) Law 2011; or</li> <li>conduct outside Jersey, which, if occurring in Jersey, would be an offence under any of the above.</li> </ul>
Money Laundering Order	means the Money Laundering (Jersey) Order, 2008
Obligated Person	means a person referred to as the obliged person in the <i>Money Laundering Order</i> at Article 16(1)
Person	means any natural or legal person (including a body of persons corporate or unincorporated)
Proceeds of Crime Law	means the Proceeds of Crime (Jersey) Law, 1999
Regulated Activity	means activity conducted pursuant to the <i>Regulatory Laws</i> , in respect of which a <i>Person</i> must be Licensed
Regulatory Laws	means the <i>AIF Regulations</i> , the <i>BB(J)L</i> , the <i>CIF(J) Law</i> , the <i>FS(J) Law</i> , and the <i>IB(J)L</i>
Relevant Person	means a <i>Person</i> carrying on a financial services business in or from within Jersey, and a Jersey body corporate or other legal person registered in Jersey carrying on a financial services business anywhere in the world
Reliance	means the arrangements described in the <i>Money Laundering Order</i> at Article 16 Reliance on <i>Relevant Person</i> or <i>Person</i> carrying on equivalent business and Article 16A Reliance upon persons in the same financial <i>Group</i> as the <i>Relevant Person</i>
Simplified Identification Measures/SDD	means those measures described in the <i>Money Laundering Order</i> at Article 17 – Simplified Identification Measures in circumstances where the customer is a <i>Relevant Person</i> and Article 18-Simplified Customer Due Diligence Measures
Source of Funds	means activity which generates funds for a customer
Supervisory Bodies Law	means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law, 2008
Three Tier Test	means the Three Tier Test as described in footnote 13 on page 14 of the <i>Funds Section</i>

# Contents

<b>Consultation Feedback .....</b>	<b>2</b>
<b>Glossary of Terms.....</b>	<b>3</b>
<b>Contents .....</b>	<b>6</b>
<b>1 Executive Summary .....</b>	<b>7</b>
1.1 Overview.....	7
1.2 Feedback received.....	7
1.3 Next steps.....	7
<b>2 Summary of Responses .....</b>	<b>8</b>
2.1 Structure of this section .....	8
2.2 Question at Paragraph 4.2.3 of Consultation Paper No. 8 2016.....	8
2.3 Question at Paragraph 4.3.4 of Consultation Paper No. 8 2016.....	9
2.4 Question at Paragraph 4.4.3 of Consultation Paper No. 8 2016.....	11
2.5 Question at Paragraph 4.4.4 of Consultation Paper No. 8 2016.....	12
2.6 Question at Paragraph 4.5.2 of Consultation Paper No. 8 2016.....	13
2.7 Question at Paragraph 4.6.2 of Consultation Paper No. 8 2016.....	13
2.8 Question at Paragraph 4.7.2 of Consultation Paper No. 8 2016.....	14
2.9 Question at Paragraph 4.8.2 of Consultation Paper No. 8 2016.....	14
2.10 Question at Paragraph 4.9.2 of Consultation Paper No. 8 2016.....	15
2.11 Question at Paragraph 4.10.2 of Consultation Paper No. 8 2016.....	16
2.12 Question at Paragraph 4.11.1 of Consultation Paper No. 8 2016.....	16
2.13 Any additional points not already dealt with in other responses.....	18
<b>Appendix A .....</b>	<b>19</b>
<b>Appendix B.....</b>	<b>20</b>

# 1 Executive Summary

## 1.1 Overview

- 1.1.1 In September 2016, the *JFSC* issued Consultation Paper No. 8 2016: on proposals to provide additional guidance on the application of *AML/CFT* requirements to *Funds* and *Fund Operators* (regulated and non-regulated) (the *Consultation Paper*).
- 1.1.2 The *Funds Section* will be applicable to all *Relevant Persons* and supplements the guidance in the handbooks for :
  - 1.1.2.1 Financial Services Business Regulated under the *Regulatory Laws* (the “*Main AML/ CFT Handbook*”)
  - 1.1.2.2 The Accountancy Sector
  - 1.1.2.3 The Legal Sector
  - 1.1.2.4 Estate Agents and High Value Dealers
- 1.1.3 The purpose of this paper is to provide feedback on the responses received to the *Consultation Paper*.

## 1.2 Feedback received

- 1.2.1 The consultation period closed on 25 November 2016. The *JFSC* received 10 responses directly and *Jersey Finance* received 6 responses. In total 16 responses were received.
- 1.2.2 Section 2 of this Feedback Paper presents a summary of the substantive comments received and the *JFSC*’s response, as appropriate, to each.
- 1.2.3 The *JFSC* is grateful to respondents for taking the time to consider and comment on the proposals. A full list of respondents is provided in Appendix A.

## 1.3 Next steps

- 1.3.1 The *JFSC* intend to publish the proposed additional guidance, with amendments as set out in this Feedback Paper, as a new chapter of Section 14 of the *Main AML/CFT Handbook*. A copy of the amended *Funds Section* is provided in Appendix B.
- 1.3.2 Amendments will be made in relation to the other three *AML/CFT* Handbooks to indicate that reference must be made to the *Funds Section* of the *Main AML/CFT Handbook* for Financial Services Business Regulated under the *Regulatory Laws*. The Four *AML/CFT* Handbooks can be accessed on the *JFSC*’s website.

## 2 Summary of Responses

### 2.1 Structure of this section

- 2.1.1 This section summarises the substantive comments received in response to the Consultation Paper. While not every comment received is individually listed, this section contains summaries of the most commonly made and pertinent comments in relation to each question posed and, as appropriate, the JFSC's response to those comments.
- 2.1.2 Paragraph references in this section are to the guidance as published, rather than the guidance as consulted upon, for ease of understanding.

### 2.2 Question at Paragraph 4.2.3 of Consultation Paper No. 8 2016

Do you consider the guidance provided in Section 14.1, in particular the explanations and diagrams setting out the Funds and the Fund Operators subject to existing statutory obligations, are clear? If not, please state in detail what your observation or concern is and explain the reason for it.

- 2.2.1 The majority of respondents considered the guidance in Section 14.1 on the Scope of the *Funds Section* to be clear.
- 2.2.2 Two respondents made observations regarding the jurisdiction of the *Fund* and *Fund Operator* and how this might impact on AML/CFT requirements. One respondent requested guidance on the applicability of Jersey AML/CFT requirements to Non-Domiciled Funds. Another respondent suggested that consideration be given that *Fund Operators* may be applying Jersey AML/CFT requirements while the Non-Domiciled Fund might be applying the AML/CFT requirements of another jurisdiction and vice versa.
- 2.2.3 Clarification was sought by one respondent of how the *Funds Section* applies to Alternative Investment Funds.
- 2.2.4 Two respondents suggested the inclusion of "Registrar" and "Promoter" in the diagram at paragraph 6 of the *Funds Section*.
- 2.2.5 It was suggested by another respondent that the *Funds Section* could provide a summary of the exemptions for *Funds* and *Fund Operators* set out in the *Proceeds of Crime Law*.

#### JFSC Response

- 2.2.6 In relation to paragraph 2.2.2, the JFSC has made some amendments to paragraph 14.1 of the *Funds Section* regarding Non Domiciled Funds and where *Funds/Fund Operators* in different jurisdictions may be subject to AML/CFT obligations of that jurisdiction.
- 2.2.7 No amendment to the *Funds Section* is required to accommodate the AIFMD regime. The AIFMD regime that applies to Alternative Investment Funds (as referred to in paragraph 2.2.3) is an overlay on the existing Jersey funds regime. Jersey AML/CFT requirements apply to all *Funds* and *Fund Operators* that are *Relevant Persons*.



2.2.8	As per the suggestion in paragraph 2.2.4 above Registrar has been added to the diagram but not the Promoter. The Promoter may be providing services as a Manager or an Investment Adviser but unless the Promoter continues to provide services to the <i>Fund</i> post establishment it will not be a <i>Fund Operator</i> .
2.2.9	In relation to the request at paragraph 2.2.5 a summary of existing exemptions are set out at Part 4: Section 1 of the <i>Main AML/CFT Handbook</i> . Also please note that the JFSC is reviewing exemptions as part of the Moneyval follow up work.

## 2.3 Question at Paragraph 4.3.4 of Consultation Paper No. 8 2016

Do you consider the guidance provided in Section 14.2, in particular the risk factors to consider and potential risk indicators, is clear? If not, please identify which guidance (by paragraph) and explain why?

- 2.3.1 The comments received in relation to Section 14.2 on *AML/CFT* risk assessments can mainly be divided into those on the risk factors and those on consolidation of risk assessments:

### Risk Factors

- 2.3.2 Three respondents expressed concern that the risk factors outlined were too wide and two of those considered them burdensome. Two respondents commented the risk factors related to the risk of any perceived financial crime rather than the risk of *Money Laundering* and *Financing Of Terrorism*.
- 2.3.3 Wording was proposed by two respondents to make clear that the risk factors were suggestions and that the *Relevant Persons* only need to consider those relevant to them. Three respondents suggested that there was a risk that the list would be seen as mandatory. One respondent commented it could become a rigid template with each *Relevant Person* being forced to address and discount each risk. While another respondent suggested the JFSC provide a template of minimum considerations for *Business Risk Assessments (BRA)*.
- 2.3.4 One respondent suggested different areas of focus of the risk factors such as
- 2.3.4.1 ability of investors to get early return of investment proceeds;
  - 2.3.4.2 whether in specie redemptions are allowed;
  - 2.3.4.3 whether third party payments are permitted;
  - 2.3.4.4 how distribution of securities is organised; and
  - 2.3.4.5 controls on the raising of monies and distribution of securities to ensure all monies are devoted to legitimate investment activity.
- 2.3.5 A comment was also made that some of these factors should be in the *Customer Risk Assessment (CRA)*.
- 2.3.6 One respondent suggested that the risk considerations required a knowledge of fund investors that does not exist in practice.
- 2.3.7 Clarification was also requested regarding the requirement of a private fund to have its own *Business Risk Assessment* when it is not in the scope of the *FS(J) Law*.

### Consolidation of Risk Assessments

- 2.3.8 Three respondents queried whether risk assessments could be consolidated citing the following scenarios:

- 2.3.8.1 Manager *CRA* on more than one *Fund* (including those with managed entity SPV governing body, particularly those with the same promoter)
- 2.3.8.2 *CRA* of Managed Entity and *CRA* of MoME each on the same *Fund*.
- 2.3.8.3 *CRA* on each investor
- 2.3.8.4 *CRA* and *BRA* of a *Fund*
- 2.3.9 One respondent queried whether a Managed Entity (adopting the policy and procedures of its MoME) and its MoME would need to undertake separate *Customer Risk Assessments* and suggested that they would be identical.

#### JFSC Response

##### Risk Factors

- 2.3.10 In relation to the comments at paragraph 2.3.2, the *JFSC* agrees that the list of risk factors is wider than many industry participants may have previously considered. However, in the *JFSC*'s view they are all potentially relevant to assist a *Relevant Person* to understand the *Money Laundering or financing of terrorism* risk that may be presented by the nature, scale and complexity of its business, the characteristics of the products and services that it offers, and the accumulation of those risks. It is important to emphasise that these are not mandatory, as they will not always be relevant in every case. They are intended to be useful prompts to encourage *Funds* and *Fund Operators* to think more widely than simply the risk presented by customers/investors.
- 2.3.11 In relation to the points set out in paragraphs 2.3.3, the Guidance at paragraphs 20-22 of the *Funds Section* make it clear that the risk factors are "potential" and the list is not exhaustive. It is not intended to become a template. It is intended to be indicative of how wide the consideration of the *Relevant Person* should be. *AML/CFT* risk is subjective therefore it is not possible or appropriate for the *JFSC* to provide a template.
- 2.3.12 In relation to the points set out at paragraph 2.3.4, the *JFSC* considers that the focus on the risk of a fund structure being used for *AML/CFT* should not solely be on ensuring investments are devoted to legitimate investment activity.
- 2.3.13 As a result of the comments made in paragraphs 2.3.2, 2.3.3 and 2.3.4 wording in paragraphs 20 and 21 and the risk factors in paragraphs 22-29 have been reviewed and where appropriate amended.
- 2.3.14 In relation to the comment in paragraph 2.3.5 the Guidance at paragraph 14 of the *Funds Section* makes it clear that factors in the *Fund's Business Risk Assessment* may also need to be considered in relation to the *Fund's Customer Risk Assessment*.
- 2.3.15 In relation to the comments in paragraph 2.3.6, the more complex the structure - the more information may need to be gathered in order to fully understand the *AML/CFT* risk. The *JFSC* acknowledges that this may be complicated and/or expensive, but each *Relevant Person* is required to take a risk based approach. The guidance in this section is intended to apply to private funds with a small number of investors and to large funds with hundreds of investors and the CDD required in each case will differ.

- 2.3.16 In relation to the clarification requested in paragraph 2.3.7, not all *Funds* and *Fund Operators* to whom the *Funds Section* applies, as set out in the scope section of the *Funds Section*, will be regulated and subject to the regulatory *Codes*. The requirement for every *Relevant Person* (regulated or not) to conduct a *Business Risk Assessment* and *Customer Risk Assessment* is pursuant to an existing statutory requirement in the *Money Laundering Order*. The *JFSC* does not intend to amend the guidance on scope.

#### Consolidation of Risk Assessments

- 2.3.17 The *JFSC* has given no guidance on consolidation of risk assessments save in relation to SPV governing bodies at Section 14.2.4. In paragraph 2.3.8 above the *JFSC* is asked to clarify if other risk assessments can be consolidated. In the *Funds Section* at 14.2.1 the statutory obligation to conduct risk assessments was reiterated. These risk assessments must be documented. How they are documented are a matter for the *Relevant Person*. The *JFSC* does not intend to provide general guidance encouraging the consolidation of risk assessments for the following reasons:
- 2.3.17.1 If the *Fund/Fund Operator* moves service providers it may be difficult to take their *BRA* and *CRA*'s with them if they are consolidated.
- 2.3.17.2 There is a heightened risk that a standardised consolidated risk assessment may not demonstrate that the specific risks to the customer/business have been properly considered.
- 2.3.18 In relation to the point at paragraph 2.3.9, the *CRA*'s would not be identical because the Managed Entity and the MoME have different customers. The customer of the Managed Entity is the *Fund* and the customer of the MoME is the Managed Entity. If risks have been adequately assessed on a subjective basis it is unlikely that the risk assessment of a managed entity and a MoME of the same fund will be identical. For example the MoME is conducting its assessment on the basis that it is a full presence entity with many staff and executive directors whereas a Managed Entity may have different non-executive directors and no staff.

## 2.4 Question at Paragraph 4.4.3 of Consultation Paper No. 8 2016

Do you consider the guidance provided in Section 14.3 of the *Funds Section* to be clear? If not, please identify which guidance (by paragraph) and explain why?

- 2.4.1 The majority of respondents considered the guidance on Customer Identification Measures in Section 14.3 to be clear.
- 2.4.2 Further guidance was requested in relation to the 3 tier test particularly by two respondents in relation to corporate nominee arrangements.
- 2.4.3 One respondent suggested clarification was required regarding the need to establish ownership of a customer even where the owners did not exercise control.
- 2.4.4 One respondent requested more complex examples than the one in paragraph 74 Section 14.3.6 of the *Funds Section* and the same respondent also requested further guidance on unit trusts. Another respondent wanted guidance on foundations and other legal arrangements included.
- 2.4.5 Two respondents thought that the minimum information requested on layers of the fund structure that is a low risk structure at paragraph 84 was too onerous.

2.4.6 Standardisation of *Source of Funds* requirements was sought by three respondents.

#### JFSC Response

- 2.4.7 In relation to the point at paragraph 2.4.2, the *JFSC* considers the guidance in the *Funds Section* read in conjunction with the *Main AML/CFT Handbook* to be clear. The use of nominees where the nominee is named in the unit register means they will be the customer as would a trustee acting on behalf of a trust. Therefore, whether XYZ Ltd holds an interest in its own capacity or XYZ Ltd is acting as nominee for Mr A, it will be treated the same ; with XYZ Ltd as the customer. It is worth noting that nominees may not always be regulated and so it may not always be possible, particularly in a higher risk scenario, to apply simplified due diligence. The controller and beneficial owners of the customer and any third parties for whom it acts and their controllers and beneficial owners will need to be ascertained using the *Three Tier Test* (see paragraph 88 of the *Funds Section*).
- 2.4.8 In relation to the comment at 2.4.3, the *JFSC's* view is that the guidance is sufficiently clear in this area.
- 2.4.9 In relation to the comment at 2.4.4, guidance provided is, by necessity, of a generally applicable nature and cannot extend to every potential circumstance and structure. The guidance provided established principles that *Relevant Persons* should apply to their own circumstances.
- 2.4.10 In relation to the point at paragraph 2.4.5, the *JFSC's* view is that the information outlined in paragraph 84 of the *Funds Section* is not too onerous and is necessary in order to sufficiently understand the ownership and control of the structure.
- 2.4.11 Some comments in this section requested guidance where guidance already appears in the *Main AML/CFT Handbook* such as in relation to verification of a trust, see Sections 4.4.2 and 13 and *Source of Funds*, see Section 3.3.3. In relation to the request in paragraph 2.4.6, the information required for *Source of Funds* cannot be standardised as it will be based on the *Relevant Person's* risk assessment.

## 2.5 Question at Paragraph 4.4.4 of Consultation Paper No. 8 2016

Are there any additional areas of CDD Measures in relation to Funds or Fund Operators where guidance would be helpful? If yes, please detail those areas providing illustrative examples if possible.

- 2.5.1 Only three respondents felt additional guidance on *CDD Measures* was needed.
- 2.5.2 One respondent reiterated the request for guidance on CDD in relation to Unit Trusts. Two respondents requested more guidance on passive investors from a fund and *Fund Operator* perspective and the interaction with 25% for *Source of Funds* and material interests.
- 2.5.3 Another respondent sought clarification in relation to *SDD measures* and ownership of CDD documentation (as some administrators refuse to pass it on) and whether a transfer to a new *Fund Operator* triggered a review and refresh of CDD.
- 2.5.4 Two respondents sought more standardisation for passive investors one wanting common standards and the other wanting guidance on the approach for different risk levels.

### JFSC Response

- 2.5.5 In relation to the comments at 2.5.2, the *JFSC* does not, at present, intend providing any more specific guidance in these areas as the guidance in the *Main AML/CFT Handbook* and the *Funds Section* is clear.
- 2.5.6 Regarding ownership of CDD referred to in paragraph 2.5.3, every *Relevant Person* must meet its *AML/CFT* obligations. The *JFSC* has highlighted that ownership of the CDD information and evidence may be an issue. However, the question of who owns it and the rights to access it will be attributable to the contracts constituting the Fund. As indicated in the guidance, early consideration will need to be given to ensuring that a Fund or *Fund Operator* that moves service providers is able to do so and still meet its *AML/CFT* obligations; noting that the *JFSC* may wish to review historic *AML/CFT* records. If the Fund does move *Fund Operator* then the new *Fund Operator* should apply the same measures as taking on a book of business - see the *Main AML/CFT Handbook* Part 1: Section 3, paragraph 3.5.
- 2.5.7 In relation to the request for standardisation in paragraph 2.5.4, the application of *AML/CFT* measures is risk based and the creation of templates and tick box standards is not possible or desirable.

## 2.6 Question at Paragraph 4.5.2 of Consultation Paper No. 8 2016

Do you consider the guidance provided in Section 14.4 of the Funds Section to be clear? If not, please identify which guidance (by paragraph) and explain why?

- 2.6.1 All respondents who responded to this question regarding timing of identification measures found Section 14.4 clear. Two respondents sought clarification regarding time limits for deferred verification. One indicated that there were legitimate cases of waiting weeks or months and another wanted a set timeline such as 30 days.

### JFSC Response

- 2.6.2 In relation to the points made at paragraph 2.6.1, the basic obligation is that ID measures must be completed before taking on a customer. Deferred verification should be on an exception basis and the timeline for deferred verification should depend on the circumstances of each particular case and how the associated risk is managed. The *JFSC* does not propose to provide generic guidance on timelines for risk-based deferred verification.

## 2.7 Question at Paragraph 4.6.2 of Consultation Paper No. 8 2016

Do you consider the guidance provided in Section 14.5 of the Funds Section to be clear? If not, please identify which guidance and explain why?

- 2.7.1 The majority of respondents found the guidance on failure to complete identification measures clear.
- 2.7.2 One respondent commented that the industry should adopt a consistent approach that investors should not be admitted if the CDD is insufficient until such time as it is.
- 2.7.3 Another suggested practical guidance when this scenario arises could be given for example the holding off of payment of distributions.

- 2.7.4 A risk one respondent raised is that obligations pursuant to the regulatory *Codes* and the fund governing documents may conflict with new *AML/CFT* requirements.

#### JFSC Response

- 2.7.5 In relation to the point made at paragraph 2.7.2 investors should not be admitted if the CDD is insufficient. However, there are provisions for deferred verification in circumstances where there is a low risk of *AML/CFT* as set out in Section 14.4 of the *Funds Section*.
- 2.7.6 Regarding the request for guidance on measures to take where the relationship with investors needs to be terminated but where this is not achievable immediately, given the bespoke nature of *AML/CFT* issues and these scenarios arising the *JFSC* does not feel it is either possible or appropriate to provide standardised measures to apply.
- 2.7.7 The *JFSC* is not aware of any circumstances where the scenario described in paragraph 2.7.4 would arise. In addition, it should be noted that the *Funds Section* does not introduce any new *AML/CFT* requirements.

## 2.8 Question at Paragraph 4.7.2 of Consultation Paper No. 8 2016

Do you consider the guidance provided in Section 14.6 of the *Funds Section* to be clear? If not, please identify which guidance (by paragraph) and explain why?

- 2.8.1 All responses save one indicated the guidance on updating identification information was clear.
- 2.8.2 The only comment was that, if distributions are to be trigger events, then reviewing CDD for frequent distributions could be onerous. It was suggested that there be a periodic review with CDD status being checked at each distribution.

#### JFSC Response

- 2.8.3 In relation to the point made at paragraph 2.8.2, the *Funds Section* paragraphs 99 and 100 refer to a scheduled pattern of reviews in addition to those upon trigger events.

## 2.9 Question at Paragraph 4.8.2 of Consultation Paper No. 8 2016

Do you consider the guidance provided in Section 14.7 of the *Funds Section* to be clear? If not, please identify which guidance (by paragraph) and explain why?

- 2.9.1 Four respondents requested further guidance while the majority felt the guidance regarding ongoing monitoring was clear.
- 2.9.2 Three respondents wanted clarification of what was meant by “expected target investments” and “expected target investors”. One respondent perceived this requirement to involve the *Relevant Person* undertaking CDD at an early stage and potentially twice.
- 2.9.3 Additional guidance on the *JFSC*’s expectations regarding ongoing monitoring was requested by two respondents.

### JFSC Response

- 2.9.4 In relation to the query on expectations in paragraph 2.9.2, in a fund offer document there is normally some indication of the geographic location of investments/investors, the type of investments and the target investors. The guidance has been amended at paragraph 101 of the *Funds Section* to make it clear it is generic target profiles that it refers to.
- 2.9.5 In relation to the point in paragraph 2.9.3, guidance regarding ongoing monitoring is included within Part 1: Section 6 of the *Main AML/CFT Handbook*. This makes it clear that the frequency and nature of ongoing monitoring will be bespoke to each Fund/*Fund Operator* and will be based on its risk assessment.

## 2.10 Question at Paragraph 4.9.2 of Consultation Paper No. 8 2016

Do you consider the guidance provided in Section 14.8 of the *Funds Section* to be clear? If not, please identify which guidance (by paragraph) and explain why?

- 2.10.1 Five out of the eleven respondents who answered the question sought further guidance on the collation of customer due diligence. Two respondents requested clarification of the applicability of the outsourcing policy.
- 2.10.2 Two others raised queries regarding *SDD*. Briefly these were:
- 2.10.2.1 What level of documentation was required in relation to *SDD* – suggesting that a risk assessment could be “... achieved through noting down the relevant considerations as part of client take on documents and... a separate document considering these risks would not be required”.
- 2.10.2.2 What approval is required to authorise *SDD*. i.e. Board of *Fund*, the Manager, the *Fund Operator* or a combination?
- 2.10.2.3 How are material interests notified where *SDD* measures are applied and pre-transaction ownership percentages will not be ascertained?
- 2.10.3 Another respondent observed that *SDD* and *Reliance* are the norm (despite the fact Moneyval view their use as exceptional) so should appear at the front of the guidance. The same respondent observed where *SDD* is applied, *Funds* in some cases will have “very little information available on underlying third party beneficial owners”.

### JFSC Response

- 2.10.4 In relation to the query in paragraph 2.10.1 about the applicability of the JFSC’s Outsourcing Policy, whether *AML/CFT* outsourcing is subject to the JFSC’s Outsourcing Policy will depend on the regulatory status of the *Relevant Person* and the *Relevant Person* undertaking its own subjective assessment of whether it is subject to the Policy. Please note that footnote 15 of the *Funds Section* has been amended to make it clear that “...the *Money Laundering Order* is described in that Policy as imposing additional legal or regulatory requirements which must still be complied with.”
- 2.10.5 In relation to the points made at paragraph 2.10.2
- 2.10.5.1 Documentation should always be sufficient to evidence the thought process and actions taken. Whether making notes on or as part of client take on documents, what will be adequate must be



	determined on a case by case basis. This is consistent with the guidance in the <i>Funds Section</i> paragraph 41.
2.10.5.2	The sign off on the risk assessments for <i>SDD</i> will depend on the policies and procedures adopted by each <i>Relevant Person</i> and how the powers of the board have been delegated/outsourced.
2.10.5.3	CDD is not static. It is an ongoing obligation. Where % holdings of underlying investors via a nominee are only ascertained post transaction the <i>Fund</i> must follow up accordingly. See guidance in the <i>Main AML/CFT Handbook</i> Part 1: Section 7.13, in particular paragraphs 80 and 81 and Section 7.14, in particular paragraphs 120 - 123.
2.10.6	The suggestion in paragraph 2.10.3 that the <i>Funds Section</i> be reordered to put <i>Reliance</i> and <i>SDD</i> first to reflect the fact that these are the norm will not be adopted. The <i>Funds Section</i> is effectively structured in two parts i) the statutory obligations of <i>Relevant Persons</i> and ii) how to avoid duplication (Section 14.8 of the <i>Funds Section</i> -Collation of customer due diligence). The <i>JFSC</i> understand that because of the complexity of <i>Fund</i> structures, mechanisms to avoid duplication will often be used - such as <i>SDD</i> , <i>Reliance</i> and outsourcing in appropriate circumstances. It should be noted, however, that this does not remove the <i>Relevant Person's</i> statutory obligations. A <i>Fund</i> with "very little information available on underlying third party beneficial owners" may, depending on the circumstances, be failing to comply with its <i>AML/CFT</i> obligations.

## 2.11 Question at Paragraph 4.10.2 of Consultation Paper No. 8 2016

Do you consider the guidance provided in Section 14.9 of the *Funds Section* to be clear? If not, please identify which guidance (by paragraph) and explain why?

- 2.11.1 All 10 respondents who answered this question indicated the guidance on enhanced due diligence was clear.
- 2.11.2 One respondent commented that as "...the majority of investors in *Funds* will be non-Jersey resident; the requirement to apply *EDD* on the majority of investors could be onerous and does not correlate to the approach of other regulatory jurisdictions". The same respondent and one other sought additional guidance on the *JFSC's* expectations and a further respondent requested industry specific training.

### JFSC Response

- 2.11.3 In relation to the points raised in paragraph 2.11.2, *EDD* on non-Jersey residents is an existing requirement of the *Money Laundering Order* and is mandatory, in line with international standards. More detailed guidance on *EDD* is contained in Part 1: Section 7 of the *Main AML/CFT Handbook*.

## 2.12 Question at Paragraph 4.11.1 of Consultation Paper No. 8 2016

Are there additional areas where guidance would be beneficial in relation to *AML/CFT* for *Funds* and *Fund Operators*? If yes, please detail those areas providing illustrative examples if possible?

- 2.12.1 Five out of the 16 respondents requested further guidance.



- 2.12.2 One respondent requested more detail regarding the appointment of MLCO, and MLRO for private/CoBO funds and unregulated funds.
- 2.12.3 Another requested clarification of the scope of the section beyond entities not within the *FS(J) Law* as TCB's may not look to the *Funds Section*.
- 2.12.4 Further training was requested by two respondents with one requesting workshops on the *Three Tier Test*. One of these respondents also requested training in their responses to questions 4.8.2, 4.9.2 and 4.10.2.
- 2.12.5 One respondent felt insufficient guidance was given in relation to listed funds, particularly noting that *SDD* only applied where the listed fund is the customer and queried what actions should be taken in relation to the investors in the listed fund.
- 2.12.6 Two respondents suggested some lower risk factors that could be included.
- 2.12.7 Also included in this section were some miscellaneous requests for specific clarification.
  - 2.12.7.1 CDD requirements in respect of CREST,
  - 2.12.7.2 Guidance on FINRA and SEC equivalence,
  - 2.12.7.3 Guidance on *JFSC's* expectations for Swiss based clients subject to Swiss Secrecy Laws,
  - 2.12.7.4 Guidance where US entities/individuals are reluctant to provide verification documentation such as passports and driving licences.

#### JFSC Response

- 2.12.8 In relation to the request for clarification in paragraph 2.12.2, the *Money Laundering Order* requires every *Relevant Person* (other than a sole trader) to appoint an MLRO (Article 8(1)) and an MLCO (Article 7(1)). This is a clear statutory provision and the *JFSC* does not consider that further guidance is required.
- 2.12.9 Regarding the observation made in paragraph 2.12.3, the TCB section of the *Main AML/CFT Handbook* will be amended to refer to the *Funds Section* and references on the website to the three other *AML/CFT Handbooks* will be amended to refer to guidance in the *Funds Section* of the *Main AML/CFT Handbook*.
- 2.12.10 The Training requests in paragraph 2.12.4 and in other responses are noted and training will be given on the *Funds Section* after publication.
- 2.12.11 In relation to the points made in paragraph 2.12.5, paragraph 112 in Section 14.8.1 of the *Funds Section* has been inserted to provide guidance as to what constitutes an IOSCO compliant or regulated market. As noted by the respondent, Article 18 (6A) does only apply to a customer. *CDD Measures* to be applied to investors depend on whether Article 17 may be applied.
- 2.12.12 In relation to the requests for lower risk factors in paragraph 2.12.6, the *JFSC* at present does not intend to include lower risk factors in guidance. Primarily, this is because, having considered the potential complexity of *Funds* and the interaction of multiple factors in determining an entities risk rating, lower risk factors may be given undue emphasis in a risk assessment.
- 2.12.13 In relation to the points at paragraph 2.12.7:

- |           |  |
|-----------|--|
| 2.12.13.1 | The assessment of the status of CREST, FINRA and SEC is a matter for the <i>Relevant Person</i> to assess and consider. The <i>JFSC</i> does not publish or maintain lists of this nature.   |
| 2.12.13.2 | A <i>Relevant Person</i> is required to apply <i>CDD Measures</i> regardless of the jurisdiction (i.e. US or Switzerland) of the customer or third parties. Adequate CDD must be obtained and the <i>Relevant Person</i> must determine alternative methods to meet its <i>AML/CFT</i> obligations or must decline to act if it is unable to complete identification measures. |

## 2.13 Any additional points not already dealt with in other responses

- 2.13.1 One respondent noted that the *JFSC* expects to issue the Section in Q1 2017 and whether there was to be an implementation phase?
- 2.13.2 Two respondents raised issues regarding *SDD*:
- 2.13.2.1 One respondent wanted to remove the difference between the application of *SDD* by legal persons and legal arrangements.
- 2.13.2.2 Another respondent commented that *SDD* measures can only be applied to immediate customers and third parties and asked about scenarios where the regulated entities/listed entities are a number of layers back in the investor holding structure.

### JFSC Response

- 2.13.3 In relation to the timing of when the *Funds Section* will become effective raised in paragraph 2.13.1, there are no new codes in the *Funds Section*. The statutory requirements exist and have not changed and *Funds* and *Fund Operators* should be meeting *AML/CFT* requirements. As such, there is no implementation phase.
- 2.13.4 In relation to the points in paragraph 2.13.2 *SDD* is not a funds-specific issue and the review of the *SDD* regime, being set in the legal framework, is outside the scope of the guidance. However, the *JFSC* is aware of these issues and the legal framework is constantly reviewed in order to ensure a practical implementation of international standards.

## Appendix A

### List of Respondents

**A total of 16 responses were received of which 10 were direct to the JFSC:**

- › Of the direct respondents, 4 either wished not to be identified or did not give consent to be identified, these were:
  - › 1 Law Firm
  - › 1 Fund Administrator
  - › 2 Banks.
- › The 6 other direct respondents were
  - › Aztec Financial Services (Jersey) Limited
  - › EFG Fund Services
  - › Simon Howard-Howard Law
  - › JTC Fund Solutions (Jersey) Limited
  - › Nordic Capital Limited
  - › R&H Fund Services (Jersey) Limited

**Jersey Finance provided 6 anonymous responses from:**

- › 1 individual with 37 years funds experience
- › a Non-Executive Director
- › 2 Fund Administrators
- › a group of Compliance Officers
- › a Lawyer.

## Appendix B

### Funds Section

## 14. FUNDS AND FUND OPERATORS

Please Note:

- › This section contains references to Jersey legislation which may be accessed through the *Commission* website by [clicking here](#).
- › Where terms appear in the Glossary this is highlighted by the use of italic text. The Glossary is available from the *Commission* Website by [clicking here](#).

### 14.1 Overview of section- scope

1. This section must be read in conjunction with, and is supplemental to the other sections of the *AML/CFT Handbook*<sup>1</sup>. All references to Articles are to Articles of the *Money Laundering Order* unless otherwise stated.
2. The purpose of this section is to assist with the application of customer due diligence, the conduct of Risk Assessments and additional *AML/CFT* requirements by funds and fund operators. The definition of *financial services business* in the *Proceeds of Crime Law* means that both regulated and prudentially supervised funds and fund operators are subject to the same statutory requirements in the *Money Laundering Order* as unregulated funds and fund operators. To be clear this section applies to funds and fund operators as set out below:
3. **Funds**

Type of Fund <sup>2</sup>	Proceeds of Crime Law Schedule 2
Recognized funds under the <i>CIF(J) Law</i>	Part A paragraph 3(1)(b)
Unclassified funds (not just Jersey Certified Funds but also non domiciled funds that are <i>relevant persons</i> ) under the <i>CIF(J) Law</i>	Part A paragraph 3(1)(c)
Unregulated funds under the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008	Part B paragraph 6
CoBO funds (meaning CoBO-Only funds, Private Placement Funds ( <b>PPFs</b> ), Jersey Private Funds and very private funds) all under the Control of Borrowing (Jersey) Order 1958 ( <b>CoBO</b> ) (not just Jersey CoBO funds but also non domiciled funds that are <i>relevant persons</i> )	Part B paragraphs 7(1)(h) and (n)

For the purposes of the above table and this section:

<sup>1</sup> All Guidance applies to *relevant persons* whether they are regulated or not as per Part 1: Section 1.3, particularly paragraph 27.

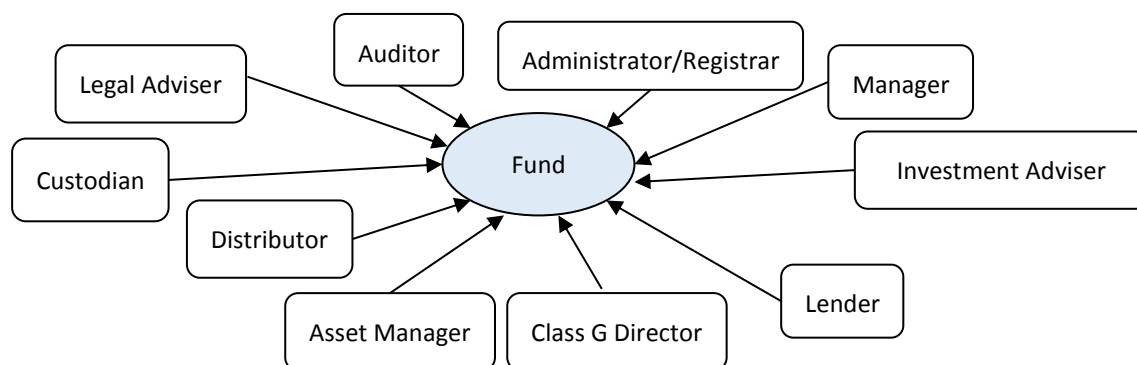
<sup>2</sup> There are no statutory exemptions for Funds, except (and subject to certain requirements) a non-domiciled company that is a Collective Investment Fund. See the *AML/CFT Handbook* [Part 4 Section 1 Proceeds of Crime Schedule 2](#)

- › References to a Fund include all sub funds and constituent parts of the Fund, e.g., those constituent parts of a fund referred to in a Certificate issued to the Jersey Certified Fund.
- › An example of a non-domiciled public fund that will be issued with a Certified Fund certificate and that is also a *relevant person* is a non-Jersey company with an established place of business in Jersey.

#### 4. Fund Operators

Type of Fund Operator <sup>3</sup>	Proceeds of Crime Law Schedule 2
Functionary of recognized fund under the <i>CIF(J) Law</i>	Part A paragraph 3(1)(a)
Fund Services Business under the <i>FS(J) Law</i>	Part A paragraph 4
Those providing services related to CoBO funds (meaning CoBO-Only funds, PPFs), Jersey Private Funds and very private funds)	Part A paragraph 4 – such as carrying on: <ul style="list-style-type: none"> <li>› trust company business i.e. acting as partner/trustee or providing a director</li> <li>› investment business</li> </ul> Part B paragraphs 7(1)(h), (k), (l), (m) or (n)
Guidance will also be relevant for other entities providing services to a fund that fall within the activities listed in Schedule 2. See paragraph 6 below.	

5. Every *relevant person* has obligations pursuant to the *Money Laundering Order*. Where there are a number of different Fund Operators involved in a Fund structure their respective *CDD* obligations and subsequent *CDD* measures applied may differ. The differences may be attributable to different roles, risk appetites and risk assessments, which will determine how they fulfil their *AML/CFT* obligations.
6. The reference to *financial services businesses* in the *Proceeds of Crime Law* means *relevant persons* under the *Money Laundering Order* includes more entities than those entities defined as financial service businesses in the *FS(J) Law*. Fund Operators can include all those entities and activities listed in Schedule 2 Part A and Part B of the *Proceeds of Crime Law*. The diagram below shows an example of some of the entities (there are others) that may be *relevant persons* with the Fund as their customer:



<sup>3</sup> There are some statutory exemptions for activities that would otherwise be *Fund Operators*. See the AML/CFT Handbook [Part 4 Section 1 Proceeds of Crime Schedule 2](#)

7. Natural Persons such as Class G Directors regulated under the *FS(J) Law* are *relevant persons* and will also have *AML/CFT* obligations. The *Commission* has produced the guidance note “Natural Persons carrying on a Single Class of Trust Company Business”<sup>4</sup>.
8. An entity that is a Managed Entity<sup>5</sup> has the same *AML/CFT* obligations as any other Fund Operator.
9. Funds and Fund Operators may have different *AML/CFT* obligations. For example, any one of the Fund Operators in the diagram above may be neither a Jersey body corporate nor carrying on business in or from within Jersey and so will not be a *relevant person* and will not be subject to Jersey *AML/CFT* obligations. A Fund and/or Fund Operator that is not a *relevant person* may have *AML/CFT* obligations in another jurisdiction. A Non Jersey Fund Operator that is not subject to Jersey *AML/CFT* obligations may act for a Jersey Fund, such as a Jersey Fund Company, that does have Jersey *AML/CFT* obligations.

## 14.2 AML/CFT risk assessments

### 14.2.1 Overview: obligation to conduct risk assessments

**Note:** This section must be read in conjunction with, and is supplemental to Part 1: Section 2.3 of the *AML/CFT Handbook* regarding Business Risk Assessments and Part 1: Section 3.3.2 regarding Customer Risk Assessments.

10. A *relevant person* (see table below for example) must prepare an assessment of its exposure to *money laundering* and *financing of terrorism* risk – “the *Business Risk Assessment*” (*BRA*) and an assessment of the risk that a business relationship or one-off transaction will involve *money laundering* or *financing of terrorism* risk – “the *Customer Risk Assessment*” (*CRA*) for each of its customers. References to *CRA* and *BRA* in this section are to those prepared to meet *AML/CFT* obligations. It is important to make the distinction between a *BRA* and a *CRA* as they are separate statutory requirements. For example:

relevant person	BRA <sup>6</sup>	CRA <sup>7</sup>
Administrator	Administrator’s Business	Funds for which the administrator acts
Fund	Fund itself	Investors

11. All the *financial services businesses* defined by the *Proceeds of Crime Law* that are *relevant persons* under the *Money Laundering Order* must conduct a *BRA* and individual *CRA*s. Where

<sup>4</sup> Available from the *Commission* website at:  
[http://www.jerseyfsc.org/the\\_commission/general\\_information/policy\\_statements\\_and\\_guidance\\_notes/index.asp](http://www.jerseyfsc.org/the_commission/general_information/policy_statements_and_guidance_notes/index.asp)

<sup>5</sup> Means an entity that is managed by a Manager of a Managed Entity with class ZK of Fund Services Business as described in Guidance Note for a Manager of a Managed Entity (a “MoME”) and Certain Managed Entities (as may be amended by the *Commission*, from time to time).  
[http://www.jerseyfsc.org/the\\_commission/general\\_information/policy\\_statements\\_and\\_guidance\\_notes/index.asp](http://www.jerseyfsc.org/the_commission/general_information/policy_statements_and_guidance_notes/index.asp)

<sup>6</sup> Article 11(1)(f) of the *Money Laundering Order*. (Handbook Part 1: Section 2.3: Corporate Governance).

<sup>7</sup> Articles 13 and 3(5) of the *Money Laundering Order*. (Handbook Part 1: Section 3.3.2 Identification Measures).

the conducting of a *BRA/CRA* is outsourced to an external party, the *relevant person* must take adequate steps to ensure the *BRA* and *CRA* are properly conducted and documented.

#### Guidance Notes

12. For Fund Operators who are subject to a relevant regulatory code of practice<sup>8</sup> there is also an obligation for a wider, operational business risk assessment to be conducted. When preparing a *BRA* or *CRA*, factors in this operational business risk assessment may be relevant. Therefore, a combined *BRA* and operational business risk assessment may be appropriate.
13. Risks that are not normally considered to be specific *AML/CFT* risks may also be relevant to a *BRA*; for example, credit risk, tax risk, investor eligibility risk, cyber security etc.
14. It is common practice for a Fund to outsource the conduct of its *BRA* to an administrator. In such circumstances, the administrator will also need to conduct a *CRA* on the Fund (its customer) as it has two separate roles - acting both for itself (conducting a *BRA* on itself and *CRA* on the Fund) and as delegate for the Fund (conducting a *BRA* and *CRA* on behalf of the Fund). Although there may be similar factors considered in the *BRA* and the *CRA*, separate assessments will need to be conducted and documented.
15. It is likely that the *BRA* will be conducted by the *relevant person* prior to any *CRA*. When *CRA*'s are prepared the *BRA* may need to be updated (for example, to take into account new risk factors or the Board's changing risk tolerance/appetite). The Board may demonstrate that its *BRA* is kept up to date where it is reviewed when events (internal and external) occur that may materially change the *money laundering* and *financing of terrorism* risk.
16. Risk should not simply be "averaged out" (e.g. two low risk factors and one high risk factor does not necessarily lead to a medium risk rating). Each identified risk should be appropriately identified, assessed and mitigated. Similarly, the mitigation of risk does not necessarily lead to a low risk rating.
17. Where high risk elements are present in a collection of lower risk elements, care should be taken that all risks are appropriately dealt with. There may be individual higher risk elements within a lower/medium risk customer - in such circumstances care should be taken that there is sufficient mitigation in place for the higher risk element.
18. *BRAs* and *CRA*s should also consider the cumulative effect of risks identified, which may exceed the sum of each individual risk element.

#### 14.2.2 Business Risk Assessment

**Note:** This section must be read in conjunction with, and is supplemental to Part 1: Section 2.3 of the *AML/CFT Handbook* regarding *BRAs*.

#### Overview

19. The purpose of the *BRA* is to consider a *relevant person's* exposure to *money laundering* and *financing of terrorism* risk and to enable the *relevant person* to put in place *policies and procedures* to deal with those risks.

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<sup>8</sup> means, collectively, the, Code of Practice for Deposit-taking Business, the Code of Practice for Fund Services Business, the Code of Practice for General Insurance Mediation Business, the Code of Practice for Insurance Business; the Code of Practice for Investment Business; the Code of Practice for Money Service Business and the Code of Practice for Trust Company Business.



## Guidance Notes

20. When conducting a *BRA* care should be taken not to focus on any single factor. All factors, as well as the wider picture (and cumulative risk) should be considered. There may be a number of parties involved in the creation of a Fund and the conduct of the fund business – in such circumstances, the *AML/CFT* risks arising from the involvement of all parties will need to be considered. Below are some potential factors<sup>9</sup> in a Fund *BRA* that could be considered, this list is not exhaustive and the *relevant person* needs to consider the risks relevant to them.
21. *Money laundering* is defined in Part 1: Section 1. Has sufficient information been obtained in relation to a fund structure to fully understand the structure and manage the risk of being involved with the proceeds of criminal conduct? This may include the fund itself being set up for a fraudulent purpose or the fund being used to facilitate *money laundering*. Not all of these potential factors will be applicable in every case (e.g. there may be no external finance).
22. Potential factors to consider when conducting a Fund *BRA*:

Fund	
Type of Fund	<ul style="list-style-type: none"> <li>› Open/closed</li> <li>› Public/private</li> <li>› Regulated/unregulated</li> <li>› Listed/ unlisted</li> <li>› Asset Class - Private equity / venture capital / property / hedge fund / fund of funds</li> </ul>
Rationale for Fund	<ul style="list-style-type: none"> <li>› Does fund proposal make sense in light of the objective?</li> <li>› Capital accumulation / income producing / both</li> </ul>
Jurisdiction/Domicile of Fund	<ul style="list-style-type: none"> <li>› Local / Non-domiciled</li> </ul>
Fund Structure	<ul style="list-style-type: none"> <li>› Legal Structure: Limited partnership / company / unit trust / incorporated cell company / protected cell company / incorporated limited partnership / separate limited partnership?</li> <li>› Separate governing body i.e. general partner/trustee</li> <li>› Complex / Simple</li> <li>› Special Purpose Vehicles (<i>SPVs</i>) to hold assets</li> <li>› Part of Fund Manager's Platform</li> <li>› Umbrella</li> </ul>
Conflicts of Interest	<ul style="list-style-type: none"> <li>› Promoter v Fund investors</li> <li>› Fund Operators v Fund investors</li> <li>› Related parties v Fund Investors</li> <li>› Between Investors (Evidenced in some cases by Side Letters)</li> <li>› Between Fund Operators</li> </ul>

<sup>9</sup> In this Section of the *AML/CFT Handbook* a Risk Factor is a circumstance, fact or influence to take into consideration which may contribute to the assessment of risk.

Fund	
Unusual Features	<ul style="list-style-type: none"> <li>› Lock ins</li> <li>› Asset holding arrangements</li> <li>› In specie contributions</li> </ul>
Influential Persons	<ul style="list-style-type: none"> <li>› The entities named in the diagram at paragraph 6</li> <li>› Promoter</li> <li>› Investment Committee – powers, composition, independence</li> <li>› Consultants –value for money, related?</li> <li>› Valuers – independent?</li> <li>› Suppliers</li> <li>› SPV level suppliers</li> <li>› Letting agents</li> <li>› Asset managers</li> <li>› Developers</li> <li>› Legal advisers</li> <li>› Tax advisers</li> <li>› Auditors</li> <li>› Co-investors</li> <li>› Key investors/Seed investors</li> </ul>
Risk Indicators	<ul style="list-style-type: none"> <li>› PEPs</li> <li>› High Risk Jurisdictions</li> <li>› Sanctions- check the lists</li> </ul>
Cash flow	<ul style="list-style-type: none"> <li>› In specie payments/redemptions permitted</li> <li>› Third party payments permitted</li> <li>› Early redemptions permitted</li> <li>› Budgetary and payment controls of monies flowing out of fund</li> </ul>

23.

Investors / Target Market	
Type	<ul style="list-style-type: none"> <li>› Retail</li> <li>› Professional / Sophisticated</li> <li>› Institutional</li> <li>› Co-investors at fund level or at investment level (see paragraph 30 below)</li> </ul>
Method of Distribution/ Solicitation.	<ul style="list-style-type: none"> <li>› Word of mouth / club arrangement / reverse solicitation / private distribution / public distribution</li> <li>› Control of raising money and distribution of securities</li> <li>› Distributor employed</li> <li>› Promoter distributes</li> <li>› In house fund (i.e. Bank for high net worth clients)</li> </ul>

Investors / Target Market	
	<ul style="list-style-type: none"> <li>› Investment Adviser distributes</li> <li>› Subject to local marketing requirements e.g. AIFMD?</li> </ul>
Investor's Holding Method	<ul style="list-style-type: none"> <li>› Via intermediaries</li> <li>› Via nominee</li> <li>› Directly/indirectly</li> <li>› Complexity of holding structure</li> <li>› Rationale for holding structure</li> </ul>
Investor information	<ul style="list-style-type: none"> <li>› <i>Source of funds</i></li> <li>› <i>Source of wealth</i></li> <li>› Rationale</li> </ul>

24.

Investments	
Type / Asset Class	<ul style="list-style-type: none"> <li>› Property / private equity / hedge fund / fund of funds / Infrastructure etc</li> <li>› Liquid/illiquid assets</li> </ul>
Listed / Unlisted	<ul style="list-style-type: none"> <li>› Recognised market?</li> </ul>
Risks associated with that Asset Class	<ul style="list-style-type: none"> <li>› Diamonds / gold / luxury goods – higher AML/CFT risk</li> <li>› Have Fund and Fund Operators sufficient knowledge and competence to deal with the asset class?</li> </ul>
Valuation	<ul style="list-style-type: none"> <li>› Listed assets easier to value</li> <li>› Specialist assets may be difficult to value</li> <li>› Independent Valuer - Experts linked already to the fund?</li> </ul>
In Specie receipt/payment	<ul style="list-style-type: none"> <li>› Valuation</li> <li>› Title transfer effective?</li> <li>› Liquid/ illiquid</li> <li>› Related party transferring the asset?</li> </ul>
Sanctions	<ul style="list-style-type: none"> <li>› Check the lists</li> </ul>

25.

Common to *Fund Operators *Governing Body *Finance Provider * Investors / Target Market *Instigator / Promoter / Creator	
Stature	<ul style="list-style-type: none"> <li>› Public / Private</li> <li>› Newly established / long established</li> <li>› Listed / unlisted</li> <li>› Global / local / number of jurisdictions / number of offices</li> </ul>

<b>Common to *Fund Operators *Governing Body *Finance Provider * Investors / Target Market *Instigator / Promoter / Creator</b>	
Legal Form	› Legal person / legal arrangement
Ownership and Control	› Wide spread of ownership / control or sole ownership › Dominant directors / shareholders
Regulatory Status	› Regulated / unregulated
Reputation	› Subject to regulatory or other disciplinary actions › Subject to legal action › International / national reputation › Held in high regard in business community
Track Record	› Relevant experience particularly in the case of specialist funds or those perceived to be high risk, for example, futures and options funds.
Jurisdiction	› Local / non-domiciled › Multiple jurisdictional operations › Multiple branches / regional office
Solvency	› Insolvency proceedings › Judgements › Issues with accounts (Audit) › Lack of liquidity
Risk Indicators	› <i>PEPs</i> - Are there any? › Sanctions - Have they been checked? › High Risk Jurisdictions – are there links?

26.

<b>Instigator / Promoter / Creator</b>	
Control of Fund	› Participation in structure – owns management shares, owns governing body, is investment manager /adviser/ directors on board of governing body

27.

<b>Fund Operators</b>	
General	› Risks in relation to fund operator role or that particular fund operator › Sub outsourcing

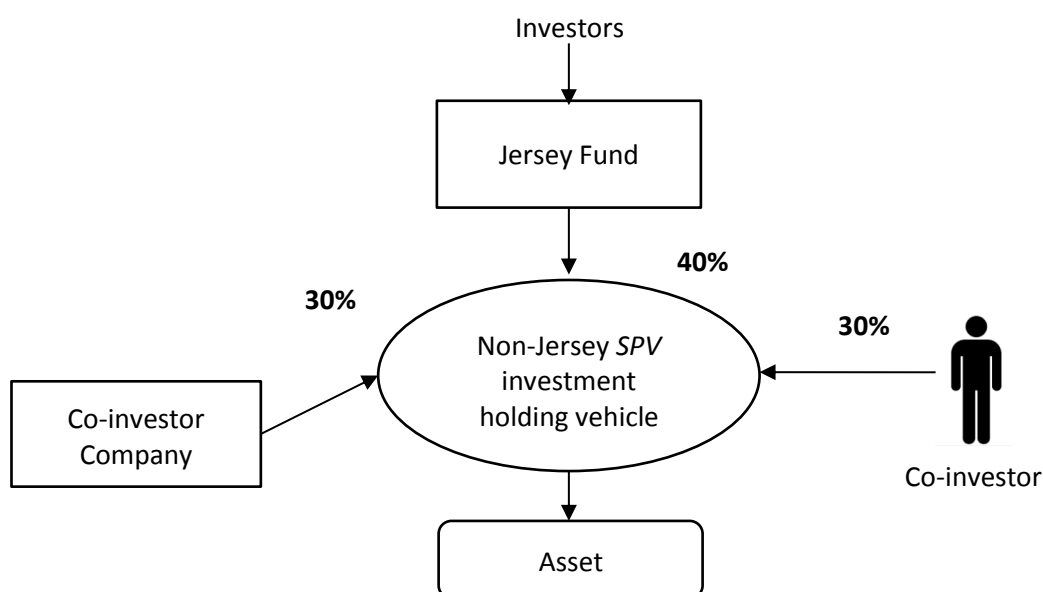
28.

Governing Body	
Control	<ul style="list-style-type: none"> <li>› Independent / equal / proportionate / dominant individuals</li> <li>› Bank Account Mandates</li> </ul>
Corporate Governance	<ul style="list-style-type: none"> <li>› Compliance Culture, compliance monitoring policy</li> <li>› Frequency that Policy and Procedures are updated</li> </ul>

29.

Finance	
Source of borrowing	<ul style="list-style-type: none"> <li>› Regulated Bank / credit institution</li> <li>› Private finance – where are funds from?</li> <li>› Layers of borrowing- how many lenders?</li> <li>› Related party?</li> </ul>
Structure	<ul style="list-style-type: none"> <li>› Loan</li> <li>› Bond</li> <li>› Ring fencing</li> <li>› Priority</li> </ul>
Security	<ul style="list-style-type: none"> <li>› Secured/unsecured</li> <li>› Collateral</li> <li>› Limited recourse</li> <li>› Guarantor</li> <li>› Take title</li> <li>› Can lender deal with the asset it is holding as security?.</li> </ul>
Level of borrowing	<ul style="list-style-type: none"> <li>› Fund</li> <li>› <i>SPV</i></li> </ul>
Rationale	<ul style="list-style-type: none"> <li>› Make sense?</li> <li>› Normal commercial terms?</li> <li>› Unusual features?</li> </ul>
Onward Lending	<ul style="list-style-type: none"> <li>› Why?</li> <li>› Who to?</li> <li>› Benefit to the Fund?</li> </ul>

30. An example of a factor to consider in a Fund *BRA* is the existence of Co-investors, see below:



31. The non-Jersey *SPV* investment holding vehicle is not a *relevant person* so has no Jersey *AML/CFT* obligations.
32. The Fund's *BRA* should consider the *AML/CFT* risks arising from the existence of the Co-investors in the structure. This may include (and this list is not exhaustive) connections to a jurisdiction listed on Appendix D2 or whether the Co-investor or the ultimate beneficial owner of the Co-investor company is a *PEP*. Sufficient information should be obtained to assess the *AML/CFT* risks in this aspect of the business.

### 14.2.3 Customer Risk Assessment – risk indicators

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

33. The lists below are indicators only and are not exhaustive. The presence of one or more low or high risk indicators does not necessarily mean a customer is low or high risk and their rating needs to be assessed on a case by case basis. Risk will be assessed on initial take-on of a customer but will also need to be reviewed to ensure the risk rating remains appropriate.
34. Potential Higher Risk Indicators<sup>10</sup> on take-on of a customer (Fund or investor)<sup>11</sup>.

Where the customer:

- › has provided information/documentation that cannot be verified
- › has links to a *PEP*

<sup>10</sup> In this Section of the *AML/CFT Handbook* a Higher Risk Indicator may indicate *money laundering* or *financing of terrorism* based on a *relevant person's* understanding of its business, its products and its customers (i.e. the outcome of its business risk assessment – Part 1: Section 2.3.1) and may contribute to the risk rating.

<sup>11</sup> Consideration may also need to be given as to whether it is appropriate to take-on the Customer at all and whether a *SAR* should be submitted.

- › has links to a higher risk jurisdiction<sup>12</sup>
- › is evasive / inconsistent when additional information is requested such as regarding identity of beneficial owners / *source of funds* / purpose and expected transactions
- › has a complex structure, for example, operates via layers of representatives making identification difficult
- › is revealed to have money problems (i.e. debt judgements)
- › is the subject of regulatory or criminal actions or has associates with these characteristics
- › acts as a nominee and there is an unwillingness to identify the underlying third party
- › is a Non-Profit Organisation / Charity that might be susceptible to abuse regarding terrorist activities such as medical and emergency relief charities with an unlimited global scope. Or where a Non-Profit Organisation / Charity operates in a specific geographical area but then transfers monies to a country / territory / jurisdiction not within the specific geographical area
- › is a Fund and:
  - a. is aiming to invest in products that may be susceptible to *money laundering*, for example diamonds and gold.
  - b. has a one off minimum investment amount so that it operates below AML reporting threshold amounts.
  - c. is a highly liquid open-ended Fund (the customer) with the possibility of frequent subscriptions and redemptions.
  - d. uses unregulated fund operators
  - e. outsources functions without any valid reasons provided
  - f. has a complex structure so it is difficult to ascertain who the underlying beneficiary is, for example using many *SPVs* and intermediaries

35. Potential Higher Risk Indicators that may be flagged during ongoing monitoring of the customer (Fund or investor).

Where the Fund:

- › has entered or intends to enter into finance arrangements that are either at a higher rate or lower rate than usual with no rationale provided
- › has or intends to purchase assets without independent valuations (particularly from connected persons)
- › receives or sends monies to related or unrelated third parties that do not fit the pattern of transactions expected for the Fund and no acceptable rationale is provided
- › transfers monies to *SPVs* which the Fund customer appears to have no control over
- › purchases assets without proof of title from the seller and title to the assets is not clearly transferred to the Fund customer
- › engages consultants who add little benefit and receive high fees (particularly in countries associated with a higher risk of corruption)

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<sup>12</sup> Appendix D2:

[http://www.jerseyfsc.org/anti-money\\_laundering/regulated\\_financial\\_services\\_businesses/aml\\_cft\\_handbook.asp](http://www.jerseyfsc.org/anti-money_laundering/regulated_financial_services_businesses/aml_cft_handbook.asp)

- › enters into a promise to purchase agreements for which monies are paid where transactions are regularly aborted, resulting in forfeiture of the monies
- › is investing with no obvious commercial rationale and is inconsistent with the Fund customer profile
- › regularly pays fees, commissions and costs to source and investigate transactions, but no transactions are executed
- › exhibits transaction activity that does not follow the expected pattern or changes substantively with no rational explanation
- › displays endemic conflicts of interest
- › regularly changes bank accounts and uses different Fund Operators in different jurisdictions

Where the investor:

- › requires a high level of liquidity and indicates funds may need to be withdrawn / moved at short notice
- › is proposing an investment of an unexpected large amount

#### 14.2.4 Risk assessments for SPV governing bodies

36. An *SPV* Governing Body is a vehicle established for the specific purpose of acting as the governing body of a Fund. Common examples are a company established to act as the general partner of a limited partnership Fund or a trustee of a unit trust Fund.
37. A unit trust or a limited partnership has no separate legal personality, so the *SPV* Governing Body is considered to be the “customer” of the Fund Operator (Article 3(2)(a) and (c)). However, trustees and general partners are also Fund Operators. Effectively they have two capacities - they are both Fund Operator and Fund governing body. For the purposes of this section if a trustee or general partner provides services to **more than one** Fund it will not be regarded as an *SPV* but will be regarded as a Fund Operator.
38. In these circumstances, its *BRA* and *CRA* (as Fund Operator) and the *BRA* it conducts in its capacity as *SPV* Governing Body of the Fund are likely to significantly overlap. In order to avoid duplication of effort, it may be appropriate to consolidate these 3 Risk Assessments, provided that all relevant risks (i.e. of all 3 risk assessments) are appropriately considered.
39. This has no effect on the separate obligation of the Fund to conduct a *CRA* on each of its customers, i.e. the investors.

Entity	BRA	CRA	Entity	BRA	CRA
Non <i>SPV</i> Trustee of Unit Trust Funds	Self	Fund	<i>SPV</i> Trustee of one Unit Trust Fund	<b>Consolidated Risk Assessment</b> Combined <i>BRA/CRA</i> for Trustee and Fund <i>BRA</i> as <i>SPV</i> Trustee is intrinsically part of the Fund.	
Unit Trust	Self	Investors	Unit Trust		



### 14.2.5 Documenting risk assessments

**Note:** This section must be read in conjunction with, and is supplemental to Part 1: Section 3, paragraph 23 and Part 1: Section 2 paragraph 10 of the *AML/CFT Handbook*.

#### Overview

40. BRAs and CRAs must be properly documented.

#### Guidance Notes

41. Comprehensive subscription agreements / investor questionnaires may assist in obtaining information on a Fund's investors and provide sufficient detail to enable the Fund to carry out a CRA. However, a subscription agreement / investor questionnaire is not a CRA.
42. For certain types of products or services, standard customer profiles may assist the CRA process. In such cases, the *relevant person* will need documented procedures which consider:
  - › whether the intention is to only accept investors who fit the standard customer profile
  - › if not, how will exceptions to the standard customer profile be managed; either at the outset or subsequently?
  - › whether (for instance) individual CRAs will be conducted with respect to any customers that do not fit the standard customer profile.
43. The *relevant person* always remains ultimately responsible for its Risk Assessments regardless of whether they outsource the conduct of them.

## 14.3 Customer identification measures

#### Overview

44. Part 1: Section 3 of the *AML/CFT Handbook* describes the stages of the identification process and provides guidance in relation to each stage. Customer due diligence is not limited to finding out the identity of the customer and obtaining verification (e.g. taking their personal details and copies of their passport and driving licence). The table below summarises CDD requirements:

CDD	Identification measures	Risk assessment		
		ID customer		
		ID Third parties		
		Where customer not individual:	ID person acting for customer	Verify authority to act
			Understand Ownership / control structure	
			ID Beneficial Owners / Controllers	
		Obtain information on purpose / nature		
	On-going monitoring	Scrutinising transactions / activity		
		Keep documents / information up-to-date		

45. The following sections provide guidance on the identification of customers, ultimate beneficial owners and third parties. These sections must be read in conjunction with relevant sections of the *AML/CFT Handbook*.

### 14.3.1 Obligation to apply identification measures.

#### Overview- Fund

46. Part 1: Section 3.1 paragraph 5 of the *AML/CFT Handbook* states a customer may be an individual (or a group of individuals) or a legal person. Further guidance on finding out of identity and obtaining evidence of identity is provided as follows:

AML/CFT Handbook Section	Type of Customer	Fund Structure
4.3	Individual / Group of Individuals.	
4.5	Legal Person	<ul style="list-style-type: none"> <li>› Company,</li> <li>› Limited Liability Partnership,</li> <li>› Separate Limited Partnership,</li> <li>› Incorporated Cell</li> </ul>
4.4	Individual or legal person acting for a legal arrangement.	<ul style="list-style-type: none"> <li>› Trustee on behalf of a Unit Trust</li> <li>› General Partner on behalf of a Limited Partnership</li> </ul>

47. For the purposes of this section, company, limited partnership and unit trust will be used as practical examples, as these are the most common Fund structures.
48. Each of the Fund's investors are its customers. The investors may take a variety of legal forms and Article 3 specifies how *identification measures* are applied to each.

Fund Structure	relevant person re each Fund structure	Customer/Investor
Company	Company	<ul style="list-style-type: none"> <li>› Article 3(2)(a) individual</li> <li>› Article 3(2)(b) acting for a third party (legal arrangement)</li> <li>› Article 3(2)(c) not an individual but legal person.</li> </ul> <p>To Legal Persons / Arrangements apply the Three Tier Test<sup>13</sup>.</p>
Limited Partnership	General Partner on behalf of the Limited Partnership	
Unit Trust	Trustee on behalf of the Unit Trust	

<sup>13</sup> 1. The Three Tier Test refers to the process by which a *relevant person* may demonstrate that it has identified each individual who is a beneficial owner or controller: See Part 1: Section 4 page 10 onwards.

2. The Three Tier Test is often summarised as control through 1) ownership means and 2) other means; or 3) through positions held. When applying the Three Tier Test, if no one is identified at Tiers 1 and / or 2 then consider Tier 3. There may be more than 1 individual identified at Tiers 1 and/or 2.

49. The table at Part 1: Section 3.3 paragraph 23 sets out the identification process, of which identifying the customer is only a part. A *relevant person* must also understand the ownership and control of the customer and identify:
- › any beneficial owners and controllers of the customer;
  - › those third parties for whom the customer acts indirectly/directly (e.g. legal arrangement); and
  - › others listed in Article 3(2) (which links to Article 3(7) e.g. settlor/protector.)
50. The starting point is that the *relevant person* has to determine who everyone detailed in paragraph 49 above is as part of *identification measures*.

#### Guidance Notes- Fund

51. Responsibility for applying *CDD* measures (which includes *identification measures* and monitoring) rests with the governing body of the Fund.

Type of Fund Entity	Responsibility
Company	Directors
Limited Partnership/ Unit Trust	Directors of the general partner / trustee of the limited partnership / unit trust where the general partner / trustee is a company
Protected Cell	Directors of the protected cell company ( <i>PCC</i> ) not each of the protected cells although the directors of the protected cells may assist with compliance
Incorporated Cell	Directors of each of the incorporated cells

#### 14.3.2 Guidance Notes – Fund Operators

52. A number of Fund Operators are likely to provide services to the Fund. Each will be a *relevant person*, with the Fund as their customer. Each will have their own *CDD* obligations pursuant to the *Money Laundering Order*.
53. Even where a Fund Operator is not providing investor facing services and only provides services to the Fund they should ensure when conducting their *CRA* (of their customer - the Fund) that they obtain sufficient information on investors (e.g. *source of funds*) and controllers of the Fund. Rather than gathering this information themselves in a low risk scenario the Fund may be able to provide a list of its investors with holdings of 25% and *source of funds* information provided to the Fund via investors via subscription agreements/investor questionnaires (see also paragraph 127).
54. The first step for a *relevant person* is to determine the nature of their customer and determine the customer's potential beneficial owners and controllers, any third parties on whose behalf the customer acts (and any third party's beneficial owners and controllers) and others listed in Article 3(2). It may not always be necessary to verify all of them.
55. The application of Article 3 differs depending on the legal form of the Fund. In the examples in the two tables below it is assumed that both the general partner and trustee are companies.

**Application of Article 3 where the Fund Operator's customer is a:**

Legal Person i.e. a Company			
Customer	Third Party	Owners / Investors of the Fund	Governing Body
Company Article 3(2)(a) and (c)	n/a	Shareholder(s) (owns customer) Article 3(2)(c)(iii)	Directors of Company Re customer Article 3(2)(c)(i), (ii) and (iii)
Legal Arrangement i.e. a Limited Partnership/Unit Trust			
General Partner / Trustee (Company) Article 3(2)(a) and (c)	Limited Partnership / Unit Trust Article 3(2)(b)(iii)	Limited Partner(s) / Unit Holder(s) (owns Third Party) Article 3(2)(b)(iii)(A), (B) and (C) (Note the requirements of Article 3(7))	Directors / Shareholders of General Partner / Trustee Re customer Article 3(2)(c)(i), (ii) and (iii) Re Third Party Article 3(2)(b)(iii)(A), (B) and (C)

56. Once a *relevant person* fully understands the ownership and control structure of a customer the *relevant person* can determine the beneficial owners and controllers pursuant to the Three Tier Test (see footnote 13 above) and then apply the necessary *identification measures*.
57. The Three Tier Test is applied on a case by case basis and the table below indicates potential beneficial owners or controllers in different scenarios where the ***relevant person is Fund Operator and the Fund is a:***

Legal person i.e. a company		
Customer	Third Party	Beneficial Owners/Controllers
Company Article 3(2)(a) and (c)	n/a	Apply the Three Tier Test (see footnote 13 above) Shareholder(s) Article 3(2)(c)(iii) - Potentially Tier 1 Promoters/Instigators Article 3(c)(ii) - Potentially Tier 2 Directors of Company - Potentially Tier 3 Article 3(2)(c)(i), (ii) and (iii)
Legal arrangement i.e. Unit Trust/Limited Partnership		
General Partner for Limited Partnership / Trustee for Unit Trust (Company) Article 3(2)(a) and (c)	Limited Partnership/ Unit Trust Article 3(2)(b)(iii)	Apply the Three Tier Test to the customer and the Third Party: customer – General Partner /Trustee Article 3(2)(c) Third Party- Limited Partnership / Trust Articles 3(2)(b) and 3(7)

58. More detailed guidance on how to determine and identify beneficial owners and controllers is contained in the following sections of the *AML/CFT Handbook*.

Entity	Finding out identity	Obtaining evidence
Limited Partnership	4.4.3	4.4.4
Trust (not Unit Trust)	4.4.1	4.4.2
Company	4.5.1	4.5.2

#### 14.3.3 Guidance Notes - Unit Trusts

59. Unit trusts differ from traditional private trusts. For example, with a private family trust there is normally a settlor who not only establishes the trust but also provides the initial funds and ongoing funding to the trust. Beneficiaries may be expressly referred to or may form part of a class and may not have a vested right to the trust assets.
60. In a unit trust the promoter or instigator may fund the establishment of the unit trust and may fund the initial investment, thus being considered a settlor. While the individual investors are not considered to be settlors for the purposes of Article 3(7)(a), each of the unit holders will be customers of the Fund (unit trust) investing their money into the unit trust. This may include the promoter as an investor.
61. Statutory requirements relating to *identification measures* that apply to unit trusts are set out at Article 3(7).

#### 14.3.4 Guidance Notes Fund Operators- Passive Investors

62. Identification of Investors in a Fund will be approached differently by the Fund and a Fund Operator.
63. The Fund has an obligation to identify each of its investors, as they are the Fund's customers. This obligation exists whether or not they are passive investors and don't exercise control over the Fund.
64. The Fund Operator, however, has an obligation to identify the beneficial owners and controllers of their customer (the Fund) and should apply the Three Tier Test (see footnote 13 above) to ascertain who the beneficial owners and controllers are. Where ownership of a Fund is distributed widely, it may be that none of the investors control the Fund through their ownership. In such a case, these "passive" investors are not beneficial owners at Tier 1 and, assuming they are not controllers via Tier 2 or 3, a Fund Operator need not apply *identification measures* to them.
65. It should be noted, however, that in order to demonstrate that sufficient information has been collected on *source of funds* for a customer relationship, it may still be necessary to consider the provenance of investors who have a material interest in a customer, but who do not also exercise control. The effect of this may still be to require information to be obtained on such passive investors (though it may not be necessary to also obtain evidence of identity).
66. For example, an investment advisor giving advice directly to a regulated Fund with passive investors will still need to obtain *source of funds* information in relation to those investors in order to understand the *AML/CFT* risk posed by its customer.

67. The extent of *source of funds* information collected will be proportionate to the risks identified and determined on a case by case basis. In a lower risk relationship, *source of funds* information should be obtained for all passive investors with a holding of 25% or more. Where there are no 25% holders, generic investor information on *source of funds* such as a generic client profile could be obtained. In a higher risk relationship, more stringent measures should be applied.
68. Similarly, in order to demonstrate that sufficient information has been collected to assess the *AML/CFT* risks posed by a customer, it may be necessary to consider the identity, nature, structure and location of investors who have a material interest in a customer, but who do not also exercise control. See Sections 3.3.2 and 3.3.4 for further detail.

#### 14.3.5 Guidance Notes Fund Operators – Promoters

69. A *relevant person* may need to consider whether the promoter of a Fund is a beneficial owner or controller. For example, the promoter / instigator of the Fund may have direct control by owning the governing entity (i.e. the general partner or the trustee) or by owning management shares of a Fund company.
70. In addition, a promoter may also be a beneficial owner or controller when the Board of a Fund does not exercise sufficient effective control. For example, a promoter may be the investment adviser / investment manager or may have a significant presence on the investment committee (which may be “controlling by other means” – see Tier 2 of the Three Tier Test).

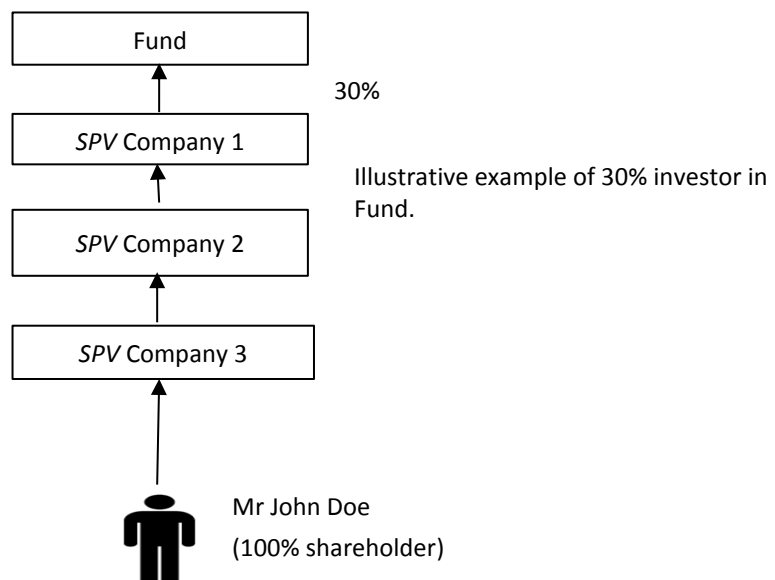
#### 14.3.6 Guidance Notes - Multiple layers

##### Overview

71. Fund structures are often complicated by ultimate beneficial owners not entering into transactions directly and there may be multiple entities, such as holding companies or trusts, between the investment in the Fund and the individual who is the ultimate beneficial owner. The more complex the structure and/or the more use of nominees / intermediaries; the more difficult it may be to determine the beneficial owner and controller.
72. A *relevant person's* approach to a complex ownership and control structure will be informed by the risk rating allocated to that customer.
73. The following must always be identified:
- › the customer;
  - › the ultimate beneficial owner/controller of the customer (as per the Three Tier Test (see footnote 13 above)); and
  - › any third parties for whom the customer acts.

##### Guidance Notes

74. In this example the Fund is the *relevant person*. The general rule is that you are trying to ascertain the ultimate individual(s) who control(s) the structure.



### Customer

75. SPV Company 1 is the customer of the Fund.
76. The Fund is obliged to find out the identity and obtain evidence of identity of its customer. The *AML/CFT Handbook* provides guidance on *identification measures* to be applied to a legal person that is a company:
- › Part 1: Section 4.5.1 finding out the identity of a legal person that is a company; and
  - › Part 1: Section 4.5.2 obtaining evidence of identity of a legal person that is company.

### Beneficial Owner/Controller

77. SPV Company 1 is a legal person and the *relevant person* must understand the ownership and control structure of the customer. The Fund is obliged to find out the identity and obtain evidence of identity of its beneficial owners/controllers. The Three Tier Test is applied to ascertain who controls the customer:
- › Control via ownership; and
  - › Control via other means; or
  - › Control through positions held (if no-one at Tiers 1 and/or 2)
78. Understanding a customer's ownership and control structure will allow a *relevant person* to determine the ultimate beneficial owner/controller. Article 2(2) of the *Money Laundering Order* states ".... it is immaterial whether an individual's ultimate ownership or control is direct or indirect".
79. In this example the structure is in place for the purpose of facilitating the investment of John Doe and he is exercising effective control. Therefore, regardless of the holding companies, John Doe is the ultimate beneficial owner/controller of the customer.
80. The *AML/CFT Handbook* provides guidance for individuals (in this case John Doe):
- › Part 1: Section 4.3.1 finding out the identity of an individual
  - › Part 1: Section 4.3.2 obtaining evidence of identity of an individual
81. If none of the individuals with an ownership interest exercises control then they may not need to be identified (see passive investor Section 14.3.4).

## “Layers”

82. In the scenario above understanding the ownership and control structure of the customer is likely to require some effort, but it may not be necessary to obtain detailed identity information and evidence in relation to each entity in the structure.
83. Verification of Identity may not be necessary in relation to *SPV Company 2* and *SPV Company 3*– they are not customers, or beneficial owners/controllers, or third parties on whose behalf the customer is acting (see paragraph 73 above). The reason they are not controllers is because they are acting on the instructions of the ultimate controller Mr John Doe and are links in the control chain.
84. Whilst verification of identity may not be needed sufficient information will still need to be obtained in relation to these two entities in order to understand the ownership and control structure. The Information required will depend on the complexity of the structure and the overall risk of the customer relationship. However as a minimum for a low risk customer the following should be obtained:
  - › Name of the entity
  - › Evidence the entity exists
  - › Names of the directors
  - › Names of the shareholders or those with other interests
  - › Details of ownership and control of the entity (proportion of holdings, voting rights, decision-making authority, etc.)

### 14.3.7 Guidance Notes– Nominees / Investment Managers

**Note:** This section must be read in conjunction with, and is supplemental to Part 1: Section 7.13 of the *AML/CFT Handbook* regarding designated relationships and *pooled relationships*.

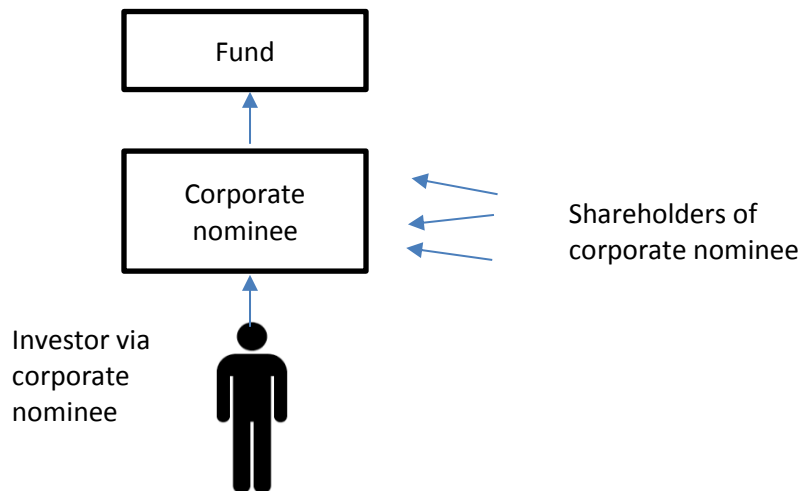
85. There may be scenarios where the Fund’s customer is representing others, for example as a nominee/investment manager.
86. In this scenario the normal obligations apply and the *relevant person* still has to identify:
  - › The customer
  - › The ultimate beneficial owner/controller of the customer (as per the Three Tier Test)
  - › Any third parties for whom the customer acts.
87. If the customer is a company then the *relevant person* would apply the guidance in paragraph 76 above.
88. The corporate nominee is the customer and it will be necessary to identify its beneficial owners and controllers. The Three Tier Test will need to be applied to determine the potential beneficial owner/controllers of the corporate nominee. In this scenario it will also be necessary to identify the third party for whom the corporate nominee is acting and determine the beneficial and ownership and control of that third party as per Article 3(2)(b).

#### Illustrative Example of application of the Three Tier Test to

a corporate nominee (Article 3(2)(c))		
X	Control via ownership	There are number of owners and there is no majority shareholder.
X	Control via other means	There are no entities/persons that fall into this tier
✓	Control through positions held	The board of directors control the corporate nominee



an individual whose interest is through the corporate nominee (Article 3(2)(b))		
✓	Control via ownership	Here the principal is an individual
X	Control via other means	Tier 1 applies so no further need to determine potential persons in other Tiers.
X	Control through positions held	



89. In the scenario above the Fund is the *relevant person*, the corporate nominee is the customer and the individual is the third party for whom the customer is acting.
90. The relevant person must identify and verify its customer –here the corporate nominee as set out at paragraph 76. Control and ownership of the customer must be ascertained applying the three tier test (paragraph 88 above).
91. The third party for whom the customer is acting must also be identified and verified. In the diagram this will be the individual who is investing via the nominee. If the third party was not an individual then its beneficial owners and controllers must be identified and verified.

#### 14.3.8 Guidance Notes Fund Operators– residual assets

92. On some occasions when a Fund is wound up the Fund Operator may hold residual and/or illiquid assets of the Fund for the benefit of the investors. In this scenario care has to be taken and the following matters should be considered:
  - › Have the investors now become the Fund Operator’s customers?
  - › Does the Fund Operator hold sufficient *CDD* on its customers? For example, the Fund Operator may have taken comfort from the *identification measures* applied by the Fund but the Fund no longer exists.
  - › Has the Fund Operator updated its *CRA* and *BRA* to take into consideration its new role (whether or not the investors are its customers)?

## 14.4 Timing of identification measures

**Note:** This section must be read in conjunction with, and is supplemental to, Part 1: Sections 4.1 and 4.7 of the *AML/CFT Handbook*.

### Overview

93. Article 13(4) of the *Money Laundering Order* provides a concession in relation to the timing of *identification measures*, permitting a delay in obtaining evidence in specific circumstances. In no circumstances can the obtaining of information be delayed.

### Guidance Notes

94. Delaying the obtaining of evidence is permitted in certain circumstances but should not be common or standard practice. It should not be common practice that verification is deferred until after the first close of a Fund. On the rare occasions the provisions of Article 13(4) are relied upon to delay the obtaining of evidence of identity, additional measures are required, including effectively managing the associated risk by appropriate authorisation, monitoring and reporting.
95. The obtaining of evidence of identity “as soon as reasonably practicable” should in most cases be a matter of days rather than weeks or months.

## 14.5 Failure to complete identification measures

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

### Overview

96. 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.
97. Such a requirement can be problematic in the case of a *relevant person* that is a Fund where its customer is an investor and where:
- › the relationship between the Fund and its investor is governed by other legislation or regulatory requirements - e.g. the *CIF(J)* Law and Code of Practice for Certified Funds; and
  - › the termination of a relationship with an investor may have a prejudicial effect on the interests of other investors (e.g. a closed-ended illiquid property fund).

### Guidance Notes

98. 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 statutory or regulatory requirement, and/or does not have any prejudicial effect on the interests of other customers (investors), so long as the risk of *money laundering* or *financing of terrorism* is effectively managed.

## 14.6 Updating identification information

**Note:** This section must be read in conjunction with, and is supplemental to, Part 1: Sections 3.4 and 4.1 of the *AML/CFT Handbook*.

### Guidance Notes

99. The *BRA* will enable a *relevant person* to establish procedures to undertake reviews of its customers on a risk sensitive basis. In addition to the established pattern of reviews there will be factors to consider or “trigger events” when it may be appropriate to consider whether the identity information and evidence held on a customer is relevant and up to date. These should include (in addition to those circumstances set out in Part 1: Section 3.4 of the *AML/CFT Handbook*):

- › Receipt of significant additional funds to be invested where the delay between contributions is material (including drawdowns)
  - › Distributions being made
  - › Economic Merger of two Funds which results in the admission of new investors<sup>14</sup>
100. It may well be that when a customer's information and evidence is reviewed upon a trigger event it is clear that the information and evidence previously obtained, possibly pursuant to a recent scheduled review, is sufficient and no further updated information is needed.

## 14.7 On – going monitoring: scrutinising of transactions & activity

**Note:** This section must be read in conjunction with, and is supplemental to, Part 1: Section 6 of the *AML/CFT Handbook*.

### Guidance Notes

101. The information about a customer obtained at the outset of the relationship as part of *identification measures* should permit a *relevant person* to monitor activity against an expected pattern of activity and transactions. For Funds this will include generic profiles of the expected target investors and the expected target investments. By way of example if the Fund's prospectus indicates that it is going to invest in UK real estate and then invests in pearls from the South China Sea this is not expected activity. Similarly, if the Fund is aiming for investment from European Banks and then receives investment from a Sub Saharan Non-Profit Organisation, this would not be expected activity.
102. It is not sufficient for an administrator/manager who has been delegated the responsibility for monitoring the Fund to simply facilitate the transaction - they are also required to monitor each transaction to determine whether it is inconsistent; complex/large; high risk or follows an unusual pattern. If, for example, the pattern does not match then the rationale for the deviation should be obtained and documented.
103. Expected activity may change over time if the target market or target investments change. This may also impact on the Fund's BRA and CRAs which may need to be updated.

## 14.8 Collation of customer due diligence

### Overview

104. Every Fund and Fund Operator is obliged to comply with its own Customer Due Diligence requirements. However, there may be statutory or contractual provisions operating so that, should one entity in a Fund structure undertake sufficient customer due diligence, others in the structure may not need to duplicate certain aspects of customer due diligence themselves.
105. The following sections of the *AML/CFT Handbook* deal with specific provisions regarding scenarios where a *relevant person* may not undertake all of the *CDD* process themselves:

Simplified <i>Identification measures</i>	› Part 1: Section 7
Reliance on <i>obliged persons</i>	› Part 1: Section 5
Outsourcing	› Part 1: Section 2.4.4 › Part 1: Section 5 paragraph 12

<sup>14</sup> Also consider guidance on taking-on a new book of business at Part 1 Section 3.5 of the *AML/CFT Handbook*

106. Where a *relevant person* is not undertaking aspects of customer due diligence it needs to document who is, on what basis and that the risks have been properly assessed and considered.

#### 14.8.1 Simplified identification measures

**Note:** This section must be read in conjunction with, and is supplemental to, Part 1: Section 7 of the *AML/CFT Handbook*.

##### Overview

107. An assessment as to whether simplified *identification measures* are appropriate for customers and/or in relation to third parties must be conducted and documented. In doing so the statutory prohibitions, stating where simplified *identification measures* cannot be applied, must be carefully considered in each case:

Article 17(14) Not permitted to apply simplified identification measures if:	Article 18(9) Nothing in this Article shall apply if:
› the <i>relevant person</i> suspects <i>money laundering</i>	› the <i>relevant person</i> suspects <i>money laundering</i>
› the <i>relevant person</i> considers that there is a higher risk of <i>money laundering</i> on the basis of the assessments made under Article 17(4) [risk of <i>Money Laundering</i> if fail to apply appropriate <i>identification measures</i> or keep records] or 17(9)	› the <i>relevant person</i> considers that there is a higher risk of <i>money laundering</i>
› the customer is resident in a country that is not compliant with the <i>FATF</i> recommendations	› the customer is resident in a country that is not compliant with the <i>FATF</i> recommendations
› the customer is a person in respect of whom Article 15(3A) applies [specified persons have a relevant connection to country/territory in relation to which <i>FATF</i> has called for enhanced customer due diligence]	› the customer is a person in respect of whom Article 15(3A) applies [specified persons have a relevant connection to country/territory in relation to which <i>FATF</i> has called for enhanced customer due diligence]
› the customer is a person in respect of whom Article 15(4) applies [certain deposit taking businesses with a banking or similar relationship with an institution whose address for that purpose is outside Jersey]	

108. Simplified *identification measures* may only be applied in appropriate circumstances. Where specified, this will require an assessment of the risk of applying simplified measures, in addition to a *CRA*.

##### Guidance Notes

109. Articles 18 and 17 can be applied to the same customer relationship, as they apply to separate identification requirements – Article 18 relates to identification of the customer and Article 17 relates to identification of third parties on whose behalf the customer is acting.

110. However, there are some aspects of customer due diligence that the *relevant person* will always be obliged to undertake, see the table below:

		Always required.
		Article 17 simplifies this obligation
		Article 18(7) removes this obligation (Note: does not apply to third parties)
CDD	Identification measures	Risk assessment
		ID customer
		ID Third parties
		Where customer not individual:
		ID person acting for customer
		Verify authority to act
		Understand Ownership/control structure
		ID Beneficial Owners/Controllers
		Obtain information on purpose/nature
	On-going monitoring	Scrutinising transactions / activity
		Keep documents/information up-to-date

111. Article 18 applies to the customer and does not extend to third parties. For example, Article 18 only applies to the general partner or the trustee and not to the limited partnerships or unit trust. Article 17 does apply to third parties which would encompass the investors in a limited partnership or a unit trust. See guidance at Part 1: Section 7.13 particularly regarding *pooled relationships*.
112. Article 18(6A) refers to a customer that is a body corporate whose securities are listed on an IOSCO compliant exchange or on a regulated market. As part of the assessment whether SDD may be applied the *relevant person* should consider whether the exchange that the securities are listed on, is an IOSCO compliant exchange or a regulated market (Article 2 (5)). The fact that the exchange is listed in a product guide (e.g. listed fund guide) or in an Order (e.g. Unregulated Funds Order) does not mean it necessarily qualifies. There are no lists of these exchanges available save for *EU* regulated markets:  
[https://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_mifid\\_rma#](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_mifid_rma#).  
Guidance is given on this point in Part 1: Section 7.15.3 of the *AML/CFT Handbook*.

#### 14.8.2 Reliance on obliged persons

**Note:** This section must be read in conjunction with, and is supplemental to, Part 1: Section 5 of the *AML/CFT Handbook*.

##### Guidance Notes

113. Care should be taken when placing reliance on an administrator. An administrator may be acting in two capacities when undertaking customer due diligence; (i) for itself as Fund Operator and (ii) as a delegate on behalf of the Fund. In such a case, a *relevant person*

seeking to rely on *CDD* undertaken by the administrator needs to be clear whether it is the administrator or the Fund that is the *obliged person*.

114. There are some key questions for the *relevant person* to ask:

- › What *identification measures* do you need to apply?
- › Who are you intending to rely upon?
- › What identification information and evidence has the *obliged person* obtained?
- › Does the information and evidence obtained by the *obliged person* being relied upon match your requirements?

115. Each Fund Operator will have its own risk appetite and its own *CRA* of the Fund and the risk ratings allocated by different Fund Operators may not be the same. Where a Fund Operator assesses the Fund as higher risk it may be insufficient to rely on information and evidence obtained by a Fund Operator rating the Fund as lower risk and additional information is likely to be required.

116. Importantly, chains of reliance are not permitted. A *relevant person* cannot rely on an *obliged person* who is in turn relying on someone else.

117. Reliance may be used where the Fund structure has higher *AML/CFT* risks or the Fund structure and Fund Operators are unregulated (where the Fund Operator cannot apply simplified *identification measures*).

118. There are aspects of Customer Due Diligence that, in the absence of other provisions, the *relevant person* must undertake itself, as below:

	Always required.
	Article 16(1) allows reliance upon an <i>obliged person</i> .

CDD	Identification measures	Risk assessment		
		ID customer		
		ID Third parties		
		Where customer not individual:	ID person acting for customer	Verify authority to act
			Understand Ownership/control structure	
			ID Beneficial Owners/Controllers	
		Obtain information on purpose/nature		
	On-going monitoring	Scrutinising transactions / activity		
		Keep documents/information up-to-date		

### 14.8.3 Obtaining copy documentation from a regulated trust and company services provider in the Crown Dependencies

**Note:** This section must be read in conjunction with, and is supplemental to, Part 1: Section 4.4.5 and Part 1: Section 4.5.7.

#### Overview

119. In certain circumstances, it may be appropriate to obtain information from a trust and company service provider that is regulated by the *Commission*, the Guernsey Financial Services Commission or the Isle of Man Financial Services Authority in order to identify certain individuals.
120. It should be noted that such practice is restricted to a very narrow set of circumstances (e.g. only certain individuals; only certain documents) and is dependent on a number of conditions being met (e.g. specific risk assessment and obtaining specific confirmations from the trust and company service provider).

### 14.8.4 Outsourcing<sup>15</sup>

**Note:** This section must be read in conjunction with, and is supplemental to, Part 1: Section 2.4.4 and Section 5 paragraph 12.

#### Overview

121. Contractual arrangements may be put in place where another entity undertakes Customer Due Diligence for the *relevant person* as a delegate. This is likely to be the case where an administrator and/or manager is appointed to the Fund or where the governing body of the Fund such as a trustee or general partner is a managed entity and reliant on a manager of a managed entity. The *relevant person* always remains responsible for fulfilling its statutory obligations regardless of the activities it outsources to delegates.
122. Procedures and processes must be put in place so that the delegating party retains oversight of the outsourced activities. The *relevant person* needs to be provided with sufficient information by the delegate in order to adequately review and monitor the outsourced activities.

#### Guidance Notes

123. Outsourcing of specific functions to a Fund Operator may form part of the Fund Operator's service level agreement with the Fund. The *relevant person* would be expected to ensure that the terms are adequate to ensure a clear understanding of what activity the delegate is undertaking.
124. Given that the delegate carrying out the outsourced function is likely to have its own customer due diligence obligations it will be important to distinguish between measures applied on behalf of the delegating party and measures applied for itself. This will ensure the respective (and potentially differing) obligations are met and will assist if the delegating party moves to another Fund Operator and wishes to take its information/documentation /records with it.

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<sup>15</sup> Consideration will also need to be given as to whether the *Commission's* Outsourcing Policy and Guidance Notes apply. However, please note that the *Money Laundering Order* is described in that Policy as imposing additional legal or regulatory requirements which must still be complied with.

	<i>CDD</i> is always the responsibility of the <i>relevant person</i> .
	These activities may be outsourced.

CDD	Identification measures	Risk assessment		
		ID customer		
		ID Third parties		
		Where customer not individual:	ID person acting for customer	Verify authority to act
			Understand Ownership/control structure	
			ID Beneficial Owners/Controllers	
		Obtain information on purpose/nature		
	On-going monitoring	Scrutinising transactions/activity		
		Keep documents/information up-to-date		

125. Where *CDD* functions are outsourced, consideration will need to be given to the contractual arrangements between the Fund and its investors (customers), the Fund and its Fund Operators and any other entities. Below are some important matters to consider (this list is not exhaustive):
- › “ownership” of the investor information
  - › permissions required from the investor for obtaining, holding and using the information for other purposes (data protection)
  - › the nature and scope of the obligations outsourced and provisions for monitoring, updating, retention and termination.
126. Where a Fund Operator assesses the risk of *AML/CFT* in relation to a Fund to be higher or the Fund/Fund Operators are not regulated the application of simplified *identification measures* is prohibited. Therefore, a Fund Operator providing services to a Fund with no direct relationship with investors may need to apply *identification measures* to investors. This may be in relation to the control of the Fund or *source of funds*. Rather than gathering this information themselves they will want access to this information which will normally already have been provided to the Fund by investors via subscription agreements/investor questionnaires.
127. Please note that specific provisions may be necessary in subscription agreements / investor questionnaires to enable the Fund to pass on information and evidence that it obtains to meet its own *AML/CFT* obligations to assist Fund Operators (present and future) involved in the Fund/Fund Structure to meet their *AML/CFT* obligations (subject to any data protection requirements).

## 14.9 Enhanced due Diligence – Non-Jersey Investors

**Note:** This section must be read in conjunction with, and is supplemental to, Part 1: Sections 7, 7.4 and 7.7 of the *AML/CFT Handbook*.



## Overview

128. Funds with overseas investors will need to undertake enhanced due diligence on those investors (Article 15) as the investors will normally be:
- › Non-resident customers; and/or
  - › Not physically present for identification purposes.
129. Enhanced due diligence measures must be applied to address the risk associated with the customer and Part 1: Section 7 of the *AML/CFT Handbook* provides guidance.

## Guidance Notes

130. A requirement to apply enhanced due diligence does not automatically mean that the customer is higher risk. Some enhanced measures are required regardless of risk.
131. It may be possible for investor profiles/subscription agreements to address enhanced due diligence requirements by obtaining additional information if the investor meets certain criteria e.g. “Are you Jersey Resident? If the answer is no please provide the following additional information...”
132. On some occasions the rationale for non-Jersey investors looking to invest in Jersey may be determined without necessarily asking the customer (e.g. it may be obvious, i.e. the Fund is a Jersey Fund).