

## 13 FUNDS AND FUND OPERATORS

### 13.1 Overview of Section

1. This section is supplemental to and should be read in conjunction with the sections of this Handbook referenced in the text below.
2. The purpose of this section is to assist with the application of CDD, 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. The types of funds and fund operators to which this section applies are set out below. For the purposes of the tables below and this section:
  - › 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 supervised person is a non-Jersey company with an established place of business in Jersey.

3.

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

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Part 1: Section 13 - Trust company business¶  
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Regulatory requirements are set within this section as AML/CFT  
Codes of Practice.¶  
This section contains references to Jersey legislation which may be  
accessed through the [JFSC website](#).¶  
Where terms appear in the Glossary this is highlighted through the  
use of italic text. The Glossary is available from the [JFSC website](#). ...

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*Laundering Order* unless otherwise stated

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trust company business i.e. acting as partner/trustee or providing a  
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investment business¶

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CoBO-Only funds, PPFs), Jersey Private Funds and very private funds)

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services to a fund that fall within the activities listed in Schedule 2.  
See paragraph 6 below.

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4.

**Type of Fund Operator**

**Proceeds of Crime Law**  
**Schedule 2**

<u>Functionary of recognized fund under the CIF(J) Law</u>	<u>Part A paragraph 3(1)(a)</u>
<u>Fund Services Business under the FS(J) Law</u>	<u>Part A paragraph 4</u>
<u>Those providing services related to CoBO funds (meaning CoBO-Only funds, PPFs), Jersey Private Funds and very private funds)</u>	<u>Part A paragraph 4 – such as carrying on:</u> <u>› trust company business i.e. acting as partner/trustee or providing a director</u> <u>› investment business</u>  <u>Part B paragraphs 7(1)(h), (k), (l), (m) or (n)</u>
<u>The <b>guidance notes</b> will also be relevant for entities providing other services to a fund that fall within the activities listed in Schedule 2 of the <i>Proceeds of Crime Law</i>. See paragraph 6 below.</u>	

5. Every supervised 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.

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6. 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 list below provides some examples of roles that supervised persons may hold with a Fund as their customer. As noted in paragraph 5 above, different supervised persons may have varying CDD obligations based on the type of service they provide to a Fund:

**Deleted:** 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*.

- › Auditor
- › Administrator/Registrar
- › Manager
- › Investment Adviser
- › Lender
- › Class G Director
- › Asset Manager
- › Distributor
- › Custodian
- › Legal Adviser

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7. Natural Persons such as Class G Directors regulated under the FS(J) Law are supervised persons and will also have AML/CFT obligations. The *JFSC* has produced the guidance note “Natural Persons carrying on a Single Class of Trust Company Business” for these individuals.

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8. An entity that is a “Managed Entity” (meaning an entity that is managed by a Manager of a Managed Entity registered to carry on class ZK of Fund Services Business) has the same AML/CFT obligations as any other Fund Operator. The JFSC has produced a guidance note for Managers of managed entities and certain managed entities.

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9. Funds and Fund Operators may have different AML/CFT obligations. For example, any one of the Fund Operators in the [list](#) above may be neither a Jersey body corporate nor carrying on business in or from within Jersey and so will not be a [supervised person](#) and will not be subject to Jersey AML/CFT obligations. A Fund and/or Fund Operator that is not a [supervised 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.

## 13.2 AML/CFT risk assessments

### 13.2.1 Overview – Obligation to conduct risk assessments

10. [In order to meet its AML/CFT obligations, a supervised person is required to prepare a Business Risk Assessment \(BRA\), along with a Customer Risk Assessment \(CRA\) for each of its customers. These obligations are covered in Sections 2.3 and 3.3.2 respectively. The BRA and CRA may be completed differently based on what the supervised person is/does, for example:](#)

<a href="#">Supervised person</a>	<a href="#">BRA</a>	<a href="#">CRA</a>
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 [supervised persons](#) under the *Money Laundering Order* must conduct a BRA and individual CRAs. Where the conducting of a BRA/CRA is outsourced to an external party, the [supervised 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 [one or more of the Codes of Practice published by the JFSC \(such as the Trust Company Business Code of Practice\)](#) 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 [AML/CFT-specific](#) 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.

### 13.2.2 Business risk assessment

15. This section [is supplemental to and should](#) be read in conjunction with Section 2.3 of [this Handbook](#) regarding BRAs.

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A relevant

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<#>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.¶

<#>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.¶

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## Guidance notes

16. When conducting a BRA 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 in a Fund BRA that could be considered, this list is not exhaustive and the supervised person will need to consider the risks relevant to them.
17. Supervised persons should satisfy themselves that 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).
18. Potential factors to consider when conducting a Fund BRA may include:

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 (SPVs) 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>
› Unusual Features	<ul style="list-style-type: none"> <li>› Lock ins</li> <li>› Asset holding arrangements</li> <li>› In specie contributions</li> </ul>

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

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19.

Investors / Target Market	
Type	<ul style="list-style-type: none"> <li>› <a href="#">Retail</a></li> <li>› <a href="#">Professional / Sophisticated</a></li> <li>› <a href="#">Institutional</a></li> <li>› <a href="#">Co-investors at fund level or at investment level (see paragraph <a href="#">25</a> below)</a></li> </ul>
Method of Distribution/ Solicitation	<ul style="list-style-type: none"> <li>› <a href="#">Word of mouth / club arrangement / reverse solicitation / private distribution / public distribution</a></li> <li>› <a href="#">Control of raising money and distribution of securities</a></li> <li>› <a href="#">Distributor employed</a></li> <li>› <a href="#">Promoter distributes</a></li> <li>› <a href="#">In house fund (i.e. Bank for high net worth clients)</a></li> <li>› <a href="#">Investment Adviser distributes</a></li> <li>› <a href="#">Subject to local marketing requirements e.g. AIFMD?</a></li> </ul>
Investor's Holding Method	<ul style="list-style-type: none"> <li>› <a href="#">Via intermediaries</a></li> <li>› <a href="#">Via nominee</a></li> <li>› <a href="#">Directly/indirectly</a></li> <li>› <a href="#">Complexity of holding structure</a></li> <li>› <a href="#">Rationale for holding structure</a></li> </ul>

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Investors / Target Market	
Investor information	<a href="#">› Source of funds</a> <a href="#">› Source of wealth</a> <a href="#">› Rationale</a>

20.

Investments	
Type / Asset Class	<a href="#">› Property / private equity / hedge fund / fund of funds / Infrastructure etc</a> <a href="#">› Liquid/illiquid assets</a>
Listed / Unlisted	<a href="#">› Recognised market?</a>
Risks associated with that Asset Class	<a href="#">› Diamonds / gold / luxury goods – higher AML/CFT risk</a> <a href="#">› Have Fund and Fund Operators sufficient knowledge and competence to deal with the asset class?</a>
Valuation	<a href="#">› Listed assets easier to value</a> <a href="#">› Specialist assets may be difficult to value</a> <a href="#">› Independent Valuer - Experts linked already to the fund?</a>
In Specie receipt/payment	<a href="#">› Valuation</a> <a href="#">› Title transfer effective?</a> <a href="#">› Liquid/ illiquid</a> <a href="#">› Related party transferring the asset?</a>
Sanctions	<a href="#">› Check the <a href="#">JFSC Sanctions</a> lists</a>

21.

<a href="#">› Factors Common to Fund Operators, Governing Body, Finance Provider, Investors / Target Market, Instigator / Promoter / Creator</a>	
Stature	<a href="#">› Public / Private</a> <a href="#">› Newly established / long established</a> <a href="#">› Listed / unlisted</a> <a href="#">› Global / local / number of jurisdictions / number of offices</a>
Legal Form	<a href="#">› Legal person / legal arrangement</a>
Ownership and Control	<a href="#">› Wide spread of ownership / control or sole ownership</a> <a href="#">› Dominant directors / shareholders</a>
Regulatory Status	<a href="#">› Regulated / unregulated</a>
Reputation	<a href="#">› Subject to regulatory or other disciplinary actions</a> <a href="#">› Subject to legal action</a>

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› <b>Factors Common to Fund Operators, Governing Body, Finance Provider, Investors / Target Market, Instigator / Promoter / Creator</b>	
	› 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	› PEPs - Are there any? › Sanctions - Have they been checked? › High Risk Jurisdictions – are there links?

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22.

<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

23.

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

24.

<b>Governing Body</b>	
Control	› Independent / equal / proportionate / dominant individuals › Bank Account Mandates
Corporate Governance	› Compliance Culture, compliance monitoring policy › Frequency that Policy and Procedures are updated

25.

<b>Finance</b>	
Source of borrowing	› Regulated Bank / credit institution › Private finance – where are funds from?

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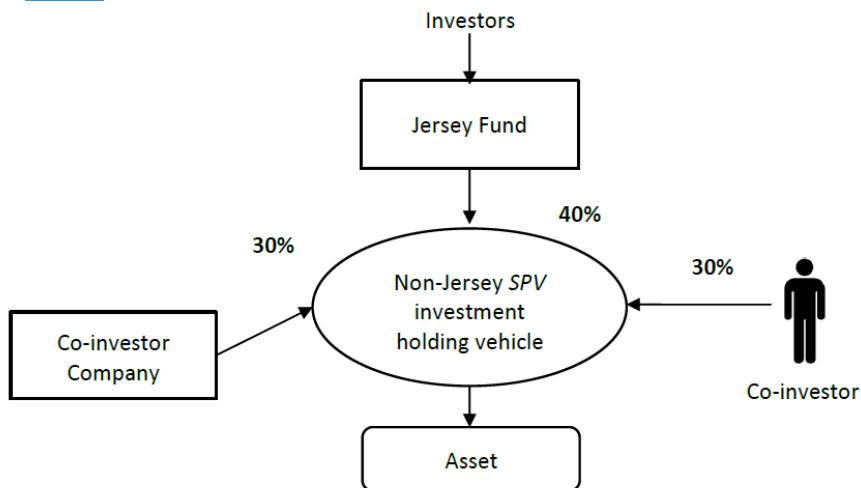
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Finance	<ul style="list-style-type: none"><li>› Layers of borrowing- how many lenders?</li><li>› Related party?</li></ul>
Structure	<ul style="list-style-type: none"><li>› Loan</li><li>› Bond</li><li>› Ring fencing</li><li>› Priority</li></ul>
Security	<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>› SPV</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>

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26. An example of a factor to consider in a Fund BRA is the existence of co-investors – see [the diagram](#) below:

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27. The non-Jersey SPV investment holding vehicle is not a [supervised](#) person so has no Jersey AML/CFT obligations.

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28. The Fund's *BRA* should consider the *AML/CFT* risks arising from the existence of the Co-investors in the structure. These risks may include (but are not limited to) connections to a jurisdiction listed in Appendix D2 of the *AML/CFT Handbook* 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.

### 13.2.3 Customer risk assessment – Risk indicators

29. This section is supplemental to and should be read in conjunction with Section 3.3.4 of this Handbook.

30. The lists below provide examples of potential risk indicators and are not exhaustive. The results of any National Risk Assessment or similar must also be taken into account. 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 at initial take-on of a *customer* but will also need to be reviewed on a regular basis and at trigger events, to ensure the risk rating remains appropriate.

31. Consideration should also be given to whether it is appropriate to on-board a customer at all, and whether a SAR should be submitted.

32. Potential Higher Risk Indicators at take-on of a *customer* (Fund or investor).

Where the customer:

- › has provided information/documentation that cannot be verified
- › has links to a *PEP*
- › has links to a *higher risk country or territory*
- › 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:
  - is aiming to invest in products that may be susceptible to *money laundering*, for example diamonds and gold.
  - has a one off minimum investment amount so that it operates below AML reporting threshold amounts.
  - is a highly liquid open-ended Fund (the customer) with the possibility of frequent subscriptions and redemptions.
  - uses unregulated fund operators

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- outsources functions without any valid reasons provided
- has a complex structure so it is difficult to ascertain who the underlying beneficiary is, for example using many *SPVs* and intermediaries.

33. 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)
- › 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.

#### 13.2.4 Risk assessments for SPV governing bodies

**F-B**

34. 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.

35. 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 (see Article 3(2)(a) and (c) of the *Money Laundering Order*). 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.
36. In these circumstances, its *BRA* and *CRA* *conducted* 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.
37. 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 SPV Trustee of Unit Trust Funds	Self	Fund	SPV Trustee of one Unit Trust Fund	Consolidated Risk Assessment Combined BRA/CRA for Trustee and Fund BRA as SPV Trustee is intrinsically part of the Fund.	
Unit Trust	Self	Investors	Unit Trust	See above	Investors

### 13.2.5 Documenting risk assessments

#### Overview

38. This section *is supplemental to and should* be read in conjunction with Section 3 and Section 2 of *this* Handbook.
39. *Supervised persons are required to ensure their* *BRAs* and *CRAs* *are* properly documented.

#### Guidance notes

40. 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 *replacement for a CRA*.
41. For certain types of products or services, standard *customer* profiles may assist the *CRA* process. In such cases, the *supervised 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.
42. The *supervised person* always remains ultimately responsible for its Risk Assessments regardless of whether they outsource the conduct of them *to another party*.

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## 13.3 Customer Identification Measures

### Overview

43. Section 3 of the *AML/CFT Handbook* describes the stages of the identification process and provides guidance in relation to each stage. [CDD](#) 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 [also displayed at Section 3](#) summarises *CDD* requirements:

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CDD	Identification measures	Risk assessment	
		ID <i>customer</i>	
		ID third parties	
		ID person acting for <i>customer</i>	Verify authority to act
		Where <i>customer</i> not individual:	Understand ownership/control structure
			ID <i>beneficial owners/controllers</i>
		Obtain information on purpose/nature	
	On-going monitoring	Scrutinising transactions/activity	
		Keep documents/information up-to-date	

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44. The following sections provide guidance on the identification of customers, ultimate beneficial owners and third parties. These sections must be read in conjunction with [the referenced](#) sections of the AML/CFT Handbook.

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### 13.3.1 Obligation to apply identification measures

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#### Overview – Fund

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45. Section 3.1 of [this](#) Handbook states [that](#) a customer may be an individual (or a group of individuals) or a legal person. Further guidance on finding out identity and obtaining evidence of identity is provided [at the following sections](#):

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AML/CFT Handbook Section	Type of customer	Fund Structure
4.3	Individual/group of individuals	
4.5	Legal person	Company, Limited Liability Partnership, Separate Limited Partnership, Incorporated Cell
4.4	Individual or legal person acting for a legal arrangement	Trustee on behalf of a Unit Trust General Partner on behalf of a Limited Partnership

46. For the purposes of this section, [companies](#), limited [partnerships](#) and unit [trusts](#) will be used as practical examples as these are the most common Fund structures.

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47. Each of the Fund's investors are its customers. The investors may take a variety of legal forms and Article 3 [of the Money Laundering Order](#) specifies how *identification measures* are applied to each.

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Fund Structure	<u>Supervised person</u> re each Fund structure	Customer/Investor
Company	Company	> Article 3(2)(a) individual > Article 3(2)(aa) any person acting on behalf of the customer > Article 3(2)(b) acting for a third party (legal arrangement) > Article 3(2)(c) not an individual but legal person.  Legal persons/arrangements apply the Three Tier Test
Limited partnership	General Partner on behalf of the Limited Partnership	
Unit Trust	Trustee on behalf of the Unit Trust	

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48. The Three Tier Test refers to the process by which a supervised person may determine each individual who is a *beneficial owner or controller* and is covered in detail at Section 4 above. However it can be summarised as determining the individuals who exercise control through 1) ownership means and 2) other means; or 3) through positions held. When applying the Three Tier Test, if no one is present at Tiers 1 and/or 2 then consider Tier 3. There may be more than one individual at Tiers 1 and/or 2.

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49. Section 3.3 lists the various steps of the identification process, of which identifying the *customer* is only a part. A supervised person must also understand the ownership and control of the *customer* and identify:

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- > any *beneficial owners and controllers* of the *customer*;
- > those third parties for whom the *customer* acts indirectly/directly (e.g. legal arrangements) and
- > others listed in Article 3(2) of the Money Laundering Order (which links to Article 3(7) e.g. settlor/protector).

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50. The starting point is that the supervised person has to determine who everyone detailed in paragraph 49 above is, as part of its identification measures.

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#### Guidance notes – Fund

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51. Responsibility for applying *CDD* measures (which includes *identification measures* and *on-going* monitoring) rests with the **governing body** of the Fund, as detailed in the table below:

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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 (PCC), 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

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### 13.3.2 Identification Measures - Fund operators

#### Guidance notes

52. A number of Fund Operators are likely to provide services to the Fund. Each will be a *supervised 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 *the* investors (e.g. *source of funds*) and *beneficial owners 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% *or more* and *source of funds* information provided to the Fund *by* investors via subscription agreements/investor questionnaires (see also paragraph *135 below*).
54. The first step for a *supervised 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) of the *Money Laundering Order*. 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. *For* 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), (aa) and (c)	N/A	Shareholder(s) (owns customer) Article 3(2)(c)(iii)	Directors of Company Re customer Article 3(2)(aa), c(ii) and c(iii)
Legal arrangement i.e. a Limited Partnership/Unit Trust			
General Partner/Trustee (Company) Article 3(2)(a), (aa) 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)(aa), c(ii) and c(iii) Re third party Article 3(2)(aa), (b)(iii)(A), (B) and (C)

56. Once a *supervised person* fully understands the ownership and control structure of a *customer* the *supervised person* can determine the *beneficial owners and controllers* pursuant to the Three Tier Test and then apply the necessary *identification measures*.

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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 *supervised person is a Fund Operator and the Fund is a:*

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Legal person i.e. a Company		
Customer	Third party	Beneficial Owners/Controllers
Company <i>Article 3(2)(a), (aa) and (c)</i>	N/A	Apply the Three Tier Test (see 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 <i>Article 3(2)(aa), (c)(ii) and (c)(iii)</i>
Legal arrangement i.e. Unit Trust/Limited Partnership		
General Partner for Limited Partnership / Trustee for Unit Trust (Company) <i>Article 3(2)(a), (aa) and (c)</i>	Limited Partnership/ Unit Trust <i>Article 3(2)(b)(iii)</i>	Apply the Three Tier Test to the customer and the third party: <i>customer</i> – General Partner/Trustee <i>Article 3(2)(aa) and (c)</i> Third Party- Limited Partnership/Trust <i>Articles 3(2)(b) and 3(7)</i>

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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*:

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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

### 13.3.3 Identification Measures - Unit trusts

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#### Guidance notes

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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.

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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) of the *Money Laundering Order*, 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).

### 13.3.4 Fund operators – Passive investors

#### Guidance notes

62. Identification of investors in a Fund will be approached differently by the Fund and the Fund Operator.

63. The Fund has an obligation to identify each of its investors, as they are the Fund's *customers*. This obligation exists *regardless of* whether they are passive investors *who do not* 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 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 profile could be obtained. In a higher risk relationship, more stringent measures should be applied. *These measures should be determined on a case-by-case basis with reference to the supervised person's customer risk assessment of the relationship.*

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.

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### 13.3.5 Fund operators - Promoters

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#### Guidance notes

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69. A supervised 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 body (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 considered to be a beneficial owner or controller where 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 indicate "control by other means" (see Tier 2 of the Three Tier Test).

### 13.3.6 Multiple layers

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#### Overview

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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, trusts, nominees and intermediaries between the investment in the Fund and the individual who is the ultimate *beneficial owner*. The more complex the structure, the more difficult it may be to determine the *beneficial owner and controller*.
72. A supervised person's approach to a complex ownership and control structure will be informed by the risk rating allocated to that *customer*. However, as set out in Section 4 of this Handbook the following are always required to be identified:
- › the customer,
  - › the *ultimate beneficial owner(s)/controller(s)* of the *customer* (the Three Tier Test can assist supervised persons in working out which persons fall within this category) and
  - › any third parties on whose behalf the *customer* acts.

#### Guidance notes

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73. In the example below the Fund is the supervised person. The general rule is that you are trying to ascertain the ultimate individual(s) who control(s) the structure.

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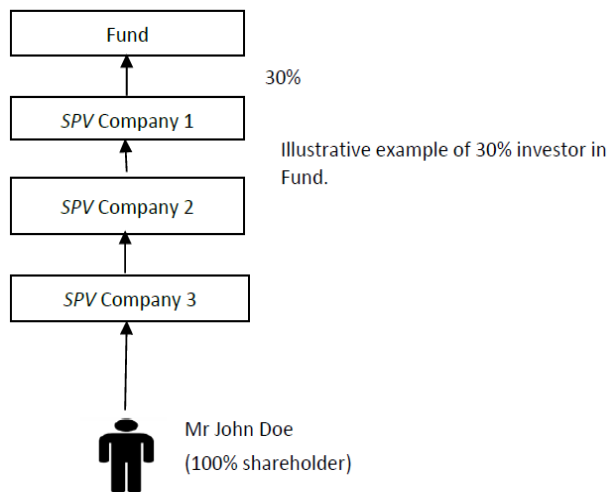
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#### Customer

74. SPV Company 1 is the *customer* of the Fund.

75. The Fund is obliged to find out the identity [of its customer](#) and obtain evidence of identity. The *AML/CFT Handbook* provides guidance on *identification measures* to be applied to a legal person that is a company:

- › [section 4.5.1 - Finding out the identity of a legal person that is a company](#) and
- › [section 4.5.2 - Obtaining evidence of identity of a legal person that is company.](#)

#### Beneficial Owner/Controller

76. SPV Company 1 is a legal person and the [supervised 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 [in order](#) 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)

77. Understanding a *customer's* ownership and control structure will allow a [supervised 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".

78. 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*.

79. The *AML/CFT Handbook* provides guidance for individuals (in this case John Doe):

- › [section 4.3.1 - Finding out the identity of an individual](#)
- › [section 4.3.2 - Obtaining evidence of identity of an individual](#)

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80. If none of the individuals with ownership interests exercise control then they may not need to be identified (Section 13.3.4 regarding passive investors).

#### Multi-layered structure

81. In the above scenario 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.

82. 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 72 above). The reason they are not controllers is because they are acting on the instructions of the **ultimate controller** Mr John Doe and are therefore merely links in the control chain.

83. Whilst obtaining evidence of identity may not be necessary, sufficient information will still need to be obtained in relation to these two entities in order to understand the wider 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.)

### 13.3.7 Nominees/Investment managers

#### Guidance notes

84. This section is supplemental to and should be read in conjunction with Section 7.15 of this Handbook regarding designated relationships and pooled relationships.

85. There may be scenarios where the Fund's *customer* is representing other parties, for example as a nominee/investment manager. In this scenario the normal obligations apply and the supervised 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.

86. If the customer is a company then the supervised person would apply the guidance in paragraph 75 above.

87. In the scenario below the Fund is the supervised person, the corporate nominee is the customer and the individual is the third party for whom the customer is acting.

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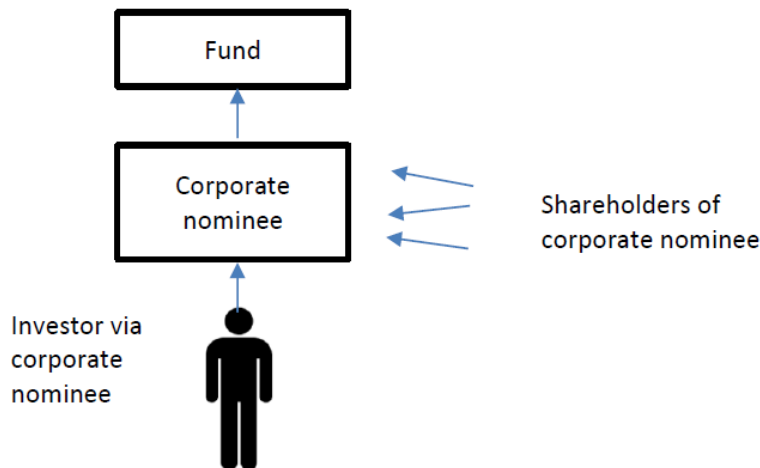
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88. The corporate nominee is the *customer* and it will be necessary to identify its *beneficial owners and controllers*. The Three Tier Test will need to be applied to determine the potential *beneficial owner/controllers* of the corporate nominee. 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) of the *Money Laundering Order*.

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

a corporate nominee (Article 3(2)(c))		
No	Control through ownership	There are a number of owners and there is no majority shareholder.
No	Control through other means	There are no entities/persons that fall into this tier
Yes	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))		
Yes	Control through ownership	Here the principal is an individual
No	Control through other means	Tier 1 applies so no further need to determine potential persons in other tiers.
No	Control through positions held	



89. The supervised person is required to identify and verify its *customer* – here the corporate nominee – as set out at paragraph 75. Control and ownership of the *customer* must be ascertained applying the Three Tier Test (paragraph 88 above).

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90. The third party for whom the *customer* is acting must also be identified and verified. In the diagram [above](#) this will be the individual who is investing via the nominee. If the third party [in the example above](#) was not an individual then its *beneficial owners and controllers* [would also need to](#) be identified and verified.

### 13.3.8 Fund operators – Residual assets

#### Guidance notes

91. 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 ([regardless of](#) whether the investors are its *customers*)?

## 13.4 Timing of identification measures

#### Overview

92. This section [is supplemental to and should](#) be read in conjunction with Sections 4.1 and 4.7 of [this](#) Handbook.

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. [However, 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. [Where](#) the provisions of Article 13(4) are relied upon to delay the obtaining of evidence of identity, additional measures are required, including [the effective management of](#) the associated risk [through](#) 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 [of](#) months.

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## 13.5 Failure to complete identification measures

### Overview

96. This section [is supplemental to and should](#) be read in conjunction with Section 4.8 of [this Handbook](#).
97. Under Article 14 of the [Money Laundering Order](#), if a [supervised 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.
98. [This](#) requirement [may cause conflicts](#) in the case of a [supervised 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(I) 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

99. In order to address [these potential issues](#), 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 [the financing of terrorism](#) is effectively managed.

## 13.6 Updating identification information

100. This section [is supplemental to and should](#) be read in conjunction with Sections 3.4 and 4.1 of [this Handbook](#).

### Guidance notes

101. The *BRA* will enable a [supervised 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 “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 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)
  - › [when distributions are](#) being made
  - › economic Merger of two Funds which results in the admission of new investors.

[The guidance set out at Section 3.5 of this Handbook regarding the taking-on of a new book of business should also be considered, where relevant.](#)

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102. It may well be that when a *customer's* information and evidence [of identity](#) is reviewed upon a trigger event, it is clear that the information and evidence previously obtained is sufficient and no further updated information is needed. [This may be the case when, for example, a regularly scheduled review has recently been undertaken and updated information has been received as a result.](#)

## 13.7 On going monitoring: Scrutinising of transactions & activity

103. This section [is supplemental to and should](#) be read in conjunction with Section 6 of [this Handbook](#).

### Guidance notes

104. The information about a *customer* obtained at the outset of the relationship as part of *identification measures* should [allow](#) a [supervised 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. [For example, if the Fund's prospectus indicates that it is going to invest in UK real estate and then invests in oil exploration and extraction businesses](#), this is not expected activity. Similarly, if the Fund is aiming for investment from European Banks and then receives investment from a [Non-Profit Organisation based in Sub-Saharan Africa](#), this would not be expected activity.

105. 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, [unusually](#) complex/large, high risk or follows an unusual pattern. [If a transaction](#) does not match [the expected profile](#) then the rationale for the [transaction](#) should be obtained and documented.

106. Expected activity may change over time if the target market or target investments change. This may also impact on the Fund's *BRA* and *CRA*s which may need to be updated.

## 13.8 Collation of [CDD](#)

### Overview

107. Every Fund and Fund Operator is obliged to comply with [the CDD](#) requirements [placed upon it](#). However, there may be statutory or contractual provisions operating so that, should one entity in a Fund structure undertake sufficient [CDD](#), others in the structure may not need to duplicate certain aspects of [CDD](#) themselves.

108. The following sections of the *AML/CFT Handbook* deal with specific provisions regarding scenarios where a [supervised person](#) may not undertake all of the *CDD* process themselves:

Exemptions from Identification Measures	› <a href="#">Section 7</a>
Reliance on obliged persons	› <a href="#">Section 5</a>
Outsourcing	› <a href="#">Section 2.4.4</a>

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› Section 5.1 Paragraphs 12-14

109. Where a supervised person is not undertaking aspects of CDD, including through the application of exemptions, it needs to:

- › document who is doing so and on what basis, and
- › ensure that the risks have been properly assessed, considered and documented.

### 13.8.1 Exemptions from identification measures

#### Overview

110. This section is supplemental to and should be read in conjunction with Section 7 of this Handbook.

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

Circumstances in which exemptions under Part 3A do not apply (Article 17A)	
Exemptions under Articles 17 B-D	Exemptions under Article 18
› the <u>supervised</u> person suspects <i>money laundering</i>	› the <u>supervised</u> person suspects <i>money laundering</i>
› the <u>supervised</u> person considers that there is a higher risk of <i>money laundering</i> , including the risk of <i>money laundering</i> if fail to apply appropriate identification measures or keep records.	› the <u>supervised</u> person considers that there is a higher risk of <i>money laundering</i>
› the <i>customer</i> is resident in a country that is not compliant with the <i>FATF recommendations</i>	› the <i>customer</i> is resident in a country that is not compliant with the <i>FATF recommendations</i>
› the <i>customer</i> is a person in respect of whom Article 15(1)(c) applies [specified persons <u>having</u> a <i>relevant connection</i> to country/territory in relation to which <i>FATF</i> has called for enhanced customer due diligence]	› the <i>customer</i> is a person in respect of whom Article 15(1)(c) applies [specified persons <u>having</u> a <i>relevant connection</i> to country/territory in relation to which <i>FATF</i> has called for enhanced customer due diligence]
› the <i>customer</i> is a person in respect of whom Article 15B(1) applies [certain deposit taking businesses with a banking or similar relationship with an institution whose address for that purpose is outside Jersey]	

112. Exemptions from *identification measures* may only be applied in appropriate circumstances. Where specified, this will require an assessment of the risk of applying the exemption, in addition to a *CRA*.

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## Guidance notes

113. As noted at Section 7.13 of this Handbook, Articles 18 and 17B-D of the Money Laundering Order can be applied to the same customer relationship, as they apply to separate identification requirements.

114. Refer to the table set out at Section 7.13 for detail on which aspects of CDD must always be undertaken by the supervised person.

115. Article 18 applies only to the customer and does not extend to third parties. From a Fund Operator's perspective this means, for example, that Article 18 only applies to the general partner or the trustee and not to the limited partnerships or unit trust. Articles 17B-D do apply to third parties which would encompass the investors in a limited partnership or a unit trust.

116. Article 18(4)(b) 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 simplified due diligence may be applied, the supervised person should consider whether the exchange on which the securities are listed is an IOSCO compliant exchange or a regulated market. The fact that the exchange is listed in a product guide (e.g. listed fund guide) or in an Order (e.g. the Unregulated Funds Order) does not necessarily mean it qualifies. Further guidance is provided on this point in Section 7.16.3 of the AML/CFT Handbook.

### 13.8.2 Reliance on obliged persons

117. This section is supplemental to and should be read in conjunction with Section 5 of this Handbook.

## Guidance notes

118. Care should be taken when placing reliance on an administrator. An administrator may be acting in two capacities when undertaking CDD: (i) for itself as Fund Operator and (ii) as a delegate on behalf of the Fund. In such a case, a supervised 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.

119. Set out below are some key questions for a supervised person to ask themselves:

- 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?

120. 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.

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

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122. 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 exemptions from *identification measures*).

123. There are aspects of *CDD* that, in the absence of other provisions, the *supervised person* must undertake itself. [These are set out in the table at Section 5.1.](#)

### 13.8.3 Obtaining copy documentation from a *supervised* Trust and company *service* provider in the Crown Dependencies

#### Overview

124. This section [is supplemental to and should](#) be read in conjunction with [Sections 4.4.5 and 4.5.7 of this Handbook.](#)

125. In certain circumstances, it may be appropriate to obtain information from a trust and company service provider that is regulated by the *JFSC*, the Guernsey Financial Services Commission or the Isle of Man Financial Services Authority in order to identify certain individuals.

126. It should be noted that such practice is restricted to a very narrow set of circumstances (e.g. only certain individuals [and](#) only certain documents) and is dependent on a number of conditions being met (e.g. [a specific risk assessment is carried out](#) and [specific confirmations are obtained](#) from the trust and company service provider).

### 13.8.4 Outsourcing

#### Overview

127. This section [is supplemental to and should](#) be read in conjunction with [Section 2.4.4 and Section 5 \(paragraph 14\) of this Handbook, along with the JFSC's Outsourcing Policy and guidance note.](#)

128. Contractual arrangements may be put in place where another entity undertakes *CDD* for the *supervised 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 *supervised person* always remains responsible for fulfilling its statutory obligations regardless of the activities it outsources to delegates.

129. Procedures and processes must be put in place so that the delegating party retains oversight of the outsourced activities. The *supervised person* needs to be provided with sufficient information by the delegate in order to adequately review and monitor the outsourced activities.

#### Guidance notes

130. Outsourcing of specific functions to a Fund Operator may form part of the Fund Operator's service level agreement with the Fund. The *supervised person* would be expected to ensure that the terms are adequate to ensure a clear understanding of what activity the delegate is undertaking.

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131. Given that the delegate carrying out the outsourced function is likely to have its own CDD 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.

132. Section 2.4.4 provides a table of activities which may be outsourced but also states that CDD is always the responsibility of the supervised person.

133. 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):

- › which party has “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.

134. Where a Fund Operator assesses the AML/CFT risk regarding a Fund to be higher or the Fund/Fund Operators are not regulated, the application of exemptions from *identification measures* is prohibited. Therefore, a Fund Operator providing services to a Fund where it has no direct relationship with the investors may need to apply *identification measures* to the investors. This may be in relation to the control of the Fund or its source of funds. Rather than gathering this information themselves they will instead seek access to this information which will normally already have been provided to the Fund by investors via subscription agreements/investor questionnaires.

135. 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, in order 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).

## 13.9 Enhanced due diligence measures – Non-Jersey investors

### Overview

136. This section is supplemental to and should be read in conjunction with Sections 7, 7.4 and 7.7 of this Handbook.

137. Funds with overseas investors will need to undertake **enhanced due diligence** on those investors (see Article 15 of the *Money Laundering Order*) as the investors will normally be:

- › non-resident *customers* and/or
- › not physically present for identification purposes.

138. Enhanced due diligence measures must be applied to address the risk associated with these types of customer. Sections 7.4 and 7.7 of the AML/CFT Handbook provide guidance on the same.

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## Guidance notes

139. 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.
140. 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. [For example a question might read](#) “Are you Jersey Resident? If the answer is no, provide the following additional information...”
141. On some occasions the rationale for [a non-Jersey investor](#) looking to invest in Jersey may be determined without necessarily [needing to ask](#) the *customer* (e.g. it may be obvious [if, say](#), the Fund is a Jersey Fund).

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