

## 14. FUNDS AND FUND OPERATORS

### Please Note:

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

### 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(I) 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(I) 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.

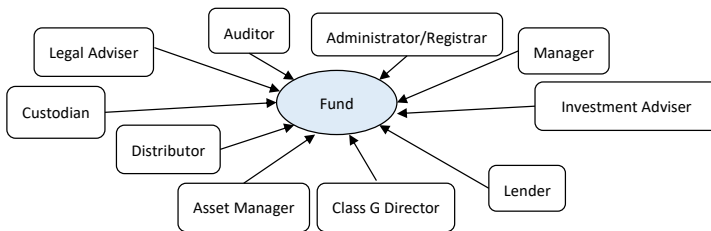
<sup>2</sup> There are no statutory exemptions for Funds, except (and subject to certain requirements) a non-domiciled company that is a Collective Investment Fund. See the *AML/CFT Handbook* [Part 4 Section 1 Proceeds of Crime Schedule 2](#)

- › 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*

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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: <https://www.jerseyfsc.org/industry/guidance-and-policy/natural-persons-carrying-on-a-single-class-of-trust-company-business/>

<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). <https://www.jerseyfsc.org/industry/guidance-and-policy/manager-of-a-managed-entity-and-certain-managed-entities/>

<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).

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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 *CRAs* 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.

<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.

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**Guidance Notes**

20. When conducting a *BRA* care should be taken not to focus on any single factor. All factors (including any identified by a National Risk Assessment or similar), 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.

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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>

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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>

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<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

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28.

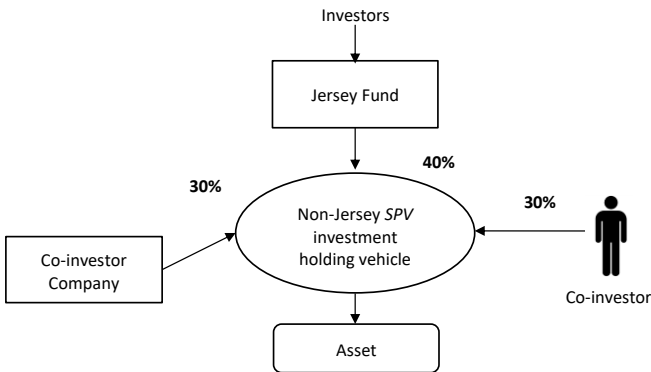
Governing Body	
Control	<ul style="list-style-type: none"> <li>› Independent / equal / proportionate / dominant individuals</li> <li>› Bank Account Mandates</li> </ul>
Corporate Governance	<ul style="list-style-type: none"> <li>› Compliance Culture, compliance monitoring policy</li> <li>› Frequency that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

<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.

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- › has links to a *PEP*
  - › 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

<sup>12</sup> Appendix D2:  
<https://www.jerseyfsc.org/media/2124/part-1-appendix-d2-countries-and-territories-higher-risk-02-september-2019.pdf>

- › 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

#### 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		

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### 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		
		ID person acting for customer	Verify authority to act	
		Where customer not individual:	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*.

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**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>› <u>Article 3(2)(aa) any person acting on behalf of the customer</u></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> To Legal Persons / Arrangements apply the Three Tier Test <sup>13</sup> .
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.

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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.

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**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), <u>(aa)</u> and (c)	n/a	Shareholder(s) (owns customer) Article 3(2)(c)(iii)	Directors of Company Re customer Article 3(2)( <u>aa</u> ), <u>c(ii)</u> and <u>c(iii)</u>
Legal Arrangement i.e. a Limited Partnership/Unit Trust			
General Partner / Trustee (Company) Article 3(2)(a), <u>(aa)</u> 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)( <u>aa</u> ), <u>c(ii)</u> and <u>c(iii)</u> Re Third Party Article 3(2)( <u>aa</u> ), (b)(iii)(A), (B) and (C)

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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), <u>(aa)</u> 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)( <u>aa</u> ), (c)(ii) and (c)(iii)
Legal arrangement i.e. Unit Trust/Limited Partnership		
General Partner for Limited Partnership / Trustee for Unit Trust (Company) Article 3(2)(a), <u>(aa)</u> 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)( <u>aa</u> ) and (c) Third Party- Limited Partnership / Trust Articles 3(2)(b) and 3(7)

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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*.

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.

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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

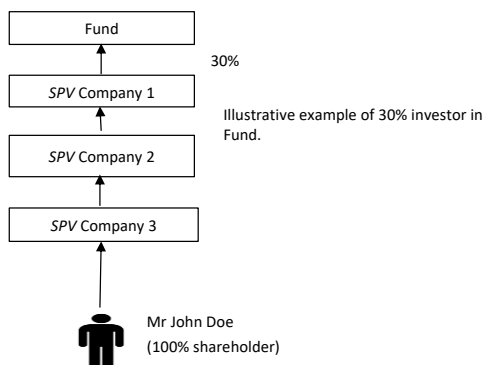
##### Overview

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.

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#### 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).

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**“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*.

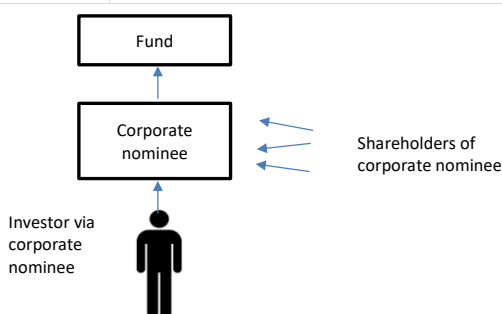
- 85. There may be scenarios where the Fund’s customer is representing others, for example as a nominee/investment manager.
- 86. In this scenario the normal obligations apply and the *relevant person* still has to identify:
  - › The customer
  - › The ultimate beneficial owner/controller of the customer (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
V	Control through positions held	The board of directors control the corporate nominee

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an individual whose interest is through the corporate nominee (Article 3(2)(b))		
V	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*.

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#### 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(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

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*):

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- › 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:

Exemptions from <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, including applying exemptions, it needs to document who is, on what basis and that the risks have been properly assessed and considered.

#### 14.8.1 Exemptions from 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 exemptions from *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 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 <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> , including the risk of <i>money laundering</i> if fail to apply appropriate <i>identification measures</i> or keep records.	› 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(1)(c) 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(1)(c) 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 15B(1) applies [certain deposit taking businesses with a banking or similar relationship with an institution whose address for that purpose is outside Jersey]	

108. 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*.

##### Guidance Notes

109. Articles 18 and 17B-D 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 17B-D relate to identification of third parties on whose behalf the customer is acting.

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Not permitted to apply exemption from identification measures if:

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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.
	Articles 17B-D provide an exemption from this obligation
	Article 18 provides an exemption from this obligation (Note: does not apply to third parties)

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CDD	Identification measures	Risk assessment	
		ID customer	
		ID Third parties	
		ID person acting for customer	Verify authority to act
		Where customer not individual:	Understand Ownership/control structure ID Beneficial Owners/Controllers
	On-going monitoring	Obtain information on purpose/nature	
		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. Articles 17B-D do apply to third parties which would encompass the investors in a limited partnership or a unit trust.

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112. 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 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 7.16.3 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:

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- › 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 exemptions from *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(2) allows reliance upon an <i>obliged person</i> .

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CDD	<i>Identification measures</i>	Risk assessment	
		ID customer	
		ID Third parties	
		ID person acting for customer	Verify authority to act
		Where customer not individual:	Understand Ownership/control structure ID Beneficial Owners/Controllers
	On-going monitoring	Obtain information on purpose/nature	
		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

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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.

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

<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.

CDD	Identification measures	Risk assessment		
		ID customer		
		ID Third parties		
		ID person acting for customer	Verify authority to act	
		Where customer not individual:	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 exemptions from *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.

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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).