

The AML/CFT Handbook for Regulated Financial Services Business

Sector Specific Section for Trust Company Business

Introduction

On 23 December 2009 the Jersey Financial Services Commission (“**JFSC**”) published an additional trust company business section (the “**Section**”) to its Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism (the “**Handbook**”).

The reason for this was that although the Handbook includes provisions that are applicable where a trustee of an express trust, or a legal body (including a foundation), is the applicant for business or customer of a person subject to Money Laundering (Jersey) Order 2008 (the “**Money Laundering Order**”) (a “**Relevant Person**”), there were no specific provisions in the Handbook to assist with the interpretation and application of customer identification measures under the Money Laundering Order where a business relationship is established or a one-off transaction is carried out by a Relevant Person in the course of “trust company business”.

The Section describes the identification and verification measures that are to be applied where a service (as specified in Articles 2(3) and (4) of the Financial Services (Jersey) Law 1998 (“**FSJL**”) and paragraph 8 of Part B of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999)) (a “**Service**”) is provided in respect of a trust, a legal body (excluding a foundation), and a foundation. It also provides guidance in relation to customer due diligence requirements and risk assessment; in particular where the service provided is a registered office address only.

The Section includes both Regulatory Requirements and Guidance Notes. The purpose of this briefing is to provide a brief summary of certain key parts of the Section.

Customer Due Diligence Requirements

The Section provides guidance for Relevant Persons carrying on trust company business in interpreting and applying Section 3 of Part 1 of the Handbook, which sets out the factors to be taken into account when assessing risk. In particular, the guidance refers to factors which

might indicate that a settlor is in fact a “dummy settlor”, or that a settlor is withholding information on persons really intended to benefit from a discretionary trust (a “blind trust”).

Where the nature of the service to be provided is provision of a registered office address only, the Section notes that there may be an increased risk of the legal body being used to launder money or finance terrorism (although this may be mitigated where the customer is a regulated person or is listed on a regulated market). The Section therefore states that the relevant person should:

- Take into account the passive nature of the service
- Corroborate the relationship information collected pursuant to Section 3.3.1 of Part 1 of the Handbook by reference to copies of minutes of directors’ and members’ meetings, and copies of accounts required by statute.

Identification measures

In respect of each of the services specified in Article 2(4) FSJL, the section clarifies (a) whether the nature of the service is such that a business relationship is formed or one-off transaction carried out, thus triggering the obligation to carry out customer due diligence in Article 13 of the Money Laundering Order; and (b) who is considered to be the “customer”.

The Section describes the identification measures that are to be applied where trust company business is to be provided. These are based on the measures set out in sections 4.3 - 4.5 of Part 1 of the Handbook, which will already be familiar to Relevant Persons. Thus, a Relevant Person may demonstrate collection of relevant identification information where it requests and receives information (in line with the guidance for individuals and legal bodies contained in sections 4.3 and 4.5 (and presumably 4.4) of Part 1 of the Handbook) as required:

Trusts

Where a Relevant Person is to provide a Service in respect of a trust, relevant identification information must be collected on the persons who are concerned with the trust before the time the trust is settled or, where the trustee is taking over from a retiring trustee, before the time of appointment (and subsequently when there is any change in those persons or the information

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previously provided). As in section 4.4.1 of Part 1 of the Handbook the following persons are concerned with a trust: settlor(s); protector(s); beneficiaries with a vested right; and beneficiaries who are the object of a power and that have been identified as presenting a higher risk. The Section also requires identification measures to be applied to any co-trustees.

Verification of identity must also take place at this time in line with sections 4.3 and 4.5 (and presumably 4.4) of Part 1 of the Handbook, except that verification of the identity of a beneficiary with a vested interest may take place at a time after a particular right vests if the following conditions are met:

- All other necessary customer due diligence information (including identification information) has been obtained;
- Verification is carried out at the time of, or before, distribution of trust property or income (a time that is considered reasonably practicable); and
- Money laundering risk is effectively managed.

Legal bodies (other than foundations)

Save where a statutory exemption is available, where a Relevant Person is to provide a Service in respect of a legal body (other than a foundation), relevant identification information must be collected on persons who are to be the beneficial owners and controllers of the legal body before the time that it is incorporated or constituted (and subsequently when there is any change in those persons or the information previously provided). As in section 4.5.2 of Part 1 of the Handbook the following persons are beneficial owners and controllers of legal bodies: persons with ultimate effective control over the legal body's assets, including the persons comprising the mind and management of the legal body eg directors; and persons ultimately holding an interest in the capital of the legal body.

Verification of identity must also take place at that time in line with sections 4.3 and 4.5 of Part 1 of the Handbook.

Foundations

Where a Relevant Person is to provide a Service in respect of a foundation, relevant identification information must be collected on the persons who are to be concerned with the foundation before the time that it is incorporated. As in section 4.5.3 of the Handbook the following persons are concerned with the foundation: the founder(s), a person(s) (other than the founder of the foundation) who has endowed the foundation, and, if any rights a founder of the foundation had in respect of the foundation and its assets have been assigned to some other person, that person; any beneficiaries entitled to benefit under the foundation in accordance with the charter or the regulations of the foundation; any other beneficiaries and persons in whose favour the council may exercise discretion under the foundation in

accordance with its charter or regulations and that have been identified as presenting higher risk; all council members (other than the Relevant Person) and, if any decision requires the approval of any other person, that person; and the guardian.

Verification of identity must also take place at that time in line with sections 4.3 and 4.5 of Part 1 of the Handbook, except that verification of the identity of a beneficiary entitled to benefit under the foundation may take place at a time after a particular right vests if the following conditions are met:

- All other necessary customer due diligence information (including identification information) has been obtained;
- Verification is carried out at the time of, or before, distribution of property or income (a time that is considered reasonably practicable); and
- Money laundering risk is effectively managed.

Termination of relationship where unable to carry out identification

The Section notes that Article 14 of the Money Laundering Order, which requires a Relevant Person to terminate a relationship where it is unable to apply identification measures when required, does not work particularly well where the customer is the beneficiary of a trust or foundation, or an object of a power of a trust or foundation and where (cumulatively):

- The relationship with the customer is not a direct contractual relationship, but is governed by other legislation eg the Trusts (Jersey) Law 1984 (in the case of a trust), or the Foundations (Jersey) Law 2009 (in the case of a foundation); and
- There may be no or very little connection between the customers of a relevant person and each customer may respond independently and differently to the performance of identification measures, in a way that might prejudice the interests of other customers.

In order to address this tension, the Section explains that termination of a relationship may be delayed until such time as compliance with the Money Laundering Order does not conflict with another legal requirement, and does not have any prejudicial effect on the interests of other customers. Termination may be delayed only where a relevant person resolves to postpone making any distribution to a particular beneficiary until the deficiency has been, or can be, addressed. However, where persons have been identified as presenting a higher risk, verification of identity must take place at the time that the risk is identified.

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Employee Benefit Schemes - verification

The Section states that where a Relevant Person enters into a business relationship with a settlor of an Employee Benefit Scheme under Article 3(4)(b) of the Money Laundering Order other than a pension, superannuation or similar scheme (in respect of which identification measures are not required pursuant to Article 18(3) of the Money Laundering Order), the measures to be applied to verify the identity of the members of such a scheme (beneficiaries) may be limited to confirming that members (who will have been identified) are bona fide employees of the sponsoring employer. This will be appropriate where the money laundering and terrorist financing risk can be considered to be lower. The Section provides guidance as to when that may be considered to be the case.

Conclusion

The Section interprets and assists with the application of customer due diligence measures where a relevant person is carrying on trust company business.

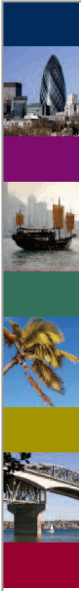
We would be happy to assist you with any questions you may have regarding the application of the Section.

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