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**ENDNOTES**

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THE MINISTER FOR EXTERNAL RELATIONS makes this Order under Articles 37 and 43 of the Proceeds of Crime (Jersey) Law 1999¹, having consulted the Jersey Financial Services Commission –

1 Amendment of Money Laundering (Jersey) Order 2008

(1) The Money Laundering (Jersey) Order 2008² is amended in accordance with this Order.

(2) In this Order, a reference to an Article by number only is a reference to the Article of the same number in the Money Laundering (Jersey) Order 2008.

2 Article 1 (interpretation) amended

In Article 1 –

(a) in paragraph (1), for the definition “enhanced customer due diligence measures” there is substituted –

   ““enhanced customer due diligence measures” means customer due diligence measures that involve specific and adequate measures to compensate for the higher risk of money laundering;”;

(b) in paragraph (1), for the definition “FATF recommendations” there is substituted –

   ““FATF recommendations” means the FATF Recommendations adopted on 16th February 2012 and as amended up to the date of the making of this Order;”;

(c) in paragraph (1), after the definition “overseas regulatory authority” there is inserted –

   ““politically exposed person” means any of the following as defined in Article 15A –

       (a) a domestic politically exposed person;
       (b) a foreign politically exposed person;
       (c) a prominent person;”;
(d) after paragraph (4) there is inserted –

“(5) In this Order, a person is a member of the same financial group as another person if there is, in relation to the group, a parent company or other legal person that exercises control over every member of that group for the purposes of applying group supervision under –

(a) the core principles for effective banking supervision published by the Basel Committee on Banking Supervision (ISBN 92-9131-164-4);
(b) the Objectives and Principles of Securities Regulation issued by the International Organisation of Securities Commissions; or
(c) the Insurance Supervisor Principles issued by the International Association of Insurance Supervisors.”.

3 Article 3 (meaning of “customer due diligence measures”) amended

In Article 3 –

(a) after paragraph (2)(a), there is inserted –

“(aa) identifying any person purporting to act on behalf of the customer and verifying the authority of any person purporting so to act;”;

(b) paragraph (2)(c)(i) is deleted;

(c) in paragraph (3)(b), after “existing records,” there is inserted “particularly in relation to higher risk categories of customers,”.

4 Article 10A (financial services business carried on outside Jersey) amended

In Article 10A, for paragraphs (6), (7) and (8) there is substituted –

“(6) Subject to paragraph (9), a relevant person must –

(a) take reasonable steps to comply with paragraphs (2), (3) and (4) to the extent that the law of the country or territory in which that person carries on a financial services business, or has a subsidiary carrying on such a business, does not have the effect of prohibiting or preventing the relevant person from taking such steps; and

(b) if the relevant person does not comply with paragraphs (2), (3) and (4) –

(i) inform the supervisory body exercising supervisory functions in relation to that relevant person under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, and

(ii) take other reasonable steps to deal effectively with the risk of money laundering.”.
5 Article 11 (policies, procedures and training to prevent and detect money laundering) amended

In Article 11 –

(a) for paragraph (2) there is substituted –

“(2) In paragraph (1), “appropriate and consistent policies and procedures” means policies and procedures that are appropriate and consistent having regard to the degree of risk of money laundering taking into account –

(a) the level of risk identified in a national or sector-specific risk assessment in relation to money laundering carried out in respect of Jersey; and

(b) the type of customers, business relationships, products and transactions with which the relevant person’s business is concerned.”;

(b) for paragraph (3)(ba) and (bb) there is substituted –

“(ba) in relation to the development of new products, services or practices, including new delivery mechanisms, the identification and assessment of associated risks before the launch of such products, services or practices and the taking of appropriate measures to manage and mitigate those risks;

(bb) in relation to the use of new or developing technologies for new or existing products or services, the identification and assessment of associated risks before the launch of such technologies and the taking of appropriate measures to manage and mitigate those risks;”;

(c) in paragraph (3)(c), after clause (v) there is inserted –

“(vi) a beneficiary under a life insurance policy,”;

(d) after paragraph (3)(fa) there is inserted –

“(fb) managing the risks in relation to the conditions under which a customer may utilise a business relationship with the relevant person before the identification of the customer has been completed;”;

(e) after paragraph (6) there is inserted –

“(6A) A relevant person carrying on business described in paragraph 5 of Part B of Schedule 2 to the Law must ensure that the customer due diligence information obtained in relation to a customer can be linked to each one-off transaction made by the customer in relation to that business.”.

6 Article 11A inserted

After Article 11, there is inserted –

“11A Additional requirements for financial groups

(1) This Article applies to a financial group of which a relevant person is a member.
(2) In addition to the requirements in Article 11, a financial group must maintain a programme to prevent and detect money laundering that includes –

(a) policies and procedures by which a relevant person within a financial group, which carries on financial services business or equivalent business, may disclose information to a member of the same financial group, but only where such disclosure is appropriate for the purpose of preventing and detecting money laundering or managing money laundering risks;

(b) adequate safeguards for the confidentiality and use of any such information;

(c) the monitoring and management of compliance with, and the internal communication of, such policies and procedures (including the appointment of a compliance officer for the financial group); and

(d) the screening of employees.

(3) In this Article, “information” includes the following –

(a) information or evidence obtained from applying identification measures;

(b) customer, account and transaction information;

(c) information relating to the analysis of transactions or activities that are considered unusual.”.

7 Article 13 (application and timing of customer due diligence measures) amended

In Article 13 –

(a) in paragraph (4)(a) “and” is deleted;

(b) in paragraph (4)(b) for “relationship.”, there is substituted “relationship; and”;

(c) after paragraph (4)(b) there is inserted –

“(c) the risk of money laundering is effectively managed.”;

(d) in paragraph (10)(d), for “Article 17(12)” there is substituted “Article 17”;

(e) in paragraph (11), for “Recommendation 5” there is substituted “Recommendation 10”.

8 Article 14 (termination where customer due diligence measures are not completed) amended

For Article 14(6) there is substituted –

“(6) A relevant person is not required to apply any identification measures if the relevant person –

(a) suspects money laundering in respect of any business relationship or transaction with a person;
(b) reasonably believes that the application of identification measures is likely to alert the person to the relevant person’s suspicions of money laundering;

c) has made a report under procedures maintained under Article 21 to a designated police officer or a designated customs officer; and

d) acting with the consent of that officer, terminates or does not establish that business relationship or does not complete or carry out that transaction.”.

9 Article 15 (enhanced customer due diligence) substituted

For Article 15 there is substituted –

“15 Circumstances for applying enhanced customer due diligence measures

1) A relevant person must apply enhanced customer due diligence measures on a risk-sensitive basis in any situation which by its nature can present a higher risk of money laundering and in any of the following circumstances –

(a) if a customer has, or proposes to have, a business relationship or proposes to carry out a one-off transaction with the relevant person and the relevant person is not resident in the customer’s country of residence or in the same country as the country from which, or from within which, the customer is carrying on business;

(b) if a customer has not been physically present for identification purposes;

(c) if the relevant person has or proposes to have a business relationship or proposes to carry out a one-off transaction with a customer having a relevant connection with a country or territory (an “enhanced risk state”) in relation to which the FATF has called for the application of enhanced customer due diligence measures;

(d) if the customer of the relevant person is a company with nominee shareholders or that issues shares in bearer form;

(e) if the customer of the relevant person is –

(i) a legal person established by an individual for the purpose of holding assets for investment purposes, or

(ii) a person acting on behalf of a legal arrangement established for an individual for the purpose of holding assets for investment;

(f) if the relevant person provides or proposes to provide a customer with private banking services.

(2) For the purposes of Article 1(c) –

(a) a “customer” includes any of the following –
(i) a beneficial owner or controller of the customer,
(ii) a third party for whom the customer is acting,
(iii) a beneficial owner or controller of a third party described in paragraph (b),
(iv) a person acting, or purporting to act, on behalf of the customer; and

(b) a person has a relevant connection with an enhanced risk state if the person is –

(i) the government or a public authority of the state,
(ii) in relation to the state, a foreign politically exposed person (within the meaning of Article 15A),
(iii) a person resident in the state,
(iv) a person having an address for business in the state,
(v) a customer, where the source of the customer’s funds is or derives from assets held in the state by the customer or by any person on behalf of the customer or income arising in the state.

(3) In this Article, a service is a “private banking service” if the service is offered, or it is proposed to offer the service, only to persons identified by the service provider as being eligible for the service, having regard to the person’s net worth, and the service –

(a) involves a high value investment;
(b) is a non-standard banking or investment service tailored to the person’s needs, or uses corporate or trust investment structures, tailored to the person’s needs; or
(c) offers opportunities for investment in more than one jurisdiction.

15A Enhanced customer due diligence measures in relation to politically exposed persons

(1) This Article applies to a relevant person –

(a) who has or proposes to have a business relationship with, or proposes to carry out a one-off transaction with, a foreign politically exposed person; or
(b) who has or proposes to have a high risk business relationship, or proposes to carry out a high risk one-off transaction with, a domestic politically exposed person or prominent person; or
(c) if any of the following is a foreign politically exposed person or, in the case of a high risk business relationship or one-off transaction, a domestic politically exposed person or prominent person –

(i) a beneficial owner or controller of the customer of the relevant person,
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(ii) a third party for whom the customer of the relevant person is acting,

(iii) a beneficial owner or controller of a third party described in clause (ii),

(iv) a person acting or purporting to act on behalf of the customer of the relevant person.

(2) A relevant person to whom this Article applies must apply enhanced customer due diligence measures on a risk-sensitive basis including –

(a) unless the relevant person is a sole trader, measures requiring a new business relationship or continuation of a business relationship or a new one-off transaction to be approved by the senior management of the relevant person;

(b) measures to establish the source of the wealth of the politically exposed person and source of the funds involved in the business relationship or one-off transaction;

(c) measures to conduct the enhanced on-going monitoring of that relationship; and

(d) if the relevant business relationship relates to a high risk life insurance policy –

(i) measures requiring the senior management to be informed before any payment is made under the policy or any right vested under the policy is exercised, and

(ii) measures to consider whether to make a disclosure under Article 21(2).

(3) In this Article –

“close associate” of a person includes any person who is known to maintain a close business relationship with the person, including a person who is in a position to conduct substantial financial transactions on behalf of the person;

“domestic politically exposed person” means a person who is an individual who is or has been entrusted with a prominent public function in Jersey including but not limited to –

(a) heads of state, heads of government, senior politicians;
(b) senior government, judicial or military officials;
(c) senior executives of state owned corporations; and
(d) important political party officials,

and includes an immediate family member or a close associate of the person;

“enhanced on-going monitoring” means on-going monitoring that involves specific and adequate measures to compensate for the higher risk of money laundering;

“foreign politically exposed person” means a person who is an individual who is or has been entrusted with a prominent public
function in a country or territory outside Jersey including but not limited to –
(a) heads of state, heads of government, senior politicians;
(b) senior government, judicial or military officials;
(c) senior executives of state owned corporations; and
(d) important political party officials,
and includes an immediate family member or a close associate of the person;
“high risk”, in relation to a business relationship or one-off transaction, means any situation which by its nature can present a higher risk of money laundering;
“immediate family member” includes any of the following –
(a) a spouse;
(b) a partner, that is someone considered by his or her national law as equivalent or broadly equivalent to a spouse;
(c) children and their spouses or partners (as defined in sub-paragraph (b));
(d) parents;
(e) grandparents and grandchildren;
(f) siblings;
“prominent person” means a person who is an individual who is or has been entrusted with a prominent public function by an international organisation;
“source of the wealth” means the source generating the total net worth of funds of the politically exposed person, whether those funds are used in the business relationship or one-off transaction.

(4) For the purpose of deciding whether a person is a close associate of a person, a relevant person need only have regard to information which is in that person’s possession or is publicly known.

15B Enhanced customer due diligence measures in relation to banking relationships outside Jersey

(1) This Article applies to a relevant person who has or proposes to have a banking or similar relationship with an institution whose address for that purpose is outside Jersey.

(2) A relevant person to whom this Article applies must apply enhanced customer due diligence measures on a risk-sensitive basis including –
(a) gathering sufficient information about the institution to understand fully the nature of its business;
(b) determining the reputation of the institution and the quality of its supervision, including whether it has been subject to any money laundering investigation or regulatory action;
(c) assessing the institution’s systems and controls to combat money laundering in order to determine whether they are
consistent with the requirements of the FATF recommendations and their effectiveness;
(d) requiring any new relationship to be approved by the senior management of the relevant person;
(e) ensuring that both the relevant person and the institution clearly understand their respective responsibilities to prevent and detect money laundering and recording those responsibilities; and
(f) being satisfied that, in respect of customers of the institution who have services provided directly by the relevant person, that the institution has applied customer due diligence measures at least equivalent to those set out in this Order and is able to provide a copy, at the request of the relevant person, of the evidence, documents, data and information obtained when applying such measures.”.

10 Article 16 (reliance on relevant person or person carrying on equivalent business) amended
In Article 16 –
(a) in paragraph (1)(b), wherever occurring, for “recommendation 5” there is substituted “Recommendation 10”;
(b) in paragraph (3)(b)(iii), for “Article 17 or 18” there is substituted “Part 3A”.

11 Article 16A (reliance upon persons in same financial group as relevant person) amended
In Article 16A –
(a) in paragraph (1), for “recommendation 5” there is substituted “Recommendation 5”;
(b) in paragraph (1)(c), for “recommendations 5, 6 and 10” there is substituted “Recommendations 10, 11 and 12”;
(c) after paragraph (1)(d) there is inserted –
“(da) any higher risk of money laundering is adequately mitigated by the policies and procedures applied by the other person;”;
(d) paragraph (2) is deleted.

12 Articles 17 and 18 substituted
For Articles 17 and 18 there is substituted –
PART 3A
EXEMPTIONS FROM CUSTOMER DUE DILIGENCE REQUIREMENTS

17 Interpretation of Part 3A
In this Part –

“relevant customer” means a customer of a relevant person that the relevant person knows or reasonably believes is –

(a) a relevant person in respect of whose financial services business the Commissioner discharges supervisory functions, or a person carrying on equivalent business; or

(b) a person wholly owned by a relevant person specified in sub-paragraph (a) (the “parent”), but only if –

(i) the person is incorporated or registered in the same jurisdiction as the parent,

(ii) the person has no customers who are not customers of the parent,

(iii) the person’s activity is ancillary to the business in respect of which the Commission discharges supervisory functions, or to equivalent business carried on by the parent, and

(iv) in relation to that activity, the person maintains the same policies and procedures as the parent;

“non-public fund” means a scheme falling within the definition of “collective investment fund” in Article 3 of the Collective Investment Funds (Jersey) Law 1988, except that the offer of units in the scheme or arrangement is not an offer to the public within the meaning of that Article;

“third party identification requirements” means the requirements of Article 13 or 15 to apply the identification measures specified in Article 3(2)(b).

17A Circumstances in which exemptions under this Part do not apply
(1) A relevant person is not exempt under this Part from applying third party identification requirements if –

(a) the relevant person suspects money laundering;

(b) the relevant person considers that there is a higher risk of money laundering;

(c) the relevant customer is resident in a country that is not compliant with the FATF recommendations; or

(d) the relevant customer is a person in respect of whom Article 15(3A) applies.

(2) A relevant person is not exempt under Articles 17B-17D from applying third party identification requirements if the relevant customer is a person in respect of whom Article 15(4) applies.
17B Exemption from applying third party identification requirements in relation to relevant customers acting in certain regulated, investment or fund services business

(1) A relevant person is exempt from applying third party identification requirements in relation to a third party for which a relevant customer is acting where the relevant customer is acting in the course of a business –

(a) that falls within paragraph (a), (b) or (d) in the definition of “regulated business”, or equivalent business; or

(b) that is an investment business or fund services business registered under the Financial Services (Jersey) Law 1998, or equivalent business.

(2) A relevant person must record the reasons for applying the exemption, having regard to the risk of money laundering inherent in the relevant customer’s business and the higher risk of money laundering associated with that type of business should the relevant customer fail to –

(a) apply the identification measures specified in Article 3(2)(b) or if the relevant customer is not in Jersey, similar identification measures required to be applied to satisfy the requirements in Recommendation 10 of the FATF recommendations; or

(b) keep records, or keep them for the period required to be kept.

17C Exemption from applying third party identification requirements in relation to certain relevant customers involved in unregulated or non-public funds, trust company business or the legal profession

(1) A relevant person is exempt from applying third party identification requirements in relation to a third party for which a relevant customer is acting if the relevant customer –

(a) is, or carries on business in respect of, an unregulated fund, within the meaning of the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008, or equivalent business;

(b) is, or carries on business in respect of, a fund that is a non-public fund, being a fund in respect of which a service is provided that is described in paragraph 7(1)(h) of Part B of Schedule 2 to the Law, or equivalent business;

(c) carries on trust company business and is registered to carry on such business under the Financial Services (Jersey) Law 1998, or equivalent business, but only if the relevant person is –

(i) carrying on deposit-taking business,

(ii) a lawyer carrying on business described in paragraph 1 of Part B of Schedule 2 to the Law, or
(iii) an accountant carrying on a business described in paragraph 2 of Part B of Schedule 2 to the Law; or

(d) is an independent legal professional carrying on a business described in paragraph 1 of Part B of Schedule 2 to the Law and is registered to carry on such business under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, but only if the relevant person is carrying on deposit-taking business.

(2) A relevant person who, by virtue of paragraph (1), does not apply third party identification requirements must—

(a) be satisfied, by reason of the nature of the relationship with the relevant customer, that there is little risk of money laundering occurring; and

(b) obtain adequate assurance in writing from the relevant customer that the relevant customer—

(i) has applied the identification measures specified in Article 3(2)(b) to the third party, or if the relevant customer is not in Jersey, has applied similar identification measures that would satisfy the requirements in recommendations 10 and 12 of the FATF recommendations,

(ii) will provide the relevant person, without delay and in writing, with the information obtained from applying the identification measures, if so requested by the relevant person,

(iii) will keep the evidence obtained during the course of applying the identification measures, and

(iv) will provide the relevant person with that evidence without delay, if requested to do so by the relevant person.

(3) In this Article—

(a) assurance is adequate if it is reasonably capable of being regarded as reliable and the person who relies on it is satisfied that it is reliable;

(b) assurance may be given in relation to one or more business relationships and for more than one transaction; and

(c) assurance need not be given before deciding not to comply with third party requirements if an assurance has previously been given by that customer to the relevant person in relation to a business relationship or transaction.

17D Obligations of relevant person who is exempt from applying third party identification requirements

(1) This Article applies to a relevant person who, by virtue of the exemption under Article 17B, does not apply third party identification requirements.
(2) A relevant person must record the reasons for applying the exemption, having regard to the risk of money laundering inherent in the relevant customer’s business and the higher risk of money laundering associated with that type of business should the relevant customer fail to –

(a) apply the identification measures specified in Article 3(2)(b) or if the relevant customer is not in Jersey, similar identification measures required to be applied to satisfy the requirements in Recommendation 10 of the FATF recommendations; or

(b) keep records, or keep them for the period required to be kept.

(3) A relevant person must, as often as the relevant person considers appropriate, establish whether the relevant customer –

(a) has appropriate policies and procedures in place to apply the identification measures described in Articles 13(1)(a), 13(1)(c)(ii) and 15 (or if the relevant customer is not in Jersey, similar identification measures that satisfy the FATF recommendations in respect of identification measures);

(b) obtains information in relation to the third party;

(c) keeps the information or evidence that has been obtained in relation to the third party; and

(d) provides the relevant person with that information or evidence without delay, if requested to do so by the relevant person,

and consider whether the relevant customer may be prevented, by application of a law, from providing that information or evidence.

(4) If at any time the relevant person is unable to establish that the relevant customer complies with the requirements mentioned in paragraph (3)(b), (c) or (d), the relevant person must immediately apply the identification measures specified in Article 13(1)(a) and 13(1)(c)(ii).

18 Further exemptions from applying identification requirements

(1) A relevant person is exempt from applying the identification measures specified in Article 13 in respect of insurance business if –

(a) in the case of a policy of insurance in connection with a pension scheme taken out by virtue of a person’s contract of employment or occupation, the policy contains no surrender clause and may not be used as collateral security for a loan;

(b) a premium is payable in one instalment of an amount not exceeding £1,750; or

(c) a periodic premium is payable and the total amount payable in respect of any calendar year does not exceed £750.

(2) A relevant person is exempt from applying the identification measures specified in Article 13 if –
(a) the business relationship or one-off transaction relates to a pension, superannuation, employee benefit, share option or similar scheme;
(b) the contributions to the scheme are made by an employer or by way of deductions from wages;
(c) the rules of the scheme do not permit the assignment of an interest of a member of the scheme except after the death of the member; and
(d) the interest of a deceased member of the scheme is not being assigned.

(3) A relevant person is exempt from applying the identification requirements in Article 13 in respect of the measures specified in Article 3(2)(a), (aa) and (c) in relation to a customer if the customer is –

(a) a regulated person;
(b) a person who carries on equivalent business to any category of regulated business; or
(c) a person wholly owned by a person (the “parent”) mentioned in sub-paragraph (a) or (b), but only if –

(i) the person is incorporated or registered in the same jurisdiction as the parent,
(ii) the person has no customers who are not customers of the parent,
(iii) the person’s activity is ancillary to the regulated business or equivalent business carried on by the parent,
(iv) in relation to that activity, the person maintains the same policies and procedures as the parent.

(4) A relevant person is exempt from applying the identification requirements in Article 13 in respect of the measures specified in Article 3(2)(a) and (aa) (in so far as those measures require identifying any person purporting to act on behalf of the customer), 3(2)(c)(ii) and 3(2)(c)(iii) in relation to a customer if the customer is –

(a) a public authority acting in that capacity;
(b) a body corporate the securities of which are listed on an IOSCO-compliant market or on a regulated market (within the meaning of Article 2(5)); or
(c) a person wholly owned by a person mentioned in sub-paragraph (b).

(5) A relevant person is exempt from applying the identification requirements in Article 13 in respect of the measures specified in Article 3(2)(aa) (in so far as those measures require identifying any person purporting to act on behalf of a customer) in relation to a person if –

(a) the person is authorised to act on behalf of the customer;
(b) the customer is not a relevant person;
(c) the person acts on behalf of the customer in the course of employment by a person carrying on a financial services business; and

(d) the financial services business is a regulated business or an equivalent business to a regulated business.

(6) A relevant person is exempt from applying the identification requirements in Article 13 to the extent that the measures require identification of a person within the meaning of Article 3(4)(b) if –

(a) the relevant person’s business falls within paragraph 1 or 3 of Part B of Schedule 2 to the Law; and

(b) that person enters into a business relationship or carries out a one-off transaction for the purpose of enabling a customer, directly or indirectly, to enter into a registered contract (within the meaning of the Control of Housing and Work (Jersey) Law 2012).

13 Article 19 (records to be kept) amended

In Article 19 –

(a) in paragraph (2)(a)(ii), after “measures” there is inserted “, including the results of analysis undertaken in relation to the business relationship or any transaction”;

(b) in paragraph (4), for “on a timely basis” there is substituted “swiftly”;

(c) in paragraph (6) –

(i) for “Article 17” there is substituted “Article 17C”;

(ii) for “Article 16(3)(d) or Article 17” there is substituted “Article 17C”;

(iii) for “Article 17(9)(c)” there is substituted “Article 17C(2)(b)(ii) and (iii)”;

(iv) for “Article 16(3)(d) or 17(9)(c)” there is substituted “Article 17(2)(b)(ii) and (iii)”.

14 Citation and commencement

This Order may be cited as the Money Laundering (Amendment No. 10) (Jersey) Order 2019 and comes into force 7 days after it is made.

SENATOR I.J. GORST

Minister for External Relations
ENDNOTES

Table of Endnote References

1 chapter 08.780
2 chapter 08.780.30
3 chapter 08.785
4 chapter 13.100
5 chapter 13.225
6 chapter 13.100.95
7 chapter 13.225
8 chapter 08.785
9 chapter 18.150