

8 REPORTING MONEY LAUNDERING AND ~~THE~~ FINANCING OF TERRORISM

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 by the use of italic text. The *Glossary* is available from the *JFSC website*.

8.1 Overview of Section

1. Under the *Proceeds of Crime Law* and *Terrorism Law* where any person conducting *financial services business* in or from within Jersey forms a knowledge, suspicion, or has reasonable grounds to suspect *money laundering* or *the financing of terrorism* activity relating to business that is conducted in Jersey, then it must report its knowledge or suspicion to the *JFCU*.
2. Under the *Money Laundering Order*, an accountancy firm undertaking Schedule 2 business must have procedures in place for reporting knowledge or suspicion of money laundering or financing terrorism activity to the *JFCU*.
3. This Section outlines the statutory provisions concerning reporting that apply to: (i) an employee of a *relevant person*; and (ii) a *relevant person*, in the course of carrying on any trade profession or business (including Schedule 2 business). It also sets *AML/CFT Codes of Practice* for and provides guidance to:
 - › employees making a report to their *MLRO* (or *deputy MLRO*) (referred to as **an internal SAR**); and
 - › *MLROs* (and *deputy MLROs*) making a report to the *JFCU* (referred to as an **external SAR**).
4. This section also considers the consent that must be sought from the *JFCU* before proceeding with a transaction or continuing a business relationship, and application of tipping off provisions.
5. An important precondition for making a report is to know enough about a business relationship or one-off transaction to be able to recognise what is “unusual”. Such knowledge is dependent upon the application of *identification measures* and on-going monitoring.
6. A report may also be based on information from other sources, including law enforcement agencies, other government bodies, the media, or the client.
7. Whilst this Section describes reports made to the *JFCU* under the *Proceeds of Crime Law* and *Terrorism Law* as *SARs*, depending on the circumstances such reports may involve knowledge of *money laundering* or *the financing of terrorism*, rather than suspicion (or reasonable grounds for knowledge or suspicion).
8. Additional information on reporting is contained within Part 2 of the *AML/CFT Handbook*.

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8.2 Reporting Knowledge or Suspicion

Overview

9. Legislation deals with reporting by a firm and employee in the course of carrying on a *financial services business* (distinct from other business) in two ways:
 - › There is a **reporting requirement** under Article 34D of the *Proceeds of Crime Law* and Article 21 of the *Terrorism Law* - when a SAR must be made when there is knowledge, suspicion or reasonable grounds for suspecting that another person is engaged in *money laundering* or the *financing of terrorism*, or any property constitutes or represents proceeds of criminal conduct, or is or may be terrorist property.
 - › There is **protection for reporting** under Article 32 of the *Proceeds of Crime Law* and under Article 18 of the *Terrorism Law* – when there is suspicion or belief that any property constitutes or represents the proceeds of criminal conduct, or that property is terrorist property. Where the person making the report does any act or deals with the property in any way which would otherwise amount to the commission of a *money laundering* or *the financing of terrorism* offence, the person shall not be guilty of that offence (where certain conditions are fulfilled) where it makes a **protective report**.
10. In practice, a report made in accordance with the **reporting requirement** will also provide **protection**. Take the situation of a firm that knows or suspects, or has reasonable grounds for knowing or suspecting, that property constitutes or represents the proceeds of criminal conduct, and which has possession of that property. It must report its knowledge or suspicion under Article 34D of the *Proceeds of Crime Law*. Where it makes such a report this will also address its suspicion or belief that property constitutes or represents the proceeds of criminal conduct under Article 32 of the *Proceeds of Crime Law* – the effect being that it does not commit a *money laundering* offence under Article 30 (and perhaps also Article 31) of that law.
11. There is also a reporting requirement (Article 34A) and protection for reporting (Article 32) in a case where information or a matter comes to a firm's attention other than in the course of carrying on a *financial services business* (i.e. **any trade, profession, business or employment**). A similar reporting requirement (and protection) may also be found in Articles 19 and 18 of the *Terrorism Law*.
12. Whilst the *Proceeds of Crime Law* and *Terrorism Law* anticipate that a report may be made by an employee directly to the JFCU, Article 21 of the *Money Laundering Order* requires that such reporting is made in line with reporting procedures. Such procedures must provide for securing that a report by an employee is made to the MLRO (or deputy MLRO).
13. Where the MLRO (or deputy MLRO) resolves to make an external SAR as a result of an internal SAR made under the *Proceeds of Crime Law* or *Terrorism Law*, Article 21 of the *Money Laundering Order* requires that SAR to be made using the approved form.
14. A SAR made in respect of a business relationship or one-off transaction does not remove the need to make further reports in respect of knowledge or suspicion that subsequently arises in respect of that relationship or one-off transaction (a series of linked transactions).

8.2.1 Requirement to Disclose of Knowledge or Suspicion within a Firm

Overview

15. In the course of carrying on a *financial services business*, employees of a firm must raise an internal SAR as soon as practicable where they have knowledge or suspicion, or where there are reasonable grounds for having knowledge or suspicion, that:
 - › Another person is engaged in *money laundering* or the *financing of terrorism*; or

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- › Property constitutes or represents the proceeds of criminal conduct; or
 - › Property is, or may be, terrorist property.
16. What may constitute reasonable grounds for knowledge or suspicion will be determined from facts or circumstances from which an honest and reasonable person working in a firm would have inferred knowledge or formed a suspicion (the so called “objective test”¹).
 17. Something which appears unusual is not necessarily suspicious and will likely form the basis for examination. This may, in turn, require judgement to be exercised as to whether something is suspicious.
 18. A firm’s *MLRO* (or *deputy MLRO*) must consider all internal *SARs* as soon as practicable.
 19. A firm’s *MLRO* (or *deputy MLRO*) must make an external *SAR* as soon as is practicable if he or she knows, suspects or has reasonable grounds for knowing or suspecting, that:
 - › Another person is engaged in *money laundering* or the *financing of terrorism*; or
 - › Property constitutes or represents the proceeds of criminal conduct; or
 - › Property is, or may be, terrorist property.
 20. Once an employee has made an internal *SAR*, and provided any additional information that may be requested by the *MLRO* (or *deputy MLRO*), they will have fully satisfied their statutory obligation in respect of the particular information or matter reported.
 21. Under the *Proceeds of Crime Law*, the requirement to report applies in relation to the proceeds of criminal conduct which constitutes an offence specified in Schedule 1 of the *Proceeds of Crime Law*, or, if it occurs or has occurred outside Jersey, would have constituted such an offence if occurring in Jersey.
 22. Under the *Terrorism Law*, the requirement to report applies in relation to property which is intended to be used or likely to be used for the purposes of terrorism in Jersey or elsewhere or for the support of a terrorist entity in Jersey or elsewhere.
 23. Other than in the course of carrying on a *financial services business* (i.e. any other trade, profession or business carried on by a firm), employees of a firm must also raise an internal *SAR* where they have knowledge or suspicion that another person is engaged in *money laundering* or the *financing of terrorism* - where information or other matter on which knowledge or suspicion is based comes to them in the course of their employment. This will be so irrespective of the underlying nature of the business that is carried on, and irrespective of whether or not the business is being carried out on behalf of another person, e.g. under an outsourcing arrangement.
 24. Where an *MLRO* who is part of a group receives information relating to suspicious activities within that group but with no specific Jersey connection, such information is not considered to have come to the *MLRO* in the course of carrying on a *financial services business*. This means that such matters, in the absence of a specific Jersey connection, are not required to be reported.

Statutory Requirements

25. Under Article 34D(4) of the *Proceeds of Crime Law*, a relevant person and employee of that relevant person are required to make a report where two conditions are fulfilled.
26. The first is that they know, suspect or have reasonable grounds for suspecting that:

¹ See Part 2 of the AML/CFT Handbook.

- › Another person is engaged in money laundering or the financing of terrorism; or
 - › Any property constitutes or represents the proceeds of criminal conduct.
27. The second is that the information or matter on which the knowledge or suspicion is based, or which gives reasonable grounds for suspicion, **comes to them in the course of the carrying on of a financial services business.**
28. Such a report must be made to a designated police officer or designated customs officer (or, in the case of an employee, to the relevant person's MLRO (or deputy MLRO)), delivered in **good faith**, and made as soon as is practicable after the information or other matter on which the knowledge or suspicion is based, or which gives reasonable grounds for suspicion, comes to their attention.
29. However, under Article 34D(5) of the Proceeds of Crime Law, a person does not commit an offence if they have a reasonable excuse for not disclosing the information or other matter, or the person is a professional legal adviser and the information or other matter comes to them in the circumstances of legal privilege (except items held with the intention of furthering a criminal purpose).
30. Under Article 34D(6) of the Proceeds of Crime Law, an employee of a relevant person does not commit an offence of failing to disclose if he or she has not been given material training and, as a result, did not know or suspect that the other person was engaged in money laundering or the financing of terrorism.
31. Under Article 34D(9) of the Proceeds of Crime Law, a report made to a designated police officer or designated customs officer (or to the relevant person's MLRO or deputy MLRO) shall not be treated as a breach of any restriction imposed by statute, contract or otherwise.
32. When considering a report made under the Proceeds of Crime Law or Terrorism Law, Article 21(2) and (3) of the Money Laundering Order states that, if the MLRO (or deputy MLRO) knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering or **the** financing of terrorism, he or she must report to a designated police officer or designated customs officer as soon as is practicable using the **approved form**. *Inter alia*, delivery of the **approved form** must comply with the requirements (including those in respect of delivery) indicated on the **approved form**.
33. Subsequent to making a report, Article 21(4) of the Money Laundering Order requires a MLRO (or deputy MLRO) to provide a designated police officer or designated customs officer (within a set period of time) with such additional information relating to that report as may reasonably be requested.
34. A person who fails to make a report under Article 34D of the Proceeds of Crime Law is liable to imprisonment for a term not exceeding 5 years or to a fine or to both. An individual who fails to make a report using the **approved form** under Article 21(2) of the Money Laundering Order is liable to imprisonment for a term not exceeding 2 years or to a fine or to both. A body corporate who fails to make a report using the **approved form** under Article 21(2) of the Money Laundering Order is liable to a fine.
35. Article 34A of the Proceeds of Crime Law contains a similar requirement to report. In a case where a relevant person, or employee, knows or suspects that another person is engaged in money laundering or **the** financing of terrorism and the information or other matter on which that knowledge or suspicion is based comes to their attention in the course of **any trade, profession, business or employment** (other than carrying on of a financial services business), they must report that knowledge or suspicion and information or other matter to a police officer (or, in the case of an employee, to the relevant person's MLRO (or deputy MLRO)), in

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- good faith and as soon as is practicable after the information or other matter comes to their attention.
36. Under Article 34A(3) of the Proceeds of Crime Law, a report made to a designated police officer or designated customs officer (or to the relevant person's MLRO or deputy MLRO) under Article 34A shall not be treated as a breach of any restriction imposed by statute, contract or otherwise.
37. Article 8 of the Money Laundering Order requires a relevant person to ensure that the MLRO (or deputy MLRO) has timely access to all records that are necessary or expedient for the purpose of performing his or her functions as a reporting officer, including, in particular, the records that a relevant person must keep under Article 19.
38. "Criminal conduct" is defined in Article 1(1) of the Proceeds of Crime Law as conduct that constitutes an offence specified in Schedule 1, or, if it occurs outside Jersey, would have constituted such an offence if occurring in Jersey.
39. Articles 19 to 22 of the Terrorism Law contain similar reporting requirements in respect of the financing of terrorism.
40. In particular, Article 21 of the Terrorism Law requires a relevant person and employee of that relevant person to make a report where two conditions are fulfilled.
41. The first is that they know, suspect or have reasonable grounds for suspecting that:
- › Another person is engaged in the financing of terrorism; or
 - › Any property is, or may be, terrorist property.
42. The second is that the information or matter on which the knowledge or suspicion is based, or which gives reasonable grounds for suspicion, **comes to them in the course of the carrying on of a financial services business.**
43. Terrorist property is defined in Article 3 of the Terrorism Law to mean property which is intended to be used, or likely to be used, for the purposes of terrorism or support of a terrorist entity. A terrorist entity is an entity which commits, prepares or instigates an act of terrorism or facilitates the commission, preparation or instigation of an act of terrorism.
44. The meaning of "terrorism" is defined in Article 2 of the Terrorism Law and the meaning of "terrorist entity" is defined in Article 4.

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8.2.2 Protective Report

Overview

45. In the course of carrying on its business, employees of a firm will raise an internal SAR in order to be protected where they suspect or believe that:
- › Property constitutes or represents the proceeds of criminal conduct;
 - › Property is terrorist property; or
 - › They are providing a service for the purposes of terrorism or for the support of a terrorist entity.
46. This will be so **irrespective of the underlying nature of the business that is carried on**, and irrespective of whether or not the business is being carried out on behalf of another person, e.g. under an outsourcing arrangement.
47. A firm's MLRO (or deputy MLRO) must consider all internal SARs as soon as practicable.

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48. Under the *Proceeds of Crime Law*, a firm's MLRO (or deputy MLRO) will make an external SAR before the firm does a particular act, or as soon as reasonably practicable after the person has done the act in order to be protected.
49. Under the *Terrorism Law*, a firm's MLRO (or deputy MLRO) will make an external SAR before the firm does a particular act or as soon as reasonably practicable after the person becomes involved in the transaction or arrangement.
50. In most cases, where the person making the report does any act or deals with the property in any way which would otherwise amount to the commission of a money laundering or the financing of terrorism offence, the person shall not be guilty of that offence (where certain conditions are fulfilled) where it makes such a protective report.
51. Under the *Proceeds of Crime Law*, protection for reporting applies in relation to the proceeds of criminal conduct which constitutes an offence specified in Schedule 1 of the *Proceeds of Crime Law*, or if it occurs, or has occurred, outside Jersey, would have constituted such an offence if occurring in Jersey.
52. Under the *Terrorism Law*, protection for reporting applies in relation to property which is intended to be used or likely to be used for the purposes of terrorism in Jersey or elsewhere or for the support of a terrorist entity in Jersey or elsewhere.

53. In this section, for the purpose of Article 21 of the Money Laundering Order, "approved form" means the form approved by the Minister, which could be changed from time to time.

Statutory Requirements

54. Where a relevant person and employee of a relevant person suspect or believe that any property constitutes or represents the proceeds of criminal conduct and make a report to a police officer (or to the relevant person's MLRO or deputy MLRO) under Article 32 of the *Proceeds of Crime Law*, they will not have committed a money laundering offence if the report is made in **good faith** and either:
 - › If the report is made before the person does the act in question, the act is done with the consent of a police officer; or
 - › If the report is made after the person does the act in question, it is made on the person's own initiative and as soon as reasonably practicable after the person has done the act in question.
55. In proceedings against a person for an offence under Article 30 of the *Proceeds of Crime Law*, it shall be a defence under Article 32(7) to provide that the alleged offender intended to make a report and there is a reasonable excuse for the failure to have made a report.
56. Under Article 32(2) of the *Proceeds of Crime Law*, a report made to a police officer (or to the relevant person's MLRO or deputy MLRO) under Article 32 shall not be treated as a breach of any restriction imposed by statute, contract or otherwise, and shall not involve the person making it in liability of any kind.
57. When considering a report made under the *Proceeds of Crime Law* or *Terrorism Law*, Article 21(2) and (3) of the *Money Laundering Order* states that, if the MLRO (or deputy MLRO) knows or suspects that another person is engaged in money laundering or the financing of terrorism, he or she must report to a designated police officer or designated customs officer as soon as is practicable using the approved form. *Inter alia*, delivery of the form must comply with the requirements (including those in respect of delivery) indicated on the form.

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58. Subsequent to making a report, Article 21(4) of the Money Laundering Order requires a MLRO (or deputy MLRO) to provide a designated police officer or designated customs officer (within a set period of time) with such additional information relating to that report as may reasonably be requested.
59. An individual who fails to make a report using the approved form under Article 21(2) of the Money Laundering Order is liable to imprisonment for a term not exceeding 2 years or to a fine or to both. A body corporate who fails to make a report using the approved form under Article 21(2) of the Money Laundering Order is liable to a fine.
60. Article 8 of the Money Laundering Order requires a relevant person to ensure that the MLRO (or deputy MLRO) has timely access to all records that are necessary or expedient for the purpose of performing his or her functions as a reporting officer, including, in particular, the records that a relevant person must keep under Article 19.
61. "Criminal conduct" is defined in Article 1(1) of the Proceeds of Crime Law as conduct that constitutes an offence specified in Schedule 1, or, if it occurs outside Jersey, would have constituted such an offence if occurring in Jersey.
62. Article 18 of the Terrorism Law contains similar provisions in circumstances where the financing of terrorism offences would otherwise be committed. In particular:
- › Article 18(1) provides that no financing of terrorism offence is committed if a person is acting with the express consent of a police officer or customs officer.
 - › Article 18(2) provides that no financing of terrorism offence is committed if a person discloses a suspicion or belief that property is terrorist property after they have become involved in a transaction or arrangement to a police officer or customs officer in good faith and as soon as reasonably practicable.
 - › Article 18(3) provides that no financing of terrorism offence is committed if a person discloses a suspicion or belief to a police officer or customs officer that a service is being, or is to be, provided for the purposes of terrorism or for the support of a terrorist entity, after they have become involved in a transaction or arrangement, in good faith and as soon as reasonably practicable.
63. However, unlike the Proceeds of Crime Law, an employee who makes a report to the relevant person's MLRO or deputy MLRO may still be charged with an offence. In such a case, it will be a defence under Article 18(8) for the employee to prove that a report was made in good faith and in accordance with the employer's procedures.

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8.2.3 What Constitutes Knowledge or Suspicion?

Guidance Notes

64. The three mental elements of knowledge, suspicion, and reasonable grounds for suspicion, which are relevant to statutory offences are not terms of art and are not defined within the statutes. However, case law has provided some guidance on how they should be interpreted.

8.2.3.1 Knowledge

65. Knowledge means actual knowledge. There is some suggestion that wilfully shutting one's eyes to the truth may amount to knowledge. However, the current general approach from the criminal courts is that nothing less than actual knowledge will suffice.

8.2.3.2 Suspicion

66. The term 'suspects' is one which the court has historically avoided defining; however, because of its importance in English criminal law, some general guidance has been given. In the case of *Da Silva* [1996] EWCA Crim 1654, Longmore LJ stated:

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‘It seems to us that the essential element in the word “suspect” and its affiliates, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice.’

67. There is no requirement for the suspicion to be clear or firmly grounded on specific facts, but there must be a degree of satisfaction, not necessarily amounting to belief, but at least extending beyond speculation.
68. The test for whether a person holds a suspicion is an objective one. If someone thinks a transaction is suspicious, they are not expected to know the exact nature of the criminal offence or that particular funds were definitely those arising from the crime. They may have noticed something unusual or unexpected and, after making enquiries, the facts do not seem normal or make commercial sense. There does not have to be evidence that *money laundering* is taking place for there to be a suspicion.
69. The meaning of suspicion detailed above was also confirmed by the Court of Appeal in the case of *K v NatWest* [2006] EWCA Civ 1039.
70. If someone has not yet formed a suspicion, but they have cause for concern, a firm may choose to ask the client or others more questions. This choice depends on what is already known, and how easy it is to make enquiries.
71. If there is a belief that a client is innocent, but there are suspicions that another party to a transaction is engaged in *money laundering*, a firm may need to consider referring the client for specialist advice regarding the risk that they may be a party to one of the principal offences.
72. Sections 2.3.1.1 and 3.3.4 of this Handbook contain a number of standard warning signs which may give cause for concern. However, whether someone has a suspicion is a matter for their own judgement.

8.2.3.3 Reasonable Grounds to Suspect: The Objective Test of Knowledge or Suspicion

73. Article 30 and 31, when read with Article 29 of the *Proceeds of Crime Law* and Articles 15 and 16 of the *Terrorism Law* provide for an offence to be committed when dealing, using, concealing etc with criminal or terrorist property where there are reasonable grounds to know or suspect that property represents the proceeds of crime or terrorist property.
74. This means that a person would commit an offence even if they did not know or suspect that a *money laundering* offence was being committed, if they had reasonable grounds for knowing or suspecting that it was. In other words, were there factual circumstances from which an honest and reasonable person, engaged in a similar business, should have inferred knowledge or formed the suspicion that another was engaged in *money laundering*, or there was knowledge of circumstances which would put an honest and reasonable person on enquiry.
75. It is important that accountants, *auditors* and tax advisers do not turn a blind eye to information that comes to their attention. Reasonable enquiries should be made, such as a professional with their qualifications, experience and expertise might be expected to make in such a situation within the normal scope of their assignment or client relationship. A reasonable conclusion should then be drawn, such as may be expected of a person of their standing.
76. Accountants, *auditors* and tax advisers should exercise a healthy level of professional scepticism, and if unsure of the action that should be taken, consult with the *MLRO* or otherwise in accordance with their firm’s procedures. If in doubt, such individuals should err on the side of caution and make a report to their *MLRO*.

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8.2.4 Auditors' Further Enquiries

Overview

77. Once an *auditor* suspects a possible breach of legislation, further enquiries will need to be made to assess the implications of this for the audit of the financial statements. Auditing standards on legislation requires that when the *auditor* becomes aware of information concerning a possible instance of non-compliance, the *auditor* should obtain an understanding of the nature of the act and the circumstances in which it has occurred. Sufficient other information must be obtained to evaluate the possible effect on the financial statements.
78. *Money laundering* legislation does not require the *auditor* to undertake any additional enquiries to determine further the details of the predicate criminal offence. To minimise any risk of tipping-off, it is important that any further enquiries represent only steps that the *auditor* would have performed as part of the normal audit work and that the *MLRO* is consulted before any further enquiry is performed. If the *auditor* is genuinely uncertain as to whether or not there are grounds to make a disclosure, they may wish to seek advice from the *MLRO*.
79. During the course of the audit work, the *auditor* might obtain knowledge or form a suspicion about a proposed act that would be a criminal offence, but has yet to occur. Because attempting or conspiring to commit a *money laundering* offence is in itself an offence, it is possible that in some circumstances, a report may need to be made.
80. Where the *auditor* makes a report to the *MLRO* and the *MLRO* decides that further enquiry is necessary, the *auditor* will need to be made aware of the outcome of the enquiry to determine whether there are any implications for the audit report or the decision to accept reappointment as *auditor*.
81. The *auditor* will need to consider whether continuing to act for the company could itself constitute a *money laundering* offence, for example, if it amounted to aiding or abetting the commission of one of the principal *money laundering* offences itself, in particular, the offence of becoming involved in an arrangement. In those circumstances the *auditor* may want to consider whether to resign, but should firstly contact the firm's *MLRO*, both to report the suspicion and to seek guidance in respect of tipping-off. If the *auditor* wishes to continue to conduct the audit, appropriate consent may be required from the *JFCU* for such an action to be taken.
82. Partners and employees in audit firms will need to follow their firm's internal reporting procedures when considering whether to include documentation relating to *money laundering* reporting in the audit working papers.

8.3 Procedures for Reporting

Overview

83. Reporting procedures provide the interface between *CDD* measures carried out by a firm and the work of the *JFCU*'s intelligence wing. Like all *policies and procedures*, they should be drafted in a way that can be readily understood by employees, should be tailored to the firm's risk assessment, and applied in every case where functions are outsourced (in line with Section 2.4.4 of this Handbook).

Statutory Requirements

84. *Article 21 of the Money Laundering Order requires that a relevant person must establish and maintain reporting procedures which:*

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- › communicate to employees the identity of the MLRO (and any deputy MLROs) to whom an internal SAR is to be made;
- › provide for that report to be considered by the MLRO (or a deputy MLRO) in the light of all other relevant information for the purpose of determining whether or not the information or other matter contained in the report gives rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering or the financing of terrorism;
- › allow the MLRO (or a deputy MLRO) to have access to all other information which may be of assistance in considering the report; and
- › provide for the information or other matter contained in an internal SAR to be disclosed as soon as is practicable by the MLRO (or deputy MLRO) to a designated police officer or designated customs officer using the approved form, where the MLRO (or deputy MLRO) knows, suspects or has reasonable grounds to know or suspect that another person is engaged in money laundering or the financing of terrorism; and
- › provide for additional information relating to a report to be given by the MLRO (or deputy MLRO) to a designated police officer or designated customs officer.

85. Article 22 of the Money Laundering Order states that if a deputy MLRO, on considering an internal SAR, concludes that it does not give rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering or the financing of terrorism, the deputy MLRO need not forward it to the MLRO. If a deputy MLRO, on considering a report, has concluded that it does give rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering or the financing of terrorism, although the SAR must still be forwarded to the MLRO, the MLRO need not consider that question. The effect of this is to require a report to be considered by the MLRO only in a case where the deputy MLRO is not able to come to a conclusion.

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8.3.1 Internal SARs

AML/CFT Codes of Practice

86. In addition to the reporting procedures that must be maintained under Article 21 of the *Money Laundering Order*, a firm must maintain procedures that:
- › highlight that reporting requirements extend to business relationships and one-off transactions that are declined (i.e. where no business relationship is established or transaction carried out);
 - › highlight that internal SARs are to be made regardless of the amount involved in a transaction or relationship and regardless of whether, amongst other things, it is thought to involve tax matters;
 - › highlight the importance attached to making an internal SAR as soon as practicable;
 - › require internal SARs to be acknowledged by the MLRO (or a deputy MLRO) as soon as is practicable;
 - › require the MLRO (or deputy MLRO) to record all internal SARs in a register (including details of the date of the internal SAR, identity of the individual making the internal SAR, and information to allow supporting documentation to be retrieved on a timely basis).
87. A firm must not allow internal SARs to be filtered by line management such that they do not reach the MLRO (or deputy MLRO). Where procedures allow employees to discuss

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relationships and transactions with line managers before an internal SAR is made, they must emphasise that the decision on reporting remains with that employee.

88. A firm must establish and maintain arrangements for disciplining any employee who fails, without reasonable excuse, to make an internal SAR where he or she has knowledge, suspicion or reasonable grounds for knowledge or suspicion, or does not do so as soon as is practicable.

Guidance Notes

89. A firm may demonstrate that it has established and maintained arrangements for disciplining employees by ensuring that employment contracts and employment handbooks provide for the imposition of disciplinary sanctions for failing to report knowledge, suspicion or reasonable grounds for knowledge or suspicion without reasonable excuse, or ~~failure to do so as soon as is practicable.~~
90. A firm may demonstrate that employees make internal SARs as soon as practicable where the MLRO (or deputy MLRO) periodically considers (by business area if appropriate):
- › The period of time between information or a matter coming to an employee's attention and the date of the internal SAR and concludes that it is reasonable.
 - › The number and content of internal SARs, and concludes that both are consistent with the firm's business risk assessment.

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8.3.2 External SARs

Overview

91. The MLRO (or deputy MLRO) must consider each internal SAR. In order to do so, the *Money Laundering Order* requires that the MLRO (or deputy MLRO) has access to all necessary records. The MLRO (or deputy MLRO) may also require further information to be obtained from the client. Any such approach will need to be made sensitively and probably by someone other than the MLRO (or deputy MLRO) to minimise the risk of alerting the client that a report to the JFCU may be being considered (though this may not yet be tipping off).
92. When considering an internal SAR, the MLRO (or deputy MLRO), taking account of the risk posed by the transaction or activity being addressed, will need to strike the appropriate balance between the requirement to make a report to the JFCU as soon as practicable, especially if consent is required, and any delay that might arise in searching a number of unlinked systems and records that might hold relevant information.

AML/CFT Codes of Practice

93. In addition to reporting procedures that must be maintained under Article 21 of the *Money Laundering Order*, a firm must maintain procedures that:
- › Require the MLRO (or deputy MLRO) to document all enquiries made in relation to each internal SAR.
 - › Require the MLRO (or deputy MLRO) to document the basis for reporting to the JFCU or deciding not to make such a report, which must be retained with the internal SAR.
 - › Require the MLRO (or deputy MLRO) to record all external SARs in a register (including the date of the report and information to allow supporting documentation to be retrieved on a timely basis).
 - › Require the MLRO (or deputy MLRO) to inform the JFCU where relevant information is subsequently discovered.

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Guidance Notes

94. A firm may demonstrate that an internal *SAR* is considered in light of all other relevant information when it considers:
- › The business and risk profile for the subject of the report.
 - › The complexity and duration of the business relationship.
 - › Transaction patterns and volumes, and previous patterns of instructions.
 - › Any connected matters or relationships. Connectivity can arise through commercial connections, e.g. linked transactions or common referrals, or through individuals, e.g. third parties, beneficial owners and controllers or account signatories.
 - › The risk that assets will dissipate.
95. A firm may demonstrate that the *MLRO* (or *deputy MLRO*) reports as soon as practicable where senior management considers:
- › The typical period of time taken by the *MLRO* (or *deputy MLRO*) to process an internal *SAR* (being the period between the date of the internal *SAR* and date of the external *SAR* (or decision taken not to report)).
 - › The number of internal *SARs* not processed within a period of time set by senior management, together with an explanation.

8.4 JFCU Consent

Overview

96. Protective reports before or after doing an act are not equal options which a firm can choose between.
- › A report should be made **before doing an act** where a client instruction is received prior to an activity or transaction taking place, or arrangements being put in place. However, when an activity or transaction which gives rise to concern has already been actioned and where a delay would lead to a breach of a contractual obligation, the *MLRO* (or *deputy MLRO*) may need to let the activity or transaction proceed and report it later.
 - › A report should be made **after doing an act** where something appears suspicious only with the benefit of hindsight or following the receipt of additional information.
97. The receipt of a protective report concerning an act (transaction or activity) that has already occurred in an established business relationship (the continuation of which is considered to be another future act) will be acknowledged by the *JFCU*, and in the absence of any instruction to the contrary from the *JFCU*, a firm will generally be provided with consent to maintain the client relationship (the future act) under normal commercial circumstances (referred to as consent to operate normally). However, receipt of such consent from the *JFCU* in these circumstances does not indicate that the knowledge or suspicion is with or without foundation, and other future acts (transactions or activity) should continue to be monitored and reported, as appropriate.
98. In the vast majority of cases in which an external *SAR* is made, consent to continue an activity, process a transaction, or continue a business relationship is provided by the *JFCU* within seven working days of receipt of a report (indeed, the *JFCU* responds within two working days in the majority of cases). However, it should be noted that the *JFCU* is not obligated to provide consent within a particular time frame, or at all.

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99. Consent may be delayed where information is required by the *JFCU* from an overseas financial intelligence unit. Consent may also be withheld where the report lacks sufficient detail to allow the *JFCU* to form a view on consent.
100. While waiting for the *JFCU* to provide consent to proceed with an activity or transaction (where it is necessary for consent to be provided), or in the event that the *JFCU* notifies a firm that consent will not be given, a firm should be aware of the risk of committing a tipping off offence where it fails to act on a client's instruction.
101. Where a firm does not wish to act upon a client's instruction, this may lead to civil proceedings being instituted by the client for breach of contract. It may be necessary in circumstances where a client has instigated civil proceedings for a firm to seek the directions of the court.
102. A firm may reduce the potential threat of civil proceedings by ensuring that clients' terms of business specifically:
 - › Allowing an instruction to be delayed or deferred, pending investigation.
 - › Exclude breaches in circumstances where following a client instruction may lead to the firm committing an offence.

8.5 Tipping-off

Overview

103. Except where otherwise provided, where a person knows or suspects that a *SAR* has been or will be made, a person will commit a tipping off offence where they disclose to another person:
 - › The fact that they have made, or will make, an internal or external *SAR*; or
 - › Any information relating to such a *SAR*.
104. Except where otherwise provided, where a person knows or suspects that the Attorney General or any police officer is acting or proposing to act in connection with a criminal investigation that is, or is about to be, conducted into *money laundering* or the *financing of terrorism*, a person will commit a tipping off offence where it:
 - › Discloses to another person any information relating to the investigation; or
 - › Interferes with material which is likely to be relevant to such an investigation.
105. Inter alia, the effect of this is that a firm or employee of a firm:
 - › Cannot, at the time, tell a client that a transaction or activity is being delayed because an internal *SAR* is about to be made or has been made to the *MLRO* (or *deputy MLRO*).
 - › Cannot, at the time, tell a client that a transaction or activity is being delayed because an external *SAR* is about to be made or awaiting consent from the *JFCU*.
 - › Cannot later tell a client that a transaction or activity was delayed because an internal or external *SAR* had been made.
 - › Cannot tell the client that law enforcement is conducting an investigation.
106. However, a tipping off offence is not committed when a firm discloses: that an internal *SAR* has been made; that it will make, or has made, an external *SAR*; information relating to such *SARs*; or information relating to a criminal investigation to its:
 - › **Lawyer** - in order to obtain legal advice or for the purpose of legal proceedings (except where the disclosure is made with a view to furthering a criminal purpose); or

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- › **Accountant** – for the purpose of enabling the accountant to provide certain services, e.g. in order to provide information that will be relevant to the statutory audit of a firm’s financial statements (except where the disclosure is made with a view to furthering a criminal purpose).
107. Nor is a tipping off offence committed when a **lawyer** discusses that disclosure with its client where this is in connection with the provision of legal advice or for the purpose of actual or contemplated legal proceedings (except where the discussion is with a view to furthering a criminal purpose). **However, no similar provision is made for an accountant to discuss the disclosure with its client.**
108. In addition, a tipping off offence will not be committed where a disclosure is permitted under the Proceeds of Crime and Terrorism (Tipping Off – Exceptions) (Jersey) Regulations 2014 (the “**Tipping Off Regulations**”) – a **protected disclosure**. So long as a disclosure meets conditions that are set in the *Tipping Off Regulations*, a disclosure will be a protected disclosure where it is:
- › Made as a result of a legal requirement;
 - › Made with the permission of the JFCU;
 - › Made by an employee of a person to another employee of the same person;
 - › A disclosure within a financial group or network;
 - › Made to another *relevant person* (but not an *equivalent business*); or
 - › Made to the *Commission*.
109. Except where a disclosure is made pursuant to a legal requirement or with the permission of the JFCU, a disclosure will not be a protected disclosure under the *Tipping Off Regulations* unless it is made in good faith for the purpose of preventing or detecting *money laundering* or the financing of terrorism.
110. Whereas the *Tipping Off Regulations* permit disclosure of the fact that a SAR has been or will be made and/or any information relating to the SAR, they do not permit the **SAR form** or copy of the **SAR form** to be disclosed (except where done pursuant to a legal requirement or by one employee of a person to another employee of that person within Jersey).
111. In a case where a firm:
- › Is the client of a financial institution or designated non-financial business or profession (A) that is not a *relevant person*; and
 - › Is acting for one or more third parties; and
 - › Has undertaken to make a disclosure to A when it makes a SAR in respect of any of those third parties,
- a tipping off offence is committed other than where such a disclosure is made with the permission of the JFCU.
112. Care should be exercised where a person is also subject to legislation in force outside Jersey. Notwithstanding that a disclosure may be a protected disclosure under the *Tipping Off Regulations*, this protection will not extend to an offence that is committed where a disclosure is not permitted under that other legislation.
113. In this section, a reference to a “disclosure” is to the disclosure of matters related to a SAR, or an investigation (and not the disclosure of suspicion or knowledge through a SAR).

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Statutory Requirements

114. Article 35(4) of the Proceeds of Crime Law and Article 35(4) of the Terrorism Law make it an offence to disclose the fact that a SAR has been or will be made, or any information otherwise relating to such a SAR, if a person knows or suspects that a SAR has been, or will be, made - except if the disclosure is a **protected disclosure** under the Tipping Off Regulations.
115. Article 35(2) of the Proceeds of Crime Law and Article 35(2) of the Terrorism Law make it an offence to disclose any information relating to an investigation, or to interfere with material which is likely to be relevant to such an investigation, where a person knows or suspects that the Attorney General or any police officer is acting or proposing to act in connection with a money laundering or the financing of terrorism investigation - except if the disclosure is a **protected disclosure** under the Tipping Off Regulations.
116. It is a defence under Article 35(5) of both the Proceeds of Crime Law and Terrorism Law for a person charged with an offence to prove that they had a reasonable excuse for the disclosure or interference.
117. However, Articles 35(2) and (4) do not apply to the disclosure of an investigation or SAR which is made by a relevant person to:
- › a professional legal adviser in connection with the provision of legal advice or for the purpose of actual or contemplated legal proceedings; or
 - › an accountant for the purpose of enabling that person to provide external accounting services, tax advice, audit services or insolvency services,
- so long as it is not made with a view to furthering a criminal purpose
118. A person who is guilty of an offence under Article 35 is liable to imprisonment for a term not exceeding 5 years or a fine, or to both.
119. Regulation 2 of the Tipping Off Regulations lists disclosures that are protected disclosures. A disclosure will be protected where:
- › It is made in good faith for the purpose of preventing or detecting money laundering or the financing of terrorism and it falls within any of the cases specified in Regulations 3 to 7.
 - › It is made in good faith for the purpose of preventing or detecting money laundering or the financing of terrorism and it is made to a person's MLRO (or deputy MLRO).
 - › It is required to be made by statute in Jersey or law elsewhere.
 - › It is made with the permission of the JFCU.
120. A disclosure that is required to be made by statute or law may include transmission of **the form** used to make a SAR (or copy thereof).
121. Regulation 3 permits an employee of a relevant person ("**D**") to make a disclosure to another employee of the same person ("**R**"). Such a disclosure may include transmission of **the form** used to make a SAR (or copy thereof) so long as the recipient of the disclosure is a person within Jersey. Such a disclosure may also include the name of the individual who has made the internal SAR.
122. Where a further disclosure is made by R in accordance with the Tipping Off Regulations (other than under Regulation 3), it may **not** disclose the identity of D.
123. Regulation 4 permits a relevant person and employee of such a person ("**D**") to make a disclosure to a person in another part of its financial group or with whom D shares common ownership, management or compliance control ("**R**"). Such a disclosure may **not** include

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transmission of **the form** used to make a SAR (or copy thereof). **Nor** may it disclose the identity of the individual who has made the internal SAR.

124. Where a further disclosure is made by R in accordance with the Tipping Off Regulations, it may not disclose the identity of D, where D is an individual.
125. Regulation 5 permits a relevant person and employee of such a person ("D") to make a disclosure to another relevant person ("R") where the disclosure relates to a person who is a customer (or former customer) of both D and R, or relates to a transaction, or provision of a service, including both D and R. Such a disclosure may **not** include transmission of **the form** used to make a SAR (or copy thereof). **Nor** may it disclose the identity of the individual who has made the internal SAR.
126. Where a further disclosure is made by R in accordance with the Tipping Off Regulations, it may not disclose the identity of D nor D's MLRO (or deputy MLRO).
127. Regulation 6 permits a relevant person and employee of a relevant person to make a disclosure to any of the following:
- › A customs officer, a police officer or any employee of the JFCU.
 - › The Commission.
128. Where a further disclosure is made by any of the above in accordance with the Tipping Off Regulations (other than under Regulation 6), it may not disclose the identity of the relevant person, except where the recipient is a customs officer, a police officer, any employee of the JFCU, or the Commission.

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129. In addition to reporting procedures that must be maintained under [Article 21](#) of the *Money Laundering Order*, a firm must maintain procedures that remind employees making internal SARs of the risk of committing a tipping off offence.

8.5.1 CDD Measures

Overview

130. Article 13(1) of the *Money Laundering Order* requires identity to be found out and evidence of identity obtained **before** the establishment of a business relationship or **before** carrying out a one-off transaction, except in some limited circumstances. Article 13(1)(c) of the *Money Laundering Order* further requires that *identification measures* be applied, where a firm suspects *money laundering* or *the financing of terrorism* (at any time) or has doubts about the veracity or adequacy of documents, data or information previously obtained under *CDD* measures during the course of a business relationship.
131. Where a firm suspects *money laundering* or *the financing of terrorism*, the application of *identification measures* could unintentionally lead to the client being tipped off, where the process is managed without due care.
132. In circumstances where an external SAR has been made, and where there is a requirement to conduct *identification measures*, the risk of tipping off a client (and its advisers) may be minimised by:
- › Ensuring that employees applying *identification measures* are aware of tipping off provisions and are provided with adequate support, such as specific training or assistance.
 - › Obtaining advice from the JFCU where a firm is concerned that applying *identification measures* will lead to the client being tipped off.

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133. Where a firm reasonably believes that the application of *identification measures* could lead to the client being tipped off, then under Article 14(6) of the *Money Laundering Order* it is not necessary to apply such measures, where an external SAR has been made and the JFCU has agreed that the measures need not be applied.
134. Reasonable enquiries of a client conducted in a tactful manner regarding the background to a transaction or activity that is inconsistent with the usual pattern of transactions of activity is prudent practice, forms an integral part of CDD measures, and should not give rise to the tipping off offence.

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8.5.2 Terminating a Relationship

Overview

135. The giving of consent by the JFCU following an external SAR is not intended to override normal commercial judgement, and a firm is not committed to continuing a business relationship with a client if such action would place the firm at commercial risk.
136. A decision to terminate a business relationship is essentially a commercial decision (except where there is a requirement to do so under Article 14 of the *Money Laundering Order*), and a firm must be free to make such judgements. However, in certain circumstances, a firm should consider liaising with the JFCU to consider whether it is likely that termination would alert the client or affect an investigation in any way. If there is continuing suspicion and there are funds which need to be returned to the client, a firm should seek advice from the JFCU.

8.6 Disclosure to Group Companies and Networks

Overview

137. Whereas the focus of the *Money Laundering Order* is on the role that a particular *relevant person* has in preventing and detecting *money laundering* and the financing of terrorism, where a firm is part of a group or larger network, it is important that it should be able to play its part in the prevention and detection of *money laundering* and the financing of terrorism at group or network level.
138. Accordingly, it is important that there should be no legal impediment to providing certain information to a group company or network.
139. Where a firm also wishes to disclose information to another *relevant person* (something that is anticipated under the *Tipping Off Regulations*), it will first be necessary to ensure that there is a proper basis for doing so, e.g. it has the consent of its client to do so in certain circumstances.

Statutory Requirements

140. Article 22A of the *Money Laundering Order* allows a *relevant person* to disclose the following to any person or institution with which the *relevant person* shares common ownership, management or compliance control, or (where different) any person within the same financial group, where such disclosure is appropriate for the purpose of preventing and detecting *money laundering* and the financing of terrorism:
- › Information contained in any report made to the MLRO (or deputy MLRO).
 - › Information provided to the JFCU that is in addition to that contained in an external SAR.
 - › Any other information that is kept under the *Money Laundering Order*.

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141. Article ~~1(5)~~ of the Money Laundering Order states that 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:
- › the Core Principles for Effective Banking Supervision published by the Basel Committee on Banking Supervision;
 - › the Objectives and Principles of Securities Regulation issued by IOSCO; or
 - › the Insurance Supervisory Principles issued by the International Association of Insurance Supervisors.

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8.7 The Auditor's Responsibility for Monitoring Compliance

Overview

142. The International Standard on Auditing's Policy Paper ISA 250 establishes standards and provides guidance on the *auditor's* responsibility to consider legislation in an audit of financial statements. *Money laundering* legislation does not require the *auditor* to extend the scope of the audit save as set out in Section 8.8 of this Handbook but the normal audit work could give rise to knowledge or suspicion, or reasonable grounds for knowledge or suspicion that will need to be reported. Such knowledge or suspicion may arise in relation to:
- › legislation relating directly to the preparation of the financial statements;
 - › legislation which provides ~~s~~ a legal framework within which the entity conducts its business;
 - › other legislation.
143. Auditing standards relating to legislation require the *auditor* to obtain sufficient appropriate audit evidence about compliance with legislation that has an effect on the determination of material amounts and disclosures in the financial statements. This may cause the *auditor* to be suspicious that, for example, fraud or tax offences have taken place, which may be criminal offences resulting in the acquisition of criminal property.
144. Auditing standards on legislation also require the *auditor* to perform procedures to help identify possible or actual instances of non-compliance with legislation which provides a legal framework within which the entity conducts its business and which are central to the entity's ability to conduct its business and hence to its financial statements. These procedures consist of:
- › obtaining a general understanding of the legal and regulatory framework applicable to the entity and the industry and of the procedures followed to ensure compliance with that framework;
 - › inspecting correspondence with the relevant licensing or regulatory authorities;
 - › enquiring of those charged with governance as to whether they are on notice of any such possible instances of non-compliance with laws or regulations; and
 - › obtaining written representation that those charged with governance have disclosed to the *auditor* all known actual or possible non-compliance with legislation whose effects should be considered when preparing financial statements, together with, where applicable, the actual or contingent consequences which may arise from the non-compliance.
145. This work may give the *auditor* grounds to suspect that criminal offences have been committed and which may need to be reported to the JFCU.

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146. Legislation relating to *money laundering* will be central to an entity's business if the client falls within the definition of a '*financial services business*'. When auditing the financial statements of such businesses, the *auditor* must review the steps taken by the entity to comply with the *Money Laundering Order* and the *Commission's* Regulatory Requirements, assess their effectiveness and obtain management representations concerning compliance with them. If the client's systems are thought to be ineffective, the *auditor* must consider whether there is a responsibility to report a matter of 'material significance' to the regulator and the possible impact of regulatory action (see also Section 8.8 of this Handbook).
147. The *auditor* will need to give consideration to whether any contingent liabilities might arise in this area. For example, there may be criminal fines for non-compliance with the *money laundering* legislation and/or the *Money Laundering Order*. In certain circumstances civil claims may arise or confiscation proceedings may give rise to contingent liabilities. The *auditor* will need to remain alert to the fact that discussions with the client on such matters may give rise to a risk of 'tipping-off' (see Section 8.5 of this Handbook).
148. In some situations, the audit client may have obtained legal advice to the effect that certain actions or circumstances do not give rise to criminal conduct and therefore cannot give rise to criminal property. Whether an act constitutes non-compliance with the *money laundering* legislation may involve consideration of matters which do not lie within the competence and experience of individuals trained in the audit of financial information. Provided that the *auditor* considers that the advice has been obtained from a suitably qualified and independent lawyer and that the lawyer was made aware of all relevant circumstances known to the *auditor*, the *auditor* may rely on such advice, provided the *auditor* has complied with auditing standards on using the work of an expert.

8.8 Reporting to Regulators

Overview

149. Reporting to the *JFCU* does not relieve the *auditor* from other statutory duties, examples of statutory reporting responsibilities include:
- › **Audits of entities in the financial sector:** the *auditor* has a statutory duty to report matters of 'material significance' to the *Commission* which come to the *auditor's* attention in the course of audit work.
 - › **Audits of entities in the public sector:** *auditors* of some public sector entities may be required to report on the entity's compliance with requirements to ensure the regularity and propriety of financial transactions. Activity connected with *money laundering* may be a breach of those requirements.
 - › **Audits of other types of entity:** *auditors* of some other entities are also required to report matters of 'material significance' to regulators (for example, charities and occupational pension schemes).

8.9 Balancing Professional Work and Post-Reporting Requirements

Overview

150. Continuation of work post-reporting may require discussion with the client's senior management of matters relating to the suspicions that were formed. Care must be taken to select appropriate, and non-complicit, members of senior management for such discussions, always bearing in mind the need to avoid tipping-off. It is important to confine enquiries to those required in the ordinary course of business and not attempt to investigate a matter, unless this is within the scope of the professional work commissioned.

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151. In more complex circumstances, consultation with law enforcement may be necessary before enquiries are continued, but in most cases a common sense approach will resolve the issue. It should be noted that neither the *JFCU* nor other law enforcement agencies may give consent to tipping-off, but discussions with them will still be valuable.
152. Firms may wish to consult the *MLRO* or other suitable specialist (for example a lawyer) regularly if there are tipping-off concerns. In particular, it is important that before any document referring to the subject matter of a report is released to a third party, the *MLRO* is consulted and, where necessary, law enforcement. Some typical examples of documents released to third parties are shown below as an aide memoire:
- › public audit or other attest reports;
 - › public record reports to regulators;
 - › confidentiality reports to regulators;
 - › statements on the resignation as *auditors*;
 - › professional clearance/etiquette letters; or
 - › communications to clients of intention to resign.
153. There is no legal mechanism for obtaining clearance from *JFCU* for the contents of such statements or other documents relating to resignation. However, firms may well wish in cases of complexity to discuss the matter with the *JFCU* in order to understand their perspective and document such discussion.
154. *MLROs* may on occasion need advice to assist them in formulating their instructions to the firm. Legal advice may be sought from a suitably skilled and knowledgeable professional legal adviser, and recourse may also be had to helplines and support services provided by professional bodies. Discussion with the *JFCU* may well be valuable, but *MLROs* should bear in mind that the *JFCU* and law enforcement are not able to advise, nor are they entitled to dictate, how professional relationships should be conducted.

8.9.1 The Auditor's Report on Financial Statements

Overview

155. Where it is suspected that *money laundering* has occurred, the *auditor* will need to apply the concept of materiality when considering whether the *auditor's* report on the financial statements needs to be qualified or modified taking into account whether:
- › the crime itself has a material effect on the financial statements;
 - › the consequences of the crime have a material effect on the financial statements; or
 - › the outcome of any subsequent investigation by the investigating agencies may have a material effect on the financial statements.
156. If it is known that *money laundering* has occurred and that directors or members of senior management of the company were knowingly involved, the *auditor* will need to consider whether the *auditor's* report is likely to include a qualified opinion on the financial statements. Any disclosure in the *auditor's* report is subject to the tipping-off requirements. It might be necessary for the *auditor*, through the *MLRO*, to discuss with the relevant law enforcement agency whether disclosure in the report on the financial statements, either through a qualified opinion or referring to fundamental uncertainty, could constitute a tipping-off offence. If so, the *auditor*, through the *MLRO*, will need to agree an acceptable form of words with the *JFCU*.

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157. Whilst an attempt may be made to seek the views of the JFCU or the relevant law enforcement agency, it must be borne in mind that law enforcement may not be willing or able to agree on a form of words to use in communicating with the client. In such circumstances, the *auditor* is advised to consider whether it would be appropriate to seek legal advice, although appropriate consent cannot be given to tipping-off, it is unlikely that the *auditor* who uses a form of words agreed with the relevant law enforcement agency will commit a tipping-off offence.
158. Timing may be a crucial factor. Any delay in issuing the audit report pending the outcome of an investigation is likely to be impracticable and could in itself lead to issues of tipping-off. The *auditor* must also consider the potential dangers of tipping-off by not issuing the audit report as expected.
159. If an audit report has to be issued, and agreement with the relevant law enforcement agency cannot be reached, firms may need to seek legal advice before issuing a qualified audit report. As a last resort, it may be necessary to make an application to the court in respect of the content of the qualified audit report.
160. If a firm, having filed a SAR, wishes to terminate a relationship and is concerned that, in doing so, it may prejudice an investigation, it should seek advice from the JFCU. This is to avoid the danger of tipping-off. However, the JFCU cannot instruct a firm to continue a relationship that it wishes to terminate.
161. Firms may wish to resign if it is believed that the client or an employee is engaged in *money laundering* or any other illegal act, particularly where a normal relationship of trust can no longer be maintained. Where the *auditor* intends to cease to hold office, there may be a conflict between the requirements for the *auditor* to bring certain matter to the attention of members or creditors and the risk of tipping-off. In such circumstances the *auditor* should seek the advice of the JFCU and the appropriate investigating agency to agree an appropriate course of action and an acceptable form of words. If necessary, legal advice or the direction of the court may need to be sought.
162. The offence of tipping-off may also cause a conflict with the need to communicate with the prospective successor *auditor* in accordance with ethical requirements relating to changes in professional appointments. Whilst the existing *auditor* might feel obliged to advise the incoming *auditor* of the suspicions of *money laundering*, to do so would run the risk of tipping-off. Expressing such concerns orally rather than in writing does not alleviate the issue. However, in certain circumstances it may be necessary to communicate the underlying circumstances which gave rise to the disclosure. When doing so, advice should be taken from the MLRO who may need to seek an opinion from the JFCU.

8.10 Investigation and the Use of Court Orders

Overview

163. Following the receipt of a disclosure and initial enquiries by the JFCU, reports are allocated to financial investigation officers for further investigation. Intelligence from reports submitted to the JFCU is then disseminated to other intelligence agencies, as appropriate.
164. Where additional information is required from a reporting institution following a SAR, it will generally be obtained pursuant to a production order issued by the Royal Court under *Proceeds of Crime Law*, *Terrorism Law*, *Investigation of Fraud (Jersey) Law 1991* and the *Criminal Justice (International Co-operation) (Jersey) Law 2001*, or a customer monitoring order under the *Terrorism Law*. It is a criminal offence to fail to comply with the terms of any order.

165. During the course of an investigation, a firm may be served with an order designed to restrain particular funds or property pending the outcome of an investigation. It should be noted that the restraint order may not apply to all funds or assets involved within a particular business relationship and a firm should consider what, if any, property may be utilised subject to having obtained the appropriate consent from the *JFCU*.
166. Upon the conviction of a defendant, a court may order the confiscation of their criminal proceeds or the confiscation of assets to a value representing the benefit of their criminal conduct, which may require the realisation of legitimately obtained assets. A firm may be served with a confiscation order in relation to any funds or property belonging to that defendant. For example, if a person is found to have benefited from drug dealing to a value of £100,000, then the court may order the confiscation of any assets belonging to that person to a value of £100,000. Confiscation of the proceeds of criminal conduct is becoming commonplace within many jurisdictions, and legislation in place in Jersey provides a mechanism by which overseas criminal confiscation orders may be recognised. Overseas civil confiscation orders may also be recognised in Jersey.
167. Property may also be forfeited in Jersey utilising civil proceedings under the *Terrorism Law*.
168. From time to time, with a view to obtaining additional intelligence, the *JFCU* will issue general liaison notices to all *relevant persons*, or to a particular category of business. The *JFCU* will ensure that the requests contained within such notices are proportionate and reasonable in the circumstances. Firms are requested to respond with any relevant information as soon as is reasonably practicable.

8.10.1 Feedback from the JFCU

Overview

169. Because a significant proportion of *SARs* received by the *JFCU* relate to the accounts or transactions of non-Jersey residents and so are disseminated to overseas intelligence agencies, it may not be possible for the *JFCU* to provide regular feedback on individual disclosures. However, on a regular basis, the *JFCU* will provide statistics, trends and advice to enhance the quality of disclosures, or issue periodic newsletters. In addition, the States of Jersey Police Annual Report contains some information on disclosures, prosecutions and confiscations.

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