

10 RECORD KEEPING

Please Note:

- › Regulatory requirements are set within this section as *AML/CFT Code 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.

10.1 Overview of Section

1. This section outlines the statutory provisions concerning record-keeping for the purposes of countering *money laundering* and the *financing of terrorism*. It also sets *AML/CFT Codes of Practice* and provides guidance on keeping records. More general obligations on firms to maintain records in relation to their business are not addressed in this section: these may extend the period for which records must be kept.
2. Record-keeping is essential to facilitate effective investigation, prosecution and confiscation of criminal property. If law enforcement agencies, either in Jersey or elsewhere, are unable to trace criminal property due to inadequate record-keeping, then prosecution for *money laundering* and *the financing of terrorism* and confiscation of criminal property may not be possible. Likewise, if the funds used to finance terrorist activity cannot be traced back through the financial system, then the sources and the destination of terrorist financing will not be identified.
3. Record-keeping is also essential to facilitate effective supervision, allowing the *Commission* to supervise compliance by firms with statutory requirements and *AML/CFT Codes of Practice*. Records provide evidence of the work that a firm has undertaken to comply with statutory requirements and *AML/CFT Codes of Practice*. Records also provide a necessary context for the opinion that may be prepared on the truth and fairness of a firm's financial statements by its external *auditor*.
4. Records may be kept:
 - › by way of original documents;
 - › by way of photocopies of original documents (certified where appropriate);
 - › in scanned form; or
 - › in computerised or electronic form.

10.2 Recording Evidence of Identity and Other CDD Measures

Overview

5. In relation to evidence of a client's identity, a firm must keep a copy, or references to the evidence of the client's identity obtained during the application of *CDD* measures. In circumstances (such as where evidence is obtained at a client's home and photocopying facilities are not available) where it would not be possible to take a copy of the evidence of identity, a record will be made of the type of document and its number, date and place of issue, so that, if necessary, the document may be obtained from its source of issue.

6. In addition, a firm must keep supporting documents, data and information in respect of a business relationship or one-off transaction including: documents, data and information obtained under *identification measures*; accounts files; and business correspondence and the results of any analysis undertaken.

Statutory Requirements

7. Article 19(2) of the Money Laundering Order requires a relevant person to make and retain the following records:
- › copies of evidence of identity or information that enables a copy of such evidence to be obtained; and
 - › all supporting documents, data and information in respect of a business relationship or one-off transaction which is the subject of client due diligence measures, including the results of analysis undertaken in relation to the business relationship or any transaction.
8. Article 19(4) of the Money Laundering Order requires a relevant person to keep records in such a manner that they can be made available swiftly to the Commission, police officer or customs officer for the purpose of complying with a requirement under any enactment, e.g. a production order under Article 40 of the Proceeds of Crime Law.
9. Article A19 of the Money Laundering Order defines 'relevant person' for the purpose of the record retention requirements as including a person who was formerly a relevant person.
10. Article 20(1) and (2) of the Money Laundering Order requires a relevant person to keep records for at least five years from: (i) the end of the business relationship with the customer; or (ii) the completion of the one-off transaction.
11. Article 20(5) of the Money Laundering Order allows the Commission to require a relevant person to keep records for a period that is more than five years.

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Guidance Notes

12. A firm may demonstrate that it keeps all supporting documents, data and information in respect of a business relationship or one-off transaction where it keeps accounts files and business correspondence.

10.3 Recording Transactions

Overview

13. Details of all transactions carried out with or for a client in the course of carrying on a *financial services business* must be recorded. Transactions records in support of such transactions, in whatever form they are used, e.g. credit/debit slips, cheques, will also be kept.

Statutory Requirements

14. Article 19(2)(b) of the Money Laundering Order requires a financial services business to keep a record containing details of every transaction carried out with or for the customer in the course of a financial services business. In every case, sufficient information must be recorded to enable the reconstruction of individual transactions.
15. Article 19(4) of the Money Laundering Order requires a relevant person to keep records in such a manner that they can be made available swiftly to the Commission, police officer or customs officer for the purpose of complying with a requirement under any enactment, e.g. a production order under Article 40 of the Proceeds of Crime Law.

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16. Article 20(3) of the Money Laundering Order requires a relevant person to keep records relating to transactions for at least five years from the date when all activities relating to the transaction were completed.
17. Article 20(5) of the Money Laundering Order allows for the Commission to require a relevant person to keep records of transactions for a period that is more than five years.

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AML/CFT Codes of Practice

18. A record must be kept of the following for every transaction/activity carried out with or for a client in the course of a business relationship or one-off transaction:
- › name and address of the client;
 - › if a monetary transaction, the kind of currency and the amount;
 - › if the transaction involves a client's account, the number, name or other identifier for the account;
 - › date of the transaction;
 - › details of the counterparty, including account details;
 - › nature of the transaction; and
 - › details of the transaction.
19. Client transaction records must provide a clear and complete transaction history of incoming and outgoing funds or assets.

Guidance Notes

20. A firm may demonstrate that it has kept details of a transaction where it records:
- › valuation(s) and price(s);
 - › the form (e.g. cash, cheque, electronic transfer) in which funds are transferred;
 - › memoranda of instruction(s) and authority(ies);
 - › memoranda of purchase and sale; and
 - › custody of title documentation.
21. A firm may demonstrate that it has a clear and complete transaction history where it records all transactions undertaken on behalf of a client within that client's records.

10.4 Other Record Keeping Requirements

10.4.1 Corporate Governance

AML/CFT Codes of Practice

22. A firm must keep for a period of five years after the end of the calendar year in which it is superseded the business risk assessment that it must conduct and record under Section 2.3 of this Handbook.
23. A firm must keep for at least five years after the end of the calendar year in which they are superseded, adequate and orderly records of its *systems and controls* (including *policies and procedures*) that it must document under Section 2.3 of this Handbook that are maintained by a *financial services business* to prevent and detect money laundering and the *financing of terrorism*.

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24. A firm must keep for a period of five years after the end of the calendar year in which a matter is considered, adequate and orderly records showing how senior management has assessed both the effectiveness of, and compliance with, *systems and controls* (including *policies and procedures*) in line with Section 2.3 of this Handbook, including reports presented by the *MLCO* on compliance matters and the MLRO on reporting.
25. A firm must keep for a period of five years after the end of the calendar year in which a matter is considered, a record of what barriers (including cultural barriers) exist to prevent the operation of effective *systems and controls* (including *policies and procedures*) in line with Section 2.3 of this Handbook.
26. A firm must keep for a period of five years after the end of the calendar year in which a person ceases to be a *MLCO* or *MLRO* (or *deputy MLRO*), adequate and orderly records to demonstrate that officer's experience and skills, independence, access to resources, and technical awareness, in line with Sections 2.5 and 2.6 of this Handbook.
27. A firm must keep for a period of five years after the end of the calendar year in which a measure is applied, adequate and orderly records to demonstrate that in line with Section 2.3 of this Handbook:
 - › measures that are at least equivalent to *AML/CFT Codes of Practice* are applied to *financial services business* carried on by a firm through overseas branches; and
 - › subsidiaries are required to apply measures that are at least equivalent to *AML/CFT Codes of Practice*.

10.4.2 Identification Measures

AML/CFT Codes of Practice

28. Where a firm is required to apply an identification measure through an *AML/CFT Code of Practice* set in Sections 4, 5 and 7 of this Handbook, an adequate and orderly record of that measure must be kept in line with record-keeping requirements in Part 4 of the *Money Laundering Order*.
29. A firm must keep for a period of five years after the end of the calendar year in which it is superseded, its risk assessment for each client that has still to be remediated in line with Section 4.7.3 of this Handbook.

10.4.3 On-going monitoring

AML/CFT Codes of Practice

30. A firm may demonstrate that it has kept details of the results of analysis undertaken in relation to the business relationship or any transaction where it keeps adequate and orderly records containing the findings of its examination of notable transactions and activity, i.e. those that:
 - › Are inconsistent with the firm's knowledge of the client (unusual transactions or activity);
 - › Are complex or unusually large;
 - › Form part of an unusual pattern; and
 - › Present a higher risk of *money laundering* or the *financing of terrorism*,for a period of five years from the end of the calendar year in which the examination is undertaken.
31. A firm may demonstrate that it has kept details of the results of analysis undertaken in relation to the business relationship or any transaction where it keeps adequate and orderly records containing the findings of its examination of transactions and activity with a person connected

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with an enhanced risk state, for a period of five years from the end of the calendar year in which the examination is undertaken.

10.4.4 SARs

AML/CFT Codes of Practice

32. A firm must keep registers of internal and external SARs, maintained in line with procedures required under Sections 8.3.1 and 8.3.2 of this Handbook.
33. In line with procedures required under Sections 8.3.1 and 8.3.2 of this Handbook, a firm must keep, for a period of five years from the date that a business relationship ends, or, if in relation to a one-off transaction, for five years from the date that a transaction was completed, adequate and orderly records containing:
 - › a copy of the form used to make any internal SAR for that client and supporting documentation;
 - › enquiries made in relation to that internal SAR and decision of the MLRO (or deputy MLRO) to make or not make an external SAR;
 - › where an external SAR has been made, a copy of the form used to make the external SAR and supporting documentation provided to the JFCU;
 - › relevant information passed to the JFCU after making the external SAR.

10.4.5 Screening, Awareness and Training of Employees

AML/CFT Codes of Practice

34. A firm must keep adequate and orderly records of training provided on the prevention and detection of *money laundering* and the *financing of terrorism* for five years after the end of the calendar year in which training was provided, including:
 - › the dates on which training was provided;
 - › the nature of the training provided;
 - › names of employees who received the training;
 - › records of testing subsequently carried out to measure employees' understanding of the training provided, including pass rates and details of any action taken in cases of failure.

10.5 Access to and Retrieval of Records

Overview

35. The *Money Laundering Order* does not specify where records should be kept, but the overriding objective is for firms to be able to access and retrieve relevant information without undue delay.

AML/CFT Codes of Practice

36. A firm must keep documents, data or information obtained under *identification measures* in a way that facilitates on-going monitoring of each business relationship.
37. For all other purposes, the records kept by a firm must be readily accessible and retrievable by it. Unless otherwise specified, records relating to evidence of identity, other *CDD* measures, and transactions must be accessible and retrievable within 5 working days (whether kept in Jersey or outside Jersey), or such longer period as agreed with the *Commission*. Other records must be accessible and retrievable within 10 working days (whether kept in Jersey or outside Jersey), or such longer period as agreed with the *Commission*.

38. A firm must periodically review the condition of paper and electronic records and consider the adequacy of its record-keeping arrangements.
39. A firm must periodically test procedures relating to access to, and retrieval of, its records.
40. Records must be maintained in a format that can be read. Where records are kept other than in legible form, they must be maintained so as to be readable at a computer terminal in Jersey - so that they may be produced in legible form.

10.5.1 External Record Keeping

Overview

41. Where records are kept by another person (group or otherwise) or kept outside Jersey, such as under outsourcing or storage arrangements, or where reliance is placed on *obliged persons*, this will present additional factors for a *financial services business* to consider.
42. Whatever the particular circumstances, a firm remains responsible for compliance with all record-keeping requirements.
43. Where an *obliged person* ceases to trade or have a relationship with a client for whom it has provided an assurance to a firm, particular care needs to be taken to check that assurance continues to have effect, or that evidence of identity is obtained from the *obliged person*. Section 5 deals with placing reliance on *obliged persons*.

AML/CFT Codes of Practice

44. A firm must not: (i) allow another person (group or otherwise) to keep records; or (ii) keep records outside Jersey, where access and retrieval of records (by that person, the *Commission* and/or law enforcement) is likely to be impeded by confidentiality or data protection restrictions.

10.5.2 Reorganisation or Termination

Overview

45. Record-keeping requirements are unaffected where a firm merges with another person, continues as another person, is taken-over by another person, is subject to internal reorganisation, terminates its activities, or transfers a block of clients to another person.

AML/CFT Codes of Practice

46. A firm that undergoes mergers, continuance, take-overs, or internal reorganisations, must ensure that records remain readily accessible and retrievable for the required period, including when rationalising computer systems and storage arrangements.
47. Record-keeping arrangements must be agreed with the *Commission* where a firm terminates its activities, or transfers a block of clients to another person.

10.6 Disclosure of Records

Overview

48. The *FATF Recommendations* identify a number of cases where a financial institution or designated non-financial business or profession (e.g. accountancy firm) may provide an assurance to another that it will provide documents, data or information:
 - › *FATF Recommendation 13* provides that a respondent institution (in the context of a correspondent banking relationship) should be able to provide relevant customer identification data upon request to the correspondent financial institution.

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- › *FATF Recommendation 17* provides that a financial institution relying upon another party should be required to take adequate steps to be satisfied that relevant documentation relating to CDD requirements will be made available by that party upon request and without delay.

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49. Accordingly, it is important that where the respondent institution or party relied on is a *relevant person* in Jersey, there should be no legal impediment to providing the data and information requested.

Statutory Requirements

50. Article *16(3)(d)* states that, where a relevant person (A) has given an assurance under Article 16 of the Money Laundering Order (or under a provision that applies outside Jersey that is equivalent to Article 16) to another relevant person (B), A must make available to B, at B's request, evidence of identity that A has obtained under Article 3 of the Money Laundering Order. A commits an offence under the Proceeds of Crime Law where it fails to do so.
51. Article *17C(4)* states that, where a relevant person (A) has given an assurance under Article *17C(2)(b)* of the *Money Laundering Order* (or under a provision that applies outside Jersey that is equivalent to Article *17C*) to another person (B), A may make available to B, at B's request, information and evidence of identity that A has obtained under Article 3 of the *Money Laundering Order*. However, A is not required by law to do so.
52. Article 19(7) applies to a relevant person carrying on deposit-taking business (a respondent) who is in receipt of banking services provided by an institution whose address is outside Jersey (a correspondent). It allows the respondent to provide the correspondent with evidence, documents, data and information obtained under Article 3 of the Money Laundering Order on request. However, the respondent is not required by law to provide information to the correspondent.

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