2 CORPORATE GOVERNANCE

Please Note:

- Regulatory requirements are set within this section as AML/CFT Codes of Practice.
- Whilst no regulatory requirements are set within this section, there are references to Jersey legislation which may be accessed through the JFSC website.
- Where terms appear in the Glossary this is highlighted through the use of italic text. The Glossary is available from the JFSC website.

2.1 Overview of Section

1. The Cadbury Report on corporate governance states that corporate governance is the system by which enterprises are directed and controlled. The Cadbury Report adds that the responsibilities of the Board include setting strategic aims, providing the leadership to put them into effect and supervising the management of the business. The Organisation for Economic Co-operation and Development builds on this definition by stating that the corporate governance structure specifies the distribution of rights and responsibilities among different participants, such as the Board, managers and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs.
2. Under the general heading of corporate governance, this section considers:
   - Board responsibilities for the prevention and detection of *money laundering* and *financing of terrorism*;
   - requirements for *systems and controls*, training and awareness; and
   - the appointment of a Money Laundering Compliance Officer (the "***MLCO***") and Money Laundering Reporting Officer (the "***MLRO***").
3. The *AML/CFT Handbook* describes a *relevant person's* general framework to combat *money laundering* and *financing of terrorism* as its **"*systems and controls*"**. The *AML/CFT Handbook* refers to the way in which those *systems and controls* are implemented into the day-to-day operation of a *relevant person* as its **"*policies and procedures*"**.
4. Where a *relevant person* is not a company, but is, for example, a partnership, references in this section to "the Board" should be read as meaning the senior management function of that person. In the case of a sole trader, the board will be the sole trader. In the case of an overseas company carrying on a *financial services business* in Jersey through a branch, "the Board" should be read as including the local management function of that branch in Jersey.

2.2 Measures to Prevent Money Laundering and Financing of Terrorism

Statutory Requirements

5. *In accordance with Article 37 of the Proceeds of Crime Law, a relevant person must take prescribed measures to prevent and detect money laundering and financing of terrorism. Failure to take such measures is a criminal offence and, where such an offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director or manager or officer of the relevant person, he too shall be deemed to have committed a criminal offence.*
6. *Article 37 enables the Chief Minister to prescribe by Order the measures that must be taken by a relevant person. These measures are established in the Money Laundering Order.*

2.3 Board Responsibilities

Overview

7. The key responsibilities of the Board are set out in further detail below. The Board is assisted in fulfilling these responsibilities by a *MLCO* and *MLRO*. Larger or more complex *relevant persons* may also require dedicated risk and internal audit functions to assist in the assessment and management of *money laundering* and *financing of terrorism* risk.

Statutory Requirements

8. *Article 11(1) of the Money Laundering Order requires a relevant person to establish and maintain appropriate and consistent policies and procedures in respect of the person's financial services business, and financial services business carried on by a subsidiary, in order to prevent and detect money laundering and financing of terrorism.*

9. *Article 11(11) of the Money Laundering Order requires a relevant person to establish and maintain adequate procedures for: (i) monitoring compliance with, and testing the effectiveness of, its policies and procedures; and (ii) monitoring and testing the effectiveness of measures to promote AML/CFT awareness and training of relevant employees (see Section 9).*

AML/CFT Codes of Practice

10. The Board must conduct and record a business risk assessment. In particular, the Board must consider, on an on-going basis, its risk appetite, and the extent of its exposure to *money laundering* and *financing of terrorism* risks "in the round" or as a whole by reference to its organisational structure, its customers, the countries and territories with which its customers are connected, its products and services, and how it delivers those products and services. The assessment must consider the cumulative effect of risks identified, which may exceed the sum of each individual risk element. The Board's assessment must be kept up to date. (See Section 2.3.1).

11. On the basis of its business risk assessment, the Board must establish a formal strategy to counter *money laundering* and *financing of terrorism*. Where a *relevant person* forms part of a group operating outside the Island, that strategy may protect both its global reputation and its Jersey business.

12. Taking into account the conclusions of the business risk assessment and strategy, the Board must: (i) organise and control its affairs in a way that effectively mitigates the risks that it has identified, including areas that are complex; and (ii) be able to demonstrate the existence of adequate and effective *systems and controls* (including *policies and procedures*) to counter *money laundering* and *financing of terrorism* (see Section 2.4).

13. The Board must document its *systems and controls* (including *policies and procedures*) and clearly apportion responsibilities for countering *money laundering* and *financing of terrorism*, and, in particular, responsibilities of the *MLCO* and *MLRO* (see Sections 2.5 and 2.6).

14. The Board must assess both the effectiveness of, and compliance with, *systems and controls* (including *policies and procedures*) and take prompt action necessary to address any deficiencies. (See Sections 2.4.1 and 2.4.2).

15. The Board must consider what barriers (including cultural barriers) exist to prevent the operation of effective *systems and controls* (including *policies and procedures*) to counter *money laundering* and *financing of terrorism*, and must take effective measures to address them. (See Section 2.4.3).

16. The Board must notify the *Commission* immediately in writing of any material failures to comply with the requirements of the *Money Laundering Order* or of the *AML/CFT Handbook*. Refer to Part 3 of the *AML/CFT Handbook* for further information.

2.3.1 Business Risk Assessment

AML/CFT Codes of Practice

17. A *relevant person* must maintain appropriate policies and procedures to enable it, when requested by the JFSC, to make available to that authority a copy of its business risk assessment.

Guidance Notes

~~17.~~18. The Board of a *relevant person* may demonstrate that it has considered its exposure to *money laundering* and *financing of terrorism* risk by:

- Involving all members of the Board in determining the risks posed by *money laundering* and *financing of terrorism* within those areas for which they have responsibility.
- Considering organisational factors that may increase the level of exposure to the risk of *money laundering* and *financing of terrorism*, e.g. outsourced aspects of regulated activities or compliance functions.
- Considering the nature, scale and complexity of its business, the diversity of its operations (including geographical diversity), the volume and size of its transactions, and the degree of risk associated with each area of its operation.
- Considering who its customers are and what they do.
- Considering whether any additional risks are posed by the countries and territories with which its customers are connected. Factors such as high levels of organised crime, increased vulnerabilities to corruption and inadequate frameworks to prevent and detect *money laundering* and *financing of terrorism* will impact the risk posed by relationships connected with such countries and territories.
- Considering the characteristics of the products and services that it offers and assessing the associated vulnerabilities posed by each product and service. For example:
  a. Products that allow a customer to "pool" third party funds will tend to be more vulnerable - because of the anonymity provided by the co-mingling of assets or funds belonging to several third parties by the customer.
  b. Products such as standard current accounts are more vulnerable because they allow payments to be made to and from external parties, including cash transactions.
  c. Conversely, those products that do not permit external party transfers or where redemption is permitted only to an account from which the investment is funded will be less vulnerable.
- Considering the risk that is involved in placing reliance on *obliged persons* to apply *reliance identification measures*.
- Considering how it establishes and delivers products and services to its customers. For example, risks are likely to be greater where relationships may be established remotely (non-face to face), or may be controlled remotely by the customer (straight-through processing of transactions).
- Considering the accumulation of risk for more complex customers.

~~18.~~19. In the case of a *relevant person* that is dynamic and growing, the Board may demonstrate that its business risk assessment is kept up to date where it is reviewed annually. In some other cases, this may be too often, e.g. a *relevant person* with stable products and services. In all cases, the Board may demonstrate that its business risk assessment is kept up to date where it is reviewed when events (internal and external) occur that may materially change *money laundering* and *financing of terrorism* risk.

2.4 Adequate and Effective Systems and Controls

Overview

~~19.~~20. For *systems and controls* (including *policies and procedures*) to be adequate and effective in preventing and detecting *money laundering* and *financing of terrorism*, they will need to be appropriate to the circumstances of the *relevant person*.

Statutory Requirements

~~20.~~21. *Article 11(1) of the Money Laundering Order requires a relevant person to establish and maintain appropriate and consistent policies and procedures in respect of the person's financial services business, and financial services business carried on by a subsidiary, in order to prevent and detect money laundering and financing of terrorism.*

~~21.~~22. *Parts 3, 3A, 4 and 5 of the Money Laundering Order set out ~~for~~ the measures that are to be applied in respect of CDD, record-keeping and reporting.*

~~22.~~23. *Article 11(2) of the Money Laundering Order requires that policies and procedures established and maintained under Article 11(1)* are *appropriate and consistent having regard to the degree of risk of money laundering and the financing of terrorism taking into account: (i) the level of risk identified in a national or sector-specific risk assessment in relation to money laundering carried out in respect of Jersey; and (ii) the type of customers, business relationships, products and transactions with which the relevant person's business is concerned.*

~~23.~~24. *Article 11(3) lists a number of policies and procedures that must be established and maintained.*

~~24.~~25. *Article 11(9) of the Money Laundering Order requires a relevant person to take appropriate measures for the purpose of making employees whose duties relate to the provision of financial services ("**relevant employees**") aware of policies and procedures under Article 11(1) and of legislation in Jersey to counter money laundering and financing of terrorism. Article 11(10) of the Money Laundering Order requires a relevant person to provide relevant employees with training in the recognition and handling of transactions carried out by or on behalf of persons who are, or appear to be, engaged in money laundering or financing terrorism.*

~~25.~~26. *Article 11(11) of the Money Laundering Order requires a relevant person to establish and maintain policies and procedures for: (i) monitoring compliance with, and testing the effectiveness of, its policies and procedures; and (ii) monitoring and testing the effectiveness of measures to promote awareness and training of relevant employees.*

~~26.~~27. *When considering the type and extent of testing to be carried out under Article 11(11), Article 11(12) of the Money Laundering Order requires a relevant person to have regard to the risk of money laundering or financing of terrorism and matters that have an impact on that risk, such as the size and structure of the relevant person.*

~~27.~~28. *Article 11(8) requires that a relevant person operating through branches or subsidiaries, which carry on financial services business, must communicate its policies and procedures, maintained in accordance with Article 11(1), to those branches or subsidiaries. In addition, Article 11A requires group programmes for information sharing (see section 2.7)*

AML/CFT CODES OF PRACTICE

~~28.~~29. A *relevant person* must establish and maintain appropriate and consistent *systems and controls* to prevent and detect *money laundering* and *financing of terrorism*, that enable it to:

- Apply the *policies and procedures* referred to in Article 11 of the *Money Laundering Order*.
- Apply *CDD* measures - in line with Sections 3 to 7.
- Report to the Joint Financial Crimes Unit ("***JFCU***") when it knows, suspects, or has reasonable grounds to know or suspect that another person is involved in *money laundering* or *financing of terrorism*, including attempted transactions - in line with Section 8.
- Adequately screen *relevant employees* when they are initially employed, make employees aware of certain matters and provide training - in line with Section 9.
- Keep complete records that may be accessed on a timely basis - in line with Section 10.
- Liaise closely with the *Commission* and the *JFCU* on matters concerning vigilance, *systems and controls* (including *policies and procedures*).
- Communicate *policies and procedures* to overseas branches and subsidiaries, and monitor compliance therewith.
- Monitor and review instances where exemptions are granted to *policies and procedures*, or where controls are overridden.

~~29.~~30. In addition to those listed in Article 11(3) of the Money Laundering Order, a relevant person's *policies and procedures* must include *policies and procedures* for:

- Customer acceptance (and rejection), including approval levels for higher risk customers;
- The use of transaction limits and management approval for higher risk customers;
- Placing reliance on *obliged persons*;
- Applying exemptions from customer due diligence requirements under Part 3A of the *Money Laundering Order*) and enhanced *CDD* measures under Articles 15, 15A and 15B;
- Keeping documents, data or information obtained under *identification measures* up to date and relevant, including changes in beneficial ownership and control;
- Taking action in response to notices highlighting countries and territories in relation to which the *FATF* has called for the application of countermeasures or enhanced *CDD* measures; and
- Taking action to comply with *Terrorist Sanctions Measures* and the *Directions Law*.

~~30.~~31. In maintaining the required *systems and controls* (including *policies and procedures*), a *relevant person* must check that the *systems and controls* (including *policies and procedures*) are operating effectively and test that they are complied with.

2.4.1 Effectiveness of Systems and Controls

Guidance Notes

~~31.~~32. A *relevant person* may demonstrate that it checks that *systems and controls* (including *policies and procedures*) are adequate and operating effectively where the Board periodically considers the efficacy (capacity to have the desired outcome) of those *systems and controls* (including *policies and procedures*, and those in place at branches and in respect of subsidiaries) in light of:

- Changes to its business activities or business risk assessment;

- Information published from time to time by the *Commission* or *JFCU*, e.g. findings of supervisory and themed examinations and typologies;
- Changes made or proposed in respect of new legislation, *AML/CFT Codes of Practice* issued under the *Supervisory Bodies Law* or guidance;
- Resources available to comply with the *Proceeds of Crime Law*, *Terrorism Law*, *Directions Law*, *Terrorist Sanctions Measures*, the *Money Laundering Order* and *AML/CFT Codes of Practice* issued under the *Supervisory Bodies Law*, in particular resources provided to the *MLCO* and *MLRO*, to apply enhanced *CDD* measures and to scrutinise transactions.

~~32.~~33. A *relevant person* may demonstrate that it checks that *systems and controls* (including *policies and procedures*) are operating effectively where the Board periodically considers the effect of those *systems and controls* (including *policies and procedures*, and those in place at branches and in respect of subsidiaries) in light of the information that is available to it, including:

- Reports presented by the *MLCO* and others (e.g., where appropriate, risk management and internal audit functions) on compliance matters and *MLRO* on reporting.
- Reports summarising findings from supervisory and themed examinations and action taken or being taken to address recommendations.
- The number and percentage of customers that have been assessed by the *relevant person* as presenting a higher risk.
- The number of applications to establish business relationships or carry-out one-off transactions declined due to *CDD* issues, along with reasons.
- The number of business relationships terminated due to *CDD* issues, along with reasons.
- The number of "existing customers" that have still to be remediated under Section 4.7.2
- Details of failures by an *obliged person* or customer to provide information and evidence on demand and without delay under Articles 16, 16A and 17B-D of the *Money Laundering Order*, and action taken.
- The number of alerts generated by automated on-going monitoring systems.
- The number of internal *SARs* made to the *MLRO* (or *deputy MLRO*), the number of subsequent external *SARs* submitted to the *JFCU*, and timeliness of reporting (by business area if appropriate).
- Inquiries made by the *JFCU*, or production orders received, without issues having previously beening identified by *CDD* or reporting *policies and procedures*, along with reasons.
- Results of testing of awareness of *relevant employees* with *policies and procedures* and legislation.
- The number and scope of exemptions granted to *policies and procedures*, including at branches and subsidiaries, along with reasons.

2.4.2 Testing of Compliance with Systems and Controls

Guidance Notes

~~33.~~34. A *relevant person* may demonstrate that it has tested compliance with *systems and controls* (including *policies and procedures*) where the Board periodically considers the means by which compliance with its *systems and controls* (including *policies and procedures*) has been monitored, compliance deficiencies identified and details of action taken or proposed to address any such deficiencies.

~~34.~~35. A *relevant person* may demonstrate that it has tested compliance with *systems and controls* (including *policies and procedures*) where testing covers all of the *policies and procedures* maintained in line with Article 11(1) of the *Money Laundering Order* and paragraph 30~~29~~ above, and in particular:

- The application of simplified and enhanced *CDD* measures.
- Reliance placed on *obliged persons* under Article 16 of the *Money Laundering Order*.
- Action taken in response to notices highlighting countries and territories in relation to which the *FATF* has called for the application of countermeasures or enhanced *CDD* measures.
- Action taken to comply with *Terrorist Sanctions Measures* and the *Directions Law*.
- The number or type of employees who have received training, the methods of training and the nature of any significant issues arising from the training.

2.4.3 Consideration of Cultural Barriers

Overview

~~35.~~36. The implementation of *systems and controls* (including *policies and procedures*) for the prevention and detection of *money laundering* and *financing of terrorism* does not obviate the need for a *relevant person* to address cultural barriers that can prevent effective control. Human factors, such as the inter-relationships between different employees, and between employees and customers, can result in the creation of damaging barriers.

~~36.~~37. Unlike *systems and controls* (including *policies and procedures*), the prevailing culture of an organisation is intangible. As a result, its impact on a *relevant person* can sometimes be difficult to measure.

Guidance Notes

~~37.~~38. A *relevant person* may demonstrate that it has considered whether cultural barriers might hinder the effective operation of *systems and controls* (including *policies and procedures*) to prevent and detect *money laundering* and *financing of terrorism* where the Board considers the prevalence of the following factors:

- An unwillingness on the part of employees to subject high value (and therefore important) customers to effective *CDD* measures for commercial reasons.
- Pressure applied by management or customer relationship managers outside Jersey upon employees in Jersey to transact without first conducting all relevant *CDD*.
- Undue influence exerted by relatively large customers in order to circumvent *CDD* measures.
- Excessive pressure applied on employees to meet aggressive revenue-based targets, or where employee or management remuneration or bonus schemes are exclusively linked to revenue-based targets.
- An excessive desire on the part of employees to provide a confidential and efficient customer service.
- Design of the customer risk classification system in a way that avoids rating any customer as presenting a higher risk.
- The inability of employees to understand the commercial rationale for business relationships, resulting in a failure to identify non-commercial and therefore potential *money laundering* and *financing of terrorism* activity.

- Negative handling by managerial staff of queries raised by more junior employees regarding unusual, complex or higher risk activity and transactions.
- An assumption on the part of more junior employees that their concerns or suspicions are of no consequence.
- A tendency for line managers to discourage employees from raising concerns due to lack of time and/or resources, preventing any such concerns from being addressed satisfactorily.
- Dismissal of information concerning allegations of criminal activities on the grounds that the customer has not been successfully prosecuted or lack of public information to verify the veracity of allegations.
- The familiarity of employees with certain customers resulting in unusual or higher risk activity and transactions within such relationships not being identified as such.
- Little weight or significance is attributed to the role of the *MLCO* or *MLRO*, and little cooperation between these post-holders and customer-facing employees.
- Actual practices applied by employees do not align with *policies and procedures*.
- Employee feedback on problems encountered applying *policies and procedures* are ignored.
- Non-attendance of senior employees at training sessions on the basis of mistaken belief that they cannot learn anything new or because they have too many other competing demands on their time.

2.4.4 Outsourcing

Overview

~~38.~~39. In a case where a *relevant person* outsources a particular activity, it bears the ultimate responsibility for the duties undertaken in its name. This will include the requirement to determine that the external party has in place satisfactory *systems and controls* (including *policies and procedures*), and that those *systems and controls* (including *policies and procedures*) are kept up to date to reflect changes in requirements.

~~39.~~40. Depending on the nature and size of a *relevant person*, the roles of *MLCO* and *MLRO* may require additional support and resourcing. Where a *relevant person* elects to bring in additional support, or to delegate areas of the *MLCO* or *MLRO* functions to external parties, the *MLCO* or *MLRO* will remain directly responsible for *his* respective role.

AML/CFT Codes of Practice

~~40.~~41. A *relevant person* must follow the *Commission's* policy statement and guidance notes on outsourcing, as may be amended from time to time.

~~41.~~42. A *relevant person* must consider the effect that outsourcing has on *money laundering* and *financing of terrorism* risk, in particular where a *MLCO* or *MLRO* is provided with additional support from other parties, either from within group or externally.

~~42.~~43. A *relevant person* must assess possible *money laundering* or *financing of terrorism* risk associated with outsourced functions, record its assessment, and monitor any risk on an on-going basis.

~~43.~~44. Where an outsourced activity is a *financial services business* activity, then a *relevant person* must be satisfied with the *policies and procedures* that are put in place by the provider of the outsourced service.

44.45. In particular, a *relevant person* must be satisfied that knowledge, suspicion, or reasonable grounds for knowledge or suspicion of *money laundering* or *financing of terrorism* activity will be reported by the provider of the outsourced service to the *MLRO* (or *deputy MLRO*) of the *relevant person*.

2.5 The Money Laundering Compliance Officer (MLCO)

Overview

45.46. The *Money Laundering Order* requires a *relevant person* to appoint an individual as *MLCO*, and task that individual with the function of monitoring its compliance with legislation in Jersey relating to *money laundering* and *financing of terrorism* and *AML/CFT Codes of Practice* issued under the *Supervisory Bodies Law*.

46.47. The *Money Laundering Order* also requires a *relevant person* to maintain adequate procedures for: (i) monitoring compliance with, and testing the effectiveness of, *policies and procedures*; and (ii) monitoring and testing the effectiveness of measures to raise awareness and training. When considering the type and extent of compliance testing to be carried out, a *relevant person* shall have regard to the risk of *money laundering* and *financing of terrorism* and matters that have an impact on risk, such as size and structure of the *relevant person's* business.

47.48. The *MLCO* may have a functional reporting line, e.g. to a group compliance function.

48.49. The *Money Laundering Order* does not rule out the possibility that the *MLCO* may also have other responsibilities. To the extent that the *MLCO* is also **responsible** for the development of *systems and controls* (and *policies and procedures*) as well as monitoring subsequent compliance with those *systems and controls* (and *policies and procedures*), some additional independent assessment of compliance will be needed from time to time to address this potential conflict. Such an independent assessment is unlikely to be needed where the role of the *MLCO* is limited to actively monitoring the development and implementation of such *systems and controls*.

~~**On 4 February 2008 (subsequently updated on 26 January 2009), the *Commission* issued a Notice under Article 10 of the *Money Laundering Order*. As a result of this notice, a *relevant person* that is not also a *regulated person* is not required to give the *Commission* written notice of the appointment, or termination of appointment, of its *MLCO*.**~~

Statutory Requirements

49.50. *Article 7 of the Money Laundering Order requires a relevant person to appoint a MLCO to monitor whether the enactments in Jersey relating to money laundering and financing of terrorism and AML/CFT Codes of Practice are being complied with. The same person may be appointed as both MLCO and MLRO.*

50.51. *Article 7(2A) of the Money Laundering Order requires a relevant person to ensure that the individual appointed is of an appropriate level of seniority and has timely access to all records that are necessary or expedient.*

51.52. *Article 7(6) of the Money Laundering Order requires a relevant person to notify the Commission in writing within one month when a person is appointed as, or ceases to be, a MLCO. However, Article 10 provides that the Commission may grant exemptions from this notification requirement, by way of notice.*

52.53. *Article 7 of the Money Laundering Order recognises that a relevant person that is also a regulated person may have notified the Commission of the appointment or cessation of a MLCO under other legislation. If so, a duplicate notification is not required under the Money Laundering Order.*

AML/CFT Codes of Practice

~~53.~~54.A *relevant person* must appoint a *MLCO* that:

- is employed by the *relevant person* or enterprise in the same financial group as the *relevant person*[1];
- is based in Jersey[2]; and
- has sufficient experience and skills.

~~54.~~55.A *relevant person* must ensure that the *MLCO*:

- has appropriate independence, in particular from customer-facing, business development and system and control development roles;
- reports regularly and directly to the Board and has a sufficient level of authority within the *relevant person* so that the Board reacts to and acts upon reports made by the *MLCO*;
- has sufficient resources, including sufficient time and (if appropriate) a deputy *MLCO* and compliance support staff; and
- is fully aware of both *his* and the *relevant person's* obligations under the *Proceeds of Crime Law*, *Terrorism Law*, *Directions Law*, *Terrorist Sanctions Measures*, the *Money Laundering Order* and *AML/CFT Codes of Practice* issued under the *Supervisory Bodies Law*.

~~55.~~56.In the event that the position of *MLCO* is expected to fall vacant, to comply with the statutory requirement to have an individual appointed to the office of *MLCO* at all times, a *relevant person* must take action to appoint a member of the Board (or other appropriate member of senior management) to the position on a temporary basis.

~~56.~~57.Where temporary circumstances arise where the *relevant person* has a limited or inexperienced compliance resource, it must ensure that this resource is supported as necessary.

~~57.~~58.When considering whether it is appropriate to appoint the same person as *MLCO* and *MLRO*, a *relevant person* must have regard to:

- the respective demands of the two roles, taking into account the size and nature of the *relevant person's* activities; and
- whether the individual will have sufficient time and resources to fulfil both roles effectively.

Guidance Notes

~~58.~~59.A *relevant person* may demonstrate that its *MLCO* is monitoring whether enactments and *AML/CFT Codes of Practice* issued under the *Supervisory Bodies Law* are being complied with where he or she:

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1 In the case of a *relevant person* that: carries on the business of being a functionary, recognized fund, or unclassified fund or is a Category B insurance permit holder, a managed bank, or other managed entity; has no employees of its own; and is administered by a person carrying on a *financial services business* that is a *regulated person*, it is acceptable for an employee of the administrator to be appointed by the *relevant person* as its *MLCO*.

2 In the case of a *relevant person* that is a Category A insurance business permit holder with no employees of its own in Jersey, it is acceptable to appoint an employee outside Jersey. In the case of a *relevant person* that is carrying on a money service business and has no employees of its own in Jersey, it is acceptable for the *relevant person* to appoint an employee outside Jersey as its *MLCO*, provided the employee is based in an equivalent jurisdiction.

- Regularly monitors and tests compliance with *systems and controls* (including *policies and procedures*) in place to prevent and detect *money laundering* and *financing of terrorism* – supported as necessary by a compliance or internal audit function.
- Reports periodically, as appropriate, to the Board on compliance with the *relevant person's systems and controls* (including *policies and procedures*) and issues that need to be brought to its attention.
- Responds promptly to requests for information made by the *Commission* and the *JFCU*.

~~59.~~60. In a case where the *MLCO* is also **responsible** for the development of *systems and controls* (including *policies and procedures*) in line with evolving requirements, a *relevant person* may demonstrate that the *MLCO* has appropriate independence where such *systems and controls* are subject to periodic independent scrutiny.

2.6 The Money Laundering Reporting Officer (MLRO)

Overview

~~60.~~61. Whilst the *Money Laundering Order* requires one individual to be appointed as *MLRO*, it recognises that, given the size and complexity of operations of many enterprises, it may be appropriate to designate additional persons (**"deputy MLROs"**) to whom *SARs* may be made.

~~**On 4 February 2008 (subsequently updated on 26 January 2009), the *Commission* issued a Notice under Article 10 of the *Money Laundering Order*. As a result of this notice, a *relevant person* that is not also a *regulated person* is not required to give the *Commission* written notice of the appointment, or termination of appointment, of its *MLRO*.**~~

Statutory Requirements

~~61.~~62. *Article 8 of the Money Laundering Order requires a relevant person to appoint a MLRO. The MLRO's function is to receive and consider internal SARs in accordance with internal reporting procedures. The same person may be appointed as both MLCO and MLRO.*

~~62.~~63. *Article 8(2A) of the Money Laundering Order requires a relevant person to ensure that the individual appointed is of an appropriate level of seniority and has timely access to all records that are necessary or expedient.*

~~63.~~64. *Article 8(4) of the Money Laundering Order requires a relevant person to notify the Commission in writing within one month when a person is appointed as, or ceases to be, a MLRO. However, Article 10 provides that the Commission may grant exemptions from this notification requirement, by way of notice.*

~~64.~~65. *Article 8 of the Money Laundering Order recognises that a relevant person that is also a regulated person may have notified the Commission of the appointment or cessation of a MLRO under other legislation. If so, a duplicate notification is not required under the Money Laundering Order.*

~~65.~~66. *Article 9 allows a relevant person to designate one or more deputy MLROs, in addition to the MLRO, to whom internal SARs may be made.*

AML/CFT Codes of Practice

~~66.~~67. A *relevant person* must appoint a *MLRO* that:

- is employed by the *relevant person* or enterprise in the same financial group as the *relevant person*[3];
- is based in Jersey[4]; and
- has sufficient experience and skills;

~~67.~~68. A *relevant person* must ensure that the *MLRO*:

- has appropriate independence, in particular from customer-facing and business development roles;
- has a sufficient level of authority within the *relevant person*;
- has sufficient resources, including sufficient time, and (if appropriate) is supported by *deputy MLROs*;
- is able to raise issues directly with the Board; and
- is fully aware of both *his* and the *relevant person's* obligations under the *Proceeds of Crime Law*, *Terrorism Law*, *Directions Law*, *Terrorist Sanctions Measures*, the *Money Laundering Order* and *AML/CFT Codes of Practice* issued under the *Supervisory Bodies Law*.

~~68.~~69. Where a *relevant person* has appointed one or more *deputy MLROs* the requirements set out above for the *MLRO* must also be applied to any *deputy MLROs*.

~~69.~~70. Where a *relevant person* has appointed one or more *deputy MLROs*, it must provide that the *MLRO*:

- keeps a record of all *deputy MLROs*;
- provides support to, and routinely monitors the performance of, each *deputy MLRO*; and
- considers and determines that *SARs* are being handled in an appropriate and consistent manner.

~~70.~~71. In the event that the position of *MLRO* is expected to fall vacant, to comply with the statutory requirement to have an individual appointed to the office of *MLRO* at all times, a *relevant person* must take action to appoint a member of the Board (or other appropriate member of senior management) to the position on a temporary basis.

~~71.~~72. Where temporary circumstances arise where the *relevant person* has a limited or inexperienced reporting resource, the *relevant person* must ensure that this resource is supported as necessary.

Guidance Notes

~~72.~~73. A *relevant person* may demonstrate that its *MLRO* (and any *deputy MLRO*) is receiving and considering *SARs* in accordance with Article 21 of the *Money Laundering Order* where, inter alia, its *MLRO*:

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[3] In the case of a *relevant person* that: carries on the business of being a functionary, recognized fund, or unclassified fund, or is a Category B insurance permit holder, a managed bank, or other managed entity; has no employees of its own; and is administered by a person carrying on *financial services business* that is a *regulated person*, it is acceptable for an employee of the administrator to be appointed by the *relevant person* as its *MLRO*.

[4] In the case of a *relevant person* that is a Category A insurance business permit holder with no employees of its own in Jersey, it is acceptable to appoint an employee outside Jersey In the case of a *relevant person* that is carrying on a money service business and has no employees of its own in Jersey, it is acceptable for the *relevant person* to appoint an employee outside Jersey as its *MLRO*, provided the employee is based in an equivalent jurisdiction.

- maintains a record of all requests for information from law enforcement authorities and records relating to all internal and external *SARs* (Section 8);
- manages relationships effectively post disclosure to avoid tipping off any external parties; and
- acts as the liaison point with the *Commission* and the *JFCU* and in any other external enquiries in relation to *money laundering* or *financing of terrorism*.

~~73.~~74. A *relevant person* may demonstrate routine monitoring of the performance of any *deputy MLROs* by requiring the *MLRO* to review:

- samples of records containing internal *SARs* and supporting information and documentation;
- decisions of the *deputy MLRO* concerning whether to make an external *SAR*; and
- the bases for decisions taken.

2.7 Financial Groups

Overview

~~74.~~75. A Financial Group of which a relevant person is a member must maintain a group programme for the sharing of AML/CFT information. In addition, as explained in Section 1.4.3, where a company incorporated in Jersey carries on a *financial services business* through an overseas branch, it must comply with *AML/CFT Codes of Practice* issued under the *Supervisory Bodies Law* in respect of that business, irrespective of whether it also carries on *financial services business* in or from within Jersey.

Statutory requirements

~~75.~~76. *Article 11A of the Money Laundering Order applies to a financial group of which a relevant person is a member.*

~~76.~~77. *Article 11A (2) of the Money Laundering Order requires a financial group to maintain a programme to prevent and detect money laundering and financing of terrorism that includes:*

- *policies and procedures by which a relevant person within a financial group, which carries on financial services business or equivalent business, may disclose information to a member of the same financial group, but only where such disclosure is appropriate for the purpose of preventing and detecting money laundering or managing money laundering risks;*
- *adequate safeguards for the confidentiality and use of any such information;*
- *the monitoring and management of compliance with, and the internal communication of, such policies and procedures (including the appointment of a compliance officer for the financial group); and*
- *the screening of employees.*

~~77.~~78. *Under Article 11A (3) of the Money Laundering Order "information" includes the following:–*

- *information or evidence obtained from applying identification measures;*
- *customer, account and transaction information;*
- *information relating to the analysis of transactions or activities that are considered unusual.*

AML/CFT Codes of Practice

~~78.~~79. A person that is a Jersey incorporated company must ensure that any subsidiary applies measures that are at least equivalent to *AML/CFT Codes of Practice* in respect of any *financial services business* carried on outside Jersey by that subsidiary.

~~79.~~80. A person who:

- is registered, incorporated or otherwise established under Jersey law, but who is not a Jersey incorporated company; and
- carries on a *financial services business* in or from within Jersey,

must apply measures that are at least equivalent to *AML/CFT Codes of Practice* in respect of any *financial services business* carried on by that person through an overseas branch/office.

~~80.~~81. A person who:

- is registered, incorporated or otherwise established under Jersey law, but who is not a Jersey incorporated company; and
- carries on a *financial services business* in or from within Jersey,

must ensure that any subsidiary applies measures that are at least equivalent to *AML/CFT Codes of Practice* in respect of any *financial services business* carried on outside Jersey by that person.

~~81.~~82. Where overseas legislation prohibits compliance with an AML/CFT Code (or measures that are at least equivalent) then the AML/CFT Codes do not apply and the *Commission* must be informed that this is the case. In such circumstances, a *relevant person* must take other reasonable steps to effectively deal with the risk of *money laundering* and *financing of terrorism*.