

8 REPORTING MONEY LAUNDERING AND THE FINANCING OF TERRORISM

8.1 Overview of section

- Under the *Proceeds of Crime Law* and *Terrorism Law*, where any *supervised* person conducting *supervised business* in or from within Jersey, *knows or suspects*, or has reasonable grounds for suspecting that another person is engaged in *money laundering* or the financing of *terrorism*, then it must report its knowledge or suspicion to the JFCU.
- Under the Money Laundering Order, a *supervised person* must have procedures in place for reporting knowledge or suspicion of *money laundering* or the financing of *terrorism* activity to the JFCU.
- This section outlines the statutory provisions concerning reporting that apply to:

- an employee of a *supervised person*, and
- a *supervised person*, in the course of carrying on any trade, profession or 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*).

- This section also considers the consent that must be sought from the JFCU before proceeding with a transaction or continuing a *business relationship*, and the application of tipping off provisions.
- An important precondition for making a *SAR* 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.
- A *SAR* may also be based on information from other sources, including law enforcement agencies, other government bodies, the media, or the *customer*.
- 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).

8.2 Reporting knowledge or suspicion

Overview

- Legislation deals with reporting by a *supervised person* and *employees* in the course of carrying on a *supervised business* in two ways:

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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](#). ¶

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- › 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 *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**.

9. In practice, a report made in accordance with the **reporting requirement** will also provide **protection**. For example, where a *supervised person* knows or suspects, or has reasonable grounds for suspecting that property constitutes or represents the proceeds of criminal conduct, and 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 *potentially* Article 31) of that law.

10. Within the *Proceeds of Crime Law* there is also a **reporting requirement** (Article 34A) and **protection for reporting** (Article 32) in a case where a *matter or information* comes to a *supervised person's* attention other than in the course of carrying on a *supervised business* (i.e. *through* 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*.

11. 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 a *supervised person's reporting procedures*. Such procedures must *ensure* that a report by an employee is made to the MLRO (or *deputy MLRO*).

12. 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. *In this section "approved form" means the form approved by the Minister, which may be changed from time to time.*

13. 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 *business relationship* or *one-off transaction* (*which may also be* a series of linked transactions).

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8.2.1 Requirement to report knowledge or suspicion

Overview

14. In the course of carrying on a *supervised business*, employees of a *supervised person* 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
- property constitutes or represents the proceeds of criminal conduct or
- property is, or may be, terrorist property.

15. What may constitute reasonable grounds for knowledge or suspicion will be determined *by the facts or circumstances present*, from which an honest and reasonable *employee* working in a *supervised person* would have inferred knowledge or formed a suspicion (the so-called "objective test"). See Section 8.2.3.3

16. Something which appears unusual is not necessarily suspicious, *but* will likely *be the cause for further investigation*. This may, in turn, require judgement to be exercised as to whether something is *indeed* suspicious.

17. A *supervised person's* MLRO (or deputy MLRO) must consider all internal SARs **as soon as practicable**.

18. A *supervised person's* MLRO (or deputy MLRO) must make an external SAR **as soon as practicable** if *they know, suspect or have* reasonable grounds for 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.

19. *Guidance on how a supervised person may demonstrate that internal and external SARs are being made as soon as reasonably practicable is set out at Sections 8.3.1 and 8.3.2 respectively.*

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 *matter or* information reported.

21. Under the Proceeds of Crime Law, the **requirement to report** applies in relation to the proceeds of *such* criminal conduct *that* 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 *it occurred* in Jersey.

22. Under the Terrorism Law, the **requirement to report** applies in relation to property which is intended 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.

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23. Other than in the course of carrying on a *supervised business* (i.e. any other trade, profession or business carried on by *the supervised person*), employees of a *supervised person* 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 *a matter* on which knowledge or suspicion is based comes to them **in the course of their employment**. This will *apply* 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 *supervised business*. This means that such matters, in the absence of a specific Jersey connection, are not required to be reported.

Statutory requirements (paraphrased wording)

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25. Under Article 34D(4) of the *Proceeds of Crime Law*, a relevant person and *employees* 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:

- › *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 *they have* 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.

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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, they must report to a designated police officer or designated customs officer as soon as is practicable using the approved form. Among other things, delivery of the approved form must comply with the requirements (including those in respect of delivery) indicated on the approved form.

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33. Following the submission of 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.

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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 good faith and as soon as is practicable after the information or other matter comes to their attention.

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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.

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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 of that law, or, if it occurs outside Jersey, would have constituted such an offence if occurring in Jersey.

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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.

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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 defined in Article 4 as 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. 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 supervised person 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 or
- › property is terrorist property or
- › they are providing a service for the purposes of terrorism or for the support of a terrorist entity.

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46. This will apply 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.

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47. A supervised person'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 and Terrorism Law, a supervised person's MLRO (or deputy MLRO) is required to make an external SAR before the supervised person does a particular act, or as soon as reasonably practicable after the person has done the act, or has become involved in the transaction or arrangement, in order to be protected.

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49. 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 it makes such a protective report and certain conditions are fulfilled.

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50. Under the Proceeds of Crime Law, protection for reporting applies in relation to the proceeds of such criminal conduct that constitutes an offence specified in Schedule 1 of the Proceeds of Crime Law, or if it occurs outside Jersey, would have constituted such an offence if occurring in Jersey.

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51. Under the Terrorism Law, protection for reporting applies in relation to property which is intended 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.

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Statutory requirements (paraphrased wording)

52. Where a relevant person or employee of a relevant person suspects or believes that any property constitutes or represents the proceeds of criminal conduct and makes 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.

53. 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.

54. 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.

55. 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, they must report to a designated police officer or designated customs officer as soon as is practicable using the approved form. Among other things, delivery of the form must comply with the requirements (including those in respect of delivery) indicated on the form.

56. 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.

57. 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.

58. 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 their functions as a reporting officer, including, in particular, the records that a relevant person must keep under Article 19.

59. "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.

60. 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

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- › 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.

61. 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.

8.2.3 What constitutes knowledge or suspicion?

Guidance notes

62. The terms 'knowledge', 'suspicion' and 'reasonable grounds for suspicion' are not defined within Jersey law. However, caselaw has provided some guidance on how they should be interpreted.

8.2.3.1 Knowledge

63. 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

64. By contrast, suspicion is more than speculation but it falls short of proof or knowledge. 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.

65. 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.

66. If someone has not yet formed a suspicion, but they have cause for concern, a supervised person may choose to ask the customer or other parties more questions. This decision will depend on what is already known, and how easy it is to make enquiries.

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67. If there is a belief that a customer is innocent, but there are suspicions that another party to the business relationship or one-off transaction is engaged in money laundering or the financing of terrorism, a supervised person may need to consider referring the customer for specialist advice regarding the risk that they may be a party to a criminal offence.

68. Section 6.4 and the sector-specific sections of this Handbook provide a number of standard warning signs which may suggest an increased risk of money laundering or the financing of terrorism and therefore give cause for concern. However, whether someone has a suspicion is a matter of their own judgement.

8.2.3.3 Reasonable grounds to suspect: the objective test of knowledge or suspicion

69. Articles 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 with, using, concealing etc criminal or terrorist property where there are reasonable grounds to know or suspect that property represents the proceeds of crime or terrorist property.

70. 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 was there knowledge of circumstances which would put an honest and reasonable person on enquiry.

8.3 Procedures for Reporting

71. Reporting procedures provide the interface between *CDD* measures carried out by a supervised person and the work of the JFCU's intelligence wing. Like all policies and procedures, they should be:

- › drafted in a way that can be easily understood by employees
- › tailored to the supervised person's business risk assessment and
- › applied in every case where functions are outsourced (in line with Section 2.4.4 of this Handbook).

Statutory requirements (paraphrased wording)

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

- › 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 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

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¶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.¶

¶Auditors' Further Enquiries¶

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- › allow the MLRO (or deputy MLRO) to have access to all other information which may be of assistance in considering the report;
- › 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.

73. 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 an internal SAR, 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**.

8.3.1 Internal SARs

AML/CFT Codes of Practice

74. In addition to reporting procedures that must be maintained under Article 21 of the Money Laundering Order, a supervised person must maintain procedures that:

- › highlight that reporting requirements extend to potential business relationships and one-off transactions that are declined (i.e. where no business relationship is established or one-off 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 it is thought to involve tax matters;
- › highlight the importance of making an internal SAR **as soon as practicable**;
- › require internal SARs to be made in a set format and to include as full a statement as possible of:
 - the information or matter giving rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion;
 - the date that the information or matter came to the employee's attention and;
 - full details of the customer, transaction or activity that the supervised person holds on its records.
- › require internal SARs to be acknowledged by the MLRO (or deputy MLRO) **as soon as practicable**.

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require the *MLRO* (or *deputy MLRO*) to record all internal SARs in a register *which includes the following:*

- o date of the internal SAR
- o identity of the individual making the internal SAR and
- o information to allow supporting documentation to be retrieved *in a timely manner.*

75. A *supervised person* 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 relationships and transactions with line managers before an internal SAR is made, *those procedures* must emphasise that the decision on reporting remains with *the employee and not the line manager.*

76. A *supervised person* must establish and maintain arrangements for disciplining any employee who fails, without reasonable excuse, to make an internal SAR where *they have* knowledge, suspicion or reasonable grounds for knowledge or suspicion, or does not do so *as soon as practicable.*

Guidance notes

77. A *supervised person* 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 report* as soon as practicable.

78. A *supervised person* 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 *amount* of time *taken* 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 *supervised person's* business risk assessment.

8.3.2 External SARs

Overview

79. 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 *customer*. 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 *customer* that a report to the JFCU may be *under consideration* (though this may not yet be tipping off).

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80. When considering an internal SAR the MLRO (or *deputy MLRO*), taking *a risk-based approach*, will need to strike *an* 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 *from* searching a number of *potentially* unlinked systems and records that might hold relevant information.

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81. In addition to reporting procedures that must be maintained under Article 21 of the Money Laundering Order, a *supervised person* must maintain procedures that:

- require the *MLRO* (or *deputy MLRO*) to document all enquiries made in relation to each internal SAR¹²
- require the *MLRO* (or *deputy MLRO*) to document the basis for reporting to the JFCU or deciding *to not* make such a report. *This* must be retained with the internal SAR
- require the *MLRO* (or *deputy MLRO*) to record all external SARs in a register *which includes the following:*
 - date of the report, and
 - information to allow supporting documentation to be retrieved *in a timely manner.*
- require the *MLRO* (or *deputy MLRO*) to inform the JFCU where relevant information is subsequently discovered.

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Guidance notes

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82. A *supervised person* may demonstrate that an internal SAR is considered in light of all other *supervised* information when *the following are taken into account:*

- 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 *accounts* or relationships. *Connections can be* commercial e.g. linked transactions or common referrals, or through individuals e.g. third parties, *beneficial owners and controllers* or account signatories *and*
- the risk that assets will dissipate.

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83. A *supervised person* may demonstrate that the *MLRO* (or *deputy MLRO*) reports as soon as practicable where *the Board²* considers:

- the typical *amount* of time taken by the *MLRO* (or *deputy MLRO*) to process an internal SAR (being the *time taken from* the date of the internal SAR and *the date of the external SAR/decision to not report*)*and*
- the number of internal SARs not processed within a period of time set by *the Board/senior management*, together with an explanation.

² Refer to Section 2, paragraph 4 for an explanation of the meaning of "the Board" in the context of this paragraph.

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8.4 JFCU Consent

Overview

84. Protective reports **before** or **after** doing an act are not equal options which a *supervised person* can choose between.

- › a report should be made **before doing an act** where a *customer* instruction is received prior to an activity or transaction taking place, or arrangements being put in place. However, when a transaction which gives rise to concern *is already within an automated clearing or settlement system* where a delay would lead to a breach of a contractual obligation *or where it would breach market settlement or clearing rules* the *MLRO* (or *deputy MLRO*) may need to let the 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.

85. Under Article 32(4) of the *Proceeds of Crime Law*, if a *SAR* was made **before doing an act**, a *supervised person's MLRO* (or *deputy MLRO*) should request consent from the *JFCU* for a specific transaction (for example, a distribution). Such consent requests should be sent to the *JFCU* via the *SAR* portal (POLSAR), either as part of an initial *SAR* submission, or as part of a *Continuation Report*. Where no specific consent for an act is being sought under Article 32(4) of the *Proceeds of Crime Law*, the *JFCU* will usually only issue an acknowledgement in response to a *SAR*. Further guidance on the consent regime is provided on the *JFCU's website* and may be updated from time to time.

86. While waiting for the *JFCU* to provide consent to proceed with a *transaction*, or *activity*, or in the event that the *JFCU* notifies a *supervised person* that consent will not be given, a *supervised person* should be aware of the risk of committing a tipping off offence where it fails to act on a *customer* instruction. In any written communication with that customer regarding the instruction, it should consider using generalised wording to explain the situation.

87. In a situation where consent is not given, a *supervised person* should contact the *JFCU* for guidance on what information can be provided to the *customer* (though the *JFCU* is not obligated to provide such guidance).

88. Where a *supervised person* does not wish to, or decides not to act upon a *customer's* instruction, this may lead to civil proceedings being instituted by the *customer* for breach of contract. In these circumstances it may be necessary for the *supervised person* to seek legal advice or direction from the law courts.

89. A *supervised person* may reduce the *risk* of civil proceedings by ensuring that *customers'* terms of business specifically:

- › *allow* an instruction to be delayed or deferred pending investigation
- › exclude breaches in circumstances where following a *customer* instruction may lead to the *supervised person* committing an offence.

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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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8.5 Tipping off

Overview

90. In this section, 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).

91. Except as otherwise provided, where a person knows or suspects that an internal or external 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.

92. Except as 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 into money laundering or the financing of terrorism that is being or is about to be conducted, a person will commit a tipping off offence where they:

- › disclose to another person any information relating to the investigation or
- › interfere with material which is likely to be relevant to such an investigation.

93. Among other things, the effect of this is that a supervised person or employee of a supervised person:

- › cannot, at the time, tell a customer 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 customer 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 customer that a transaction or activity was delayed because an internal or external SAR had been made.
- › cannot tell the customer that law enforcement is conducting an investigation.

94. However, a tipping off offence is not committed when a supervised person 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, where the above information is disclosed to its:

- › lawyer—in order to obtain legal advice or for the purpose of legal proceedings or
- › 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 supervised person's financial statements.

Except, where the disclosure is made with a view to furthering a criminal purpose.

95. Nor is a tipping off offence committed when a lawyer discusses that disclosure with its customer, 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 a disclosure with its customer.

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96. In addition, a tipping off offence will not be committed where a disclosure is permitted under the *Tipping Off Regulations*—known as a “protected disclosure”. A disclosure will be a protected disclosure where it *meets the conditions set in the Tipping Off Regulations*:

- › 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 *supervised* person (but not an *equivalent business*) or
- › made to the *IFSC*.

97. Except where *it* 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*.

98. *Whilst* 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).

99. In a case where a *supervised person*:

- › is the *customer* of a financial institution or designated non-financial business or profession (A) that is not a *supervised 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, *except* where such a disclosure is made with the permission of the *JFCU*.

100. Care should *also* 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.

Statutory requirements (paraphrased wording)

101. 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*.

102. 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 *money laundering or financing of terrorism* investigation - *except if the disclosure is a protected disclosure under the Tipping Off Regulations*.

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103. 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.

104. 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.

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105. A person who is guilty of an offence under Article 35 of either of the above laws is liable to imprisonment for a term not exceeding 5 years or a fine, or to both.

106. 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 with 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.

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107. 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).

108. Regulation 3 of the Tipping Off Regulations 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.

109. 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.

110. Regulation 4 of the Tipping Off Regulations permits a relevant person and an 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 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.

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111. 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.

112. Regulation 5 of the Tipping Off Regulations permits a relevant person and an 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.

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113. 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).

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114. Regulation 6 of the Tipping Off Regulations permits a relevant person and an 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 JFSC

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115. 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.

AML/CFT Code of Practice

116. In addition to reporting procedures that must be maintained under Article 21 of the Money Laundering Order, a supervised person must maintain procedures that remind employees making internal SARs of the risk of committing a tipping off offence.

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8.5.1 CDD Measures

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117. 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 supervised person 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.

118. Where a supervised person suspects money laundering or the financing of terrorism, the application of identification measures could unintentionally lead to the customer being tipped off if the process is not managed with due care.

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119. In circumstances where an external SAR has been made, and where there is a requirement to apply identification measures, the risk of tipping off a customer (and its advisers) may be reduced 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 supervised person is concerned that applying identification measures will lead to the customer being tipped off.

120. Where a supervised person reasonably believes that the application of identification measures could lead to the customer 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.

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121. Making reasonable enquiries to a customer in a tactful manner regarding the background to a transaction or activity that is inconsistent with the customer's established profile is prudent practice and forms an integral part of CDD measures. Such enquiries, when conducted appropriately, are less likely to result in a tipping off offence being committed.

8.5.2 Terminating a business relationship

Overview

122. The giving of consent to proceed by the JFCU following an external SAR submission is not intended to override normal commercial judgement, and a supervised person is not obliged to continue a business relationship with a customer they have reported upon, if such action would pose a commercial risk.

123. 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 supervised person is free to make such judgements. However, in certain circumstances a supervised person should consider liaising with the JFCU to assess whether it is likely that termination would tip off the customer or affect an investigation in any way. If there is continuing suspicion and there are funds which need to be returned to the customer, a supervised person should seek advice from the JFCU.

8.6 Disclosure to group companies and networks

Overview

124. Whilst the focus of the Money Laundering Order is on the role that a particular supervised person has in preventing and detecting money laundering and the financing of terrorism, where a supervised person is part of a group or larger network it is also important that they play their part in the prevention and detection of money laundering and the financing of terrorism at group or network level.

125. Accordingly, it is important that there should be no legal impediment to providing certain information to a group company or network.

126. Where a supervised person also wishes to disclose information to another supervised 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 customer in certain circumstances.

Statutory requirements (paraphrased wording)

127. 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:

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- › *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.*

128. 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 *the* 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;*
- › *the Objectives and Principles of Securities Regulation issued by IOSCO; or*
- › *the Insurance Supervisory Principles issued by IAS.*

8.7 Investigation and the use of court orders

Overview

129. Following the receipt of a *SAR* 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.

130. 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 *the* 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 *received under the above legislation*.

131. During the course of an investigation, a *supervised person* 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 *supervised person* should consider what, if any, *funds and assets* may *still* be utilised subject to having obtained the appropriate consent from the JFCU.

132. 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 *assets which were legitimately obtained*. A *supervised person* 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 *common place* 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.

133. Property may also be forfeited in Jersey utilising civil proceedings under the *Terrorism Law*.

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→ Part 1: Section 8: Reporting Money Laundering and Financing of Terrorism

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Deleted: <#>The Auditor's Responsibility for Monitoring Compliance
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<#>1 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:

<#>1 legislation relating directly to the preparation of the financial statements; 1

<#>1 legislation which provides a legal framework within which the entity conducts its business; 1

<#>1 other legislation. 1

<#>1 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. 1

<#>1 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: 1

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134. The JFCU will, from time to time, issue liaison notices to all supervised persons, or to a particular category of business, with the goal of obtaining additional intelligence. The JFCU will ensure that the requests contained within such notices are proportionate and reasonable in the circumstances. Relevant persons are requested to respond with any relevant information as soon as reasonably practicable.

8.7.1 Updates/Feedback from the JFCU

Overview

135. 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 updates or feedback on individual disclosures. However, the JFCU will provide statistics, trends and advice on a regular basis to help enhance the quality of disclosures. Alternatively a periodic newsletter may be issued. In addition the States of Jersey Police Annual Report contains some information on disclosures, prosecutions and confiscations.

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Part 1: Section 8: Reporting Money Laundering and Financing of Terrorism¶

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