Jersey Financial Services Commission

# 9 REPORTING *MONEY LAUNDERING,* THE *FINANCING OF TERRORISM* OR *PROLIFERATION,* AND SANCTIONS REPORTING OBLIGATIONS

## 9.1 Overview of section

1. 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 knowing or suspecting that another person is engaged in *money laundering* or the *financing of terrorism*, then it must report its knowledge or suspicion to the *FIU*.

2. Under the *Money Laundering Order*, a *supervised person* must have procedures in place for reporting such knowledge or suspicion of *money laundering* or the *financing of terrorism* activity to the *FIU*.

3. 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/CPF 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 *FIU* (referred to as an external *SAR*).

4. This section also considers the consent that must be sought from the *FIU* before proceeding with a transaction or continuing a *business relationship*, and the application of tipping off provisions.

5. 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 ongoing monitoring.

6. A *SAR* may also be based on information from other sources, including law enforcement agencies, other government bodies, the media, or the *customer*.

7. Whilst this section describes reports made to the *FIU* 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. Section 9.8 of *this Handbook* explains the separate sanctions compliance reporting obligations under the *Sanctions and Asset-Freezing Law*.

## 9.2 Reporting knowledge or suspicion

**Overview**

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

- there is a **reporting requirement** under Article 34D of the *Proceeds of Crime Law* and Article 21 of the *Terrorism Law* - 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
  - any property has been, is being or is intended to be used in criminal conduct; or
  - any property 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
  - property used in or intended to be used in criminal conduct; or
  - terrorist property.
- Where the person making the report does any act or deals with the property in any way which would otherwise amount to the commission of a *money laundering* or the *financing of terrorism* offence, the person shall not be guilty of that offence (where certain conditions are fulfilled in section 9.2.2 of *this Handbook*) where it makes a **protective report**.

10. 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 knowing or suspecting, that property constitutes or represents the proceeds of criminal conduct (or has been, is being or is intended to be used in 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 (or has been used in or is intended to be used in criminal conduct) under Article 32 of the *Proceeds of Crime Law*. The effect of this is that the *supervised person* does not commit a *money laundering* offence under Article 30 (and potentially Article 31) of the *Proceeds of Crime Law.*

11. 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*. This is different to the aforementioned requirement at Article 34D of the *Proceeds of Crime Law*, where the matter or information comes to a person's attention in the course of carrying on a *financial services business* (i.e., a *supervised business*).

12. Whilst the *Proceeds of Crime Law* and *Terrorism Law* anticipate that a report may be made by an *Employee* directly to the *FIU*, 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*).

13. Where the *MLRO* (or *Deputy MLRO*) resolves to make an external *SAR* as a result of an internal *SAR* made under the *Proceeds of Crime Law* or *Terrorism Law*, Article 21 of the *Money Laundering Order* requires that *SAR* to be made using the approved form. In this section "approved form" means the form approved by *the Minister*, which may be changed from time to time.

14. Where an external *SAR* is made using the approved form to the *FIU*, in the circumstances where a *supervised person* is also subject to the requirements of the EU Legislation (Information Accompanying Transfers of Funds) (Jersey) Regulations 2017 (as amended) and is transacting with group counterparties, an external *SAR* should also be made in each jurisdiction to which the transaction relates. This external *SAR* is in addition to any made to the *FIU* and can be made either by the *supervised person*, or the group counterparty who was also subject to the same transaction in that jurisdiction.

15. 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).

## 9.2.1 Requirement to report knowledge or suspicion

**Overview**

16. While carrying on a *supervised business*, *Employees* of a *supervised person* are required to 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
- any property constitutes or represents the proceeds of criminal conduct; or
- any property has been, is being, or is intended to be used in criminal conduct; or
- any property is, or may be, terrorist property.

17. 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 9.2.3.3 of *this Handbook*.

18. 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. The provisions under section 9.5 of *this Handbook* regarding tipping off may also need to be considered.

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

20. A *supervised person's MLRO* (or *Deputy MLRO*) is required to 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
- any property constitutes or represents the proceeds of criminal conduct; or
- any property has been, is being, or is intended to be used in criminal conduct; or
- any property is, or may be, terrorist property.

21. 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 9.3.1 and 9.3.2 of *this Handbook*.

22. 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.

23. 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.

24. 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.

25. 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* are also required to 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 the business is being carried out on behalf of another person, e.g., under an outsourcing arrangement.

26. 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)

27. *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.*

28. *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;*
- *any property constitutes or represents the proceeds of criminal conduct; or*
- *any property has been, is being or is intended to be used in criminal conduct.*

29. *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.*

30. *Such a report must be made to the FIU (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.*

31. *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).*

32. *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.*

33. *Under Article 34D(9) of the Proceeds of Crime Law, a report made to the FIU (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.*

34. *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 the FIU 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.*

35. *Following the submission of a report, Article 21(4) of the Money Laundering Order requires a MLRO (or Deputy MLRO) to provide the FIU (within a set period of time) with such additional information relating to that report as may reasonably be requested.*

36. *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.*

37. *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 the FIU (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.*

38. *Under Article 34A(3) of the Proceeds of Crime Law, a report made to the FIU (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.*

39. *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 of the Money Laundering Order.*

40. *"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 or has occurred outside Jersey, would have constituted such an offence if occurring in Jersey.*

41. *Articles 19 to 22 of the Terrorism Law contain similar reporting requirements in respect of the financing of terrorism.*

42. *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.*

43. *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.*

44. *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.*

45. *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 of the Terrorism Law as an entity which commits, prepares or instigates an act of terrorism or facilitates the commission, preparation or instigation of an act of terrorism.*

46. *The meaning of "terrorism" is defined in Article 2 of the Terrorism Law. The meaning of "terrorist entity" is defined in Article 4 of the Terrorism Law.*

## 9.2.2 Protective report

**Overview**

47. 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 used in or intended to be used in 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.

48. This will apply irrespective of the underlying nature of the business that is carried on, and irrespective of whether the business is being carried out on behalf of another person, e.g., under an outsourcing arrangement.

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

50. 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, to be protected.

51. 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.

52. 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 or has occurred outside Jersey, would have constituted such an offence if occurring in Jersey.

53. 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.

## Statutory requirements (paraphrased wording)

54. *Where a relevant person or Employee of a relevant person suspects or believes that any property constitutes or represents the proceeds of criminal conduct or property used in or intended to be used in criminal conduct and makes a report to the FIU (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 the FIU; or*
- *if the report is made after the person does the act in question, it is made on the person's own initiative and as soon as reasonably practicable after the person has done the act in question.*

55. *In proceedings against a person for an offence under Article 30 of the Proceeds of Crime Law, it shall be a defence under Article 32(7) of the Proceeds of Crime Law to provide that the alleged offender intended to make a report and there is a reasonable excuse for the failure to have made a report.*

56. *Under Article 32(2) of the Proceeds of Crime Law, a report made to the FIU (or to the relevant person's MLRO or Deputy MLRO) under Article 32 of the Proceeds of Crime Law shall not be treated as a breach of any restriction imposed by statute, contract or otherwise, and shall not involve the person making it in liability of any kind.*

57. *When considering a report made under the Proceeds of Crime Law or Terrorism Law, Article 21(2) and (3) of the Money Laundering Order states that, if the MLRO (or Deputy MLRO) knows or suspects that another person is engaged in money laundering or the financing of terrorism, they must report to the FIU 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.*

58. *Left intentionally blank.*

59. *Left intentionally blank.*

60. *Subsequent to making a report, Article 21(4) of the Money Laundering Order requires a MLRO (or Deputy MLRO) to provide the FIU (within a set period of time) with such additional information relating to that report as may reasonably be requested.*

61. *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.*

62. *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 of the Money Laundering Order.*

63. *"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 the Proceeds of Crime Law, or, if it occurs or has occurred outside Jersey, would have constituted such an offence if occurring in Jersey.*

64. *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 the FIU;*
- *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 the FIU 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 the FIU 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.*

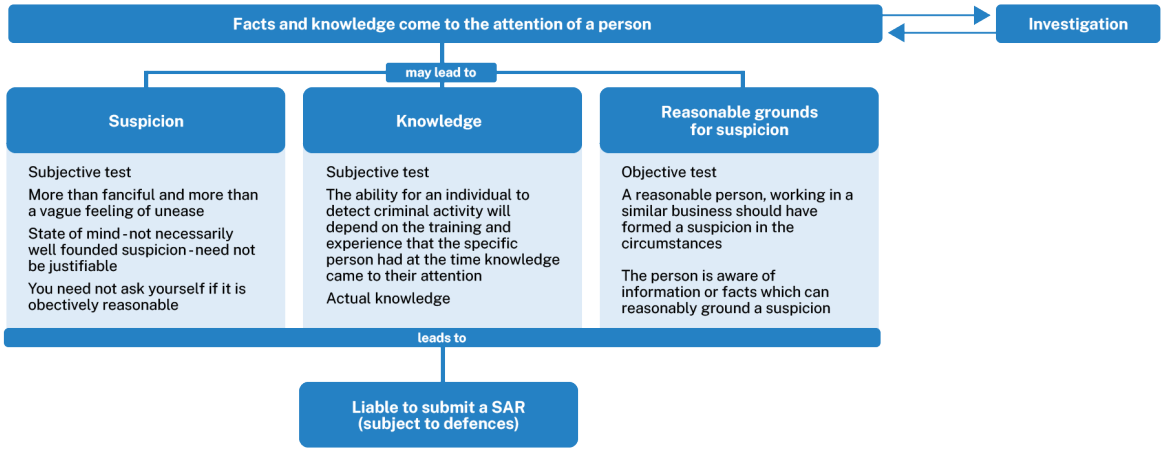
65. *However, unlike the Proceeds of Crime Law, an Employee who makes a report to the relevant person's MLRO (or Deputy MLRO) may still be charged with an offence. In such a case, it will be a defence under Article 18(8) of the Terrorism Law for the Employee to prove that a report was made in good faith and in accordance with the employer's procedures.*

### 9.2.3 What constitutes knowledge or suspicion?

***Guidance notes***

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

67. The diagram below summarises the differences between each of these three terms and where they sit within the wider reporting process:




### 9.2.3.1 **Knowledge**

68. 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.

### 9.2.3.2 **Suspicion**

69. 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.

70. The test for whether a person holds a suspicion is subjective. The suspicion is one of believing that something is possible, which is more than fanciful. The suspicion must also be more than a vague feeling of unease. 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, terrorist financing,* or *the financing of proliferation* is taking place for there to be a suspicion.

71. 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. The provisions under section 9.5 of *this Handbook* regarding tipping off may also need to be considered.

72. 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,* the *financing of terrorism*, or the *financing of proliferation* 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.

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

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

74. Articles 30 and 31 of the *Proceeds of Crime Law*, 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 criminal conduct or instrumentalities, or terrorist property.

75. This means that a person would commit an offence even if they did not know or suspect that a *money laundering* or *terrorism financing* offence was being committed and is determined by whether a reasonable person would suspect that criminality had occurred. In other words:

- were there factual circumstances from which a reasonable person, engaged in a similar business, should have inferred knowledge, or formed the suspicion that another was engaged in *money laundering,* the *financing of terrorism.*
- was there knowledge of circumstances which would put a reasonable person on enquiry?

## 9.3 Procedures for reporting

76. Reporting procedures provide the interface between *CDD* measures carried out by a *supervised person* and the work of the *FIU'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 BRA*; and
- applied in every case where functions are outsourced (in line with section 2.4.4 of *this Handbook*).

### Statutory requirements (paraphrased wording)

77. *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;*
- *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 the FIU 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 the FIU.*

78. *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.*

### 9.3.1 Internal *SARs*

***AML/CFT/CPF Codes of Practice***

[COP84] 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:
  - i) the information or matter giving rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion;
  - ii) the date that the information or matter came to the employee's attention;
  - iii) the date of submission of the internal SAR; and
  - iv) 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;**
- require the *MLRO* (or *Deputy MLRO*) to record all internal *SARs* in a register which includes the following:
  - i) the date that the information or matter came to the Employee's attention;

ii) date of the internal SAR;

iii) identity of the individual making the internal SAR; and

iv) information to allow supporting documentation to be retrieved in a timely manner.

[COP85] 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.

[COP86] 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***

79. A *supervised person* may demonstrate that it has established and maintained arrangements for disciplining *Employees* by ensuring that employment contracts and employment *Handbook*s provide for the imposition of disciplinary sanctions for failing to report knowledge, suspicion or reasonable grounds for knowledge or suspicion without reasonable excuse or failing to report as soon as practicable.

80. 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 BRA*.

## 9.3.2 External *SARs*

**Overview**

81. The *MLRO* (or *Deputy MLRO*) must consider each internal *SAR*. 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 *FIU* may be under consideration (though this may not yet be tipping off).

82. 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 *FIU* 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.

83. For *supervised person*s who are subject to the requirements of the EU Legislation (Information Accompanying Transfers of Funds) (Jersey) Regulations 2017 (as amended to account for *MVTS supervised person*s and *VASP supervised persons* (as appropriate), and which are transacting with group counterparties in a different jurisdiction, those *supervised person*s are required to file a *SAR* in each jurisdiction to which the transaction relates.

## *AML/CFT/CPF Codes of Practice*

[COP87] 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 *SAR*;
- require the *MLRO* (or *Deputy MLRO*) to document the basis for reporting to the *FIU* 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:
  - i) date of the external SAR;
  - ii) name of the individual making the external SAR and the capacity in which they are doing so (e.g., as the supervised person's MLRO or Deputy MLRO); and
  - iii) information to allow supporting documentation to be retrieved in a timely manner.
- require the *MLRO* (or *Deputy MLRO*) to inform the *FIU* where relevant information is subsequently discovered.

## *Guidance notes*

84. 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/or controllers* or account signatories; and
- the risk that assets will dissipate.

85. A *supervised person* may demonstrate that the *MLRO* (or *Deputy MLRO*) reports as soon as practicable where the board considers:

- the typical amount of time taken by the *MLRO* (or *Deputy MLRO*) to consider an internal *SAR* (being the time taken between the date of the internal *SAR* and the date of the external *SAR*/decision to not report) and concludes that it is reasonable; and

› the number of internal *SARs* not considered within a period of time judged by the board/senior management to be reasonable, together with an explanation.

Refer to section 2.1 *of this Handbook* for an explanation of the meaning of "the board" in the context of this paragraph.

## 9.4 *FIU* Consent

**Overview**

86. 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.

87. 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 *FIU* for a specific transaction (for example, a distribution). Such consent requests should be sent to the *FIU* 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 *FIU* will usually only issue an acknowledgement in response to a *SAR*. Further guidance on the consent regime is provided on the FIU's website and may be updated from time to time.

88. While waiting for the *FIU* to provide consent to proceed with a transaction or activity, if the *FIU* 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.

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

90. 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.

91. 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.

## 9.5 Tipping off

**Overview**

92. 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*).

93. 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*.

94. 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.

95. 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 *FIU*;
- 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.

96. 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* –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.

97. 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*.**

98. 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 *FIU*;

- 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 *JFSC*.

99. Except where it is made pursuant to a legal requirement or with the permission of the *FIU*, 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*.

100. 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).

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

- is the *customer* of a *Financial Institution* or a *DNFBP* (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 *FIU*.

102. 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)

103. *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.*

104. *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.*

105. *Article 35(5) of the Proceeds of Crime Law and Article 35(5) of the Terrorism Law provide for the States of Jersey to make Regulations, specifying cases where a disclosure or interference shall not amount to an offence.*

106. *Articles 35(2) and (4) of the Proceeds of Crime Law 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.*

107. *A person who is guilty of an offence under Article 35 of the Proceeds of Crime Law or the Terrorism Law is liable to imprisonment for a term not exceeding 5 years or a fine, or to both.*

108. *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 of the Tipping Off Regulations;*
- *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 FIU.*

109. *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).*

110. *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.*

111. *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.*

112. *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.*

113. *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.*

114. *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.*

115. *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).*

116. *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 FIU;*
- *the JFSC.*

117. *Where a further disclosure is made by any of the above in accordance with the Tipping Off Regulations (other than under its 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 FIU, or the Commission.*

***AML/CFT/CPF Codes of Practice***

[COP88] 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.

## 9.5.1 *CDD* Measures

**Overview**

118. 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*.

119. 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.

120. 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 *FIU* where a *supervised person* is concerned that applying *identification measures* will lead to the *customer* being tipped off.

121. 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 *FIU* has agreed that the measures need not be applied.

122. 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.

## 9.5.2 Terminating a business relationship

**Overview**

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

124. A decision to terminate a *business relationship* is 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 *FIU* 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 *FIU*.

## 9.6 Disclosure to group companies and networks

**Overview**

125. Whilst the focus of the *Money Laundering Order* is on the role that a particular *supervised person* has in preventing and detecting *money laundering* or 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.

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

127. 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., the conditions set out in the statutory requirements below are met.

**Statutory requirements (paraphrased wording)**

128. *Article 22A of the Money Laundering Order allows a relevant person to disclose the following to any person or institution with which the relevant person shares common ownership, management or compliance control, or (where different) any person within the same financial group, where such disclosure is appropriate for the purpose of preventing and detecting money laundering and the financing of terrorism:*

- *information contained in any report made to the MLRO (or Deputy MLRO);*
- *information provided to the FIU that is in addition to that contained in an external SAR;*
- *any other information that is kept under the Money Laundering Order.*

129. *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 IAIS.*

# 9.7 Investigation and the use of court orders

**Overview**

130. Following the receipt of a *SAR* and initial enquiries by the *FIU*, reports are allocated to financial investigation officers for further investigation. Intelligence from reports submitted to the *FIU* is then disseminated to other intelligence agencies, as appropriate.

131. 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.

132. During 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 *FIU*.

133. 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.

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

135. The *FIU* 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 *FIU* will ensure that the requests contained within such notices are proportionate and reasonable in the circumstances. *Supervised persons* are requested to respond with any relevant information **as soon as reasonably practicable**.

## 9.7.1 Updates/Feedback from the FIU

**Overview**

136. Because a significant proportion of *SARs* received by the *FIU* 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 *FIU* to provide regular updates or feedback on individual disclosures. However, the *FIU* 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.

Jersey Financial Services Commission

## 9.8 Sanctions compliance reporting obligations under the *Sanctions and Asset-Freezing Law*

137. Jersey's financial sanctions reporting obligations are outlined on the Government of Jersey website, and more extensive sanctions guidance can be found on the *JFSC* website.

138. It is a criminal offence to contravene or to intentionally participate in activities knowing that the object or effect of them is to circumvent, to enable, or to facilitate the contravention of any of the prohibitions in respect of Jersey's financial sanctions regimes.

139. Jersey's financial sanctions regimes are rules-based and designed to prevent sanctions breaches. They can relate to all sorts of *financial crimes*, such as *money laundering*, the *financing of terrorism*, the *financing of proliferation*, bribery, corruption, misappropriation of funds, market abuse etc. Sanctions breaches can lead to a potential prosecution for criminal offences and/or financial penalties and cause reputational damage to the *supervised person* and to Jersey as an international financial centre.

140. Jersey implements both *UNSC* sanctions and autonomous *UK* sanctions by implementing the relevant *UK* Sanctions Regulations through the *Targeted Financial Sanctions Measures.*

141. The list of active sanctions regimes is available on the *JFSC* website and provides further explanation of the sanctions legal framework, including:

- targeted financial sanctions related to terrorism and *terrorist financing*
- targeted financial sanctions related to proliferation and *proliferation financing*
- other sanctions regimes in effect in Jersey

142. Sanctions compliance reporting obligations under the *Sanctions and Asset Freezing Law* are separate and distinct from any legal obligation to submit a *SAR*. For example, the *Sanctions and Asset Freezing* Law requires notification to *the Minister* concerning suspected financial sanctions breaches, *sanctioned persons,* and frozen assets. In some circumstances, it may be necessary to submit both reports, i.e., an external *SAR* to the *FIU* and a sanctions compliance report to the *FSIU*.

143. *The Minister* is the "Competent Authority" for sanctions in Jersey. All communication regarding sanctions breaches and licencing should be made using the approved forms. These forms provide details on what information is required.

144. Even though Jersey has an independent sanctions regime, some cross-border transactions may trigger certain extra-territorial effects and sanctions compliance reporting obligations in another jurisdiction. In Jersey, failure to comply with sanctions compliance reporting obligations is a criminal offence.

145. In this section, reference to a 'person' is a reference to a natural person, as well as a legal person, body or entity. *'Designated person'* is defined in the Glossary of *this Handbook*, and essentially means persons who are subject to financial sanctions. References to the 'listing' of a person means their inclusion on the lists of *designated persons*. Sanctions designations lists are available on the *JFSC* website.

### Statutory requirements (paraphrased wording)

146. *Under Article 1 of the Sanctions and Asset Freezing Law, a "relevant financial institution" includes:*

- *all financial services businesses, as specified in* Schedule 2 *of the Proceeds of Crime Law;*
- *a person (not being an individual) that is incorporated or constituted under the law of Jersey and carries on such financial services business in any part of the world.*

147. *Under Article 32(1) of the Sanctions and Asset Freezing Law, a relevant financial institution must inform the Minister as soon as practicable if -*

- *(a) it knows, or has reasonable cause to suspect, that the person;*

*i. is a designated person; or*

*ii. has committed, is committing or intends to commit an offence under this Law; and*

- *(b) the information or other matter on which the knowledge or reasonable cause for suspicion based came to it in the course of carrying on its business.*

148. *Under Article 32(2) of the Sanctions and Asset Freezing Law the information given to the Minister must include:*

- *the information or other matter on which the relevant financial institution's knowledge or reasonable cause for suspicion is based;*
- *any information that the relevant financial institution holds about the person by which the person can be identified;*
- *if the person is a customer or client of the institution, the nature and amount or quantity of any funds or economic resources held by the institution for the person at the time when the institution first had the knowledge or reasonable cause for suspicion; and*
- *any actions taken by the institution in compliance with an obligation imposed under Proceeds of Crime Law*

149. *The Minister retains the power to require additional information and to disclose information under certain conditions.*

150. *By exception, under Article 15 of the Sanctions and Asset Freezing Law, the relevant financial institution may credit frozen accounts in certain circumstances. This activity must be reported to the Minister, as soon as practicable, but in any case, within 14 days.*

151. *Under Article 35(1) of the Sanctions and Asset-Freezing Law, a person commits an offence, and is liable to imprisonment for a term of 12 months and to a fine of level 3 on the standard scale, if the person, without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with sanctions reporting requirements.*

152. *Under Article 35(2) of the Sanctions and Asset Freezing Law, a person commits an offence, and is liable to imprisonment for a term of 2 years and to a fine, if the person: –*

- *(a) knowingly or recklessly gives any information, or produces any document, that is false in a material particular in response to a requirement of sanctions reporting obligations.*
- *(b) with intent to evade the reporting provisions, destroys, mutilates, defaces, conceals or removes a document; or*

- *otherwise intentionally obstructs the Minister in the exercise of the Minister's powers.*

## *Guidance notes*

153. The most common types of financial sanctions include:

- targeted asset freezes, which are usually applied to named individuals, entities, and bodies, restricting their access to and ability to use funds and economic resources;
- restrictions on access to a wide variety of financial markets and services, applicable to named individuals, entities, and bodies, to specified groups or to entire sectors, such as investment bans, restrictions on access to capital markets, directions to cease banking relationships and activities, requirements to notify or seek authorisation before certain payments are made or received, and restrictions on provision of financial, insurance, brokering, advisory services or other financial assistance; and
- directions to cease all business of a specified type with a specific person, group, sector, territory, or country.

154. Financial sanctions legislation will contain prohibitions on carrying out certain activities or behaving in a certain way where financial sanctions apply. What is prohibited depends on the exact terms of the relevant financial sanctions regime.

155. A *relevant financial institution* should refer to the most up-to-date version of the sanctions legislation imposing the specific financial sanctions that apply in their case, to understand exactly what is prohibited and if there is a breach. We strongly encourage independent advice to be sought if there is any doubt in respect of this point.

156. If the financial sanction takes the form of an asset freeze, it is generally prohibited to:

- deal with the funds or economic resources belonging to or owned, held, or controlled by a *designated person*;
- make funds or economic resources available, directly or indirectly, to, or for the benefit of, a *designated person*; or
- engage in actions that directly or indirectly circumvent the financial sanctions.

157. The *relevant financial institution*, which knows or has a "reasonable cause to suspect" that it is in possession or control of, or is otherwise dealing with, the funds or economic resources of a *designated person*, may demonstrate their sanctions reporting compliance by undertaking and documenting the following:

- Immediately freeze funds or economic resources without notice and without delay;
- refrain from dealing with the funds or assets or making them available (directly or indirectly) to such persons unless licensed by *the Minister*;
- as soon as practicable, report any findings to the *FSIU*, together with any additional information that would facilitate compliance with the *Sanctions and Asset Freezing Law*;
- provide any further information concerning the frozen assets of *designated persons*, if required. Examples of information to be reported to *the Minister* may be found in Annex A to the *JFSC*'s Financial sanctions practical guidance.

158. “Reasonable cause to suspect” refers to an objective test that the Court uses to ascertain whether there were factual circumstances from which an honest and reasonable person should have inferred knowledge, or formed the suspicion, of a sanctions breach.

159. The requirement to disclose a breach to *the Minister* “as soon as practicable” after discovery of the breach is dependent on the circumstances in each case. Although it is reasonable for a person to take some time to assess the nature and extent of the breach, and/or seek advice, this should not delay an effective response to the breach. A *relevant financial institution* should demonstrate their decision-making process and document any reason for a reporting delay.

160. Where full disclosure is not possible, it is recommended that a *relevant financial institution* makes an early disclosure with partial information on the basis that it is still working out the facts and will make a further disclosure as soon as possible.

161. Sanctions reporting is not generally related to a tipping-off offence since sanctions designations are public. However, there may be circumstances when tipping off provisions may apply, such as when a *SAR* has been submitted for related suspected *money laundering*, or the *financing of terrorism,* or the *financing of proliferation*.

162. The sanctions landscape is constantly changing and evolving. It requires dedicated and qualified staff to ensure that all sanctions designation changes are reviewed and implemented without delay through effective sanctions screening and asset-freezing processes. A *relevant financial institution* may demonstrate an effective sanctions compliance culture by:

- having appropriate *policies and procedures* and *systems and controls* in place to ensure that there are dedicated staff assigned to sanction compliance monitoring and reporting;
- evidencing that relevant training is provided to the assigned employees and to management, including sanctions evasion techniques and identification of sanctions evasion;
- ensuring that the requisite report is filed in accordance with the legislation relevant to the particular sanctions regime and its guidance;
- appropriate sanctions reporting record-keeping.

The *JFSC* and the Government of Jersey provide regular updates on sanctions matters, and deliver sanctions webinars, workshops, and presentations. Further information, including a, description of sanctions regimes in effect in Jersey and their relevant guidance, is available on the *JFSC* website. Further sources of information in respect of *proliferation financing* risks and sanctions evasion typologies also available on the *JFSC’s* Additional information sources – ML/TF/PF page.