21 ACCOUNTANTS

21.1 Definition and overview of *Accountants* undertaking *supervised business*

1. Paragraph 22 of Part 3 of Schedule 2 to the *Proceeds of Crime Law* defines the relevant operations and activities of *Accountant*s for the purposes of complying with *AML* requirements in the *Money Laundering Order*. *Guidelines* provide interpretation and the activities and operations of *Accountant*s that are in scope.

21.1.1 Activities to which the *Money Laundering Order* applies

Overview

2. For the purposes of *this Handbook*, "*accountancy services"* is limited to those services set out in the *Guidelines.*

3. Where the services provided by an *Accountant* do not fall within the definition of accountancy services, all persons and businesses within Jersey are covered by the primary legislation covering *money laundering*, the *financing of terrorism*, or the *financing of proliferation*.

4. *Accountant*s involved in the provision of management consultancy or interim management should be alert to the possibility that they could fall within the scope of the *Money Laundering Order* and by extension *this Handbook* to the extent that they provide any supervised business when acting under a contract for services in the course of business.

21.1.2 Tax advisers

Overview

5. Refer to the Glossary of *this Handbook* for *this Handbook's* definition of *tax advisers*, and the *Guidelines* for a description of particular services that fall within Schedule 2 of the *Proceeds of Crime Law.*

6. A *tax adviser* should be aware of the *JFSC's* responsibility to regulate *Trust and Company Business*, which may impinge upon the work *tax advisers* undertake for their *customers*.

7. Whilst *tax advisers* are more likely to identify tax offences, they need to be aware of the potential requirement to report knowledge or suspicion of proceeds derived from any criminal conduct (as defined in Article 1 of the *Proceeds of Crime Law*) which is encountered in the course of business as a *tax adviser*.

21.1.3 Audit services

Overview

8. Refer to the Glossary of *this Handbook* for a definition of *audit services*, and *the Guidelines* for a description of particular services that fall within Schedule 2.

9. The extent to which the *Anti-Money Laundering and Counter-Terrorism Legislation* affects the auditor's work differs between two broad categories of audit – audits of *supervised persons* and audits of other types of entity.

21.1.3.1 Audits of *supervised persons*

Guidance notes

10. *Supervised persons* carrying on *supervised business* are required to comply with the *Money Laundering Order* which places obligations on them to combat *money laundering,* the *financing of terrorism*, or the *financing of proliferation*. All such businesses are required to comply with the *AML/CFT/CPF Codes of Practice* and *Guidance notes* issued by the *JFSC* (see section 2.6 of *this Handbook*, which covers the monitoring of compliance with the same).

11. In addition to reporting on their financial statements, auditors of such businesses are required to report to the *JFSC* on matters of significance that come to their attention in the course of their work. This includes non-compliance with legislation, departures from its requirements and suspicions that the directors and management of such entities are implicated in *money laundering* (see section 9 of *this Handbook*). Therefore, auditors of such businesses should not only be aware of the key provisions contained in the *Money Laundering Order* as they affect auditors themselves, but also the requirements of the wider *AML/CFT/CPF Handbook*, including any sector-specific AML/CFT/CPF Codes of Practice and Guidance notes relevant to the business that they are auditing.

21.1.3.2 Audits of other types of entity

Guidance notes

12. In general, auditors of other types of entity not covered by the *Money Laundering Order* are required only to take appropriate steps in response to factors encountered in the course of their work which led them to suspect that *money laundering,* the *financing of terrorism,* or the *financing of proliferation* is taking place.

21.1.3.3 Detection of *money laundering*, the *financing of terrorism*, and the *financing of proliferation*

Guidance notes

13. Whilst auditors have no statutory responsibility to undertake work solely for the purpose of detecting *money laundering,* the *financing of terrorism,* and/or the *financing of proliferation*, they nevertheless need to take the possibility of *money laundering,* the *financing of terrorism*, and the *financing of proliferation* into account in the course of carrying out procedures relating to fraud and compliance with the *Anti-Money Laundering and Counter-Terrorism Legislation*. An auditor's wide access to documents and systems, and the need to understand the business, can make them ideally suited to spot such issues as they arise.

14. However, auditors cannot be held responsible for the prevention of, and failure to detect, the *financing of terrorism,* or the *financing of proliferation* activities in the entities they audit. External auditors performing financial statement audits within a short timescale may be less likely than other professional *Accountants* (such as forensic *Accountants* and *Accountants* in management positions) to encounter signs of possible *money laundering,* the *financing of terrorism,* or the *financing of proliferation*. Nor is it the auditors' responsibility to detect suspicious activity in connection with a compliance or operational audit of an *AML/CFT/CPF programme* or testing a *SAR* process.

21.1.4 Insolvency services

Overview

15. The terms insolvency services and insolvency practitioners are defined in the Glossary of *this Handbook*. *The Guidelines* further describe particular insolvency services that fall within Schedule 2 of the *Proceeds of Crime Law*.

21.1.5 Accountants undertaking supervised business

Overview

16. *The Guidelines* indicate that accountancy businesses may provide other services that fall within the scope of Schedule 2 of the *Proceeds of Crime Law*. These include:

- undertaking investment related activity, including acting as a financial intermediary;
- advising on the setting up of trusts, companies or other bodies;
- acting as trustee, nominee or company director;
- giving advice on capital structures, acquisitions and securities issues;
- providing safe custody services;
- arranging loans.

17. Consequently, some *supervised persons* providing *accountancy services* are authorised and regulated by the *JFSC* under the *FS(J) Law* and subject to one or more of the Investment Business, *Trust Company Business* and Funds Services Business *Codes of Practice*. *Supervised persons* who are so regulated should therefore have regard to any relevant sector-specific sections of *this Handbook* when drawing up their *policies and procedures* for the prevention and detection of *money laundering*, the countering of *terrorist financing*, and the countering of *proliferation financing* in respect of those regulated activities.

21.2 Risk-based approach to *identification measures*

Overview

18. This section must be read in conjunction with, and is supplemental to, the *Guidance notes* set out at section 3.3.2 of *this Handbook* (Information for Assessing Risk – Stage 1.4).

19. The *Guidance notes* set out below provide sector-specific guidance on additional factors *supervised persons* providing *accountancy services* may need to consider, to appropriately assess the risk that a *business relationship* or *one-off transaction* will involve *money laundering*, the *financing of terrorism*, or the *financing of proliferation*.

21.2.1.1 Insolvency cases

Guidance notes

20. In the context of insolvency work, the *customer* is considered to be the insolvent. An *insolvency practitioner* should risk assess, identify and verify the *customer* over which they are appointed.

21. A situation where an *insolvency practitioner* is required may be urgent, for example, if there is a risk of dissipation of assets and erosion of value. It is therefore important for an *insolvency practitioner* to be certain about the identity of the *customer* over which they are taking appointment.

21.2.1.2 Auditing standards on acceptance of client relationships

Guidance notes

22. Auditing standards on quality control for audits state that acceptance of *business relationships* and specific audit engagements includes considering the integrity of the principal owners, key management and those charged with governance of the *customer*. This involves the auditor making appropriate enquiries and may involve discussions with third parties, the obtaining of written references and searches of relevant databases.

23. The extent of knowledge a *supervised person* providing *audit services* will have regarding the integrity of a *customer* will generally grow within the context of an ongoing *business relationship* with that *customer*. However, useful information may be obtained at the outset of a *business relationship* including, for example:

- the reasons for the proposed appointment of the *supervised person* and non-reappointment of the previous auditors;
- communications with existing or previous providers of professional accountancy, banking and legal services to the *customer*; and
- background searches and the review of relevant databases.

24. Whilst adherence to auditing standards may provide some relevant *customer* identification information, they will not be sufficient on their own to comply with the requirements of the *Money Laundering Order* and *this Handbook*.

21.3 *Identification measures*

21.3.1 Obligation to find out identity and obtain evidence: Individuals

Overview

25. This sector-specific section is supplementary to and should be read in conjunction with section 4.2.1 of *this Handbook*.

21.3.1.1 Insolvency cases

26. It may not always be possible or necessary to obtain identification evidence direct from individuals, individual shareholders or directors in respect of an insolvent company as their co-operation may not be forthcoming.

Guidance notes

27. An insolvency practitioner may demonstrate compliance with Article 3 of the *Money Laundering Order* where it obtains evidence of the identity of the person or entity over which they are appointed. Acceptable evidence may include a court order, a court endorsed appointment, or an appointment made by a debenture holder or creditors meeting supported by a company search or similar.

21.3.2 Urgent undertakings

28. Section 4.7 of *this Handbook* sets out statutory requirements under the *Money Laundering Order* regarding when identification measures must be applied, in respect of a business relationship or one-off transaction.

29. Where the provision of supervised business by the *Accountant* is urgent, this undertaking may be provided prior to obtaining evidence of identity if there is little risk of *money laundering*, the *financing of terrorism*, or the *financing of proliferation* occurring, and *evidence of identity* is obtained as soon as reasonably practicable.

21.3.3 Ascertaining legal position

Overview

30. Section 4.8 of *this Handbook* sets out the statutory requirements under the *Money Laundering Order* to terminate a *business relationship* or not carry out a *one-off transaction* where a *supervised person* is unable to apply *identification measures* in respect of that relationship or *one-off transaction*.

31. A concession from terminating a *business relationship* is permitted for *Accountants*, *Lawyers* and other professional advisers who are in the course of ascertaining the legal position for their *customer* or performing the task of defending or representing their *customer* in legal proceedings (including advice on instigating or avoiding proceedings).

32. To qualify for the concession the *Accountant*, *Lawyer* or other professional adviser must be a member of a supervised professional body that undertakes competency testing for its members and imposes and maintains professional and ethical standards.

Statutory requirements (paraphrased wording)

33. Article 14(9) of the *Money Laundering Order* provides that the prohibition from continuing a *business relationship* does not apply where the relevant person is a *Lawyer* or other business falling within paragraph 21 or 22 of Part 3 of Schedule 2 to the *Proceeds of Crime Law* and is in the course of ascertaining the legal position for that person's client or performing the task of defending or representing the client in, or concerning legal proceedings, including advice on instituting or avoiding proceedings.

Guidance notes

34. *CDD* information will still need to be collected within a reasonable timescale to comply with Article 13 of the *Money Laundering Order*.

35. *Accountants*, *Lawyers*, and other supervised professional advisers are encouraged to consider their position very carefully before applying this concession to ensure that the type of work and their professional status falls within the conditions contained in Article 14(9) of the *Money Laundering Order*.

21.3.4 Exemptions from *CDD* Measures

Overview

36. This section is supplemental to and should be read in conjunction with section 8.2 of *this Handbook*.

37. Accountant relevant exemptions:

Customer/Activity	Exemption	Article of MLO	Section of *this Handbook*	Conditions to be fulfilled before use?	Ongoing requirements?
Trust Customer	Third parties	17C(1)(c)(ii) and 17C(2)	8.2	Yes	Yes

38. Article 17C(1)(c)(iii) of the *Money Laundering Order* provides that a *supervised person* that is an Accountant is exempt from applying third party identification requirements in relation to a third party for which a relevant *customer* is acting if the relevant *customer* carries on Trust Company Business and is registered to carry on such business under the FS(J) Law, or equivalent business.

39. Article 17C(2) of the *Money Laundering Order* requires that a *supervised person* who does not apply third party identification requirements must be satisfied, by reason of the nature of the relationship with the relevant *customer*, that there is little risk of *money laundering*, *terrorist financing*, or *proliferation financing* occurring.

Guidance notes

40. In relation to the exemption set out at Article 17C(1)(c)(iii) of the *Money Laundering Order*, a *supervised person* may demonstrate that due to the nature of the relationship with the relevant *customer*, there is little risk of *money laundering*, the *financing of terrorism*, or the financing of proliferation occurring where the service being provided to the relevant *customer* is the provision of:

- generic information on Jersey accounting requirements for the preparation of financial statements; or
- generic information on Jersey tax requirements; and
- it considers the extent of the service provided.

41. A *supervised person* may demonstrate that it has considered the extent of the service provided when it considers:

- the extent of any further explanation of the Jersey accounting or tax requirements that may subsequently be needed; and
- the fee that is to be charged.

42. For example, the provision of generic information on Jersey accounting or tax requirements that requires no more than an explanation of a Jersey accounting or tax requirement and attracts only a nominal fee, may be illustrative of a service which presents little risk of *money laundering*, terrorism financing, or *proliferation financing*. By contrast, the provision of detailed and complex tax structuring services that require detailed information of the person or arrangement in question to be collected and attracts more than a nominal fee, may indicate a higher risk of *money laundering*.

21.4 *Business Risk Assessment*

21.4.1 Considering *customer* and service risks to the business

Overview

43. Further factors to consider when evaluating the risks posed by *customer*s and service areas are set out in section 3.3.4 of *this Handbook*.

21.4.1.1 Accountancy, audit and *insolvency services* risk

Guidance notes

44. Those providing *accountancy services*, *audit services* or *insolvency services* will primarily need to consider their *BRA* in respect of the nature of their *customer* base, the business sectors in which their *customers* operate and the geographical location of their *customers*. The standing of *customers* and adherence to sound corporate governance principles will also have an impact including those *customers* that have previously been prosecuted or fined for criminal or regulatory offences.

45. The *BRA* should take account of the following risks:

- setting up, winding up, or effecting recovery for high cash turnover businesses for *customers* which may provide a front for criminal money;
- being used in an active sense to launder money through the handling of cash or assets or through payments that are made to, or received from, third parties, particularly with a cross-border element;
- becoming concerned in an arrangement which facilitates *money laundering* through the provision of investment services;
- becoming a party to serious fraud on the part of senior management or failing to recognise the warning signs relating to management fraud; and
- the potential for *money laundering,* the *financing of terrorism,* and the *financing of proliferation* to become attached to the *customer* and/or those who trade with or otherwise interact with *customers*.
- those providing *accountancy services* should also consider the risks when:
    - providing assistance in setting up trusts or company structures which could be used to obscure beneficial ownership of monies and assets settled into trust; and
    - handling the financial affairs, or setting up companies, trusts or other structures for politically exposed persons whose assets and wealth may be derived from the proceeds of corruption (see section 7.6 of *this Handbook*).

21.4.1.2 **Taxation service risk**

Guidance notes

46. *Tax advisers* are not required to be experts in criminal law, but they are expected to be aware of the offences which can give rise to the proceeds of crime. For example, *tax advisers* should be aware of the boundaries between deliberate understatement or other tax evasion and simple cases of error or genuine differences in the interpretation of tax law. The main areas where offences may arise which might increase the risks of the *tax adviser* becoming concerned during an engagement are (note the below list is not exhaustive):

- tax evasion, including making false returns (including supporting documents), accounts or financial statements or deliberate failure to submit returns;
- deliberate refusal to correct known errors;
- fraudulent or dishonest conduct;
- fraudulent evasion of *VAT* by *customers* operating within the *EU* including the possession and dealing in goods on which *VAT* has been evaded (e.g., missing trader intra community/carousel fraud).

21.5 *Money laundering*, *terrorist financing* and *proliferation financing* warning signs for accountancy sector

Overview

47. This section must be read in conjunction with, and is supplemental to, the warning signs set out at section 6.7 of *this Handbook*.

48. Article 13 of the *Money Laundering Order* requires a *supervised person* to apply ongoing monitoring throughout the course of a *business relationship* and take steps to be aware of transactions with heightened *money laundering, the financing of terrorism,* or the *financing of proliferation* risks. The *Proceeds of Crime Law* requires a *supervised person* to report suspicious transactions and activity (see section 9 of *this Handbook*).

49. This section highlights several warning signs for *supervised persons* providing *accountancy services* to help them decide whether there may be reasons for concern or the basis for a reportable suspicion.

50. *Supervised persons* providing *accountancy services* should have regard both to the sector-specific warning signs set out below and the general indicators described at section 6.4 of *this Handbook*, where they may become vulnerable to *money laundering,* the *financing of terrorism,* or the *financing of proliferation*. These warning signs apply both to circumstances that may arise at the start of a *business relationship* and to those arising during ongoing monitoring.

51. Because money launderers, terrorist financers and proliferators are always developing new techniques, no list of examples can be fully comprehensive. However, the following are some key factors indicating activity or transactions which might heighten a *customer's* risk profile or give cause for concern.

21.5.1 Accountancy and audit services

52. Any of the following general warning signs should prompt additional questions or investigation by those offering *accountancy services* and *audit services*:

- use of many different firms of auditors and advisers for connected companies and businesses;
- the client has a history of changing bookkeepers or *Accountant*s yearly;
- company records consistently reflect sales at less than cost, thus putting the company into a loss position, but the company continues to operate without reasonable explanation of the continued loss.

21.5.2 Tax advisers

53. There are several tax offences which can give rise to the proceeds of crime and therefore require the submission of a *SAR* to the *FIU*. A *tax adviser* is not required to be an expert in criminal law, but they would be expected to be aware of the boundaries between deliberate understatement or other tax evasion and simple cases of error or genuine differences in the interpretation of tax law and be able to identify conduct in relation to direct and indirect taxation which is punishable by the criminal law.

54. There will, however, be no question of criminality where the *customer* has adopted in good faith, honestly and without misstatement, a technical position with which a revenue authority disagrees.

55. The main areas where offences may arise in relation to direct taxation are:

- tax evasion, including making false returns (including supporting documents), accounts or financial statements or deliberate failure to submit returns; and
- deliberate refusal to correct known errors.

21.5.2.1 Innocent or negligent error

56. It is not uncommon for *tax advisers* to become aware of errors or omissions, in current or past years, from *customer's* tax returns, or any calculations or statements appertaining to any liability, or an underpayment of tax, for example, because a payment date has been missed. If the *tax adviser* has no cause to doubt that these came about because of an innocent mistake or negligence, then they will not have formed a suspicion. However, in some cases the *tax adviser* may form a suspicion that the original irregularity was criminal in nature, and this will then become a reportable suspicion.

21.5.2.2 Unwillingness or refusal to disclose to a revenue authority

57. Where a *customer* indicates that they are unwilling, or refuse, to disclose the matter to a revenue authority (e.g., HMRC, Revenue Jersey etc) to avoid paying the tax due, the *customer* appears to have formed a criminal intent and therefore a reporting obligation arises. The *tax adviser* should also consider whether they can continue to act and should consult their professional body's guidance on such matters. This paragraph applies equally to potential *customers* for whom the *tax adviser* has declined to act.

21.5.2.3 Adjusting subsequent returns

58. Where the legislation permits the correction of small errors by subsequent tax adjustments, and the original error was not attributable to any criminal conduct, then the adjustment itself will not give rise to the need to report, since no crime will have been committed.

21.5.2.4 Intention to underpay

59. A *customer* may suggest that they will, in the future, underpay tax. This would be tax evasion and a *money laundering* offence when it occurs. A *tax advisor* can and should apply their professional body's normal ethical guidance to persuade the *customer* to comply with the legislation. Should the *customer's* intention in this regard remain in doubt, the *tax adviser* should consider carefully whether they can commence or continue to act, and if in doubt should seek specialist legal advice. A *SAR* may well be required in such cases.

21.5.2.5 Offences applicable to Value Added Tax

60. A *customer* which is a business resident in the *UK* or an *EU* member state will normally be subject to *VAT*. Guidance on the offences applicable to *VAT*, for example fraudulent evasion of *VAT* and production or sending of false documents or statements, is set out in the 'Supplementary Anti *Money Laundering* Guidance for Tax Practitioners' produced as an appendix to the AML/CFT Guidance for the Accountancy Sector released by the UK Consultative Committee of Accountancy Bodies (**CCAB**).

21.5.3 Business recovery or receiverships

61. *Insolvency practitioners* will often encounter criminal activity when winding up or effecting recovery for a business. Serious fraud which has resulted in benefit either for the business or an individual will be reportable to the *FIU* as will incidences where the business has been used to launder the proceeds of crime. Examples may be where:

- fraud has caused or contributed to the failure of the business;
- there has been illegal siphoning off or transfer of assets by directors/shareholders;
- false accounting or misrepresentation of profits has been applied to maintain share value;
- the directors or members of senior management have been guilty of illegal trading or market abuse;
- tax fraud has been committed by reducing income or profits; or
- a white knight (a form of hostile takeover defence by a 'friendly' buyer) has invested criminal funds.

21.5.3.1 Observation of unlawful conduct resulting in advice

62. It should be borne in mind that for property to be criminal property, not only must it constitute a person's benefit from criminal conduct, but the alleged offender must know or suspect that the property constitutes such a benefit. This means, for example, that if someone has made an innocent error, even if such an error resulted in benefit and constituted a strict liability criminal offence, then the proceeds are not criminal property, and no *money laundering* offence has arisen until the offender becomes aware of the error.

63. Examples of unlawful behaviour which may be observed, and may well result in advice to a *customer* to correct an issue, but which are not reportable as *money laundering*, are set out below:

- offences where no proceeds or benefit results, such as the late filing of company accounts. However, *supervised persons* should be alert to the possibility that persistent failure to file accounts could represent part of a larger offence with proceeds, such as fraudulent trading or credit fraud involving the concealment of a poor financial position;
- misstatements in tax returns, for whatever cause, but which are corrected before the date when the tax becomes due;
- attempted fraud where the attempt has failed and so no benefit has accrued (although this may still be an offence in some jurisdictions e.g., the UK); and
- where a *customer* refuses to correct, or unreasonably delays in correcting, an innocent error that gave rise to proceeds and which was unlawful, firms should consider what that indicates about the client's intent and whether the property has now become criminal property.

21.6 Reporting *money laundering* and *terrorist financing* activity

21.6.1 Further enquiries by auditors

Overview

64. This section is supplemental to and should be read in conjunction with section 9.2 of *this Handbook* (Reporting knowledge or suspicion).

65. Section 9.2 *of this Handbook* states that there is a reporting requirement under Article 34D of the *Proceeds of Crime Law* and Article 21 of the *Terrorism Law* to make a *SAR* 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.

66. Once an auditor suspects a possible breach of legislation which may require a report under the laws referenced above, further enquiries will need to be made. Auditing standards require that when the auditor becomes aware of information concerning a possible breach, the auditor should obtain an understanding of the nature of the act and the circumstances in which it has occurred. Sufficient information should be obtained to evaluate the possible effect on the *customer's* financial statements.

67. However, the *Anti-Money Laundering and Counter-Terrorism Legislation* does not require an auditor to undertake any additional enquiries to determine further details of the predicate criminal offence (i.e., the offence giving rise to the proceeds of crime). To help mitigate the risk of tipping-off, it is important that any further enquiries only represent steps that the auditor would have performed as part of the normal audit work and that the *MLRO* (or *Deputy MLRO*) is consulted before any further enquiry is performed. If an employee of the auditor is genuinely uncertain as to whether there are grounds to make a *SAR*, they may wish to seek advice from their *MLRO* (or *Deputy MLRO*).

68. During the course of the audit work, the auditor might obtain knowledge or form a suspicion about a proposed act that would be a criminal offence but has yet to occur. Because attempting or conspiring to commit a *money laundering* offence is itself a criminal act, a *SAR* may need to be made in some circumstances.

69. Where the auditor makes an internal *SAR* to the *MLRO* (or *Deputy MLRO*) and it is decided that further enquiry is necessary, the *auditor* will need to be made aware of the outcome of the enquiry to determine whether there are any implications for the audit report or the decision to accept reappointment as auditor.

70. The auditor will need to consider whether continuing to act for the *customer* could itself constitute a *money laundering offence*. For example, if it amounted to aiding or abetting the commission of one of the principal *money laundering* offences such as becoming involved in an arrangement. In those circumstances the auditor may wish to consider resigning but should first contact their *MLRO* (or *Deputy MLRO*) to report the suspicion and seek guidance in respect of tipping-off. If the auditor wishes to continue to conduct the audit, appropriate consent may be required from the *FIU*.

71. Partners and employees of *supervised persons* carrying on *audit services* will need to follow their internal reporting procedures when considering whether to include documentation relating to *money laundering* reporting in the audit working papers.

21.6.2 Auditor's responsibility for monitoring compliance

Overview

72. 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. The *Anti-Money Laundering and Counter-Terrorism Legislation* does not require the auditor to extend the scope of an audit except as set out in section 16.7.3 of *this Handbook*, but regular audit work could still give rise to knowledge or suspicion, or reasonable grounds for knowledge or suspicion, that will need to be reported. Such knowledge or suspicion may arise in relation to:

- legislation linked directly to the preparation of the financial statements;
- legislation which provides a legal framework within which the *customer* conducts its business; and
- other legislation.

73. Auditing standards relating to legislation require the auditor to obtain sufficient appropriate audit evidence regarding **compliance** with the legislation that has an effect on the determination of material amounts and disclosures in the financial statements. This may result in the auditor becoming suspicious that, for example, fraud or tax offences have taken place, which may be criminal offences resulting in the acquisition of criminal property.

74. Auditing standards on legislation also require the auditor to carry out procedures to help identify possible or actual instances of **non-compliance** with the legislation which provides a legal framework within which the *customer* conducts its business and is therefore central to its financial statements. These procedures involve:

- obtaining a general understanding of the legal and regulatory framework applicable to the *customer* and its wider industry, and of the procedures followed to ensure compliance with that framework;
- inspecting correspondence with the relevant licensing and regulatory authorities;
- making enquiries to the Board/senior management of the *customer* as to whether they are on notice of any such possible instances of **non-compliance** with those laws or regulations; and,
- obtaining written representation that the Board/senior management have disclosed to the auditor all known actual or possible instances of **non-compliance** with legislation whose effects should be considered when preparing financial statements, together with - where applicable - the actual or contingent consequences which may arise from the **non-compliance** (i.e., regulatory fines, public censure etc).

75. This work may give the auditor grounds to suspect that criminal offences have been committed, and which may need to be reported to the *FIU*.

76. If the *customer* falls within the definition of a *financial services business*, legislation relating to *money laundering* will be central to the operation of their business. When auditing the financial statements of such *customers*, the auditor must review the steps taken by the *customer* to comply with the *Money Laundering Order* and the *JFSC's* other regulatory requirements, assess their effectiveness and obtain board/senior management representations concerning compliance with them. If the *customer's systems and controls* (including *policies and procedures*) appear to be ineffective, the auditor must consider whether there is an obligation to report a matter of "material significance" to the *JFSC* and the possible impact of any regulatory action which may arise from the same (see section 16.7.3 of *this Handbook* for further information).

77. The *auditor* will need to consider whether any **contingent liabilities** may arise in this area. For example, there may be criminal fines for **non-compliance** with the *Anti-Money Laundering and Counter-Terrorism Legislation*. In certain circumstances, civil claims or confiscation proceedings may occur, giving rise to contingent liabilities. The *auditor* will also need to remain alert to the fact that discussions with the *customer* on such matters may create a risk of tipping off (see section 9.5 of *this Handbook*).

78. In some situations, the *auditor's customer* may have obtained legal advice to the effect that certain actions or circumstances do not give rise to criminal conduct and therefore cannot give rise to criminal property. Determining whether an act constitutes **non-compliance** with the *Anti-Money Laundering and Counter-Terrorism Legislation* may involve consideration of matters which do not lie within the competence and experience of the *auditor*. As a result, provided that the *auditor* considers that the advice has been obtained from a suitably qualified and independent *Lawyer* and the *Lawyer* was made aware of all relevant circumstances known to the *auditor*, then the *auditor* may rely on such advice, provided the *auditor* has complied with auditing standards on using the work of an expert.

21.6.3 Reporting to regulators

Overview

79. Making a *SAR* to the *FIU* does not relieve the *auditor* of its other statutory reporting duties. Examples of these responsibilities include:

- **audits of *customers* carrying on *financial services business*:** The *auditor* has a statutory duty to report matters of "material significance" to the *JFSC* which come to the *auditor's* attention in the course of its audit work;
- **audits of *customers* in the public sector:** A*uditors* of some *customers* which operate in the public sector may be required to report on the *customer's* **compliance** with regulatory requirements around financial transactions. Activity connected with *money laundering* may constitute a breach of those requirements;
- **audits of other types of *customer*:** A*uditors* of some other types of *customers* are also required to report matters of "material significance" to regulators (for example, charities and occupational pension schemes).

21.6.4 Balancing professional work and post-reporting requirements

Overview

80. Continuation of audit work following the submission of an external *SAR* may require discussion of matters relating to the suspicions that were formed with the *customer's* board/senior management. Care must be taken to select appropriate and non-complicit members of the board/senior management for such discussions, keeping in mind the need to avoid tipping-off. It is important to confine enquiries to those required in the ordinary course of business and not attempt to further investigate a matter reported upon, unless this is within the scope of the professional work commissioned.

81. In more complex circumstances, consultation with the *FIU* may be necessary before enquiries are continued. It should be noted that neither the *FIU* nor other law enforcement agencies may give consent to tipping-off.

82. *Supervised persons* carrying on audit business may wish to engage their *MLRO/Deputy MLRO* or another suitable specialist (for example a *Lawyer*) if there are tipping-off concerns. In particular, it is important that before any document referring to the subject matter of a *SAR* is released to a third party, the *MLRO* (or *Deputy MLRO*) is consulted along with, where necessary, law enforcement. Some typical examples of documents released to third parties include but are not limited to:

- public audit or other attest reports;
- public record reports to regulators;
- confidential reports to regulators;
- statements on the resignation of a *supervised person* as *auditor*;
- professional clearance/etiquette letters; or
- communications to *customers* of a *supervised person's* intention to resign.

83. There is no legal mechanism for obtaining consent from the *FIU* regarding the contents of statements or other documents relating to an auditor's resignation. However, in complex cases, *supervised persons* carrying on audit business may still wish to discuss the matter with the *FIU* to understand their perspective and document such discussion.

84. *MLRO*s may, on occasion need advice to assist them in formulating their instructions to the *supervised person*. Legal advice may be sought from a suitably skilled and knowledgeable professional legal adviser, and recourse may also be had to helplines and support services provided by professional bodies. Discussion with the *FIU* may well be valuable, but *MLRO*s should bear in mind that the *FIU* and law enforcement are not able to advise, nor are they entitled to dictate, how professional relationships should be conducted.

21.6.5 Auditor's report on financial statements

Overview

85. Where it is suspected that *money laundering,* the *financing of terrorism,* or the *financing of proliferation* has occurred, the auditor will need to apply the concept of materiality when considering whether the auditor's report on the *customer's* financial statements needs to be qualified or modified, taking into account whether:

- the crime itself has a material effect on the financial statements;
- the consequences of the crime have a material effect on the financial statements; or
- the outcome of any subsequent investigation by the investigating agencies may have a material effect on the financial statements.

86. If it is known that *money laundering* or the *financing of terrorism* has occurred and members of the *customer's* board or senior management were knowingly involved, the auditor will need to consider whether their report will include a qualified opinion on the financial statements disclosing the same. Any such disclosure in the auditor's report will be subject to the tipping off requirements set out at section 9.5 of *this Handbook*. It might be necessary for the auditor, through the *MLRO* (or *Deputy MLRO*), to discuss with the relevant law enforcement agency whether disclosure in their report on the financial statements could constitute a tipping-off offence. If so, the auditor, through the *MLRO* (or *Deputy MLRO*), will need to seek guidance on an acceptable form of words with the *FIU*.

87. As noted at section 9.4 of *this Handbook*, the *FIU* is not able to advise or instruct in respect of a *supervised person's* professional conduct. Auditors must therefore bear this in mind when discussing a potential form of words with the *FIU* which can then be used in communicating with the *customer*. In circumstances like these, the auditor may also wish to consider seeking legal advice to reduce the risk of committing a tipping off offence.

88. A delay in issuing the audit report pending the outcome of an investigation may not be practicable for the auditor and could itself create a risk of tipping off.

89. If it is concluded that a qualified audit report must be issued, the *supervised person* may need to seek legal advice before issuing the report. In exceptional circumstances, it may be necessary to make an application to the court in respect of the content of the qualified audit report.

21.6.6 Resignation as auditor

90. If an auditor, having filed a *SAR*, wishes to terminate a *business relationship,* and is concerned that in doing so it may prejudice an investigation, it should seek guidance from the *FIU*. This will help reduce the risk of tipping-off. However, the *FIU* cannot instruct a *supervised person* to continue a *business relationship* that it wishes to terminate.

91. An auditor may wish to resign if it is believed that the *customer* or an employee of the *customer* is engaged in *money laundering*, the *financing of terrorism*, or the *financing of proliferation,* or any other illegal act, particularly where a normal relationship of trust can no longer be maintained. Where the auditor intends to resign, there may be a conflict between the requirements to bring certain matters to the attention of the *customer's* members or creditors and the risk of tipping-off. In such circumstances the auditor should seek guidance from the *FIU* and the appropriate investigating agency to discuss an appropriate course of action and an acceptable form of words. If necessary, legal advice or the direction of the court may need to be sought.

92. The risk of tipping-off may also cause a conflict with the need to communicate with the prospective successor auditor in accordance with ethical requirements relating to changes in professional appointments. Whilst the existing *auditor* might feel obliged to advise the incoming auditor of their suspicions of *money laundering,* the *financing of terrorism*, or any other illegal act, to do so would run the risk of tipping-off. Expressing suspicions orally rather than in writing **does not** constitute a mitigation of the tipping-off risk. In circumstances where it is considered necessary to communicate the underlying circumstances which gave rise to the *SAR*, guidance should be sought from the *MLRO* (or *Deputy MLRO*) who may then need to seek an opinion from the *FIU*.