Jersey Financial Services Commission

11 RECORD-KEEPING

11.1 Overview of section

1. This section outlines the *statutory provisions* concerning record-keeping for the purposes of countering *money laundering*, the *financing of terrorism* or *proliferation financing*. It also sets *AML/CFT/CPF Codes of Practice* and provides *Guidance notes* on the keeping of records. More general obligations on *supervised persons* to maintain records in relation to their business are not addressed in this section – these may extend the period for which records must be kept.

2. Record-keeping is essential to facilitate effective investigation, prosecution, and confiscation of criminal property. If law enforcement agencies, either in Jersey or elsewhere, are unable to trace criminal property due to inadequate record-keeping, then prosecution for *money laundering,* the *financing of terrorism,* or the *financing of proliferation* and confiscation of criminal property may not be possible. Likewise, if the funds used to finance terrorist activity or proliferation activity cannot be traced back through the financial system, then the sources and the destination of *terrorist financing* or *proliferation financing* will not be identified.

3. Record-keeping is also essential to facilitate effective supervision, allowing the *JFSC* to supervise compliance by *supervised persons* with statutory requirements and *AML/CFT/CPF Codes of Practice*. Records provide evidence of the work that a *supervised person* has undertaken to comply with these requirements. Records also provide a necessary context for the opinion that may be prepared on the truth and fairness of a *supervised person's* financial statements by its external auditor.

4. Records may be kept:

- by way of original documents;
- by way of copies of original documents (certified where appropriate);
- in scanned form; or
- in computerised or electronic form.

11.2 Recording evidence of identity and other *CDD* measures

Overview

5. In relation to evidence of a *customer's* identity, a *supervised person* is required to keep a copy of, or references to, the evidence of the *customer's* identity obtained during the application of *CDD* measures.

6. In addition, a *supervised person* is required to keep supporting documents, data, and information in respect of a *business relationship* or *one-off transaction*. This consists of:

- accounts files;
- business correspondence records; and
- the results of any analysis undertaken regarding the *business relationship* or any transaction.

Statutory requirements (paraphrased wording)

7. *For the purpose of the record retention requirements set out below, Article A19 of the Money Laundering Order defines a 'relevant person' as including a person who was formerly a relevant person.*

8. *Article 19(2)(a) of the Money Laundering Order requires a relevant person to keep the following records:*

- *copies of evidence of identity or information that enables a copy of such evidence to be obtained;*
- *all the supporting documents, data, and information in respect of a business relationship or one-off transaction which is the subject of CDD measures, including the results of analysis undertaken in relation to the business relationship or any transaction.*

9. *Article 19(4) of the Money Laundering Order requires a relevant person to keep records in such a manner that they can be made available swiftly to the JFSC, police officer or customs officer for the purpose of complying with a requirement under any enactment, e.g. a production order under Article 40 of the Proceeds of Crime Law.*

10. *Articles 20(1) and 20(2) of the Money Laundering Order require a relevant person to keep records for at least five years from:*

i) the end of the business relationship with the customer; or

ii) the completion of the one-off transaction.

11. *Article 20(5) of the Money Laundering Order allows the JFSC to require a relevant person to keep records for a period longer than five years.*

AML/CFT/CPF Codes of Practice

[COP99] As part of the supporting documents, data, and information to be kept in respect of a business relationship or one-off transaction, a supervised person must keep the following documents:

- accounts files; and
- business correspondence.

Guidance notes

12. Examples of business correspondence may include, but are not limited to:

- e-mails;
- letters;
- faxes;
- notes of telephone conversations.

13. A *supervised person* should consider, on a case-by-case basis, whether any records additional to those required under the *Money Laundering Order* or the *AML/CFT/CPF Codes of Practice* set out above should be kept for a particular *business relationship* or *one-off transaction*.

Jersey Financial Services Commission

11.3 Recording transactions

Overview

14. Details of all transactions carried out by *a supervised person* with or for a *customer* in the course of carrying on a *supervised business* must be recorded. Additional records in support of such transactions, in whatever form they are used, e.g., credit/debit slips, cheques, will also be kept.

Statutory requirements (paraphrased wording)

15. *Article 19(2)(b) of the Money Laundering Order requires a relevant person to keep a record containing details of every transaction carried out with or for the customer in the course of a financial services business. In every case, sufficient information must be recorded to enable the reconstruction of individual transactions.*

16. *Article 19(4) of the Money Laundering Order requires a relevant person to keep records in such a manner that they can be made available swiftly to the JFSC, police officer or customs officer for the purpose of complying with a requirement under any enactment, e.g., a production order under Article 40 of the Proceeds of Crime Law.*

17. *Article 20(3) of the Money Laundering Order requires a relevant person to keep records relating to transactions for at least five years from the date when all activities relating to the transaction are completed.*

18. *Article 20(5) of the Money Laundering Order allows the JFSC to require a relevant person to keep records of transactions for a period that is longer than five years.*

AML/CFT/CPF Codes of Practice

[COP100] A record must be kept of the following for every transaction carried out in the course of a business relationship or one-off transaction:

- the name and address of the customer;
- if a monetary transaction, the kind of currency and the amount;
- if the transaction involves a customer's account, the number, name or other identifier for the account;
- the date of the transaction;
- details of the counterparty, including account details;
- the nature of the transaction; and
- details of the transaction.

[COP101] Customer transaction records must provide a clear and complete transaction history of incoming and outgoing funds or assets.

Guidance notes

19. A *supervised person* may demonstrate that it has kept details of a transaction where it records:

- valuation(s) and price(s);
- the form in which funds are transferred (e.g. cash, cheque, electronic transfer);

- memoranda of instruction(s) and authority(ies);
- memoranda of purchase and sale;
- custody of title documentation.

20. A *supervised person* may demonstrate that it has a clear and complete transaction history where it records **all transactions undertaken on behalf of a *customer*** within that *customer's* records. For example, a *customer's* records should include all requests for wire transfer transactions where settlement is provided other than from funds drawn from a *customer's* account with the *supervised person*.

21. When original vouchers or documents are used for account entry, e.g., credit/debit slips and cheques, and not returned to the *customer*, a *supervised person* may demonstrate that it has kept details of a transaction where such vouchers or documents are kept for at least one year to assist forensic analysis.

11.4 Other record-keeping requirements

11.4.1 Corporate governance

AML/CFT/CPF Codes of Practice

[COP102] A *supervised person* must keep each *BRA* that it conducts and records under section 2.3 of *this Handbook* for a period of five years after the end of the calendar year in which it is superseded.

[COP103] A *supervised person* must keep adequate and orderly records of its *systems and controls* (including *policies and procedures*) that it must document under section 2.3 of *this Handbook* for a period of at least five years after the end of the calendar year in which they are superseded.

[COP104] A *supervised person* must keep adequate and orderly records showing how the Board/senior management has assessed both the effectiveness of, and compliance with, *systems and controls* (including *policies and procedures*) in line with section 2.3 of *this Handbook*, including reports presented by the *MLCO* on compliance matters and the *MLRO* on reporting, for a period of five years after the end of the calendar year in which a matter is considered.

[COP105] A *supervised person* must keep a record of what barriers (including cultural barriers) exist to prevent the operation of effective *systems and controls* (including *policies and procedures*) in line with section 4 2.4 of *this Handbook* for a period of five years after the end of the calendar year in which a matter is considered.

[COP106] A *supervised person* must keep adequate and orderly records to demonstrate the *MLRO* (and *Deputy MLRO*) and *MLCO's* experience and skills, independence, access to resources and technical awareness, in line with sections 2.6 and 2.7 of *this Handbook* for a period of five years after the end of the calendar year in which an individual ceases to act in said positions.

[COP107] A *supervised person* must keep adequate and orderly records to demonstrate that in line with section 2.4 of *this Handbook*:

- measures that are at least equivalent to AML/CFT/CPF Codes of Practice are applied by a *supervised person* through overseas branches; and
- subsidiaries are required to apply measures that are at least equivalent to AML/CFT/CPF Codes of Practice;

- for a period of five years after the end of the calendar year in which a measure is applied.

11.4.2 Identification measures

AML/CFT/CPF Codes of Practice

[COP108] Where a *supervised person* is required to apply an *identification measure* through an *AML/CFT/CPF Codes of Practice* set in sections 4, 5 and 7 of *this Handbook*, an adequate and orderly record of that measure must be kept in line with the record-keeping requirements set out in Part 4 of the *Money Laundering Order*.

[COP109] A *supervised person* must keep its risk assessment for each *customer* that has still to be remediated in line with section 4.9.2 of *this Handbook* for a period of five years after the end of the calendar year in which it is superseded.

11.4.3 Ongoing monitoring

Guidance notes

22. A *supervised person* may demonstrate that it has kept details of the results of analysis undertaken regarding a *business relationship* or any transaction where it keeps adequate and orderly records containing the findings of its examination of notable transactions and activity, i.e., those that:

- are inconsistent with the *supervised person's* knowledge of the *customer*;
- are complex or unusually large;
- form part of an unusual pattern; or
- present a higher risk of *money laundering,* the *financing of terrorism,* or the *financing of proliferation*;

for a period of five years from the end of the calendar year in which the examination is undertaken.

23. A *supervised person* may demonstrate that it has kept details of the results of analysis undertaken regarding a *business relationship* or any transaction where it keeps adequate and orderly records containing the findings of its examination of transactions and activity with a person which has a *relevant connection* to an *enhanced risk state*, for a period of five years from the end of the calendar year in which the examination is undertaken.

11.4.4 SARs

AML/CFT/CPF Codes of Practice

[COP110] A *supervised person* must keep registers of internal and external *SAR*s, maintained in line with procedures required under sections 9.3.1 and 9.3.2 of *this Handbook*.

[COP111] In line with procedures required under sections 9.3.1 and 9.3.2 of *this Handbook*, a *supervised person* must keep adequate and orderly records containing:

- a copy of the form and supporting documentation used to make any internal SAR for that customer;
- enquiries made in relation to that internal SAR and the decision of the MLRO (or Deputy MLRO) to make or not make an external SAR;
- where an external SAR has been made, a copy of the form used to make the external SAR and supporting documentation provided to the FIU; and
- relevant information passed to the FIU after making the external SAR;

for a period of five years from the date that a business relationship ends, or if in relation to a one-off transaction, for five years from the date that a transaction was completed.

Guidance notes

24. Depending on the volume of external *SARs* submitted, complexity of the *supervised person* and/or complexity of the matter subject to an external *SAR,* it may be decided to record continuation reports in a separate register to the initial external *SAR.* Where this is done, the *supervised person* should ensure that each continuation report is clearly linked to its initial external *SAR.*

11.4.5 Screening, awareness and training of *employees*

AML/CFT/CPF Codes of Practice

[COP112] A supervised person must keep adequate and orderly records of training provided on the prevention and detection of money laundering, the financing of terrorism, or the financing of proliferation for five years after the end of the calendar year in which the training was provided, including:

- the dates on which training was provided;
- the nature of the training provided;
- names of *Employees* who received the training; and
- records of testing subsequently carried out to measure Employees' understanding of the training provided, including pass rates and details of any action taken in cases of failure.

11.5 Access and retrieval of records

Overview

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

AML/CFT/CPF Codes of Practice

[COP113] A *supervised person* must keep documents, data or information obtained under *identification measures* in a way that facilitates ongoing monitoring of each *business relationship*.

[COP114] For all other purposes, the records kept by a *supervised person* must be readily accessible and retrievable by the person. Unless otherwise specified, records relating to evidence of identity, other *CDD* measures, and transactions must be accessible and retrievable **within 5 working days** (whether kept in or outside of Jersey), or such longer period as agreed with the *JFSC*. Other records must be accessible and retrievable **within 10 working days** (whether kept in or outside of Jersey), or such longer period as agreed with the *JFSC*.

[COP115] A *supervised person* must periodically review the condition of paper and electronic records and consider the adequacy of its record-keeping arrangements.

[COP116] A *supervised person* must periodically test procedures regarding access to and retrieval of its records.

[COP117] Records must be maintained in a **readable format**. Where records are kept other than in readable form, they must be maintained such that they can be produced in readable form at a computer terminal in Jersey.

[COP118] When original documents (such as transaction-related vouchers used to input data onto computer systems) that would ordinarily have been destroyed are requested for investigation purposes, a *supervised person* must ascertain whether the documents have in fact been destroyed.

11.5.1 External record-keeping

Overview

26. Where records are kept by another person (group or otherwise), or kept outside Jersey, such as under an outsourcing or storage arrangement, this will present additional factors for a *supervised person* to consider. Regardless of the circumstances, the *supervised person* remains responsible for compliance with all record-keeping requirements.

27. Where an *obliged person* ceases to trade or have a relationship with a *customer* for whom it has provided an assurance to a *supervised person*, particular care needs to be taken to check whether the assurance continues to have effect, or to ensure that evidence of identity is obtained from the *obliged person*. Section 5 of *this Handbook* deals with reliance arrangements made with *obliged persons*.

AML/CFT/CPF Codes of Practice

[COP119] A supervised person must not:

- allow another person (group or otherwise) to keep records; or
- keep records outside Jersey;

where access and retrieval of records (by that person, the JFSC and/or law enforcement) is likely to be impeded by confidentiality or data protection restrictions.

11.5.2 Reorganisation or termination

Overview

28. Record-keeping requirements persist and are unaffected where a *supervised person*:

- merges with another person;
- continues as another person;

- is taken over by another person;
- is subject to internal reorganisation;
- terminates its activities; or
- transfers a block of *customers* (i.e., a "book of business") to another person.

AML/CFT/CPF Codes of Practice

[COP120] A *supervised person* that undergoes mergers, continuance, takeovers or internal reorganisations, must ensure that records remain readily accessible and retrievable for the required periods stated *above*. This extends to the rationalising of computer systems and storage arrangements.

[COP121] Record-keeping arrangements must be agreed with the *JFSC* where a *supervised person* terminates its activities or transfers a block of *customers* to another person.

11.6 Disclosure of records

Overview

29. The *FATF Recommendations* identify several cases where a *financial institution* (or a *DNFBP*) may provide an assurance to another that it will provide documents, data or information:

- *FATF Recommendation* 13 provides that a respondent institution (in the context of a **correspondent banking relationship**) should be able to provide *relevant customer* identification data upon request to the correspondent *financial institution*;
- *FATF Recommendation* 17 provides that a *financial institution* relying upon another party should be required to take adequate steps to be satisfied that relevant documentation relating to *CDD* requirements will be made available by that party upon request and without delay.

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

Statutory requirements (paraphrased wording)

31. *Article 16(7) of the Money Laundering Order states that, where a relevant person (including a person who was formerly a relevant person) (A) has given an assurance under Article 16 of the Money Laundering Order (or under a provision that applies outside Jersey that is equivalent to Article 16 of the Money Laundering Order) to another relevant person (B), Person A must make available to Person B, at Person B's request, evidence of identity that Person A has obtained under Article 3 of the Money Laundering Order. Person A commits an offence under the Proceeds of Crime Law where it fails do so.*

32. *Article 17C(4) of the Money Laundering Order states that, where a relevant person (A) has given an assurance under Article 17C(2)(b) of the Money Laundering Order (or under a provision that applies outside Jersey that is equivalent to Article 17C of the Money Laundering Order) to another person (B), Person A may make available to Person B, at Person B's request, information and evidence of identity that Person A has obtained under Article 3 of the Money Laundering Order. However, A is not required by law to do so.*

33. *Article 19(7) of the Money Laundering Order applies to a relevant person carrying on deposit-taking business (a respondent) who is in receipt of banking services provided by an institution whose address is outside Jersey (a correspondent). It allows the respondent to provide the correspondent with evidence, documents, data and information obtained under Article 3 of the Money Laundering Order on request. However, the respondent is not required by law to provide information to the correspondent.*

11.7 Retention of supporting material for fit and proper determinations for key persons and principal persons, including criminal records certificates

Overview

34. A *supervised person* is required to ensure that its *key persons* and *principal persons* are fit and proper in accordance with Section 10.6 of the Handbook.

35. A *supervised person* is required to maintain documentation concerning the assessment of the fitness and propriety of key persons. This includes criminal records certificates and any other documentation pertaining to these fitness and propriety checks.

Statutory requirements (paraphrased wording)

36. Article 8(1) of the Supervisory Bodies Law gives the JFSC broad powers to carry out its supervisory duties. These include conducting examinations and requiring information from *supervised persons*.

AML/CFT/CPF Codes of Practice

[COP122] A supervised person must retain any documents, data, and information relied upon to establish whether a key person or principal person is fit and proper for a period that aligns with their obligations under the relevant data protection legislation and policy.