



2.6. The MLCO

Overview

65. The *Money Laundering Order* requires a *supervised person* or the *supervised persons AMLSP*, where applicable (see section 15 of *this Handbook*), to appoint an individual as *MLCO*, and tasks that individual with the ~~function responsibility of for~~ monitoring its compliance with ~~legislation in Jersey~~ Jersey legislation relating to *money laundering*, the *financing of terrorism*, and the *financing of proliferation* and *AML/CFT/CPF Codes of Practice* issued under the *Supervisory Bodies Law*. The objective of this requirement is to require *supervised persons* to clearly demonstrate how they ensure compliance with the requirements of the same.
66. The *Money Laundering Order* also requires a *supervised person* to maintain adequate procedures for:
- monitoring compliance with, and testing the effectiveness of, *policies and procedures*; and
 - monitoring and testing the effectiveness of measures to raise awareness and training. When considering the type and extent of compliance testing to be carried out, a *supervised person* shall have regard to the risk of *money laundering*, the *financing of terrorism*, and the *financing of proliferation* and matters that have an impact on risk, such as size and structure of the *supervised person's* business.
67. The *MLCO* may have a functional reporting line, e.g., to a group compliance function.
68. The *Money Laundering Order* does not rule out the possibility that the *MLCO* may also have other responsibilities. To the extent that the *MLCO* is also responsible for the development of *systems and controls* (and *policies and procedures*), as well as monitoring subsequent compliance with those *systems and controls* (and *policies and procedures*), some additional independent assessment of compliance will be needed from time to time to address this conflict of interest. Such an independent assessment is unlikely to be needed where the role of the *MLCO* is limited to actively monitoring the development and implementation of such *systems and controls*.

Statutory requirements (paraphrased wording)

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

70. *Article 7 (1A) of the Money Laundering Order requires the obligation to appoint a compliance officer applies unless, based on the size of the financial services business and its money-laundering risk, such an appointment is considered inappropriate. Any determination of appropriateness must be made by reference to the relevant Code of Practice.*



~~70-71.~~ Article 7(2A) of the Money Laundering Order requires a relevant person to ensure that the individual appointed is ~~of an appropriate level of seniority~~ at senior management level and has timely access to all records that are necessary or expedient for the MLCO to carry out their monitoring responsibilities.

~~72.~~ Article 7 (3) and (3A) of the Money Laundering Order require the MLCO to be responsible for monitoring compliance with Jersey's anti-money laundering legislation and relevant Codes of Practice. This responsibility may be fulfilled by delegating the monitoring tasks to another person for support or execution.

~~71-73.~~ Article 7(6) of the Money Laundering Order requires a relevant person to notify the JFSC in writing within one month when a person is appointed as, or ceases to be, a MLCO. However, Article 10 of the Money Laundering Order provides that the JFSC may grant exemptions from this notification requirement, by way of notice.

~~72-74.~~ Article 7(9) of the Money Laundering Order recognises that a relevant person that is also a regulated person may have notified the JFSC of the appointment or cessation of a MLCO under other legislation. If so, a duplicate notification is not required under the Money Laundering Order.

AML/CFT/CPF Codes of Practice

[COP18] A supervised person must appoint an MLCO that:

- › subject to Article 9A (Appointment of AMLSP to fulfil obligations of relevant person) is employed by the supervised person or an enterprise in the same financial group as the supervised person;
 - In the case of a supervised person that: carries on the business of being a functionary, recognized fund, or unclassified fund or is a Category B insurance permit holder, a managed bank, or managed entity (meaning a person carrying on regulated business that includes a managed trust company and an entity that is managed by a manager of a managed entity registered to carry on class ZK of fund services business); has no employees of its own; and is administered by a person carrying on a regulated business, it is acceptable for an employee of the administrator to be appointed by the supervised person as its MLCO;
- › is based in Jersey;
 - In the case of a supervised person that is a Category A insurance business permit holder with no employees of its own in Jersey, it is acceptable to appoint an employee outside Jersey. In the case of a supervised person that is carrying on MVTs activity and has no employees of its own in Jersey, it is acceptable for the supervised person to appoint an employee outside Jersey as its MLCO, provided the employee is based in an equivalent jurisdiction; and
- › has sufficient experience and skills or be supported by a person with sufficient experience and skills.

[COP19] A supervised person must ensure that the MLCO:

- › has appropriate independence, in particular from customer-facing, business development and systems and controls development roles;



- › reports regularly and directly to the board and has a sufficient level of authority within the *supervised person* so that the board reacts to and acts upon reports made by the *MLCO*;
- › has sufficient resources, including sufficient time and (if appropriate) a *deputy MLCO* and compliance support staff;
- › is fully aware of both their and the *supervised person's* obligations under the *Anti-Money laundering* and *Counter-Terrorism Legislation* and *AML/CFT/CPF Codes of Practice* issued under the *Supervisory Bodies Law*.

[COP20] If the position of *MLCO* is expected to fall vacant, to comply with the *statutory requirement* to have an individual appointed to the office of *MLCO* at all times, a *supervised person* must take action to appoint a member of the board (or other appropriate member of senior management) to the position on a temporary basis.

[COP21] If temporary circumstances arise where the *supervised person* has a limited or inexperienced *money laundering, terrorist financing, proliferation financing* compliance resource, it must ensure that this resource is supported as necessary.

[COP22] When considering whether it is appropriate to appoint the same person as *MLCO* and *MLRO*, a *supervised person* must have regard to:

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

Guidance notes

73-75. A *supervised person* may demonstrate that its *MLCO* is monitoring whether enactments and *AML/CFT/CPF Codes of Practice* issued under the *Supervisory Bodies Law* are being complied with where they:

- › regularly monitor and test compliance with *systems and controls* (including *policies and procedures*) in place to prevent and detect *money laundering*, counter the *financing of terrorism* and counter the *financing of proliferation* – supported as necessary by a compliance or internal *audit* function, or any other person;
- › report periodically, as appropriate, to the board on compliance with the *supervised person's systems and controls* (including *policies and procedures*) and issues that need to be brought to its attention;
- › respond promptly to requests for information made by the *JFSC* and the *FIU*.

74-76. In a case where the *MLCO* is also responsible for the development of *systems and controls* (including *policies and procedures*) in line with evolving requirements, a *supervised person* may demonstrate that the *MLCO* has appropriate independence where such *systems and controls* are subject to periodic independent scrutiny.

75-77. Vacancy of *MLCO* as referred to in COP20 above may also apply in the event the *MLCO* is temporarily unable to fulfil his or her responsibilities, for example due to medical leave.