

Snapshot: how does the JFSC gather information - and is it protected?

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In order to discharge its functions effectively the JFSC requires a broad range of information, which often comes from the very firms it regulates. Much of that information will be confidential (if not commercially sensitive), meaning firms will want to understand whether it is protected in the JFSC's hands.

This briefing summarises various ways in which the JFSC gathers the information it needs, and outlines the extent of the protections afforded to that information.

| How does the JFSC gather information from firms?

It is important that firms provide the JFSC with the information that it reasonably requires: a failure to comply with the JFSC's information requirements (or the provision of false or misleading information) can potentially give rise to regulatory sanction and/or constitute a criminal offence. The following is an overview of ways in which the JFSC gathers information.

Regulatory returns

Regulated firms will be familiar with one of the more 'routine' ways in which the JFSC gathers information, namely the obligation to submit regular regulatory returns.

Compulsory information requests

The Regulatory and AML Laws [1] provide the JFSC with the power to serve a "notice" requiring (broadly speaking) that a person:

- provide such information or documents, with explanation of them; and/or
- attend to answer such questions

as the JFSC reasonably requires for the purposes of the performance of its functions. This is

clearly a broad power, which is available to the JFSC in the performance of its supervisory functions generally. The recipient of a notice must respond promptly and comprehensively to it, and if they are invited to interview they should prepare fully.

Broadly comparable powers are available if the JFSC has reasonable grounds to suspect that a person has contravened a relevant regulatory requirement.

The Regulatory and AML Laws also empower an officer or an agent to enter, at a reasonable time, any premises occupied by a person on whom a notice has been given (or any other premises where information or documents are kept by such person) for the purpose of (broadly speaking) obtaining the information set out in the notice.

The JFSC is permitted to copy and/or retain documents it obtains as a result of such a notice.

Reports by skilled persons

The JFSC can require a person it supervises to provide a report by an accountant or other person with relevant professional skill on any information, documents or questions that could be the subject of a notice.

Appointment of investigators

In appropriate cases the JFSC is empowered to appoint "competent persons" to investigate and report on a wide range of matters relating to its supervisory functions, including (for example): the nature, conduct or state of a registered person's financial service business; compliance with codes of practice; and compliance with specified obligations under Jersey's AML/CFT regime.

Appointed investigators have (very) broad powers to compel information. Every person who is or was at any material time a registered person under investigation, a principal person of such a person, or officer, employee, banker, auditor or (subject to protections for legal professional privilege) legal adviser of such a registered person is required to:

- provide all documents relating to the registered person or formerly registered person which are in their custody or power
- attend at an appointed time and place to answer questions which they reasonably require the person to answer for the purposes of the investigation; and
- otherwise give all assistance in connection with the investigation which the person is reasonably able to give

Self-reporting obligation on registered persons

That the JFSC is reliant on firms is implicit in the Codes of Practice with which registered persons must comply: one of the overarching Principles is that a "registered person must deal with the

JFSC in an open and co-operative manner". This Principle is underpinned by a requirement to notify the JFSC in writing as soon as the firm becomes aware of any matter that might reasonably be expected to affect its registration or be in the interests of its customers to disclose, as well as more specific notification obligations.

In effect, this Principle requires firms to self-report matters of interest to the JFSC.

It is important that firms comply (and can demonstrate that they have complied) on an ongoing basis with this self-reporting obligation: the JFSC has imposed financial penalties on firms that it concluded had failed to discharge these obligations. [2] Importantly, registered persons should remember that, even if they are under investigation, they remain subject to this self-reporting obligation.

How is my confidential information protected?

Understandably, firms will be concerned to ensure that the information they provide to the JFSC remains confidential.

"Commercial sensitivity" is not a ground on which a firm can refuse to provide information to which the JFSC or its appointed investigators are entitled. However, the Regulatory and AML Laws do confer certain protections on information provided to the JFSC.

Each of the Regulatory and AML Laws contains a provision to the effect that a person who receives information relating to the business or other affairs of any person:

- a. under or for the purposes of one of those laws; or
- b. directly or indirectly from a person who has so received it

shall be guilty of an offence and liable to imprisonment for a term of two years and a fine if they disclose the information unless:

- they have the consent of the person to whom it relates and (if different) the person from whom it was received; or
- the disclosure falls within one of a limited number of 'gateways' set out in the law in question (e.g. for the purpose of enabling or assisting the JFSC to discharge its functions; with a view to the investigation of a suspected offence)

In broad terms, this means the JFSC is only permitted to use confidential information that it receives in the discharge of its public functions or for certain other purposes that are in the public interest, on pain of potentially severe consequences if it does otherwise. This careful balance should provide firms with reassurance that their sensitive information will be protected.

Further, and importantly, the Regulatory and AML Laws contains exclusions from disclosure in respect of material that is protected by legal professional privilege. This enables firms to be frank with their legal advisers when seeking legal advice, without fear that they will later be compelled to disclose that correspondence to the regulator.

[1] See in particular the Regulatory Laws (which include the *Banking Business (Jersey) Law 1991*, *Collective Investment Funds (Jersey) Law 1988*, *Insurance Business (Jersey) Law 1996* and the *Financial Services (Jersey) Law 1998*) and the *Proceeds of Crime (Supervisory Bodies) (Jersey) Law 1998*.

[2] <https://www.jerseyfsc.org/news-and-events/sgkh-entities/>

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