

# Consent regime – FAQ's

## Introduction

This FAQ document (**FAQs or Document**) is issued by the JFCU FIU (**FIU**) in an effort to provide further clarity in managing the consent process. This Document should be read in conjunction with guidance previously issued by the FIU dated 9 November 2020.

**This Document is provided for general information only and does constitute legal advice, nor is it a replacement for such.** Independent legal advice should be sought as required and dependent on your relevant circumstances. This Document may be revoked or amended at any time.

## Assumptions

In issuing the FAQs an assumption has been made that those directly concerned with its content will be familiar with:

- Part 3 of the Proceeds of Crime (Jersey) Law 1998, as amended (**POCJL**) – Money Laundering.
- Part 3 of the Terrorism (Jersey) Law 2002, as amended (**TJL**) – Offences relating to Terrorist Financing.
- the relevant AML/CFT Handbook(s) issued by the JFSC; and
- any relevant guidance issued by the JFSC.

The FAQs make reference primarily to consent requests made under POCJL; similar provisions are contained in the TJL.

## FAQ's

### **Q1: What Article of the POCJL relates to consent requests?**

A: Article 32 of the POCJL, more specifically Article 32(4) of the POCJL which states:-

- (4) The conditions mentioned in paragraph (3) are that the disclosure is made in good faith and either –
  - (a) if the disclosure is made before the person does the act in question, the act is done with the consent of a police officer; or
  - (b) if the disclosure 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.

In seeking consent pursuant to Article 32(4) of the POCJL, the FIU draws your attention to other relevant provisions within the POCJL which are interconnected and should be considered on each occasion when consent is sought:

- Article 29 – Criminal Property
- Article 30 – Offences of dealing with criminal property

- Article 31 – Concealment etc. of criminal property
- Article 34A - Failure to disclose knowledge or suspicion of money laundering
- Article 34D - Failure in a financial institution to report to designated police officer, designated customs officer or nominated officer

**Q2: How should consent requests be communicated to the FIU?**

A: 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. Consent requests should not be made over the telephone, by email or by letter. The FIU does however recognise there may be instances where access to the SAR portal is not possible. In such circumstances please contact the FIU on 612250 to discuss your consent submission.

Requesting consent for an act(s) can be done at the time of the initial SAR submission or on a subsequent Continuation Report; however where you seek consent on the submission of an initial SAR, please remember this is likely to be the first time the FIU has been made aware of your suspicion and therefore are unlikely to be in a position to make a determination on your request within short term. Of course this will be dependent on the amount of information provided to assist the FIU to assess the consent request (discussed later in the Document).

**Q3: What response(s) will we receive from the FIU on requesting consent pursuant to Article 32(4) of the POCJL?**

Consent request - Consent granted

When consent to an act(s) is granted, the FIU will write to the submitter of the consent request (**the requestor**) informing them of its decision.

It is important to note that in granting consent to an act(s) the FIU does not:

- **obligate the requestor or disclosing institution to undertake the proposed act(s) for which consent has been granted**

Whilst the issuance of a consent(s) by the FIU may provide a defence against the commission of an offence under Article 30 or 31 of the POCJL, any consent(s) provided by the FIU is done so at a point in time and based on all information available to it.

Having received a consent to act(s) and prior to the act(s) being carried out does the requestor or disclosing institutions know of any other information which has come into their possession that would change the original consent request sought and provided; and has this been made known to the FIU. Failure to do so may affect the protection afforded to the requestor or disclosing institution provided for in Article 32(4) of the POCJL.

- **replace the need for the requestor or disclosing institution to carry out its regulatory requirements or professional duties, for example, carrying out KYC checks, ongoing monitoring, or the submission of further SARs;**
- **provide the MLRO or the disclosing institution with a defence against other criminal offences pertaining to the proposed act(s) – whilst the provision of a consent(s) may provide a defence against the commission of an offence under Article 30 or 31 of the POCJL,**

there are other criminal offences which may be considered including Article 35 – Tipping Off; Article 37 – Procedures to prevent and detect money laundering.

### Consent request - Consent Not Given

Where consent is not granted to an act(s), the FIU will write to the requestor informing it of its decision. The legislation does not prescribe that the FIU has to provide a rationale when a consent is not granted; however where it can it will endeavour to do.

### Consent request – Inadequate Information

The FIU's determination of a consent request is seen as a binary one, either granted or not. In order the FIU can make a proper determination of the consent request it may need further information or particulars from the requestor.

Where this is the case, the FIU will write to the requestor acknowledging a consent request has been received, setting out what further information it requires in order to assist in its decision making process. It is therefore vitally important that in seeking consent for an act(s) the requestor provides full details as to why they need consent. Failure to do so may cause a delay in a response from the FIU in considering the consent request.

If your consent request relates to multiple acts the FIU may address each act on an individual basis; any response may therefore contain an amalgamation of the above responses, and may include wording similar to:

*'...the FIU consents to your requests as identified in points A., B. and D., but does not consent to C. With regard to your consent request at point E. please can you provide the following information...'*. The FIU will clearly identify its decision within any response.

### Consent request – Consent to Exit

If the request relates to a Consent to Exit, the FIU will usually respond to the requestor either consenting or not, and/or seeking further information.

#### **Q4: If I have previously received a general consent, for example "consent to operate" do I need to ask for further consents?**

A: You should take your own legal advice as to whether a consent covers a particular transaction, but we would usually expect a further request for consent in relation to any change of circumstances or any significant transaction or if a significant period of time has passed since the previous consent was given.

#### **Q5: Within the request, can consent be sought for a range of transactions / types of payments.**

A: As per the guidance previously issued, the FIU will need clarity around the precise transactions you will be requesting consent to carry out and conversely those that you will not, based on your

own suspicion – for example in a banking relationship will you be limiting/withdrawing access to ATM withdrawals; internet banking being revoked; or deposit of third party payments outside of known salary receipts?

**Q6: Having submitted a consent request how do we deal with our client? What should we do whilst we are awaiting consent?**

A: The FIU draws your attention to Article 35 of the POCJL - Tipping Off. There is a general misconception in that once a SAR has been submitted that contact with the client is somehow curtailed. It is the FIU's view this is not the case; so long as you do not inform your client that you are aware that a criminal investigation is/has commenced, or that a SAR is/has been submitted, you can still deal with your client in ordinary course and are obligated to comply with regulatory requirements to fully understand your client.

For example, if you have filed a SAR because adverse media has been noted which suggests your client is connected with some form of criminal activity, then the FIU can see no reason why you could not challenge the client making reference to adverse media seeking explanation and/or documentation from them to alleviate or confirm your suspicions.

The FIU is not in a position to give general guidance as to what may or may not constitute tipping-off or prejudice a criminal investigation. Where specific concerns are held as to what questions may be put to a client/customer can be raised with the FIU and discussed on a case by case basis. The FIU take this opportunity to once again remind submitters of SARs of the Proceeds of Crime and Terrorism (Tipping Off – Exceptions) (Jersey) Regulations 2015 (**Tipping Off Regulations**).

**Q7: Where a relationship is managed in the UK and the assets held in Jersey, if UKFIU approval has been received for a transaction, do we also need separate approval from the JFCU or can reliance be placed on the NCA approval?**

A: Where assets/administration/control are situated in Jersey then consent of the Jersey FIU will usually be required. Consent of the UKFIU will be relevant information to pass to the FIU, however it should not be construed, assumed or implied that consent for an act will be provided by the FIU.

**Q8: Having submitted a consent request pursuant to Article 32(4) of the POCJL, how long will it take for the FIU to respond to me with its decision?**

A: It is difficult to give a definitive answer to this question. The FIU will endeavor to acknowledge receipt of a consent request within two working days. The determination may however take longer given the request will have to be considered on its own merits and require the FIU to determine the consent(s) being sought against the suspicion(s) identified; whether all information and relevant details are contained within the request which allows the FIU to make an informed decision; and if the consent request requires complex legal considerations to be made (for example restructuring of legal ownership of assets through share dilutions).

Until consent is granted or not, it will be for the relevant institution to manage its relationship with its client.

**Q9: If the FIU don't provide consent, are you going to provide release from tipping off. If you don't then how long will it take for this to come through?**

A: The FIU is fully cognisant of the difficulties in managing a client/customer relationship where a suspicion is held by the local financial institution. We will always seek to release from Tipping Off restrictions where the circumstances allow this to take place, especially if consent is not granted.

Where such a release from Tipping Off could affect a criminal investigation or proposed criminal investigation this restriction will be withheld for a shortest period of time the circumstances will allow. The FIU will always endeavor to work closely with the submitting institution apprising them of the reasons why a Tipping Off release has been withheld, however it must be appreciated that sensitivities surrounding a SAR submission will mean on limited occasions the FIU cannot divulge information other than a basic response of 'You are not at this time released from Tipping Off'.

The FIU cannot provide a definitive timeframe for when an institution may be released from Tipping Off, if indeed it is. Such a decision is taken by the FIU dependent on the merits of the SAR submitted and wider information which includes: - the suspicion and rationale provided in the SAR; jurisdiction of subjects / companies / assets / relationships (which may require the FIU to contact international counterparts); any known ongoing investigations in this jurisdiction or internationally.

**Q10: Having previously sought consent for a transaction on the submission of an initial SAR, I have now made enquiries and am no longer suspicious that I am dealing with 'criminal property'. What do I do now?**

A: It is a matter for you as to whether your initial suspicion(s) has been allayed. If you deem this is the case and you no longer have any suspicions you are dealing with the proceeds of criminal property you can submit a Continuation Report setting out why this is the case; and informing the FIU that you no longer seek consent for the act(s) previously requested. In submitting any Continuation Report please state what enquiries were undertaken and what has led to your suspicions being allayed.

**Q11: Can consent be sought in relation to an individual or entity which has not been the subject of a SAR, but has been mentioned in a Continuation Report?**

A: As a SAR has not been submitted in relation to this individual or entity this would amount to a new suspicion and therefore a new SAR should be submitted to the FIU before consent can be sought and considered.

**Q12: If I have submitted a SAR stating that other property of my client, elsewhere, appears to be the proceeds of crime, can I have consent to maintain his account in Jersey?**

A: The FIU's power to consent (Article 32(4)) relates only to your acts or dealings with suspected criminal property. If your client's Jersey account is not suspected to contain criminal property and you are not dealing with his other property you do not need our consent (but you might still need to report the other matter to us).

## **FIU observation on recent trend seen connected to consent requests:**

The FIU has recently seen a trend where a report is made pursuant under Article 34D of the POCJL and no specific consent request to carry out an act is sought; however, wording is added at the end of the SAR which states something similar to *'It is our intention to do [an act(s)], but should you not wish us to do this then we await to hear from you'* or *'It is our intention to do the following [an act(s)] in the absence that you do not have any objections'*.

The FIU's view is this is not a formal consent request made pursuant to Article 32(4) of the POCJL and as such the submitting institution will receive an acknowledgment letter only; the FIU cannot give you consent by silence.

In seeking consent for an act(s), the FIU require this to be clearly set in the SAR or Continuation Report with words similar to *'ABC Trustees Limited seek consent pursuant Article 32(4) to carry out the following act (or acts)...[set out here the exact consent(s) requested of the FIU – this can be in bulleted form if required]'*.

## **Examples of SAR or Continuation Report (all names and addresses are fictitious):**

### **1. Article 34D – No consent requested at this time**

Miss Sang is an Indonesian national who currently resides in Jersey and works at Staypress Launderette as a staff member. Miss Sang established a relationship with our bank on 1 July 2019.

According to account opening documentation, the customer has been resident in Jersey since May 2019 and has a basic salary of £1,000 per month (£12k (gross) per annum). The purpose of the account is for receipt of weekly salary and for every day debit card spending.

A review of the activity has revealed that in addition to the customer's weekly salary of circa £225.00 from Staypress (Jersey) Limited the customer has, since July 2021, started making a number of cash deposits into her account. In total circa £7.5k has been received in 30 tranches, the origin of the cash is unknown at this time. In addition to the deposits the customer has also made 6 x international payments of £1.5k each to an individual named Francesco Stephen Castelluccio, Indonesia, referenced family; 1 x international payment of £1.5k to a company named The Four Seasons, Indonesia, again referenced family; and a further 3 faster payments to a Tommy DeVito totalling £3.5k. Other transactional activity on the account appears to be for day to day spending.

#### Reason for Disclosure

Transaction monitoring has flagged this account for review given it had been established for receipt of salary and living expenses, but other unidentified payments have been noted. At this stage, it is not clear why the account is operating this way and is clearly not in line with expectations as stated at the time the relationship was established. The business has therefore been requested to contact the customer to establish:

- The reason for the cash credits
- The true origin of the cash
- The reason for the payments to Mr Castelluccio, The Four Seasons and Mr DeVito.
- The connections to these third party individuals.

Until this information is received, the business are not allowing any further cash deposits to be accepted into the account, in addition the business has blocked all third party payments which are to be made outside of this jurisdiction. A note to reflect this has been added to the customers file. Once this information is obtained, a further update will be provided to the JFCU via PoLSAR. At this time the bank are not seeking any consent from the FIU pursuant to Article 32(4) of the POCJL to operate the account(s) as per the above applicable restrictions.

## **2. Article 34D and Consent to Exit request (this is first SAR filed with the FIU by the requestor)**

Customer Z holds a personal bank account with XYZ Bank (Jersey).

XYZ Bank's (Jersey) Fraud team were contacted ABC Bank (UK) to advise that Customer Z is suspected of carrying out an impersonation scam. It is believed that Customer Z called Victim A (who holds an account at ABC Bank (UK)) and claimed to be calling from the ABC Bank (UK) fraud team. Customer Z stated that he needed Victim A's account details to stop a fraudulent payment going through on her account.

Victim A shared her account details, along with online security codes for her internet banking. Victim A then noticed two large payments debiting her account and called the ABC Bank (UK) genuine Fraud team to report this.

In light of the information received from ABC Bank (UK), XYZ Bank (Jersey) has blocked access to Customer Z's accounts and Victim A has been refunded. ABC Bank (UK) have asked Victim A to make a report to the authorities regarding the scam.

Numerous attempts have been made to contact Customer Z, via phone, e-mail and letter however there has been no response despite his accounts being blocked.

XYZ Bank (Jersey) urgently seeks consent to exit the relationship with Customer Z.

### **FIU Observations:**

- As this is the first time the FIU has been notified of XYZ Bank (Jersey) suspicion, the granting of an immediate Consent to Exit is unlikely given that enquiries will have to be conducted by the FIU not just locally but also with international counterparts.
- The FIU has not been informed what, if any, funds remain in the account?
- Has a transactional analysis been conducted on the account and what did this ascertain – Has the account use been as expected? Is the suspicion a one off or can other similar remittances in or payments out to other accounts?

- The FIU cannot see the need for urgency in the request to exit. The narrative provided gives no illusion as to the urgency needed. The accounts are blocked and no attempts (appear) to have been made (or requested) by Customer Z to access the account and withdraw/transfer funds (if this had been the case then the SAR should have made reference to this).
- In seeking consent to exit the relationship, no details have been provided as to how, when and where any funds would be remitted (should any be remaining). This again is important information for the FIU as it allows it to make intelligence enquiries in the jurisdiction where the funds are looking to be remitted (sort code details / account details / is there an instruction that the bank have previously been provided by Customer Z?)

### **3. Continuation Report - Consent request - Consent to Exit**

We write further to a SAR made on 22nd October 2019 and Continuation Reports made on 13 December 2019, 30 July 2020 and 17 November 2020.

#### The XYZ Trust

As you are aware, ABCD Trust Company (Jersey) Limited administer a trust relationship for Mr Atendo (**Atendo**), consisting of The XYZ Trust with underlying companies, the beneficiaries of which are Atendo and his children. Atendo settled The XYZ Trust with assets he received from The DEF Trust, a trust settled by his father, Mr Miles Atendo Snr. (**Atendo Snr.**).

The assets of The XYZ Trust comprise:

- a. The shares in BBB Investments Limited (a Jersey holding company);
- b. BBB Investments Limited in turn owns the shares in DDD Investments Limited (a Jersey registered company) which owns a luxury yacht;
- c. The shares in Podi Investments Limited (a Cayman registered company);
- d. Podi Investments Limited in turn owns a shareholding in ZZZ Construction Limited (a Malaysian registered company) shareholding only, no services are provided by ABC Trust Company (Jersey) Limited;
- e. The shares in Onyx Limited (a Jersey registered company).
- f. Onyx Limited in turn owns the shares in Global Max Limited (a Cayman registered company). Its assets comprise a Discretionary Managed Portfolio and a subscription in a regulated fund.

ABCD Trust Company (Jersey) Limited provide full administration services to the above companies with the exception of ZZZ Construction Limited.



Consent request pursuant to Article 32(4) of the POCJL (Exit):

ABCD Private Clients (Jersey) Limited has determined that it is looking to exit the relationship with both Atendo and Atendo Snr. and as such wishes to transfer the administration of the Trusts and their underlying companies to a new service provider. This exit has been discussed with Atendo and Atendo Snr. and a suitable new services provider has been identified which is located in Jersey – HHH Trust Company (Jersey) Limited. We therefore seek consent to exit the relationship in favour of the new service provider in Jersey. The transfer of the administration of trusts and underlying companies is anticipated to take place within the next two months (should there be any delay in this transfer then we will keep you apprised by way of a further Continuation Report). There is no intention to liquidate any of the portfolio or withdraw from the regulated fund.

Pursuant to Article 32(4) of the POCJL consent to exit the relationship in the terms set out above is therefore requested from the FIU.

We look forward to hearing from you.

FIU Observations:

- The continuation report is clear and concise and makes reference early to previous submissions.
- In seeking the Consent to Exit, the remitter clearly sets out what has happened in coming to the decision to exit, when the proposed transfer will occur, to whom it will transfer to (important to set this out as in this instance it of note to the FIU that the transfer of the structure and assets will remain in this jurisdiction); confirmation that any portfolios will not be liquidated; and what will happen if there is any delay in the transfer occurring.
- In light of the information provided in the Continuation Report, the FIU would more than likely have provided consent to the exit request.