



Financial Investigation Unit **Cross Border Crime**

A Division of the Guernsey Border Agency

Best Practices for Suspicious Activity Reports and New Changes to Legislation

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Topics for discussion

- The current SAR regime
- Definition of suspicion
- SAR content
- Attempted Transactions
- Terminating a Business Relationship
- SAR Statistics
- Changes to Regulations and Legislation



Current SAR Regime

- Legal Framework
- Suspicious Activity Report [SAR] generic term used by the FIU
- SAR – knowledge, suspicion or reasonable grounds for suspicion that another person is engaged in money laundering or proceeds of criminal conduct
- How ‘effective’ is the AML/CFT reporting regime?
- Global cooperation and international obligations



Definition of Suspicion

- A subjective and objective test – is less than knowledge
- Joint Money Laundering Steering Group – personal and subjective and falls short of proof based on firm evidence.
- UK Court [Shah v HSBC] – there is a very low threshold for suspicion, which does not have to be either reasonable or rational
- Law Enforcement approach – not a ‘Fishing Trip’



SAR Reporting

MLRO receives an internal report, which warrants a SAR to the FIS.

When reporting the suspicion to the FIS, the reason for the **MLROs** suspicion, (not the person who has informed the MLRO) should be outlined, and submitted along with any supporting documentation.

A copy of an Internal Report as the MLROs reason for suspicion is NOT adequate [but can be attached as a document if required].

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GFSC – Chapter 10

When submitting a SAR to the FIS, please be mindful of section 306 in the GFSC Handbook:

‘The financial services business should provide as much information and documentation (for example, statements, contract notes, correspondence, minutes, transcripts, etc.) as possible to demonstrate why suspicion has been raised and to enable the FIS to fully understand the purpose and intended nature of the business relationship or occasional transaction.’

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SAR Content – Reason for Suspicion

Include an initial overview statement including:

- what you believe the criminality to be*;
- and
- a brief outline of your reasons for suspicion

Please be clear and concise.

*e.g. Attempted Transaction, Organised Crime Group, Fraud, Tax Evasion, Money Laundering etc.

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SAR Content – Reason for Suspicion

Please try to answer the following questions in the SAR Reason for Suspicion tab: -

- Who?
- What?
- Where?
- When?
- Why?
- How?

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SAR Content – Reason for Suspicion

Within the Reason for Suspicion text, please include:

- The nature of your relationship with the subject;
- The relationship start date;
- Details of what your suspicion is;
- Assets involved, including, where applicable:
 - the type/nature of asset(s) (i.e. account type),
 - trust type and asset(s),
 - who has control of the asset(s),
 - values of the asset(s) etc.

If the relationship is complicated, it is helpful to attach explanatory structure charts to the SAR.

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SAR content – Things to Remember

Values of Assets

If there are asset(s) relevant to the SAR, such as a Pension Fund, Trust etc., include details about the nature, value and currency.

Seeking consent – Please include:-

- What you are looking for Consent to do
- What you intend to do with the relationship

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SAR Reporting - Fraud

- Activity of Organised Crime Groups [OCGs]
- Fraud = 'Criminal Conduct'
- Money laundering = possession of or arrangements involving benefit from criminal conduct
- NFA indicator 2013 – loss to the UK at £52 billion
- Reporting obligations
 - ❖ Suspicion of / reasonable grounds to suspect money laundering
 - ❖ Dealing with the proceeds of fraud

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SAR Reporting - Fraud

- Subject to:-
 - ❖ Cannot identify the money launder or whereabouts of any of the laundered property, and not reasonable to believe that the available information will or may assist indentifying either of those things
 - ❖ Unsuccessful attempted fraud [an attempted transaction] subject to a SAR

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Attempted Transactions or Attempted Activity

- GFSC Handbook ‘transaction’ or ‘activity’ – Chapter 10 [290]
- Attempt is an ‘act’ – more than purely preparatory
- An Attempted Transaction is one that a client attempts to conduct and took some form of activity to do so.
- Different to a simple request for information, such as an enquiry as to the fee applicable to a definite transaction.



Attempted Transactions or Attempted

Examples:

- An E-Casino refuses to accept a deposit due to the client refusal to provide identification as requested.
- An individual attempts to open an account or **new business**, which is **declined** by an institution. (e.g. adverse due diligence, failed KYC docs)
- An institution will not process a request to transfer funds, because the client refuses to provide identification requested or is not a facility of the institution.
- An institution receives a fraudulent email requesting a transaction.



GFSC Handbook – Chapter 10

- GFSC Handbook – Chapter 10 [299]
- CDD – Unhappy with information provided ?
- Level of Suspicion ?
- Classified as an ‘attempt’ or ‘activity’ to commence a business relationship
- Submit a SAR



GFSC Handbook Chapter 10.7 – Terminating a Business Relationship

- GFSC Handbook – Chapter 10.7
- Terminate a business relationship – a commercial decision for the FSB
- Exiting may prejudice an investigation or contravene tipping off
- Have you engaged with the FIS?

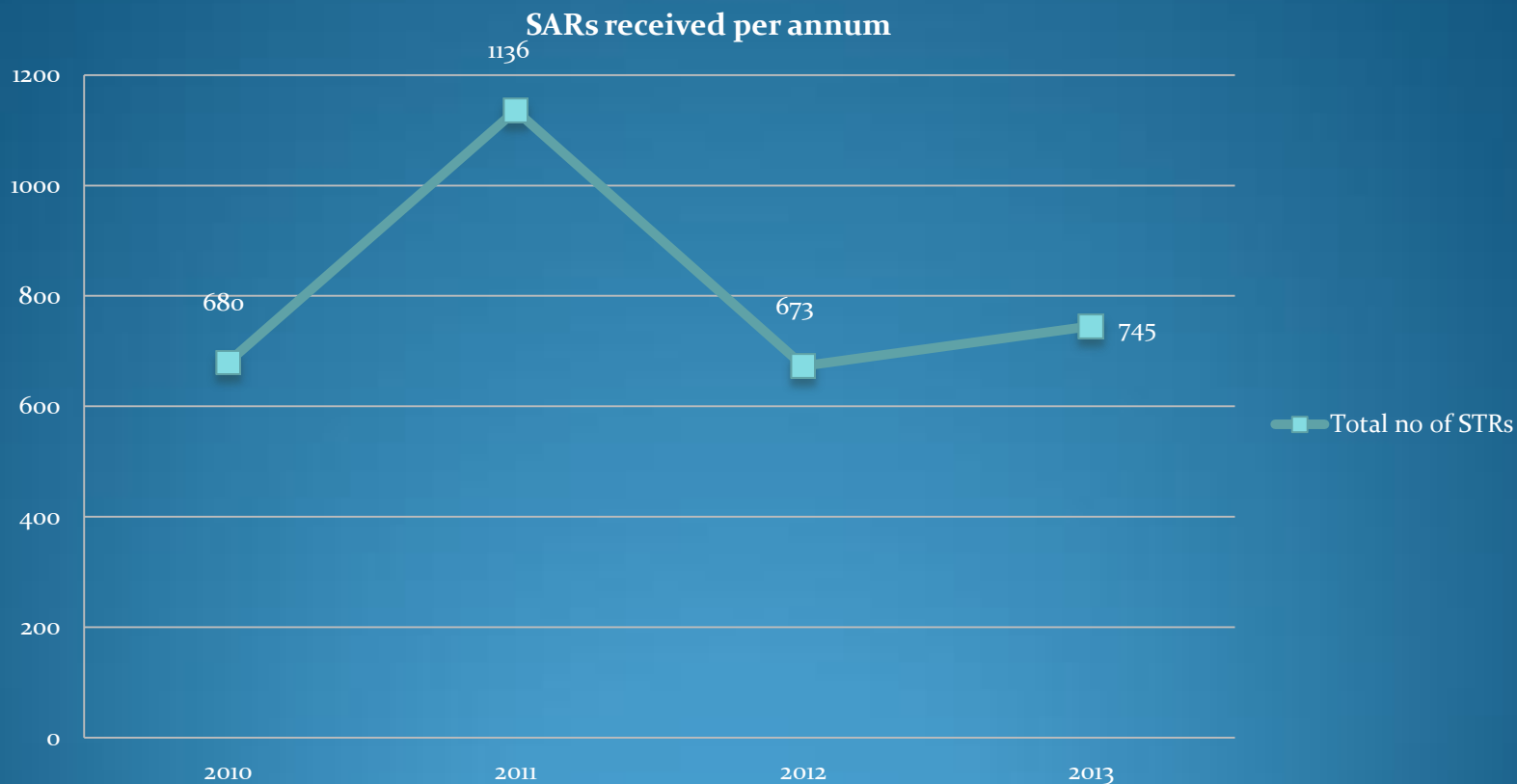


GFSC Handbook Chapter 10.7 – Terminating a Business Relationship

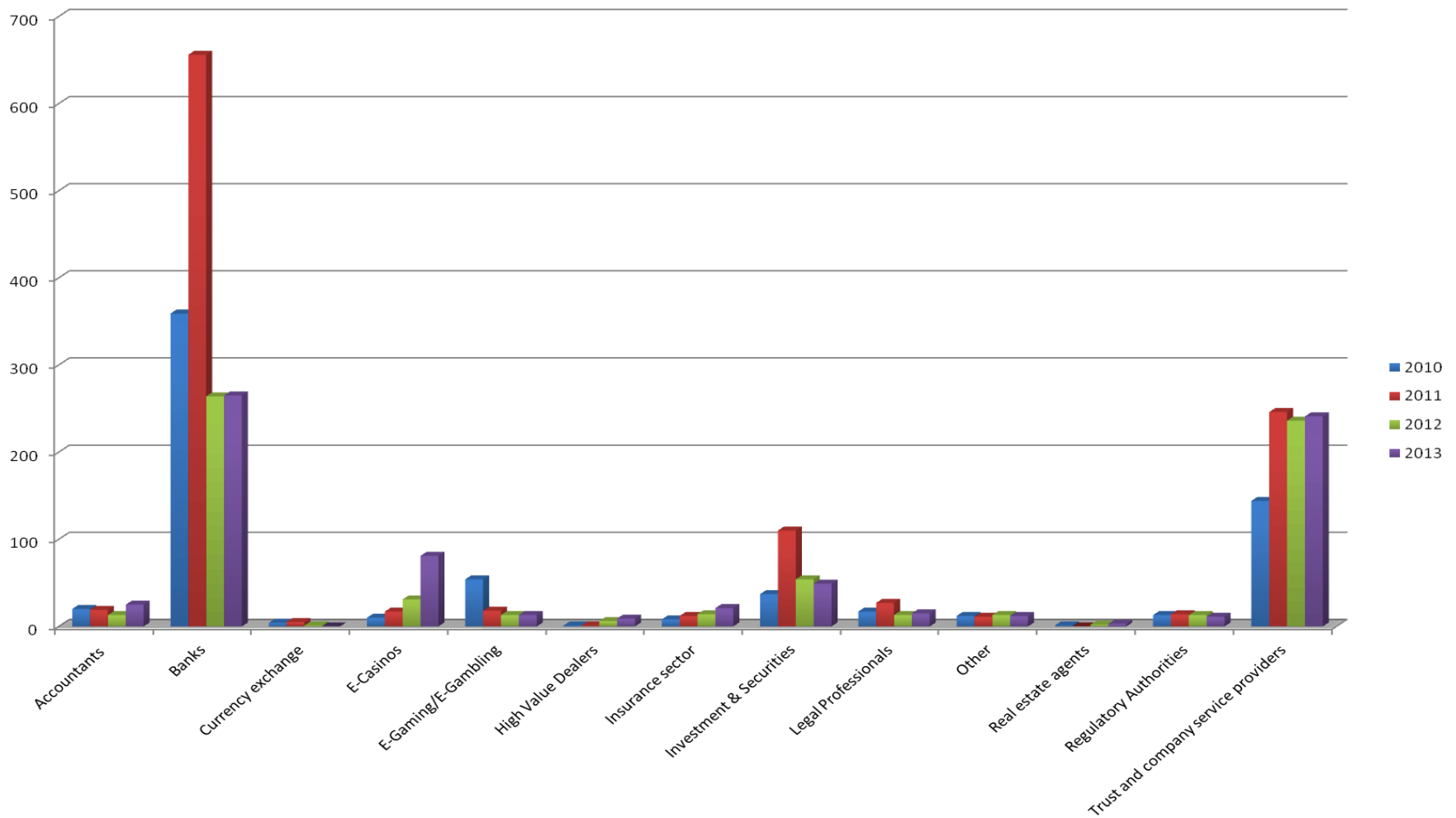
- SAR received relating to potential fraud
- Fraud ‘act of criminal conduct’
- FIS engage with FSB
- FIS engage with respective LE Authority
- Period of investigation / decision making required
- FSB encouraged to hold off exiting procedures
- FSB exits [without consent]



SAR Statistics



SARs Received by Sector 2010 - 2013



SAR Reporting Grounds for Suspicion

Grounds for Suspicion	Year			
	2010	2011	2012	2013
Adverse Due Diligence	3%	12%	17%	13%
Cash	4%	5%	9%	5%
Corruption/Bribery	2%	0%	1%	2%
Early redemption of product	0%	0%	0%	0%
Failure to Provide Due Diligence	4%	4%	3%	5%
Fraud/False Accounting/Forgery	23%	6%	10%	19%
Group Referral	0%	0%	0%	1%
High Risk Business Activity	1%	0%	1%	0%
Highly Transactional	2%	1%	2%	2%
Inadequate Due Diligence	2%	2%	2%	2%
Insider Dealing	0%	0%	1%	0%
Internet/Media	0%	2%	7%	4%
Layering	0%	0%	1%	0%
Other	3%	0%	0%	0%
Other (failure to forfeit vessel)	0%	0%	0%	0%
Other (Sanction Breach)	0%	0%	0%	0%
Rapid Transfer	1%	1%	1%	1%
Reactive/Defensive	7%	8%	10%	11%
Sensitive Jurisdiction	0%	0%	0%	0%
Service of order	1%	0%	0%	1%
Smurfing	1%	1%	0%	1%
Tax Evasion	40%	49%	23%	22%
Third Party Referral	0%	1%	2%	3%
Transaction Support Inadequate	3%	2%	4%	2%
Transaction Support Not Provided	1%	0%	1%	1%
Unexplained lifestyle	1%	4%	5%	4%
Unusual Forex	0%	0%	0%	0%
Total SARs	100%	100%	100%	100%

A current trend for reporting over the past 4 years, have been in relation to Tax Evasion. (4yr av 35% of SARs received)

A consistent trend for reporting in relation to Adverse Due Diligence and Fraud/False

Accounting/Forgery can be seen for the 4 year period.(4yr av 11.5% & 13% of SARs received)



Changes to Regulations

- Evaluation by Moneyval
- Review by Law Officers of the Crown – identified a number of amendments that could be made to the Bailiwick criminal justice legislation
- Amendments are ‘technical’
- One non- technical issue relating to information sharing



Proceeds of Crime

‘Tipping off’ – Section 41

- Subject to an exemption in respect of legal advice
- Currently does not expressly apply to disclosures made by
 - ❖ a client seeking legal advice, whether in relation to legal proceedings or more generally
 - ❖ Any other person in connection with legal proceedings (e.g. expert witness)
- Section 41 to be amended



Proceeds of Crime

‘Tipping off’ – Section 41

- Case Example
- Mr X is arrested for a money laundering offence
- Mr X seeks to obtain legal advice to assist in his defence for the offence arrested
- Mr X discloses to XYZ Law Firm details of the offence / investigation or
- Mr X discloses to ABC Forensic Accountants who have been instructed to assist in preparing his defence
- Disclosure for legal advice does not constitute an offence under the new changes



Disclosure Law

- Current wording – Failure to disclose knowledge or suspicion etc. that another person is engaged in ‘Money Laundering’ is criminal offence. Change in approach from time of IMF evaluation, current wording may be seen as falling short of the FATF standards
- First Ground - Introduce a positive duty to make a report into the Disclosure Law alongside existing offence for failure to do so.
- Second Ground – Obligation to report knowledge or reasonable grounds for suspicion that another person is engaged in ‘Money Laundering’ or that property represents the ‘Proceeds of Crime’
- Technical changes



Additional Information

- FATF standard – obtaining additional information
- Section 11 Disclosure Law – Home Department prescribe regulations
- Section 2 Disclosure Law – additional information from the FSB or prescribed business that has made the report. Technical amendment to Law to widen scope of section 2, no practical effect without changing regulations.
- No legal enforceable way to obtain additional information [except a Court order]



Additional Information

- Proposal to amend Disclosure Law regulations
- To expand the existing scope of the regulations to include the power to obtain additional information from affected parties
- Example:- Bank A discloses on client X – who has two further accounts at Bank B and C – FIS can request additional information from Bank B and C under the Regulations
- Home Department to consult all interested parties prior to amending the regulations



Prescribed Manner to Report

- Changes in the Prescribed Form
- Relevant transactions – wording to change to flag up existing requirement to report attempted transactions including when no business relationship has been established
- Reasons for Suspicion – ‘Suspected Underlying Offences’
 - ❖ Specify nature of offence i.e. Tax Evasion, OCG
- Changes required to THEMIS



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