



# **Financial Investigation Unit** **Cross Border Crime**

A Division of the Guernsey Border Agency

## THE OBLIGATION TO REPORT SUSPICION OF MONEY LAUNDERING / UPDATE FROM THE FINANCIAL INVESTIGATION UNIT

10<sup>th</sup> July 2014

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# Topics for discussion

- Legislation
- The current SAR regime
- GFSC Handbook – Obligation to Report [chapter 10]
- Definition of Suspicion
- SAR content
- Attempted Transactions
- Terminating a Business Relationship
- SAR Statistics
- Changes to Regulations and Legislation
- Typologies



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# Legislation

- The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999
  - Criminal Conduct (other than drug trafficking)
- Section 39 – Assisting another person to retain the proceeds of criminal conduct
  - Knowing or suspecting that ‘A’ is a person [or entity] is or has been engaged in criminal conduct or benefited from criminal conduct
  - Do you commit an offence?



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# YES – ‘Report it’

- Obligation to Report – knowledge or suspicion
  - Offence if you do not report [ summary conviction imprisonment of 12 months or a fine or on conviction on indictment to 14 years, a fine or both]
- Reporting Suspicion [‘Act’]
  - Disclosure before ‘he’ does the act concerned
  - ‘Act’ is done with the consent of a police officer
  - Disclosure after ‘he’ does the act and as soon as it is reasonable for him to make it

YES – 'Report it'



# Current SAR Regime

- 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
- Chapter 10 GFSC Handbook – Reporting Suspicion and Obligation to Report



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# Internal Reporting

- FSB and Prescribed Business must have appropriate and effective policies, procedures and controls.
- Report any suspicion to the MLRO [regardless of amount or if it is thought to involve tax].
- The MLRO will determine if the suspicion or knowledge must be disclosed to the FIS.
- No SAR – documented and retained.
- Can I make a SAR?



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# Definition of Knowledge

- Knowledge – means actually knowing something to be true
- Must have come to ‘you’ in the course of your business
- Can be inferred from the surrounding circumstances  
e.g. CDD process, asking questions
- Seek clarification or ask for evidence to support any statement or claim



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# 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
- A transaction or activity may not be suspicious at the time – may be raised later



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# Reasonable Grounds – ‘*KNOW*’ or ‘*Suspect*’

- Criminal Liability – Failure to disclose information
- Objective test of suspicion
- Inferred knowledge, or formed the suspicion that another person was engaged in money laundering, terrorist financing or criminal conduct
- INTERNAL REPORT



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# SAR Reporting

MLRO receives an internal report, which warrants an 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.



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# SAR Content – Reason for Suspicion

Please try to answer the following questions : -

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



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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.

# 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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## 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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# Fraud – Reporting Cases of Fraud

- Activity of Organised Crime Groups [OCGs]
- Fraud = ‘Criminal Conduct’
- Money laundering = possession of / 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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# Fraud – Reporting Cases of Fraud

- Subject to:-
  - ❖ Cannot identify the money launderer or whereabouts of any of the laundered property, and not reasonable to believe that the available information will or may assist in identifying 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.



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# 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



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# 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?



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# Current SAR Regime 2008 - 2012

- How 'effective' is the AML/CFT reporting regime?
- 3635 - STRs submitted and reviewed
- 295 - STRs linked to proceeds of crime investigations (active)
- 52 convictions
- 259 years prison sentences
- £2,283,447 criminally confiscated
- £589,148,710 by court penalty

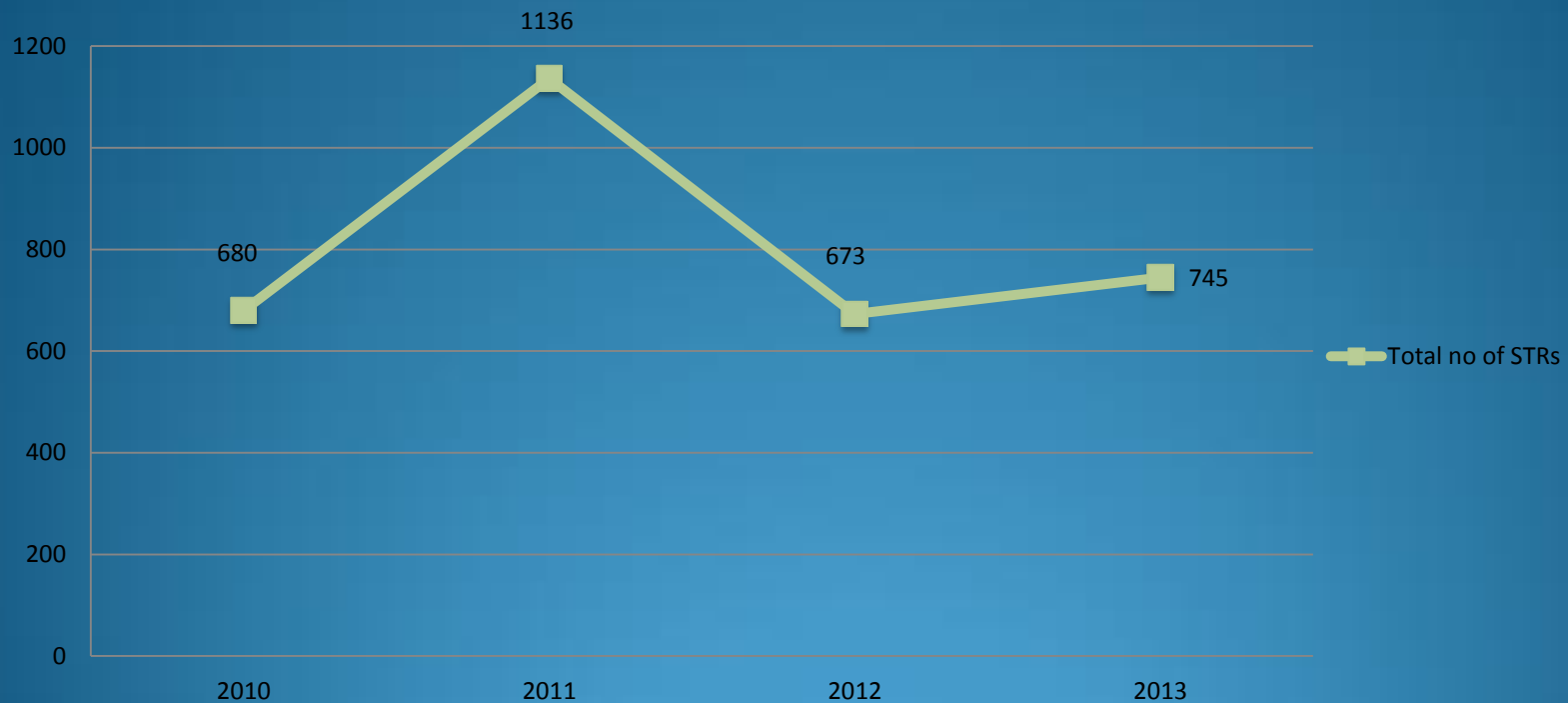


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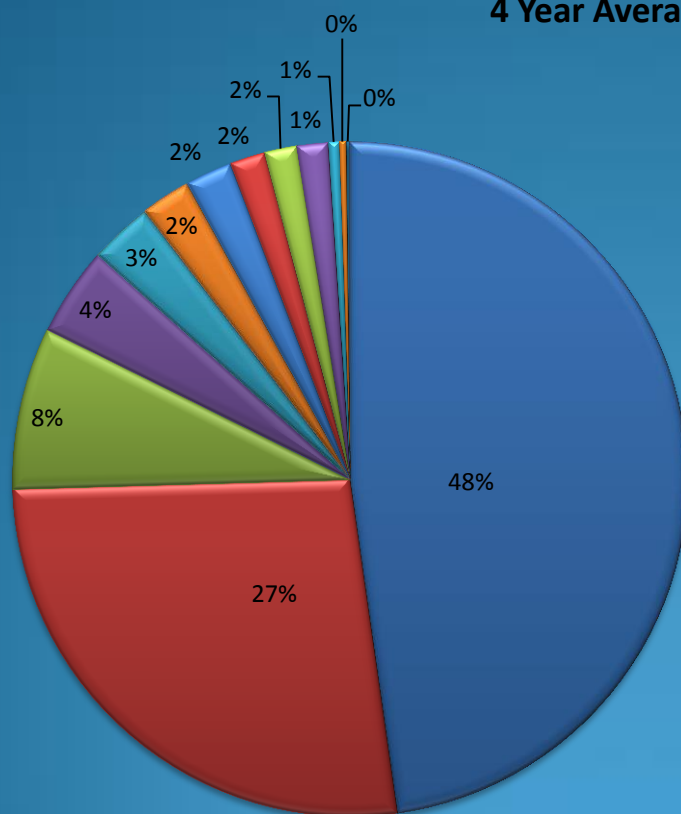
# Current SAR Regime

**SARs received per annum**



# Current SAR Regime

**SARs by Reporting Entity  
4 Year Average as a %**

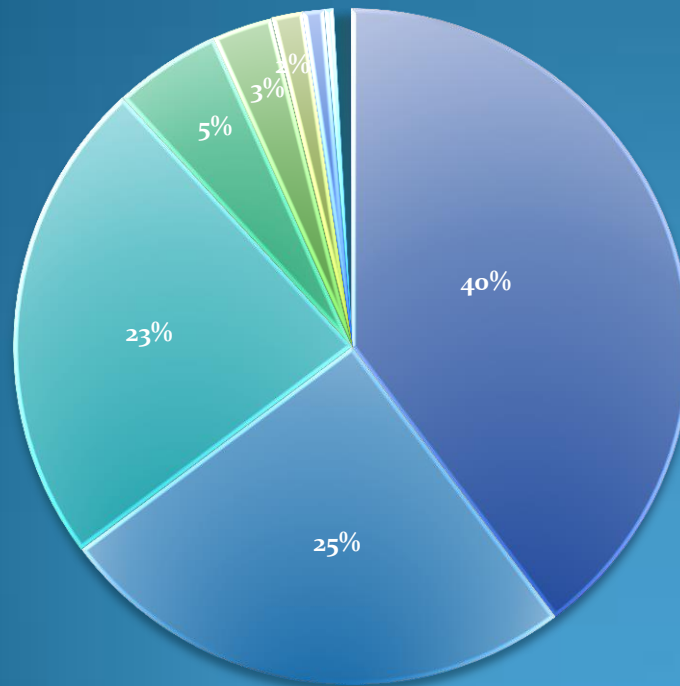


- Banks
- Trust and company service providers
- Investment & Securities
- E-Casinos
- E-Gaming/E-Gambling
- Accountants
- Legal Professionals
- Insurance sector
- Regulatory Authorities
- Other
- High Value Dealers
- Currency exchange
- Real estate agents



# Current SAR Regime

Percentage of SARs by Suspected Criminality  
2011-2013



- Tax evasion
- Money laundering
- Fraud, false accounting or forgery
- Corruption & bribery
- Illicit trafficking in narcotic drugs and psychotropic substances
- Other
- Insider trading and market manipulation
- Robbery/theft
- Trafficking in human beings and migrant smuggling
- Terrorist financing & terrorism
- Illicit arms trafficking
- Participation in an organised criminal group and racketeering
- Sexual exploitation, including sexual exploitation of children
- Murder, grievous bodily injury

# 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



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# 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



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## Additional Information

- Provides the FIS with powers under the Disclosure (Bailiwick of Guernsey) Law, 2007 to request additional information relating to a STR
- 2011 – 26 Section 2 letters issued
- 2012 – 24 Section 2 letters issued
- EVIDENCE ?



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# 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. 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]



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# 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



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# Typology 1 – Cash Offence

- Male A – non resident [Italy] seeks cash withdrawal €15,000 obtained from a inheritance
- Cash not wire transfer for tax purposes
- Collecting cash with Female A
- Suspicion?
- SAR submitted – FSB engage with FIS
- Male A and Female A informed of requirement to complete a cash declaration form



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# Typology 1 – Cash Offence

- Male A and Female A identified travelling to St Malo by car
- No restricted items [including cash] declared
- Examination of vehicle identified cash in rear spare wheel compartment
- Male A did not wish to pay inheritance tax
- Male A and Female A fined €3,000





# Typology 2 – CDD ‘Suspicion’

- New business relationship with a client
- Client provides CDD which is verified
- Client informs you that he is an Australian living in France for tax purposes
- Source of funds not verified
- Client reluctant to provide any information as to source of funds
- Attempts to verify source of funds failed – client becomes more and more allusive
- CDD process not complete

# Typology 3 – Sanctions

- A criminal investigation into possible breach of EU sanctions
- Identified by a FSB and resulted in a SAR being filed with the FIS [knowledge or suspicion]
- Example of a Sanctions breach and relevant policies not adhered to by FSB



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# Typology 3 - Sanctions

- Sanctions Screening - IMPORTANT
- Payment to listed individual - missed
- Enhanced CDD and KYC not undertaken
- Open Source check [not listed – DO MORE]
- Review of accounts identified suspicious payment to listed individual
- Internal Reporting to MLRO



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# Typology 3 - Sanctions

- SAR submitted to FIS
- Case adopted for criminal investigation [sanctions committee]
- Intelligence developed and disseminated to the Financial Criminal Team, GBA
- Production order served locally
- Evidence Obtained via Court Order



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# THE OBLIGATION TO REPORT SUSPICION OF MONEY LAUNDERING AN UPDATE FROM THE FINANCIAL INVESTIGATION UNIT



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