

CONSULTATION PAPER.

DISCLOSURE OF SUSPICION – OBTAINING ADDITIONAL INFORMATION

ISSUED BY: THE STATES OF GUERNSEY HOME DEPARTMENT (“THE DEPARTMENT”)

DATE OF ISSUE: Wednesday 9th July 2014

RESPONSES REQUIRED BY: Wednesday 6th August 2014

Submissions should be made in writing to:

**The Chief Officer
The States of Guernsey Home Department
Sir Charles Frossard House,
La Charroterie,
St Peter Port,
Guernsey
GY1 1FH.**

Submissions will be used solely for the purposes of this consultation as set out above. They will be considered by the Department who may wish to use them for additional consultation with other interested bodies (including, but not limited to, the Policy Council, the Guernsey Border Agency, the Law Officers of the Crown, the Guernsey Financial Services Commission and the Alderney Gambling Control Commission). Those making submissions should clearly indicate, within the body of the submission, if they wish their contributions to remain anonymous for such additional consultation purposes.

SUMMARY

The Department is seeking comments in relation to a proposed amendment to the Disclosure (Bailiwick of Guernsey) Regulations, 2007 and the Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007 (“the existing regulations”). The proposed amendment will enable the Financial Intelligence Service (“FIS”) to obtain additional information relating to a disclosure from persons, other than the person who made the disclosure.

The Department also intends to make some changes to the Disclosure Form as it currently appears in the Schedule to the existing regulations. These changes are set out in an appendix to this paper for information only, as they are not the subject of this consultation exercise and no response in respect of them is required.

BACKGROUND

Under the existing regulations, the FIS has the power to demand additional information from a party who has made a report of suspicion of money laundering or terrorist financing. This power applies only to the party who has made a report in a particular case, so a report made by one institution does not enable the FIS to obtain additional information relating to that report from another institution in the jurisdiction without a court order, even if the subject of the report has a business relationship with that second institution.

The Department considers that this should now be remedied, in order to assist the FIS in the effective exercise of its functions. This would also comply with the Financial Action Task Force (“FATF”) standards on money laundering and terrorist financing.

When the International Monetary Fund evaluated the Bailiwick in 2010, it highlighted the fact that the existing power to seek additional information did not apply to all parties who are required to make reports in line with international standards, but just to the reporting entity in any given case. It is clear from the feedback from other international evaluators since then that the Bailiwick will be marked down on this point in future evaluations if it is not remedied. Although to date the restricted nature of this power has not in fact caused any difficulties in practice, clearly there is therefore a need to implement the proposed amendment to the existing regulations if the Bailiwick is to remain compliant with the FATF standards.

THE PROPOSED AMENDMENT

The Department is mindful of the need to ensure that the Bailiwick’s legal framework remains proportionate, and believes that it would not be appropriate to give the FIS an unlimited power to demand information from third parties. Therefore, it is proposed that a new provision should be introduced into the existing regulations to give the FIS the power to request additional information relating to a disclosure from third parties, but this power will be subject to some safeguards in the form of additional requirements in the regulations before such a request can be made, and some internal policies and procedures which the FIS will adopt. These proposed safeguards will also address points that arose in preliminary discussions which the FIS had with a group of Money Laundering Reporting Officers from a cross section of regulated bodies including members of the banking, fiduciary and investment sectors.

The additional requirements in the regulations are that if a disclosure of suspicion of money laundering or terrorist financing has been made, the FIS can only request information from a third party relating to that disclosure if it is satisfied that there are reasonable grounds to believe that the third party possesses such information, and also that there are reasonable grounds to believe that the information is necessary to the FIS for the proper discharge of its functions. The existing provisions in respect of the person, who has made the disclosure, which do not contain these additional requirements, will be unchanged.

The internal policies and procedures that the FIS will adopt if the proposed amendments are made will be summarised in a guidance document issued by the FIS. This document will reiterate that the FIS will only request information from a third party if there are reasonable grounds that are proportionate, rational and justified to believe that the information is

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|--|--------|
| Tel: 714081 Fax: 710466 E-mail: fiu@gba.gov.gg | |
| Disclosing Organisation: | |
| Reporting MLRO: | |
| Tel: | Email: |

| | | |
|----------------|--|--------------------------------|
| Your reference | | |
| FIS reference | | |
| Date | | Consent request? Yes/No |

1. MAIN DISCLOSURE SUBJECT

Individual

| | |
|--|--|
| Title | |
| Full name <i>(please include former and other names)</i> | |
| Gender | |
| Date of birth /Alias date of Birth | |
| Estimated age | |
| Place of Birth | |
| Town of Birth | |
| Nationality(ies) | |
| Occupation | |
| Employer | |
| Address(es) including postal codes | |
| Country of Residence | |
| Contact details, e.g. telephone, fax, email | |
| Passport number(s) and dates | |
| Passport issuing country(ies) | |
| Other identification numbers and dates, e.g. national identity card, driving licence etc. <i>(please specify type)</i> | |
| Any other relevant information | |

and/or Organisation

| | |
|--|--|
| Type of Organisation i.e. company, trust, non-profit organisation or other | |
| Name <i>(please include former and other names)</i> | |

necessary to assist in the investigation of offences relating to money laundering, proceeds of criminal conduct or terrorist financing.

The Department believes that these proposals strike the right balance between protecting confidentiality on the one hand and providing the FIS with the necessary tools to function effectively on the other as the information will be used for the prevention, detection or investigation of crime within or outside the Bailiwick pursuant to section 29 (1) of the Data Protection (Bailiwick of Guernsey) Law, 2001. The new proposals will also comply with international standards as defined by FATF.

THE SCHEDULE

The proposed changes to the Schedule referred to above, which are included for information only, are set out under headings 4 and 6 of the Disclosure Form. The new information under heading 4 clarifies the scope of transactions that are covered by the existing reporting obligations in the legislation and in particular makes it clear that the obligation applies even though no business relationship may then be established between the reporting entity and the disclosure subject. The change to heading 6 requires reporting entities to identify suspected underlying offences where possible.

THE HOME DEPARTMENT

MARCH 2014

APPENDIX

DRAFT SCHEDULE

Regulations 1 and 5

FORM OF DISCLOSURE

DISCLOSURE FORM

STRICTLY PRIVATE AND CONFIDENTIAL

Please submit to:

The Guernsey Border Agency, Financial Investigation Unit:
Financial Intelligence Service,
Ozanne Hall,
Mignot Plateau,
Cornet Street,
St Peter Port,
GY1 1LF

| | |
|---|--|
| Legal registration / identification number | |
| Address(es) including postal codes | |
| Contact details, e.g. telephone, fax, email | |
| Place of Incorporation / date | |
| Country registered / established | |
| Date registered / established | |
| Any other relevant information | |
| (Trust) Country of Administration Country Settled | |
| (non-profit organisation) Area of Benefit Area of Operation | |

2. ASSOCIATED SUBJECTS (including organisation officials)

| | |
|--|--|
| Official Type | |
| Title | |
| Full name <i>(please include former and other names)</i> | |
| Date of birth | |
| Address(es) including postal codes | |

For further associated subjects, please copy the formats used above

3. RELEVANT ACCOUNTS

| | |
|---|--|
| Account Name | |
| Account Holder(s) | |
| Financial Institution/ SWIFT/BIC address | |
| Account / product type, e.g. investment, company etc. | |
| Account number and sort code | |
| Date account opened | |
| Date account closed | |
| Account balance / value | |
| Balance / value date | |

For additional accounts or products, please copy the format used above.

4. RELEVANT TRANSACTIONS

Please note that the obligation to report suspicion applies to all types of transaction and attempted transaction, including attempted transactions in circumstances where there is no existing business relationship with the disclosure subject and no such business relationship is subsequently established.

| | |
|--|--|
| Transaction date | |
| Transaction amount | |
| Transaction type / method | |
| Transaction parties <i>(please use person / organisation format as above where more detailed information is available)</i> | |
| Was the transaction carried out? | |
| Was the transaction request made in the context of an existing business relationship? If not, was a business relationship then established? | |

For additional transactions, please copy the format used above.

5. CLIENT RELATIONSHIP

| | |
|--------------------------------|--|
| Current status of relationship | |
| Date relationship commenced | |
| Date relationship ended | |

6. REASONS FOR SUSPICION

| |
|--|
| <i>Please give full account of circumstances for suspicion</i> |
|--|

| | |
|-------------------------------|--|
| Suspected Underlying Offences | <i>Please specify where possible the nature of the offences which you suspect may underlie or otherwise be relevant to the transaction, for example fraud or corruption, (whether carried out or not), together with the grounds for that suspicion.</i> |
|-------------------------------|--|

| | |
|--|---|
| This disclosure is made under the <i>(please delete as appropriate)</i> | Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 |
| | Disclosure (Bailiwick of Guernsey) Law, 2007 |

7. DETAILS OF ANY REQUEST FOR CONSENT

Please specify the act or transaction for which consent is sought

8. ADDITIONAL INFORMATION (including explanation of any attachments)

NB - Please also provide as much information and documentation 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, e.g. copy identification and account opening documents, account statements, contract notes, minutes, correspondence, structure charts, transcripts, etc.

