



Financial Investigation Unit Cross Border Crime

A Division of the Guernsey Border Agency

Financial Investigation Unit (FIU)

Attempted Transactions

1. Foreword

The following is a quote from the Deputy Managing Director of the International Monetary Fund [‘IMF’] [April 2014] in relation to the threat of money laundering and financing of terrorism:-

"Money laundering and the financing of terrorism are financial crimes with economic effects. They can threaten the stability of a country's financial sector or its external stability more generally. Effective anti-money laundering and combating the financing of terrorism regimes are essential to protect the integrity of markets and of the global financial framework as they help mitigate the factors that facilitate financial abuse. Action to prevent and combat money laundering and terrorist financing thus responds not only to a moral imperative, but also to an economic need."

This guidance has been published to assist Financial Services Businesses (‘FSB’s) and prescribed businesses in determining whether a Suspicious Activity Report [‘SAR’] should be submitted to the Financial Intelligence Service [‘FIS’] following (or during) an ‘Attempted Transaction’.

2. Background

There is an obligation under the Financial Action Task Force [‘FATF’] international standards on combating money laundering and the financing of terrorism and proliferation to report suspicious transactions as defined under recommendation 20. Financial institutions are required, by law, to promptly report their suspicions to the Financial Investigation Unit [‘FIU’]. The FIS is embedded within the FIU and is the competent authority for the receipt of SARs in the Bailiwick of Guernsey.

The FATF recommendations direct that all suspicious transactions, including ‘Attempted Transactions’, should be reported regardless of the transaction amount.

The purpose of this document is to provide guidance and advice relating to ‘Attempted Transactions’ and the requirement in the Bailiwick for FSBs and prescribed businesses to report any knowledge or suspicion of suspicious ‘Attempts’ to the FIS.

3. Legal Framework

The legislation framework for the reporting obligations is the Disclosure (Bailiwick of Guernsey) Law, 2007 [Sections 1 to 3] in respect of money laundering of proceeds of any person's criminal conduct, and the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 in respect of terrorist financing [Sections 12, 15 and 15C]. The aforementioned legislation and the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 specifically define 'Money Laundering' as **any act which – constitutes an 'Attempt', 'Conspiracy' or 'Incitement' to commit an offence.**

Moreover, the obligation to report suspicion applies to 'Activity' rather than just to transactions. Therefore 'Attempts' fall within the remit of the legal framework and a FSB or prescribed business has a legal obligation to report suspicious 'Attempted Transactions or Activity' to the FIS in the form of a SAR.

4. Guernsey Financial Services Commission Handbooks

The Guernsey Financial Services Commission's ['GFSC'] Handbooks for FSBs and prescribed businesses [Chapters 10 and 8 respectively] outline the statutory provisions for reporting and disclosing suspicion to the competent authority within the Bailiwick, the Financial Intelligence Service ['FIS'].

References to a 'Transaction' or 'Activity' in these Chapters include an 'Attempted or Proposed Transaction', 'Attempted Activity,' and 'Attempts' or 'Proposals' to enter into a business relationship or to undertake an occasional transaction.

5. Attempted Transactions

There is no generic definition of an 'Attempted Transaction' in the GFSC Handbook or in the legal framework. An 'Attempted Transaction' could be classified as one that a client intended to conduct with a FSB or prescribed business and took some form of action or activity [**act**] to do so. An 'Attempted Transaction' is different from a single request for information, such as an enquiry as to the fee applicable to a specific transaction. The client must enter into negotiations or discussions with the FSB or prescribed business to conduct the transaction or activity and such activity must involve specific measures to be taken by either the client or the FSB or prescribed business.

The obligation to report suspicion applies to all types of activity and 'Attempted Transactions or Activity', including circumstances where there is no existing business relationship with the client and no such business relationship is subsequently established. Therefore, during the course of 'Attempting' to set up a new business relationship ['Activity'], due consideration should be given during the CDD process to key points raised with or by the client e.g. if the client fails to explain source of funds; if the purpose of account or advice required does not make sense; or if questions are asked about disclosure to tax authorities of existence of account or disclosure to other authorities. Depending upon the information received, a FSB or prescribed business may form a suspicion of money laundering or terrorist financing in which case a SAR must be submitted to the FIS.

Further guidance is provided under Chapter's 10 and 8 of the GFSC Handbooks.

5 (a). Examples of suspicious 'Attempted Transactions or Activity'

The following are examples of 'Attempted Transactions or Activity' that may give rise for sufficient knowledge and suspicion to submit a SAR. The FIS require sufficient information on any entity (i.e. forename, surname and date of birth or company name, address, bank account numbers (in relation to attempted frauds etc.) to undertake further investigations therefore during all of the following examples the client would have provided the institution or business involved with sufficient information to proceed with a SAR i.e. full name details, address, etc. If you are unsure as to whether a SAR should be submitted to the FIS please contact the FIS (although of course, it is still the reporting FSB's/prescribed business' decision whether or not to submit a SAR). **General**

- A FSB/prescribed business refuses to accept a deposit because the client refuses to provide proof of identification as requested.
- A client attempts to open an account(s) in what appears to be a fictitious name or in the name of other persons.
- A client attempts to open a bank account and provides identification documents which are suspected to be forged or false.
- A client provides unclear or doubtful information during account opening and CDD process about source of funds; future activity on accounts or disclosure of information to tax or other authorities.
- A client is reluctant to provide his/her details and verification of identity proves unusually difficult.
- A client attempts to use cash to complete a proposed transaction when this type of business transaction would normally be handled by cheques or other payment instruments.
- A client contacts a FSB/prescribed business about a business opportunity that involves unusually high sums of money and/or the service that is being requested is required as a matter of urgency.

Insurance Sector

- A client attempts to use a third party cheque to make a proposed purchase of a policy.
- A securities dealer or life insurance agent refuses to process a transaction for which the client insists on using cash because their business practice is not to accept cash.
- A client attempts to purchase life assurance policies for a number of foreign nationals. (In one case, for instance, the underwriter was requested to provide life coverage with an indemnity value identical to the premium. There were also indications that in the event that the policies were to be cancelled, the return premiums were to be paid into a bank account in a different jurisdiction to the assured.)

Real Estate

- A client of a real estate agent starts to make an offer on the purchase of a house with a large deposit, but will not finalise the offer once asked to provide identification and source of funds.

Accountants

- A client asks an accountant to facilitate a financial transaction involving a large amount of cash exceeding £10,000 without reasonable explanation.

Lawyers

- A client engages a lawyer to purchase a property or make other investments. The client decides not to proceed with the proposed purchase or investment for no reasonable explanation when asked for CDD and source of funds for the purchase of the property and/or investment.

High Value Dealers

- A trader in goods has a request to purchase a vehicle or vessel for cash [exceeding £7,500] in one single transaction or two transactions of £5,000 and £2,500 respectively, without reasonable explanation.

6. Summary

To meet international standards on combating money laundering and the financing of terrorism and proliferation all Suspicious Activity Reports ['SARs'] should be reported to the FIS regardless of the transaction amount. The reporting of SARs to the FIS should include any suspicious '**Attempted Transaction**' or '**Attempted Activity**'. This guidance document, in conjunction with other resources available, will assist FSBs and prescribed businesses in identifying '*Attempts*' and reporting their suspicion to the FIS.

Disclaimer

The information provided in this document is for guidance purposes only to assist FSBs and prescribed businesses accordingly. It is not intended to amount to advice on which you should rely, and should not be treated as a substitute for professional advice based on your specific circumstances.

The information contained within this document is subject to change.

Phil Hunkin

Head of the Financial Investigation Unit

Guernsey

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