



Bailiwick of Guernsey
Financial Intelligence Service

Guidance on Attempted Transactions

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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 the 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 (FSBs) and Prescribed Businesses (PBs) together (Licensees) in the determination of whether a Suspicious Activity Report (SARs) should be submitted to the Financial Intelligence Service (FIS).

Background

There is an obligation under the Financial Action Task Force (FATF) international standards on combating money laundering, financing of terrorism and proliferation financing to report suspicious transactions, including attempted transactions as defined under recommendation 20. Financial institutions are required, by law, once they have formed a suspicion to promptly report to the Financial Intelligence Unit. The Financial Intelligence Service (FIS) is the competent authority for the receipt of SARs in the Bailiwick of Guernsey.

The FATF recommendations direct that all suspicious transactions, including *Attempted Transaction or Attempts*, should be reported regardless of the amount or Act.

The purpose of this document is to provide guidance and advice as to the definition of an *Attempted Transaction* and the requirement in the Bailiwick for Licensees to report any knowledge or suspicion of *Attempted Transactions or Attempts* to the FIS.

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 the 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]. This 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 Licensee

has a legal obligation to report *Attempted Transactions or Activity* to the FIS in the form of a SAR.

Guernsey Financial Services Commission (GFSC)

The GFSC's Handbook for Licensees [Chapters 13] outlines the statutory provisions for reporting and disclosing suspicion to the competent authority within the Bailiwick, the FIS.

Reference to a *Transaction or Activity* in Chapter 13.4 includes an *Attempted or Proposed Transaction or Attempted Activity*. Further reference in this chapter includes *Attempts or Proposals* to enter into a business relationship or to undertake an occasional transaction.

Attempted Transactions

There is no generic definition of an *Attempted Transaction* in the GFSC Handbook or in the legal framework. However there is a legal obligation for a Licensee to report knowledge or suspicion of *Attempted Transactions or Activity*.

An *Attempted Transaction* could be classified as one that a client intended to conduct with a Licensee 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 about the fee applicable to a specific transaction. The client must enter into negotiations or discussions with the Licensee to conduct the transaction or activity and such activity must involve a tangible act to be taken by either the client or the Licensee.

The obligation to report suspicion applies to all types of transaction including *Attempted Transactions, Act or Attempts* including in circumstances where there is no existing business relationship with the client and no such business relationship is subsequently established. If during the course of *Attempted Transaction, Act or Attempts* to set up a new business relationship, the client fails to comply with the required Customer Due Diligence (CDD) process, this could constitute sufficient grounds to submit a SAR to the FIS. 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.

The following examples may be indicators of an *Attempted Transaction* and may give rise for sufficient knowledge and suspicion to submit a SAR. The FIS require sufficient information on any individual or entity (i.e. forename, surname and date of birth or company name, address, 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 considered appropriate.

- **General** A financial entity/reporting entity refuses to accept a deposit because the client declines to provide proof of identification as requested or verification proves unusually difficult.
- 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 attempts to use cash to complete a proposed transaction when this type of business transaction would normally be handled by cheques or other payment methods.

E-gaming

- A financial entity or casino refuses to accept a deposit because the client refuses to provide identification as requested

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 requests advice from an accountant / tax adviser about regularising his / her tax affairs which could lead to suspicion that tax evasion has occurred if they do not follow up on advice to bring their tax affairs up to date.

Money Service Businesses

- A money service business will not process a request to transfer a large amount of funds because the client requesting the transfer refuses to provide identification requested.

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 transaction.

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.

Securities Dealer

- A securities dealer refuses a request to purchase a security for a proposed new client, and a business relationship is not established because possession of insider information is suspected.

Summary

To meet international standards on combating money laundering, financing of terrorism, and proliferation financing all SARs should be reported to the FIS regardless of the transaction amount. The reporting of SARs to the FIS should include any *Attempted Transactions, Acts or Attempts* where a Licensee has formed a suspicion.

This guidance document, in conjunction with other resources available on the GFSC, FIS and FATF's websites, will assist Licensees in identifying *Attempted Transactions, Acts or Attempts* and reporting their suspicion to the FIS.

Disclaimer

The information provided in this document is for guidance purposes only to assist Licensees 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 FIS which is the competent authority for the filing of SARs, although cannot give legal advice, and can be contacted on telephone number 01481 714081 or by email: fis@gba.gov.gg