



Bailiwick of Guernsey
Financial Intelligence Unit

Guidance on the Submission of Suspicious Activity Reports (SARs)

Financial Intelligence Unit

Published April 2023

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Guidance on the submission of Suspicious Activity Reports (SARs)

1. Overview

Suspicious Activity Reports (SARs) are disclosures submitted to the Financial Intelligence Unit (FIU) via the THEMIS online reporting system, under the provisions of The Disclosure (Bailiwick of Guernsey) Law, 2007, and The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002.

This document provides guidance to all reporting entities on how to ensure that SARs submitted to the FIU are of a consistently high quality. It outlines the type of information required to enable the FIU to fully understand the relationship held and the nature of the suspicion pertaining to it, in order that the FIU can make an informed decision as to how to develop the information provided.

Good quality SARs allow for information to be efficiently and effectively analysed and developed by the FIU for dissemination to overseas competent authorities, the Bailiwick's Economic and Financial Crime Bureau and other government and regulatory authorities in order to combat financial crime, and in particular, money laundering, terrorist financing and proliferation financing.

It is the responsibility of the person making the required disclosure to submit all of the relevant information. In addition to the guidance contained in this document, attention is also drawn to the FIU guidance on the consent regime and contents of Chapter 13 ("*Reporting Suspicion*") of the Guernsey Financial Services Commission *Handbook on Countering Financial Crime and Terrorist Financing*.

2. Legal Obligations

It is an offence punishable by up to 5 years' imprisonment for a person to fail to submit a SAR when, in the course of a business, they:

know, suspect, or have reasonable grounds for knowing or suspecting that another person

- is engaged in money laundering, or that property is, or is derived from, the proceeds of criminal conduct;
- or that another person is engaged in terrorist financing, or that property is, or is derived from terrorist property;
- or that another person is engaged in proliferation of weapons of mass destruction, or the financing of the proliferation of weapons of mass destruction.

You must therefore submit a SAR if:

- you know that the relevant facts exist; or
- you think there is a possibility, which is more than fanciful, that the relevant facts exist (i.e. you have a reportable subjective suspicion - note that a vague feeling of unease does not suffice); or
- there are reasonable grounds for suspecting that the relevant facts exist (i.e. objectively such grounds exist regardless of your subjective state of mind).

Bear in mind that a reasonable person will not have a subjective suspicion in the absence of reasonable grounds for suspicion. The reporting regime exists to alert the FIU to information which can lead to the development of valuable intelligence. **If there are, in reality, no reasonable grounds for suspicion, you should not have such a suspicion and should not be filing a SAR.**

Reporting Entities must have appropriate policies, procedures, and controls in place in respect of supporting suspicion to the FIU.

3. Negating Suspicion

Prior to submitting a SAR you should make appropriate enquiries to clarify the situation and which might result in suspicion being negated. This important step is sometimes overlooked but is critical to the operation of an efficient system.

Whilst the tipping-off offence prevents you from disclosing information relating to the submission of a SAR, it does not prohibit the making of appropriate enquiries with a view to negating suspicion. You cannot tell a client that you have submitted, or are going to submit, a SAR. However, you can, for example, ask them: to explain an adverse reference in open-source material; to provide additional Customer Due Diligence (CDD); to provide information to verify Source of Funds or Source of Wealth (SOF/SOW); or to verify tax compliance. These enquiries can all be framed as part of your compliance requirements without suggesting that you are considering making a disclosure to the FIU.

A transaction or activity which appears unusual is not necessarily suspicious. An unusual transaction or activity is, in the first instance, likely to be a basis for further enquiry, which may in turn require judgement as to whether there is any reasonable suspicion. As an example, an out of the ordinary transaction or activity within a business relationship should prompt enquiries about the transaction or activity.

There may be a number of reasons for disquiet, either about CDD information or because of the recognition of other “red flags”. Queries should be made of the customer or other key principals in order to assist in formulating or negating a suspicion. For example, additional information as to source of funds could be sought, or a more detailed rationale

as to the commercial basis of a transaction. The answers to these queries might explain a transaction so that suspicion is negated. Alternatively, such answers, or the lack of any prompt response to the queries, might fail to negate, or might enhance suspicion.

4. Content of the SAR

A SAR should set out a clear factual account of the circumstances so that the FIU can readily understand what has prompted suspicion and can easily ascertain all of the other details relevant to its intelligence analysis.

To assist in that process the THEMIS online reporting system leads an MLRO through a number of fields designed to extract relevant information. Some of these fields (shaded in yellow) are mandatory and must all be completed before the SAR can be submitted. **There are also optional fields which seek equally important information. It is essential that you complete all of those which apply in your case.** (The only reason these fields are not mandatory is that otherwise you would be prevented from filing a SAR at all if the field did not apply in your case.)

Where information is sought in a particular place it is important that the information is given in that place, rather than simply being included within some other free text box. This is so that data is readily usable and searchable within THEMIS, including the operation of certain system functions.

In addition to these fields there are a number of free text boxes where further information can be entered. Contextual help is available wherever you see a **?** symbol.

Bear in mind, particularly when entering free text, the need to:

- keep your language concise and clear
- limit text to the appropriate subject matter for each text box (do not try to tell the whole story in one text box)
- set matters out chronologically giving clear dates
- avoid jargon and acronyms

You may find it helpful to bear in mind the following questions when structuring your text:

- Who is involved?
- How are they involved?
- How did the circumstances arise?
- What is the criminal / terrorist property?
- What is the value of the criminal / terrorist property (estimated if necessary)?
- Where is the criminal / terrorist property? (e.g. property in Spain, investments held in Switzerland etc.)
- When are the circumstances planned to happen?
- When did the circumstances arise?
- Why are you suspicious or how do you have knowledge?

Every SAR should, as a minimum:

- clearly define the suspected criminality
- clearly demonstrate the reason for suspicion
- describe in sufficient detail the purpose and intended nature of the business relationship or occasional transaction
- describe in sufficient detail the assets under management, including their value and location
- clearly outline any suspected proceeds of crime
- clearly indicate how the Reporting Entity will proceed with the relationship

5. Completing the SAR on THEMIS

Subjects

THEMIS will first ask you to identify a Subject of the SAR. This should be the primary subject. You first have to select the type of subject. This will be a company, an individual, a trust or foundation, an Non-Profit Organisation (NPO), or another organisation. (Additional relevant subjects can be added later.) Once you click on *Add New Suspicious Activity Report* you will be prompted to enter details for the subject relevant to its type. All boxes shaded in yellow are mandatory fields. Not all details are mandatory as not all will apply in all cases. However, **you should complete as many details as you are able to for each subject.**

Once this is done you click on *Create Suspicious Activity Report* to create the SAR for completion. At this point THEMIS will create a 7 – 9 digit SAR reference number, which will be quoted on any future correspondence relating to the SAR. Any future updates should be made to this SAR by using the Further Information tab, not by creating a new SAR.

In the Subjects Tab You will now be prompted to provide further information about the primary subject. For example in the case of a company this will include the identity of its beneficial owner(s), shareholder(s) and director(s). Again, **complete as many details as are within your knowledge.**

Next click Save. You can now add further Subjects in the same manner as for the primary subject. **You should include each relevant individual or entity as a subject**, including identifying each relevant legal person or legal arrangement. For example, in a trust structure you should include as subjects: the trust; any relevant underlying companies including any relevant subsidiaries; the trustee; the settlor; the beneficiaries and any protector. Click Exit after each new Subject and add further subjects if applicable until **details have been given for all relevant subjects.**

It is appreciated that the amount of information held by the Reporting Entity will vary from subject to subject, depending on the nature of the relationship. All available details must be provided, which is to say that **every box must be completed unless the relevant information is not available**. Where information is not available, and where, by the nature of the relationship, it would reasonably be expected that such information should be known, an explanation should be provided in the *Further Information about this Subject* free text box.

Transactions / Assets

You can now move on to the Transaction Tab. **Although called the Transaction Tab, this is also where you will provide details of source of funds/wealth and details of assets**. Once you have completed the details on this Tab, you should have described in detail the assets under management, their value and location.

You can enter details of relevant accounts and, within each account, enter details of relevant transactions. Separately you can identify source of funds/wealth and identify assets.

Accounts & transactions

Initially the primary subject will be shown and you can add account details for that subject where relevant. **Complete as many details as are within your knowledge**. Click Save and then add details of transactions on the account. You do not need to give details of transactions which are not relevant to your suspicion. **Complete details only of transactions which are relevant to your suspicion**. Again click Save and you can then add details of any additional parties to the transaction you have identified. **Repeat the process for each relevant transaction**. Once all such transactions have been identified, click Exit to return to the Transaction Tab. You can now **repeat the process for other accounts** if applicable.

The following account information should be provided:

- Sort code / Account number (format 012345 12345678)
- Date account opened / closed
- Product type
- Dates of commitment / drawdown / redemption / maturity (as applicable)
- Please ensure the THEMIS accounts card is completed

Where reference is made to any transactions the following details should be included:

- Nature of the transaction
- What is the value?
- Which parties are involved?

- What is the value of the parties' wider business relationship?
- Which jurisdictions are involved?
- What are the account details?

Source of funds/wealth

Next add **details of Source of Funds / Source of Wealth** and click Save.

Source of funds should identify:

- Where the funds originated from
- How they were generated
- Where they were moved from

Source of wealth should identify: how the subject or subjects' wealth was generated

Assets

You can now add **details of any other assets** (not already identified) of the subject, which are held or administered by you and are relevant to the suspicious activity.

Where reference is made to any assets, the following details should be included:

- Nature of the assets
- What do the assets consist of?
- What is the value?
- In which jurisdiction(s) are the assets held?

Once all details are completed, click Save Draft. You can now **repeat the process for other subjects** by selecting them from the drop-down menu at the top of the screen and clicking *View Financial Details*.

Only once details of all relevant accounts, transactions, source of funds /wealth and other assets have been completed for each subject, should you move on to the Reason for Suspicion Tab.

Reason for suspicion

Begin by identifying from the drop-down menu the **Legislation** under which the disclosure is made (i.e. the Disclosure Law or the Terrorism and Crime Law).

Next identify the **Suspected Criminality** from the drop-down menu. **You should select the criminality which best reflects the suspected predicate offence, that is the underlying crime, the proceeds of which are being laundered. Do not simply define the suspected criminality as Money Laundering.** For example, if you suspect that a transaction is being undertaken to launder the proceeds of corruption, you should select the corruption and

bribery option. Where more than one type of predicate offence is suspected, you should select the predominant criminality. If none of the drop-down options is applicable, select Other and enter a short description. **Only if you are unable to select an option, because the underlying offence is unknown, should you select Money Laundering as the suspected criminality.**

Next select the **Grounds for Suspicion** from the drop-down menu. If none of the drop-down options is applicable, select Other and enter a short description.

Next list any countries to which the SAR is being **Dual Reported** i.e. if you are also reporting the suspicion to another FIU.

You should now enter text into the free text box **Reasons for Suspicion and Any Additional Information.**

Here you should set out a clear narrative containing sufficient information for the FIU to understand the reason for the suspicion **beginning with a short summary of the reason for suspicion.** You should provide a chronological account of the relationship referred to, and the subsequent event(s) or information that has led to the suspicion of money laundering or terrorist financing, or that certain property is or is derived from the proceeds of criminal conduct.

For example, merely stating that an adverse open-source article on a client has been found is not in itself sufficient information. The relevant information that should be provided is how that adverse information relates to the relationship held and give rises to a suspicion of money laundering, or terrorist, or proliferation financing.

The rationale behind the reason for suspicion and the context of why the SAR is being submitted should be clearly communicated. Remember to:

- **keep your language concise and clear**
- **set matters out chronologically giving clear dates**
- **avoid jargon and acronyms**

Unless important to explain the narrative, you need not and should not repeat here information which you have already provided in answer to specific prompts. That information must be provided at its appropriate location. Completion of this free text box is not a substitute for proper completion of the rest of the SAR.

Here you should:

- **clearly demonstrate the reason for suspicion**
- **describe in sufficient detail the purpose and intended nature of the business relationship or occasional transaction**
- **clearly outline any suspected proceeds of crime**

- **clearly indicate how the Reporting Entity will proceed with the relationship** (This is in addition to answering “Yes” or “No” to the question “Do you intend to continue with this relationship?” in the Reason for Suspicion Tab.)

Once you have completed the narrative text, click Save Draft.

Risk Indicators

You should now consider the Risk Indicators and select the YES radio button for any which are applicable.

You should also indicate whether any suspected criminality occurred within the Bailiwick, whether a report has been made to Action Fraud and whether the Reporting Entity intends to continue with the relationship.

Attachments

In the Attachments Tab you can add documents to be submitted to the FIU with your SAR. **In most cases the FIU will expect to see a detailed structure chart.**

You should submit any document which supports the reasons for your suspicion.

You should also submit documents which will assist the FIU in understanding the transaction or relationship involved in your suspicion.

Do not omit important information elsewhere in the SAR because such information can be gleaned from reading attached documents. It is important that the FIU can conduct an initial analysis of SARs based on the information on their face so as to prioritise further analysis.

Each case will vary according to its facts and you should consider carefully what documents should be attached. For example, in a trust case the Trust Deed, any relevant Deeds of Variation and Letters of Wishes are likely to be helpful in explaining the relationship. In a banking relationship bank statements are likely to be important. In an investment funds case asset valuations are likely to be important. In many cases accounting documents will clarify transactions and assets. These are only examples and many other documents or classes of document may satisfy the tests of supporting the reasons for suspicion and/or assisting the FIU’s understanding.

You should ensure that any documents which you attach are in readable format and are clearly legible.

Consent

Finally, in the Consent Tab, you can seek consent to undertake an act (i.e. a defence to a potential money-laundering or terrorist-financing offence). **It is vital that you read and apply the guidance in the separate FIU Consent Regime Guidance document when applying for consent.**

Submission of SAR

Once you have submitted a SAR it cannot be amended. If you later have additional information to provide, it should be provided under the additional information tab of the existing SAR.

6. Submitting a Paper SAR

THEMIS is the prescribed manner in which to report SARs to the FIU. In exceptional circumstances permission can be sought to submit a paper SAR to the FIU. Permission must be sought from the Head of the FIU (or the deputy) before a SAR can be submitted in paper including the exceptional circumstance which justify submitting a paper SAR. If you wish to submit a paper SAR contact the Head of the FIU:

Tel: (01481) 225824 Email: FIU@gov.gg

7. Reporting a Crime

The SAR regime is not the route to report a crime or matters relating to immediate risk to others. Where an institution, for example, has been the victim of a fraud or has concerns for the welfare of a client this should be reported to the relevant Law Enforcement Authority / jurisdiction as appropriate.

Economic Financial Crime Bureau: (01481) 221500

Guernsey Police: (01481) 222222

8. Caveat

For the avoidance of doubt, this guidance is issued by the FIU to assist industry in discharging their legal duties with regard to SARs and does not constitute legal advice. Anyone who has concerns about any of the matters covered in this guidance should obtain independent legal advice. This guidance is issued to clarify the FIU's expectations from industry. It may be revoked or amended at any time.

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