

UPDATE

FIU issues guidance on Guernsey's consent regime

Update prepared by Christopher Edwards and Iona Mitchell (Guernsey).

The guidance provides information about the approach the FIU will adopt when a business seeks consent in respect of an act that may constitute a money laundering and / or terrorist financing offence.

The FIU has just released guidance on the consent regime. That is of interest to institutions and individuals because obtaining the FIU's consent to a proposed act provides a statutory defence to the money laundering or terrorist financing offences under the relevant Guernsey legislation. However, the guidance highlights the view of the FIU that the consent will only provide a defence if the Suspicious Activity Report (SAR) contains sufficient information to demonstrate why the suspicion has been raised, or to enable the FIU to fully understand the purpose and intended nature of the business relationship or occasional transaction. Accordingly, consent requests should include the nature of the act such as converting, transferring or removing property that may represent money laundering or the financing of terrorism and the rationale for why the reporting entity wishes to carry out the act. The FIU has previously expressed some frustrations about the quality of some SARs which have been lodged, and this guidance may, in part, represent some subtle encouragement on its part.

The guidance contains a timely reminder that a SAR is a living document. If a reporting entity becomes aware of new information that negates the original suspicion, they should provide that information and the rationale behind it to the FIU as soon as possible.

If the FIU grants consent to the request, this does not provide the reporting entity with a defence against any other criminal offences or any regulatory breaches relating to the proposed act. Further, it is not a statement that the property in question does or does not represent the proceeds of criminal conduct / terrorist property. It only gives a criminal defence to the money laundering or terrorist financing offences, in relation to the act specified in the request and the information disclosed at the time. Accordingly, a reporting entity needs to ensure when it proceeds to carry out an activity that it accords with the consent provided.

Unlike in the UK, there is no 'deemed consent' regime whereby the absence of a response from the authority within a specified period has the effect of consent. There is no time limit within which the FIU has to respond, but it will aim to respond within 14 working days of the submission.

Finally, the guidance confirms that FIU provides the Guernsey Financial Services Commission, the Revenue Service and the Alderney Gambling Commission with relevant SAR information. Accordingly, there is no need to seek permission from the FIU to discuss a SAR with any of these authorities.

Due to the potentially serious nature of the relevant offences and the complexities that may be involved, early advice is recommended.

The FIU guidance is [here](#).

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