

Suspicious Activity Reports: Practical guidance for Reporting Entities and Account Holders

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This guide explains how the Guernsey Suspicious Activity Report regime operates in practice and what it means for both reporting entities and account holders. It covers the FIU consent process, asset freezing, tipping-off risks, and practical steps to manage regulatory, operational, and reputational exposure when a Suspicious Activity Report is filed.

Introduction

At Mourant, our leading Litigation and Dispute Resolution team in Guernsey regularly advises clients on assets held by financial or non-financial services businesses (**Reporting Entities**) that are subject to a Suspicious Activity Report (**SAR**) submitted to the Financial Intelligence Unit (**FIU**) by a nominated officer, usually a Money Laundering Reporting Officer (**MLRO**).

This Guide provides an overview of the SAR regime, together with practical guidance on how to navigate it for both Reporting Entities and their customers (**Account Holders**) who may be subject to a SAR.

Key terms/parties

An MLRO is a designated individual within a Reporting Entity responsible for overseeing and ensuring compliance with anti-money laundering (**AML**), counter terrorist financing (**CTF**) and anti-proliferation of weapons of mass destructions (**APWMD**) regulations (together, the **Regulations**).

The FIU is the competent authority tasked with:

- the responsibility to receive, analyse and disseminate SARs filed by Reporting Entities under The Disclosure (Bailiwick of Guernsey) Law, 2007 or The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002; and
- dealing with consent requests.

A SAR is a disclosure submitted to the FIU by the MLRO of a Reporting Entity when there is knowledge or suspicion that certain assets it holds constitute the proceeds of crime. The suspicion required in this context is a possibility which is more than fanciful that the assets are the proceeds of crime. It is subjective and not a very high threshold to meet.

The regime

The FIU can provide a Reporting Entity with an exemption from criminal liability for dealing with the suspected proceeds of crime. In practice this is exercised where necessary for the interests of law enforcement, the preservation of assets, and/or the payment of legitimate professional fees.

Where the FIU does not provide consent to a Reporting Entity, it results in the assets held by it remaining frozen temporarily. The lack of consent does not mean the assets are the proceeds of crime. It means that anyone dealing with assets they either suspect, know, or have reasonable grounds to know or suspect are the proceeds of crime is guilty of a criminal offence if the assets prove to be the proceeds of crime. Consent obtained from the FIU provides a statutory defence to such an offence. While there is no statutory time limit, the FIU aims to deal with a consent request within fourteen days of receiving it.

At Mourant, we have extensive experience acting for Reporting Entities and for Account Holders. In the process, we have developed our understanding of the regime to better advise clients.

Our other articles on SARs are:

[Guernsey court found monies in bank account not the proceeds of crime](#) dated 19 April 2023.

[Suspicious activity reports and 'no consent' – recent Guernsey court decision](#) dated 26 July 2023.

[Recent Guernsey case sheds light on the role of a business holding assets subject to a 'Suspicious Activity Report'](#) dated 22 August 2024.

[Latest Guernsey case concerning a 'Suspicious Activity Report' elaborates on the 'proceeds of criminal conduct' requirement](#) dated 11 December 2024.

Practical guidance

Below is a quick, practical guide on SARs for both Reporting Entities and Account Holders.

Reporting Entities

The main risks Reporting Entities need to manage under the current regime are:

- reputational damage from their business being used to facilitate money laundering, terrorist financing, and the proliferation of weapons of mass destruction;
- criminal convictions for dealing with suspected or known proceeds of crime or when they had reasonable grounds to suspect or know that they were dealing with the proceeds of crime;
- inefficient operations; and
- customer dissatisfaction.

Proven ways to manage these risks up to the point of filing a SAR, include:

- robust internal policies and procedures to guide decision-making and actions. Strong policies and procedures ensuring compliance with the Regulations will help with the prompt identification and reporting of suspicious activities;
- regular staff training to help with the identification and reporting of risks. It is important for MLROs, compliance, and other staff to receive training to help recognise signs of money laundering, terrorist financing, and the proliferation of weapons of mass destruction, and understand what their obligations are under the law. It would serve to avoid overly cautious approaches and defensive SARs being filed;
- meticulous record keeping of all SARs filed, decisions made, and actions taken in connection with customer transactions. Internally, this helps with assessments of what was considered and by whom. It can highlight gaps in understanding and direct what further information on a client or transaction is required. Externally, it assists with the facilitation of investigations;
- THEMIS literacy to ensure SARs are filed accurately and completely. Communicating SARs accurately and completely will help ensure the FIU is able to deal with it quickly. For more on this, see the Reporting page on the FIU's website [here](#).
- appointing knowledgeable and experienced MLROs and compliance staff to handle suspicious activity reports and ensure compliance with the law. It is an increasingly specialised and dynamic field that requires the appointment of experienced professionals to ensure the legal requirements are known and satisfied on a continuous basis;
- regular compliance audits. This will test adherence to the Regulations and help identify where policies and procedures could use some strengthening to avoid risks; and
- commercial sensibility. The risk-based approach requires MLROs and compliance staff to identify AML, CTF and APWMD risks, assessing the level of those risks, and managing those risks to ensure resources are focused on higher-risk areas minimising unnecessary burdens on lower-risk areas. It is therefore important for MLROs and compliance staff to have commercial sensibility to ensure risks are identified, assessed and managed in a manner conducive to business; and
- taking legal advice.

Once a SAR is filed, Reporting Entities should in addition:

- maintain the confidentiality of the SAR. The act of filing the SAR and the contents of the filed SAR must remain strictly confidential to avoid committing the offence of "tipping-off" and prejudicing law enforcement's investigation;
- maintain a dialogue with the FIU. It is important to maintain clear and open communication with the FIU to address any consent or disclosure issues related to the SAR. If the FIU has given consent for a particular transaction, it will include monitoring the relevant transaction and related activities of the subject to provide additional information to assist law enforcement with its investigation; and
- keep their suspicion under review. It is possible for suspicions to be allayed over time as new information becomes available. It is the responsibility of the Reporting Entity to regularly review their suspicion when new information is received, carefully record all such reviews, and communicate their findings to the FIU.

Account Holders

The filing of a SAR can prevent the Account Holder of the Reporting Entity which is the subject of the SAR from dealing with an account and often they cannot be told the reason why, lest the Reporting Entity commit the 'tipping off' offence. This can be frustrating, particularly where, as is often the case, the potential criminality is many stages removed from the account holder.

The main risks for Account Holders to manage under the current regime are:

- reputational damage from any association with money laundering, terrorist financing, and the proliferation of weapons of mass destruction;
- operational inefficiencies and delays caused by the protracted onboarding needs of third-party service providers; and
- the freezing of their assets.

Proven ways Account Holders can reduce their exposure to these risks include:

- maintaining accurate, complete, and up-to-date business records so that they can be readily shared with Reporting Entities when required;
- fostering positive and transparent relationships with Reporting Entities;
- understanding their risk profile and anticipating areas where enhanced scrutiny may arise; and
- seeking professional advice early.

To avoid tipping-off, an Account Holder will not be expressly advised by the Reporting Entity that their assets have been frozen due to a SAR being filed against them. Rather the Reporting Entity will likely advise that it cannot proceed with the requested transaction or deal with the relevant funds for legal and regulatory reasons. In such case, the Account Holder should:

- communicate calmly and constructively with the Reporting Entity;
- cooperate fully and promptly with any further requests for information; and
- instruct a Guernsey advocate at an early stage. This will ensure that the matter is dealt with objectively and efficiently. Once it becomes clear that the Reporting Entity is not willing to withdraw its suspicions it would be advisable to progress a private law action as soon as possible. In a private law action, the Account Holder applies to the Royal Court of Guernsey for a declaration to the effect that the assets held by the Reporting Entity are not the proceeds of crime. If the Account Holder is successful, the assets held by the Reporting Entity may then be dealt with by it as requested by the Account Holder.

Whether you are a Reporting Entity or an Account Holder facing a SAR-related issue, our Litigation and Dispute Resolution team is well placed to assist.

Contacts

A full list of contacts specialising in Litigation and Dispute Resolution can be found [here](#).