

Suspicious Transactions & Suspicious Activity





“Suspicion” - Defined

- the act or an instance of suspecting guilt, a wrong, harmfulness, etc. with little or no supporting evidence
- the feeling or state of mind, uneasiness and uncertainty or doubt of a person who suspects
- a very small amount or degree; suggestion; inkling; trace



Suspicious Transaction

- A financial transaction where there is reasonable grounds to suspect that the funds involved relate to the proceeds of criminal conduct

Suspicious Activity

- Acts carried out by an individual that do not include the transaction. An abuse of the financial system by those engaged in money laundering or terrorist financing

A feeling or state of mind, uneasiness and uncertainty or doubt about the activity or transaction



FATF Recommendations

- Customer Due Diligence & Record Keeping
- R.10 (d) Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.
- If compliance is not possible then the Financial Institution should exit the relationship and consider making submitting a SAR.

INTERPRETIVE NOTE TO RECOMMENDATION 10 (CUSTOMER DUE DILIGENCE)



- If, during the establishment or course of the customer relationship, or when conducting occasional transactions, a financial institution suspects that transactions relate to money laundering or terrorist financing, then the institution should:
 - (a) normally seek to identify and verify the identity of the customer and the beneficial owner, whether permanent or occasional, and irrespective of any exemption or any designated threshold that might otherwise apply; and
 - (b) make a suspicious transaction report (STR) to the financial intelligence unit (FIU), in accordance with Recommendation 20.

Recommendation 20 – Reporting of Suspicious Transactions



If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, by law, to report promptly its suspicions to the financial intelligence unit (FIU).



Financial Investigation Agency (FIA)

Anti-Money Laundering & Terrorist Financing Code of Practice

6. (1) The Financial Investigation Agency is the reporting authority of the Virgin Islands and acts through the guidance and direction of the Steering Committee in matters relating to suspicious activity reports concerning money laundering and terrorist financing.



FIA's Functions

Financial Investigation Agency Act, the Agency is responsible for receiving, obtaining, investigating, analysing and disseminating information which relates or may relate to:

- A financial offence or the proceeds of a financial offence; or
- A request for legal assistance from an authority in a foreign jurisdiction which appears to the Agency to have the function of making such requests.

Under the Act, the Agency is also designated as the receiver of all disclosures of information which are required to be made pursuant to any financial services legislation relevant to its functions, including suspicious transactions reports and disclosures from foreign authorities.



Who must report?

(S.27(2) Proceeds of Criminal Conduct as amended)

- Entities regulated by the Financial Services Commission (FSC)
- Non-financial business or professions whether public or private and designated by the FSC as vulnerable to money laundering or terrorist financing when engaged in transactions involving cash of US\$10,000 or more. These apply to business engaged in the buying and selling of
 - Boats
 - Vehicles
 - Jewellery and other high valued goods
- Real estate agents
- Accountants, an Attorney-at-law or other independent legal professional
- Charities, non-profit institutions, associations or organisations
- Or where it is known or suspected that a person is engaged on ML or TF based on information received in the course of trade profession or business.



Legislation applicable to SARs

The Anti-Money Laundering Regulations 2008 as amended
Anti-money Laundering And Terrorist Financing Code Of Practice
2008

The Terrorism (UN Measures)(Overseas Territories) Order 2001
The Anti-terrorism (Financial and Other Measures) (Overseas
Territories) Order 2002

Drug Trafficking Offences Act 1992 (as amended)

Proceeds of Criminal Conduct Act 1997 (as amended)



Failing to Report!

SUMMARY CONVICTION - US\$150,000.00 FINE OR THREE YEARS' IMPRISONMENT, OR BOTH

CONVICTION ON INDICTMENT -US\$500,000.00 FINE OR FIVE YEARS' IMPRISONMENT, OR BOTH



Know the Risk - Customer

- **complex structures** where the nature of the 'entity' or relationship sought makes it difficult to identify the actual beneficial owner or the person or persons with controlling interests.
- **cash or equivalent intensive businesses**, including those that generate significant amounts of cash or undertake large cash transactions,
- customers who conduct their business relationships or transactions in such **unusual circumstances**
- where there is **insufficient commercial rationale** for the transaction or business relationship;
- where there is a request to associate **undue levels of secrecy** with a transaction or relationship or, in the case of a legal person, a reluctance to provide information regarding the beneficial owners or controllers;
- situation where the **source of funds and/or the origin of wealth cannot be easily verified**, or where the audit trail has been broken or unnecessarily layered;
- **delegation of authority by the applicant** for business or customer, for instance, through a power of attorney;
- where the **customer is a charity or other non-profit making organisation** which is not subject to AML/CFT monitoring or supervision, especially those that engage in cross-border activities;



Know the Risk – Product or Service

- where the Agency, Commission or other credible source **identifies a particular service as potentially high risk**: this would include international correspondent banking services that involve, for instance, commercial payments for non-customers and pouch activities, and international private banking services;
- **services that involve banknotes and precious metal trading** and delivery;
- **services that seek to provide account anonymity or layers of opacity, or can readily transcend international borders**: this latter category would include online banking facilities, stored value cards, international wire transfers, private investment companies and trusts.



Know the Risk Country/Geographic

- situations where there is **an embargo, a sanction or other restriction imposed on a country by the United Nations or the EU**; these may relate to persons (natural and legal) and transactions and are generally extended to the Territory by the UK and are published in the BVI Gazette; the scope of the embargo, sanction or other restriction may not necessarily relate to financial prohibitions;
- countries that are identified by credible institutions such as the FATF, CFATF or other regional style bodies, IMF, WB or Egmont as **lacking appropriate AML/CFT laws, policies and compliance measures**, or providing funding or support for terrorist activities that have designated terrorist organisations operating within them, or having significant levels of corruption or other criminal activity (such as abductions and kidnappings for ransom).



Key Points – Law Enforcement

Protect the source by:

- not using SAR as evidence
- not revealing SAR to suspect



UK SAR Regime

Key statistics	April 2018 to March 2019
Total SARs	478,437
DAML SARs	34,151
Defence Against Terrorism Financing (DATF) SARs	392
DAML SARs refused	1,332
DATF SARs refused	40
Breaches of confidentiality	3



Interventions arising from refused DAML requests	
Restraint sums (includes restraints and AFOs)	£122,838,459
Cash seizure sums	£829,752
Funds recovered by HMRC	£7,947,889
Total	£131,616,100

Interventions arising from granted DAML requests₂	
Restraint sums (includes restraints and AFOs)	£45,692
Cash seizure sums	£5,685
Total	£51,377
Total	£51,377



April 2018 to March 2019	Volumes	% of total	% comparison to 2017-18
Credit institution – banks	383,733	80.21%	3.29%
Credit institution – building societies	21,714	4.54%	10.56%
Credit institution – others	10,203	2.13%	-25.41%
Financial institution – MSBs	18,940	3.96%	-10.65%
Financial institution – others	24,911	5.21%	16.16%
Accountants and tax advisers	5,055	1.06%	-1.65%
Independent legal professionals	2,774	0.58%	4.29%
Trust or company service providers	23	0.00%	-56.60%
Estate agents	635	0.13%	-10.56%
High value dealers	481	0.10%	93.17%
Gaming (including casinos)/leisure (including some not under Money Laundering Regulations [MLRs])	4,163	0.87%	93.27%
Not under MLRs	5,805	1.21%	5.78%
Total	478,437	100%	3.13%

Case Study



- Please have a look at the SAR and document your actions.

Any Questions?

