



FINANCIAL INTELLIGENCE UNIT

Guideline No. 1 - 2013

Anti Money Laundering and Countering the Financing of Terrorism Act 2009

Suspicious Transaction Reporting (STR) – Reporting Entities

Preamble

The objectives of the Anti Money Laundering and Countering the Financing of Terrorism (AMLCFT) Act 2009 are:

- to provide for the establishment and management of a Financial Intelligence Unit;
- to provide for unlawful proceeds of all serious offences to be identified, traced, frozen, seized and forfeited;
- to provide for comprehensive powers for the prosecution of money laundering, terrorist financing and other financial crimes, and the forfeiture of the proceeds of crime and terrorist property;
- to provide for civil forfeiture of assets and for matters connected therewith; and
- to require reporting entities to take preventative measures to help combat money laundering and terrorist financing.

To achieve these objectives the AMLCFT Act 2009 places certain obligations on reporting entities including the requirement to submit Suspicious Transactions Reports (STRs) to the Financial Intelligence Unit (FIU).

This guideline is issued by the FIU to assist reporting entities in reporting suspicious transactions in accordance with section 18(4) of the AMLCFT Act 2009 which states:

Whenever a reporting entity suspects or has reasonable grounds to suspect that funds, a transaction or attempted transaction are connected to the proceeds of criminal activity, money laundering or terrorist financing offences it shall as soon

as possible but not later than three (3) days after forming that suspicion and wherever possible before the transaction is carried out-

(a) take reasonable measures to ascertain the purpose of the transaction, the origin and ultimate destination of the funds involved and the identity and address, of any ultimate beneficiary; and

(b) prepare a report of the transaction in accordance with subsection (8) and send the report to the Financial Intelligence Unit in such other form as the Director, may approve.

Reporting Procedures

When must a Suspicious Transaction Report (STR) be made?

1. A STR must be submitted to the FIU whenever a reporting entity suspects or has reasonable grounds to suspect that funds, a transaction or attempted transaction are connected to the proceeds of a criminal activity, money laundering or terrorist financing offences. The STR must be submitted as soon as possible but not later than three (3) days after forming the suspicion.

What is a transaction?

2. A transaction can be constituted by any business dealing between a reporting entity and a customer. It includes negotiations or discussions that may or may not result in an actual dealing but does not include mere inquiries. The transaction must be something that can be reported in terms of the reportable details set out in the STR Form (see **Appendix A**), but it is not essential that all such details be available to the reporting entity before there is a reporting obligation. The reporting entity should complete the STR Form under as many headings as possible from the information ordinarily available to the reporting entity.

What is suspicious transaction?

3. As a general principle, any transaction that causes a reporting entity to have a feeling of apprehension or mistrust about the transaction should be considered as a suspicious transaction.

How to identify a suspicious transaction?

4. Suspicious transactions are likely to involve a number of factors which together raise a suspicion in the mind of the officer of the reporting entity that the transaction may be connected to money laundering, terrorist financing or the proceeds of a crime.

The factors that should be considered in assessing whether or not a transaction is suspicious include - **complex, unusual large business transactions, and unusual patterns of transactions, whether completed or not, that have no apparent economic or lawful purpose and are inconsistent with the profiles of the persons carrying out such transactions.**

Where to report?

5. Reporting entities must complete the Suspicious Transaction Report Form (which is available from the FIU) and send to:

The Director
Financial Intelligence Unit (FIU)
Ministry of Finance Compound
49 Main & Urquhart Streets
Georgetown, Guyana

Onus to report

6. Section 18(4) of the AMLCFT Act puts the onus to report a suspicious transaction upon the reporting entity. Whilst the officers of a reporting entity comprise the actual links between the customer and what is ultimately reported, the responsibility to ensure there is prompt and accurate reporting rests with the reporting entity concerned.

What is a reporting entity?

7. A reporting entity is any person whose regular occupation or business is the carrying on of:
- (a) any activity listed in the First Schedule of the AMLCFT Act 2009; or
 - (b) any other activity defined by the Minister responsible for Finance as such by an order published in the Gazette amending the First Schedule.

See Appendix B for a copy of the First Schedule of the AMLCFT Act 2009.

Confidentiality of reporting

8. It is an offence for a person who knows or suspects that a report is being prepared or has been sent to the FIU, to disclose that information to another person, other than a court, or other person authorized by law.

A natural person who commits this offence shall be liable to a fine of not less than **one million dollars (\$1,000,000.00)** nor more than **two million dollars (\$2,000,000.00)** and to imprisonment for a term not exceeding **three (3) years**.

A body corporate which commits this offence shall be liable to a fine of not less than **two million dollars (\$2,000,000.00)** nor more than **three million dollars (\$3,000,000.00)**.

Protection of the reporting entity and its officers

9. The AMLCFT Act 2009 contains important protection in relation to reports of suspicious transactions made pursuant to Section 18(4) of the AMLCFT Act 2009.

The protection removes the possibility of a ‘damages claim’ for breach of client confidentiality in complying with the reporting obligations. This protection is contained in Section 111 of the AMLCFT Act 2009 which stipulates:-

Subject to the provisions of the Constitution, the provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

Further, Section 112 of the AMLCFT Act 2009 stipulates:-

It shall not be unlawful for any person to make any disclosure in compliance with this Act.

Note:

This Guideline is issued in accordance with the provisions of Section 9(4)(e)(iv) of the AMLCFT Act 2009 which stipulates that “*The Financial Intelligence Unit – shall issue guidelines to reporting entities and advise the Minister accordingly.*”

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