



**Financial Services  
Commission**

# **Guidance Note**

## **Counter Terrorism Act**

Date of Paper : 3 September 2010





## Table of Contents

Introduction.....	3
Basis of the Guidance Note .....	3
Provisions of the Act .....	3
To whom it applies .....	3
Directions .....	3
Customer Due Diligence .....	4
Enhanced ongoing monitoring.....	4
Systematic Reporting .....	4
Limiting or ceasing business.....	4
Exemptions by licence.....	5
Duration and publication of Directions .....	5
Provision of information and Documents.....	5
Non-compliance .....	5
Compliance Considerations for relevant persons .....	5
Legal Notice .....	6

Financial Services Commission  
 PO Box 940,  
 Suite 3, Ground Floor,  
 Atlantic Suites, Europort Avenue,  
 Gibraltar  
 Tel (+350) 20040283  
 Fax (+350) 20040282  
 E-Mail: [info@fsc.gi](mailto:info@fsc.gi)  
[www.fsc.gi](http://www.fsc.gi)

## Introduction

This Guidance Note highlights the main provisions of the Counter-Terrorism Act 2010 (the "Act") which came into effect on 29 April 2010<sup>1</sup>.

The Financial Services Commission, the Commissioner of Banking and the Commissioner of Insurance are "supervisory authorities" as defined in Section 32 of the Act by virtue of Section 19 of the Crime (Money Laundering and Proceeds) Act 2007. The guidance note is therefore issued jointly by each of these supervisory authorities.

## Basis of the Guidance Note

This guidance has been issued with the consent of the Minister as provided for in Section 34 of the Act in order to assist persons operating in the financial sector to comply with the provisions of the Act.

## Provisions of the Act

### To whom it applies

The Act refers to "persons operating in the financial sector" who can be either natural or legal persons who carry on financial business in Gibraltar or are established, incorporated or Registered in Gibraltar but conduct their business elsewhere. The term "financial institution" is then defined further but broadly speaking includes all of the following;

- Banks,
- Money service businesses (i.e. a bureau de change or money transmitter),
- Investment Firms,
- Collective Investment Schemes, and
- Life Assurance Companies and Intermediaries.

There a number of exceptions provided for in Section 7 of the Act but for the purposes of this Guidance Note shall not be considered material as they are designed for those people who undertake financial services business on an occasional basis.

## Directions

The main thrust of the Act is the power of the Minister to issue Directions under the Act. These directions can be triggered by any one of the following events;

- Advice from the Financial Action Task Force that measures should be taken in relation to a country or the Minister reasonably believes that there is a risk of terrorist financing or money laundering activities being carried on;
  - In the country
  - By the Government of the Country or
  - By persons resident or incorporated in the Country, or

---

<sup>1</sup> Legal Notice 83 of 2010.

- The Minister is advised by the Her Majesty's Government in the UK that there is a significant risk to the interests of Gibraltar by the development or production of nuclear, radiological, biological or chemical weapons (referred to as "WMDs") in the country or facilitating the development or production of the same.

The Minister's Directions can be given to;

- A particular person operating in the financial sector;
- Any description of persons operating in the financial sectors; or
- All persons operating in that sector.

It is also possible for the Direction to make different provisions for different descriptions of persons operating in the financial sector.

These Directions may impose requirements and these may be varied between types of persons as well as different descriptions of transactions or business relationships.

## Customer Due Diligence

Directions imposed in this regard may entail undertaking enhanced due diligence on a designated person either before commencing or during a business relationship, which may include taking general or specific measures in order to ascertain further information or documentation about

- the person's identity,
- their business,
- source of funds; and
- whether the designated person is involved in terrorist financing, money laundering or the production or facilitation of WMDs.

## Enhanced ongoing monitoring

Direction may also be made requiring a relevant person to undertake enhanced ongoing monitoring of a business relationship with a designated person. Enhanced ongoing Monitoring is defined as ;

- (a) keeping up to date information and documents obtained for the purposes of customer due diligence measures; and
- (b) scrutinising transactions undertaken during the course of the relationship (and, where appropriate, the source of funds for those transactions) to ascertain whether the transactions are consistent with the relevant person's knowledge of the designated person and their business.

## Systematic Reporting

Relevant persons may also be required to supply information and/or documents relating to a business relationship with a designated person at stated intervals. This does not include documents or information that is subject to legal professional privilege but a direction under this section supersedes any restriction on the disclosure of information imposed by statute or otherwise.

## Limiting or ceasing business

Directions may also prohibit a relevant person from entering or continuing with a business relationship or transactions with a designated person.



## Exemptions by licence

Where a Direction is given which limits or ceases a business relationship or transaction the Minister may, through the issue of a licence, exempt certain acts from these requirements.

## Duration and publication of Directions

All Directions made by the Minister have to be sent to the relevant person and must also cause the Direction to be published in the Gazette. Unless revoked, all Directions end after a year but can be reissued on similar terms.

## Provision of information and Documents

The Act provides for Enforcement Officers (appointed by the Minister) to give effect to the Direction provisions of the Act. The Enforcement Officers have powers to require information or documents from relevant persons in connection with the Act. In most cases the Enforcement Officer is empowered to enter the premises of a relevant person and observe, take copies of documents, etc without the production of a warrant.

Warrants can, however, be issued by a Magistrate under certain circumstances.

## Non-compliance

The Act gives both the Courts and the Minister wide and dissuasive powers when a relevant person appears not to be in compliance with the Directions or Licence conditions.

The Court may make Orders to a relevant person to comply, within a specified period, or to remedy the consequences of the failure.

Civil penalties which are "effective, proportionate and dissuasive can be applied" when there has been failure to comply with a requirements imposed by a Direction or Condition. In addition, criminal offences may be brought against the relevant person for failing to comply with their requirements.

## Compliance Considerations for relevant persons

It is clear from the summary of the Act above that firms to whom the Act applies need to have additional processes in place in order to be able to comply with a Direction issued under this Act.

The Directions may be specific to a firm, a sector or part of the sector and equally may be directed at one or more persons, countries or Governments thereof.

In the day to day administration of the firm's business, however, the FSC does not consider that a firm would need to have any additional systems of control other than that provided for in the Guidance Notes on Systems of control to prevent the financial system from being used for money laundering or terrorist financing activities<sup>2</sup>. Compliance arrangements designed to meet these requirements should hold the firm in good stead for the provisions of the Act.

However, a firm must be able to respond very quickly to the additional requirements of any Direction given under this Act by the Minister including the production of documents and information without production orders and/or warrants.

---

<sup>2</sup> <http://www.fsc.gi/amlgn>



The FSC will monitor compliance with the additional process requirements under this Act at the same time as it considers a firm's arrangements to comply with the Guidance Notes on Systems of control to prevent the financial system from being used for money laundering or terrorist financing activities.

## Legal Notice

The advice or interpretation given in this Guidance Note represents the views of the FSC as to its expectations of how the requirements of the relevant legislation in question is to be complied with and/or how it falls to be applied. This, however, is not intended as a definitive interpretation of the applicable legislation which is ultimately a matter for the courts to determine. You are, therefore, strongly advised to seek appropriate legal advice before any action or decision is taken (if you have not already done so). The FSC does not provide, or purport to offer, legal advice.