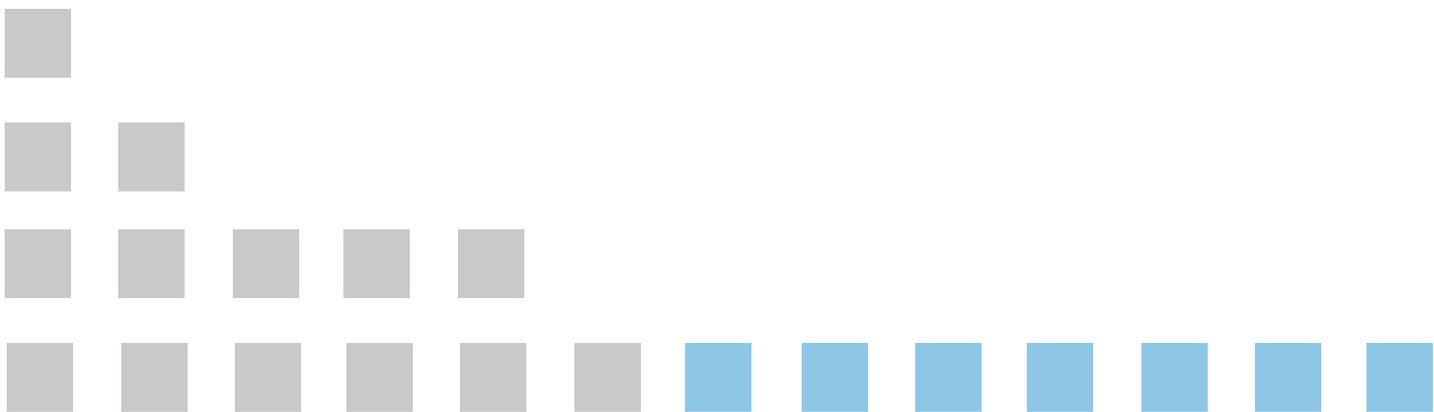


Financial Crime Return

Guidance Notes



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Notes to Completion

The Financial Crime Return is to be completed by entities/individuals holding a permission by the Gibraltar Financial Services Commission (GFSC), and entities which have established a branch presence in Gibraltar to carry out financial services activity. Before completing the return, we strongly suggest reviewing these guidance notes as they contain answers to frequently asked questions.

The Return is to be completed in GBP. Please refer to the GFSC Newsletter for the exchange rate to be used - <https://www.fsc.gi/publications/2019/12/Newsletter-Euro%20Exchange%20Rates%20for%20twelve%20month%20period%20commencing%2031%20Dec%202019.pdf>

For any other currencies not covered in the newsletter please confirm the exchange rate used.

All questions need to be completed.

The Financial Crime Return contains specific coding for each licensee. Firms should not tamper with or alter any of the code contained within the form as doing so may prevent the form formatting, or uploading correctly.

Once you have opened the return, a security warning will appear as a yellow box at the top of the Excel Spreadsheet. You will need to click 'Enable Content' to gain access to complete the questions. You are able to copy and paste data into the return by using the formula bar.

Once the return has been completed, please submit the Return electronically in Excel format by dragging and dropping the form into the GFSC Cloud. The form will upload automatically.

A separate e-mail acknowledgement will be sent to the MLRO of the firm advising the form has been successfully received.

The GFSC Cloud is a web based portal which facilitates information sharing between licensees and the GFSC in a secure manner. Any information uploaded to the cloud is unable to be viewed by external parties.

Should you have any queries please contact the AML/CFT Supervision Team on +350 20040283 or amlcft@fsc.gi

Completion process:

1. When you open the form complete the fields requesting the firm's details.
2. Within the Activity list, please select all activities which your firm is authorised for. Even if your firm does not carry out an activity for which it is licensed, you must still select it.
If you have separate legal entities authorised to carry out financial services within the same Group, you will need to complete separate forms for each legal entity (with the exception of Trust and Company Service Providers, who will be notified of firms that can be Grouped together).
3. Once the activities are selected, the form will produce the relevant questions to complete. This will comprise of a list of "general" questions, and then it will be produce separate sheet(s) that also need to be completed.
4. In the additional sheets, which relate to information that needs to be reported per country, you can create a new column per country as required. There is also the option to include data under "unknown" if the firm does not hold the requested information. If this is the case, please provide separately an explanation on the reasons for not holding the information.
5. You may supplement the data submitted in the form, in a letter or email, if you wish.

General Questions

'Individual Customer' refers to a natural person with which the firm has entered into a business relationship during the reporting period.

'Corporate Customer' refers to legal persons and arrangements (including trusts, foundations, partnerships, unincorporated associations, etc), not relating to a natural person.

A **'business relationship'** is as set out in Section 8 of the Proceeds of Crime Act: '...a business, professional or commercial relationship which is connected with the professional activities of a relevant financial business and which is expected, at the time when contact is established, to have an element of duration.'

Therefore, this does not include occasional clients or transactions.

The **'reporting period'** refers to 1 January 2020 to 31 December 2020 inclusive.

'Face to face' refers to all traditional forms of face to face interaction and is in addition to the use of Skype, FaceTime, or other live web-based communication where the firm is able to physically identify the individual. Face to face interaction does not however, refer to the use of self-identification photos. For corporate customers, face to face would need to be considered with respect to the ultimate beneficial owner(s). A corporate client can appoint a representative who needs to be appropriately verified.

'Eligible introducers' are such entities that comply with the criteria set out in the GFSC's AML/CFT Guidance Notes in Recommendation 48. Firms should only account for customers for which it has relied on the eligible introducer for customer due diligence.

Firms may have introducers of business on which they do not rely on them for customer due diligence, and therefore, these need not be accounted for.

Where a firm relies on the due diligence carried out by its Group, this is not considered to be an Eligible Introducer for the purposes of this Return.

‘Non-eligible introducers’ are such entities on which the firm has relied on for customer due diligence, though the introducer does not meet the criteria set out in Recommendation 48 of the GFSC’s AML/CFT Guidance Notes.

‘Trading companies’ refer to any company which receives income for the provision of goods, services, activities or similar.

‘Holding companies’ refers to a company created to own or hold any type of asset.

‘Independent Financial Advisors’ (IFAs) are advisors which provide independent advice to their clients on financial matters on the market.

‘Financial crime’ refers to money laundering, terrorist financing, fraud, bribery, corruption and tax evasion.

A **‘suspicious activity report’** (‘SAR’) refers to disclosures submitted to the GFIU relating to activity which the firm suspects may constitute financial crime. Section 1ZDA of the Proceeds of Crime Act 2015 provides requirements for reporting suspicious activity to the GFIU.

The **‘GFIU’** refers to the Gibraltar Financial Intelligence Unit established under Section 1B. of the Proceeds of Crime Act 2015.

The **‘109 Compliance Report’** is found here: <http://www.gfsc.gi/fsc/financialcrime> under the Templates section. Please note that it is not the GFSC’s Statement of Compliance.

A link to the **‘Guidance Notes’** can be found here:

<https://www.fsc.gi/uploads/AMLCFT%20Guidance%20Note%20v7-Jun2020.pdf>

Where the question refers to the **total value of policies paid**, and policies are paid in instalments, we are requesting the amount paid within the reporting period only and not any further installments outside of that. In addition, **where policies are running over several years**, we are requesting for the amount paid within the reporting period only.

‘A cooling-off period’ is granted to policyholders upon the purchase of a policy. Policyholders are allowed to cancel a policy during this period and obtain a refund. The period of time is usually 14 days and depends on the type of policy obtained and the terms offered by the company.

‘Mid-policy’ is the period after the cooling-off period but before the end of the contract period.

A **‘third party’** is a person or group besides the two primarily involved in a situation/activity/transaction. A third-party is usually found in liability insurance which is purchased by an insured (the first party) from an insurer (the second party) for protection against the claims of another (the third) party. Where a payment is made to a secondary account which still solely belongs to the UBO, this is not considered a payment to a third party.

‘Cash’ refers to money in coins or notes (whatever the currency) rather than in the form of a cheque or credit.

‘Non-standard investments or products’ refers to those which are not in cash, cash bonds, corporate bonds, exchange traded commodities, Government and other authority bonds and other fixed interest stock, investment notes and trusts, managed pension funds, open-ended investment companies, permanent bearing interest shares, virtual asset and cryptocurrency products, retail investment trust, unit trusts, and shares listed on Alternative Investment Market, London Stock Exchange and Recognised overseas stock exchanges.

'An asset' is a resource with an economic value which is held with the intention of deriving a benefit from it over time.

'Assets under administration' refer to those managed by a bank or financial institution, however, they are held by the beneficial owner and decisions are made by the beneficial owner too.

'An irregular transfer' would be a transfer which is contrary or out of the ordinary to those usually conducted or established by the customer.

A **'Politically Exposed Person'** (PEP) is "a natural person who is or who has been entrusted with prominent public functions" including the individual's family members and close associates in line with the Proceeds of Crime Act 2015. Please see guidance below for further information on family members and close associates.

As defined by the FATF, **'bearer shares'** are "negotiable instruments that accord ownership in a legal person to the person who possesses the bearer share certificate".

A **'privacy coin'** is a type of cryptocurrency that ensures the privacy and anonymity of its users. Privacy coins conceal information about senders and receivers during transactions through a variety of methods e.g. the grouping and splitting of payments, utilising stealth addresses (a one-time address created by the sender for each transaction), ring signatures and ring confidential transactions (a method that uses multiple signatures as decoys to obfuscate address of the sender and/or transaction details).

'Total number of customers declined or exited in the reporting period for failure to obtain satisfactory due diligence' – we ask that firm advise of the number of customer declined (where a business relationship has not yet been established) or exited (where the firm already held a business relationship with the client) where it has received unsatisfactory due diligence. By unsatisfactory due diligence we refer to e.g. where a customer refuses to provide due diligence or where the due diligence received is not to the standard that the firm would require.

'Total value of funds under custody' includes the funds under custody by a third party custodian.

Country breakdown Questions

The Country List provides an option for "unknown". For completeness sake, if the firm does not hold the information on any of its clients, please record this by using the option as "unknown".

If any data is recorded as "unknown", please provide separately an explanation on the reasons.

'Beneficial owner' refers to the "natural person who ultimately owns or controls the customer and a natural person on whose behalf a transaction or activity is being conducted" as defined in Section 7(1A) to (1C) of POCA 2015.

Where data on the beneficial owner is requested, this refers to the nationality of **all** beneficial owners behind a corporate customer. Where an individual has dual nationality, please include all of these in your response.

With respect to Listed Companies – only data on the direct shareholder needs to be reported.

The AML/CFT Guidance Notes (Section 7.7.1.2.) offers guidance in this respect.

‘Active customers’ refers to any customer (corporate or individual) with whom the firm continues to hold a business relationship as at 31 December of the reporting period whether these were existing customers or new ones within the reporting period. Any customer with whom a business relationship has ceased, does not need to be accounted for.

‘Country of activity’ refers to the country or countries in which the corporate customer is active i.e. trading, holds property, provides services, is making use of the firm’s services, etc. A corporate may report as being active in multiple countries. This does not apply to individual customers.

‘Family member of a PEP’ refers to the spouse, or a person considered to be equivalent to a spouse; the children and their spouses, or persons considered to be equivalent to a spouse; and the parents of a politically exposed person as per Section 20A of the Proceeds of Crime Act 2015.

‘Close associate of a PEP’ refers to persons who are known to have, joint beneficial ownership of legal entities or legal arrangements, any other close business relations; and persons who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a PEP as per Section 20A of the Proceeds of Crime Act 2015.

‘An agent’ is defined within the Financial Services (EEA)(Payment Services) Regulations as “a natural or legal person which acts on behalf of a payment institution in providing payment services”.

‘A distributor’ is defined within the Financial Services (Electronic Money) Regulations as “a person who distributes or redeems electronic money on behalf of an electronic money institution but who does not provide payment services on its behalf”.

‘Correspondent Bank’ refers to a financial institution that provides services on behalf of another financial institution. It can facilitate wire transfers, conduct business transactions, accept deposits and gather documents on behalf of another financial institution.

‘Subscription’ refers to an investor’s commitment to invest in a financial instrument, before the actual closure of the purchase of the financial instrument.

‘Redemptions’ refer to the return of an investor’s financial instrument. This may generate a capital gain, or loss.

For all applicable industries, **‘Investment Advisors’** are understood as under Section 2 of the Collective Investment Schemes Act refers to ‘a person retained by the manager of a collective investment scheme under a commercial arrangement which is not a contract of service to supply him with advice in relation to the scheme as to the merits of investment opportunities or information relevant to the making of judgements about the merits of investment opportunities’.

For all applicable industries, **‘Investment Managers’** are understood as under Section 2 of the Collective Investment Schemes Act refers to ‘a person retained by the manager of a collective investment scheme under a commercial arrangement which is not a contract of service to exercise any function concerning the management of the scheme property’.

For all applicable industries, **‘Investment Directors’** are understood as under Section 26 of the Collective Investment Schemes Act states that “directors” means those persons who, by law or under the instruments of incorporation, represent the open ended investment company, or who effectively determine the policy of the company’.

'Fiat' refers to a government-issued currency that is not backed by a physical commodity, such as gold or silver, but rather by the government that has issued it. The value of fiat money is derived from the relationship between supply and demand and the stability of the issuing government. Most modern paper currencies are considered fiat currencies.

'Open contracts' refer to outstanding or active derivative contracts, such as options or futures, which have not been settled for an asset.

Activity specific guidance

Funds

This includes Experienced Investor Funds (EIF), Undertakings for Collective Investment in Transferable Securities (UCITS), European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEFs).

Fund Managers

This includes Small Scheme Managers, Alternative Investment Fund Managers and UCITS Managers.

Auditors

The Financial Crime Return is only applicable with respect to statutory audits.

Insolvency Practitioners

The Financial Crime Return is required to be completed individually, and separate from an audit firm.

Trust and Company Service Providers

You will receive an email setting out the Group entities to be used per group (please note that the Group entities will only include Trust and Company Service Providers). If you have not received this, please contact the Financial Crime team.

Bureaux

These figures should consolidate those of all the local branches under the legal entity. Each transaction should only appear once on the Financial Crime Return, dependent on whether a customer is buying or selling a particular currency.

"Bought" refers to the purchase of foreign currency i.e. buying currency in exchange for sterling.

"Sold" refers to the sale of foreign currency i.e. the sale of a currency in exchange of sterling.

Distributed Ledger Technology (DLT)

Direct exposure is defined as the sending/receiving of virtual assets where the origin/destination is known to be an illicit source.

E-money

It is not necessary to select Payment Services when completing the Financial Crime Return.

Question - Total number of new corporate customers on-boarded in the reporting period:

We note that at times a client might sign up for a product, however it will not make use of it. Given that an initial business relationship has been established, then these customers need to be accounted for. Further questions that refer to “active” customers, do not need to account for these types of customers.

General and Life Intermediaries

The country/cash questions apply to life insurance intermediaries **only**.

Firms that are unable to split the data can include both general and life within when completing the country/cash questions.

Life Insurance and Life Intermediaries

Question - Total number of policies issued in the reporting period.

Novated policies are to be included within the total number of policies issued.