

GUIDANCE ON PROSECUTION FOR TIPPING OFF

This guidance is issued by HM Procureur in his capacity as the prosecuting authority within the Bailiwick and it does not constitute legal advice. Anyone who has concerns about any of the matters covered in this guidance should obtain independent legal advice. A glossary of terms used in this document is set out at the end.

BACKGROUND

It has come to the attention of the Bailiwick authorities that the finance industry and others would welcome clarification of the reach of the tipping off offences. Amendments to the Disclosure Law and the Terrorism Law are under consideration. In the meantime, this guidance is issued to clarify the circumstances in which prosecution will be pursued. It may be revoked or amended at any time.

THE TIPPING OFF OFFENCES

The tipping off offences were introduced to underpin the regime for making SARS (that is, required disclosures) under the Disclosure Law and the Terrorism Law. Their purpose is to prevent the subject of a SAR or other person from causing prejudice to ongoing or future investigations into money laundering or terrorist financing as the case may be. In order to achieve this, it is important that as few people as possible are aware that a SAR has been made. For this reason the scope of the offences is necessarily very wide, with a correspondingly narrow range of exemptions, and the offences carry substantial penalties.

However, it was not and is not the intention of the Bailiwick authorities that the tipping off offences should forestall legitimate attempts to prevent money laundering and terrorist financing. It is extremely important that those working in the finance sector and other affected industries are content that they are able to communicate concerns if they are to discharge their AML/CFT responsibilities effectively.

PROSECUTION

For the avoidance of doubt it is confirmed that no prosecutions will be brought against persons who disclose the fact that a SAR has been or will be made, if the disclosure is made by one member of an organisation to another for the purposes of discharging AML/CFT responsibilities and functions. This will also be the case in respect of a disclosure made to linked organisations such as head offices or other branches of the same institution, again providing that it is made to discharge AML/CFT responsibilities and functions.

However, this will not apply if the disclosure is made in circumstances where there are grounds to believe that it may prejudice an investigation.

HM Procureur

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GLOSSARY

AML/CFT	Anti –Money Laundering/Countering the Financing of Terrorism
Disclosure Law	Disclosure (Bailiwick of Guernsey) Law 2007
SAR	Suspicious Activity Report
Terrorism Law	Terrorism and Crime (Bailiwick of Guernsey) Law 2002
Tipping Off Offences	Offences at section 4 of the Disclosure Law and section 40 of the Terrorism Law