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Welcome to CIIPA's AML Guidance Newsletter

This is the fourth edition of CIIPA's AML Guidance Newsletter, published as part of our AML Supervision Programme for DNFBPs. Issues 1 to 3 covered the Business Risk Assessment, training and governance, and customer due diligence. This issue turns to suspicious activity reporting.

If you are registered with CIIPA and conducting relevant financial business – which includes insolvency and liquidation appointments – you are subject to the Proceeds of Crime Act (2025 Revision) (POCA) and the Anti-Money Laundering Regulations (2025 Revision) (the AMLRs). This newsletter is designed to help you understand what that means in practice, what CIIPA expects, and how you can demonstrate that your firm is meeting its obligations.

What you will find in this issue

This issue focuses on suspicious activity reports (SARs). We summarise the legal framework and the relevant international standards, set out the elements of an effective internal reporting structure, and explain how to complete a SAR that the Financial Reporting Authority (FRA) and law enforcement can use effectively. We also explain the Defence Against Money Laundering (DAML) / consent regime that has applied in the Cayman Islands since January 2025, its relevance to asset realisations and distributions, and the importance of avoiding tipping off.

Focus Topic: Suspicious Activity Reports

A SAR provides intelligence to the FRA, the Cayman Islands' financial intelligence unit. It is not a crime report or a complaint; it is information that may assist the FRA and law enforcement to identify, trace and recover the proceeds of crime.

Insolvency practitioners are often well placed to identify suspicious activity. Office holders take control of books and records, investigate the conduct of directors, trace assets and adjudicate claims. Much of what is identified may relate to conduct before the appointment. Whether or not the proceeds of that conduct still exist, or pass through the estate, the reporting obligations apply.

The threshold is **suspicion**, not proof. It is not necessary to know what the underlying offence is, or to have evidence of it. English case law describes suspicion as a possibility that is "more than fanciful" – more than a vague feeling of unease, but short of belief. That provides a useful practical benchmark when assessing whether suspicion has arisen in the Cayman Islands. The FRA's guidance describes "reasonable grounds for suspecting" as an objective test: whether the circumstances were such that an honest and reasonable person would have formed a suspicion.

A report to the court, to creditors or to another regulator is not a SAR. Where knowledge or suspicion arises, the matter should be reported internally to the MLRO, who will consider whether a disclosure to the FRA is required.

Equally, a SAR is not a substitute for reporting a crime. The FRA's guidance notes that where an actual crime has occurred, a report should also be made to the relevant law enforcement agency, such as the Royal Cayman Islands Police Service (RCIPS). Where a matter is urgent and requires immediate action – for example, an ongoing fraud, an imminent attempt to move or dissipate assets, or a risk to any person – it should be reported directly to the RCIPS without delay, in addition to any SAR.

The legal requirement

POCA ss.133-135 – the principal money laundering offences: concealing, disguising, converting, transferring or removing criminal property; arrangements; and acquisition, use and possession.

POCA s.136 – failure to disclose: a person who knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in criminal conduct must disclose to a nominated officer or the FRA as soon as is practicable.

POCA s.137 – the nominated officer (MLRO) must disclose to the FRA as soon as is practicable.

POCA s.139 – tipping off.

POCA s.9 – a disclosure to a nominated officer or the FRA does not breach any confidentiality restriction and does not give rise to any criminal or civil liability.

AMLRs Regs 33 and 34 – designation of an MLRO and Deputy MLRO at managerial level, and internal reporting procedures.

Offences under ss.136, 137 and 139 of POCA are punishable on summary conviction by a fine of $5,000 and/or two years' imprisonment, and on indictment by a fine and/or five years' imprisonment (s.141).

Why this matters: the international standards

FATF Recommendation 20 requires suspicions to be reported promptly to the financial intelligence unit — in the Cayman Islands, the FRA. Recommendation 21 protects those who report in good faith and prohibits tipping off, and Recommendation 23 applies both to DNFBPs.

In a mutual evaluation, assessors consider effectiveness as well as the legal framework: whether regulated businesses report, and whether their reports are of a quality the FIU can use. Timely, well-prepared SARs from insolvency practitioners form part of the evidence of an effective AML regime for the Islands.

The information provided does not need to be complete to be of value. A SAR may form one part of a wider picture, helping the FRA to link individuals, entities and transactions across different reports.

An effective reporting structure

The quality of a firm's SARs depends on the effectiveness of its internal reporting procedures.

Staff should report knowledge or suspicion to the MLRO in accordance with the firm's procedures. Regulation 34 of the AMLRs requires the MLRO, or the Deputy MLRO in the MLRO's absence, to consider the internal report in the light of all other relevant information, and to have access to the information needed to do so, before determining whether a disclosure to the FRA is required. That determination should be made independently of commercial or case pressures.

Staff can only report what they recognise. Section 136 of POCA provides a defence for a person who did not know or suspect money laundering and had not been provided with the training specified in guidance. A firm that does not train its staff therefore increases the risk that suspicious activity goes unreported. The role-based training set out in Issue 2 is an important part of the firm's reporting structure.

Decisions should be documented. Where the MLRO decides that a disclosure is not required, the reasons should be recorded as carefully as where a SAR is made. A reviewer may wish to see that internal reports were considered promptly, with access to the relevant case information, and that the conclusion reached was reasoned.

What an effective structure includes

- A designated MLRO and Deputy MLRO at managerial level (Reg 33), whose identities — and any changes — are notified to the CIIPA
- Written SAR procedures, reviewed regularly and communicated to staff
- A clear internal reporting route to the MLRO, supported by an internal report form
- MLRO access to the case file and other relevant information (Reg 34(c))
- A confidential SAR register and decision log, held separately from case files
- Disclosures made as soon as is practicable
- Appropriate management information for senior management, without compromising confidentiality

Completing a quality SAR

A SAR is only as useful as the information it contains. The FRA's Guidance on Preparing and Submitting High Quality Suspicious Activity Reports (February 2020, amended May 2024) sets out what it expects, with examples of good and poor reports. All firms should read it.

The FRA asks reporters to address six questions – **who, what, when, where, why and how** – and to present the narrative clearly and in chronological order, with an introduction (why the SAR is being filed, and the reference numbers of any previous SARs), a body (the facts, transactions with dates, amounts and currencies, and links between the parties) and a conclusion (any action the reporter intends to take – the FRA's own example is the transfer of funds in a liquidation).

The FRA's SAR form is designed for all types of reporting entity, so insolvency practitioners should consider how the appointment fits the form. Sections 2 and 3 identify the subjects of the report – individuals and legal entities – and Section 4 any other financial institutions or service providers involved, such as the banks holding the estate's or the company's accounts. In Section 1, the reporter's role should be described clearly: for example, "official liquidator of X Ltd, appointed by … on …"

Section 5 – Reason for Suspicion is the most important part of the SAR report. It enables the FRA to analyse the report and, where appropriate, disseminate it to law enforcement, other competent authority, supervisory authority or overseas financial intelligence unit. The form asks for "relevant details including date business relationship established/declined, source of funds, value of assets currently held if any and nature of the suspicion". In an insolvency appointment, this means:

What Section 5 asks for	What to include in an insolvency appointment
Date business relationship established / declined	The date and type of appointment, and the date on which the suspicion arose. Key transactions should be set out in date order.
Source of funds	Where the funds or assets came from, so far as known – for example, receipts shortly before the appointment, contributions from directors, or purchase monies.
Value of assets currently held	The value of the relevant property held or controlled, and where it is held – bank, account and jurisdiction. Section 136(1)(d) and 137(1)(d) of POCA requires the whereabouts of the property to be disclosed, so far as it is known.
Nature of the suspicion	The reasons for the suspicion, stated clearly: what is unusual or inconsistent with what is known, who is involved, and how the matter came to light – for example, a review of bank statements, an interview or a creditor claim.

Completing and following up the form

Complete each section. Gather the information for Sections 1 to 4 as well as Section 5, including full names, dates of birth, addresses, identification documents, company details, beneficial owners and account numbers. Much of this should already be held from CDD (see Issue 3). Where information is not known, the FRA asks for "Unknown" or an explanatory comment rather than a blank. Supporting documents, such as bank statements, agreements and corporate records, are welcomed and can reduce the need for the FRA to request further information.

Keep the SAR off the case file. The completed form, the MLRO's decision and any FRA correspondence should be held in a confidential SAR register with restricted access, and not on the client or case file, where they could be seen by colleagues, creditors, successor office holders or the subject.

Update the FRA as the case develops. Where further proceeds of crime, additional individuals or entities, or other relevant information are identified, a further report should be considered. The form provides for the date of the original report and the FRA case number, which should be used so that the FRA can link the reports.

Consider whether consent is required. Where new information relates to an act the office holder proposes to carry out, such as a realisation or a distribution, the further report may need to include a DAML request (see below).

Example from the FRA guidance – a SAR filed by liquidators

The FRA's guidance includes, as an example of a complete SAR narrative, a report filed by liquidators. A creditor with a significant claim made no contact for over two years. Intermediaries then sought urgent payment of the creditor's dividend to third parties – first an escrow agent for a property purchase overseas, then an overseas company supported by a promissory note – while being unable to provide adequate KYC documentation, and the payment instructions changed repeatedly.

The report identified the persons involved, the time period and specific dates, set out the reasons for suspicion, and stated the action the liquidators intended to take. It illustrates why distributions are a point of heightened risk, as explained in Issue 3.

What the FRA regards as an insufficient SAR

- A narrative that simply refers to an attached article or screening result, without explaining the link to the subject
- No explanation of the reporter's relationship with the subjects of the report
- No dates, amounts, identifiers or description of the activity
- No clear statement of why the reporter is suspicious

The DAML / consent regime

Since 2 January 2025, where a person proposes to deal with property that is known or suspected to be criminal property, making a disclosure alone does not provide a defence. The FRA's consent to the proposed act is also required.

The Proceeds of Crime (Amendment) Act, 2023 amended the defences to the principal money laundering offences in sections 133 to 135 of POCA. A person who makes a disclosure to the FRA **and has the consent of the FRA** to do the act does not commit an offence under those sections. The FRA's Industry Advisory (January 2025) sets out how the regime operates:

- The FRA has **7 working days**, commencing on the first working day after the SAR containing the DAML / consent request is submitted, to respond (the notice period). The notice period may be extended where the FRA considers that an amendment to the SAR is required
- If the FRA does not respond within the notice period, consent is deemed to have been given
- If consent is refused, a **30 calendar day moratorium** applies, during which the activity should not proceed
- The SAR must be clearly identified as a DAML SAR, and the "Reason for Suspicion" section must explain why consent is being sought and give full details of the proposed activity

Relevance to insolvency appointments. Realising assets, paying dividends, returning funds and transferring assets may all involve dealing with property. Where an office holder knows or suspects that funds or assets in the estate are the proceeds of crime, consideration should be given to seeking consent **before** acting, and the notice period and any moratorium should be built into the timetable for completions and distributions. Issue 3 explained why these are points of heightened risk.

A good DAML request

- Describes the **specific proposed act** – for example, "pay a dividend of $X to creditor Y from account Z"
- Identifies the property suspected to be criminal property, its value and where it is held
- Identifies the parties involved
- Explains clearly why the property is suspected to be criminal property
- Relates to a proposed act – where an act has already taken place, a SAR should be made in the usual way
- Is followed by no action until consent is given, the notice period expires without a response, or any moratorium ends

Tipping off in insolvency

Insolvency is a public and transparent process, which can create particular tipping-off risks.

Under section 139 of POCA, it is an offence, where a person knows or suspects that activity requiring disclosure is about to take place, is taking place or has taken place, to make a disclosure that is likely to prejudice any investigation that might be conducted. Office holders report to creditors, committees and the court, correspond with directors and deal with purchasers – each of which may create a risk of revealing, directly or indirectly, that a SAR has been made or that an investigation may follow.

SAR records and MLRO decisions should be kept out of the case file, progress reports and time records, and access to them restricted. Where a firm forms a suspicion and reasonably believes that completing CDD would tip off the customer, Regulation 19 of the AMLRs requires the firm not to complete the CDD but to file a SAR.

Common weaknesses

Weaknesses commonly identified in SAR arrangements include:

- No SAR procedures, or procedures that are not known to staff
- An assumption that another body – a regulator or the court – will report
- SAR details recorded in case files or reports, creating tipping-off risk
- MLRO decisions not to report left undocumented

What your firm should do now

Action for your firm

1. Review your SAR procedures: confirm that they reflect the DAML / consent regime, identify the MLRO and Deputy MLRO (and that the CIIPA has been notified of them), explain how staff should report internally, and explain when a matter should also be reported to the RCIPS.
2. Check your SAR register and decision log: confirm that decisions, including decisions not to report, are recorded with reasons and held separately from case files, and that further reports are made and linked to the original where new information comes to light.
3. Build DAML into your case procedures: identify when consent may be required before asset realisations and distributions, and allow for the notice period and any moratorium.
4. Test the quality of a recent SAR against the FRA guidance: does Section 5 answer who, what, when, where, why and how, set out the date of appointment, the source of funds and the value and location of assets held, and explain the suspicion clearly?
5. Train staff to recognise suspicion in insolvency work and to report it promptly, and ensure your MLRO understands the DAML regime.
6. Review the controls your firm applies to prevent tipping off in reports to creditors, the court and other parties.

Contact CIIPA

If you have questions about your firm's AML obligations or the inspection programme, please contact CIIPA's regulatory team.

SARs are submitted to the FRA through its AMLive reporting portal or, for unregistered entities, by secure email. The FRA's Guidance on Preparing and Submitting High Quality SARs, its Industry Advisory on the DAML / consent regime and its money laundering indicators are available at fra.gov.ky.

Urgent matters and actual crimes should also be reported to the RCIPS Financial Crimes Unit: RCIPS.FCU@rcips.ky or +1 345 949-8797.

This newsletter is for guidance purposes and does not constitute legal advice. Firms should take independent legal advice where appropriate. The AMLRs (2025 Revision) and the Proceeds of Crime Act (2025 Revision) are the authoritative legal texts.