

GOVERNMENT OF GIBRALTAR



**ANTI-MONEY LAUNDERING GUIDANCE FOR BUSINESSES
WHICH ACCEPT LARGE CASH PAYMENTS FOR GOODS**

APRIL 2005

NOTICE: THIS GUIDANCE NOTE IS NOT LAW AND IS PROVIDED FOR INFORMATION PURPOSES ONLY. FOR AN ACCURATE STATEMENT OF THE LAW THE CRIMINAL JUSTICE ORDINANCE 1995 AND SUBSEQUENT AMENDING LEGISLATION MAY BE PURCHASED FROM:

**THE GOVERNMENT PUBLICATIONS OFFICE
No.6 CONVENT PLACE**

1. Introduction

1.1 What is this notice about?

This notice explains the changes to the Criminal Justice Ordinance 1995, effected by the Criminal Justice (Amendment) Ordinance 2004, in relation to money laundering, and their effect on businesses accepting payment for goods in cash equivalent to €15,000 or more.

1.2 Who needs to read this notice?

This notice is addressed to proprietors, directors, managers, employees and Nominated Officers of businesses, which:

- deal in goods and
- accept a payment or series of payments in cash equivalent to €15,000 or more in any currency for a single transaction.

These businesses are called High Value Dealers or HVDs and the cash payments they accept for goods are referred to as High Value Payments or HVPs.

1.3 How much is €15,000 in sterling?

For practical purposes, you can use the latest rate published in the media. The precise legal requirement is the exchange rate in force on the date when the cash is received.

It is recommended that to avoid difficulties with exchange rates, you put in place a policy of applying anti-money laundering procedures for transactions which are significantly less than €15,000, for example over £9,000.

1.4 What if I never accept High Value Payments?

Providing you have a business policy of refusing HVPs this notice will not apply to your business.

1.5 What is money laundering?

It is the process by which criminally obtained money or other assets (criminal property) are exchanged for 'clean' money or other assets with no obvious link to their criminal origins.

It also covers money arising out of any criminal activity.

1.6 How will this notice help me?

It offers advice about ways in which HVDs can fulfil their obligations under the Criminal Justice Ordinance 1995.

1.7 Important.

This notice offers advice on ways HVDs can fulfil their legal obligations. Should you have any doubts as to how any particular measure affects you or your business you should seek independent legal advice.

2. The Law Relating to Money Laundering.

2.1 What do you mean by failure to disclose?

Failing to report reasonable grounds for knowledge or suspicion of money laundering to either your Nominated Officer or police or customs¹.

This is covered in more detail in sections 5 and 6.

¹ The Royal Gibraltar Police and HM Customs jointly operate the Gibraltar Financial Investigation Unit (GIFU). A disclosure made to an officer in the GIFU may be regarded as being compliant with any disclosure requirement imposed under the Criminal Justice Ordinance 1995.

2.2 What do you mean by ‘tipping-off’?

‘Tipping-off’ occurs where you know or suspect that a disclosure has been made or is going to be made to police or customs and you pass on information which you believe might prejudice any investigation.

This does not prevent you from making normal enquiries about the nature and details of a particular transaction to assess grounds for suspicion.

3. The Criminal Justice Ordinance 1995.

3.1 What is in the Criminal Justice Ordinance 1995?

The Criminal Justice Ordinance 1995 require relevant businesses to have:

- policies and procedures to prevent them being used by money launderers
- staff trained in these procedures and in anti-money laundering law
- checks and controls to ensure the policies and procedures are working, and
- internal and external disclosure procedures for suspicious transactions.

These requirements are summarised in CATCH.

3.2 ‘CATCH’ and what it means.

CATCH is a shorthand way of helping you to remember the five main elements of the Criminal Justice Ordinance 1995.

As a High Value Dealer, whenever you accept an HVP you must operate CATCH:

Action	For more information, See section.....
1 Control your business by having anti-money laundering systems in place and	4
2 Appoint a Nominated Officer	7
3 Train your staff	8
4 Confirm the identity of your customers	9
5 Hold all records for at least 5 years.	10

3.3 Do I have to operate CATCH when I receive payments by cheque or credit card?

No. The Criminal Justice Ordinance 1995 only applies to you when you accept HVPs in cash.

4. CATCH – Control Systems. Identifying and Disclosing Suspicious Transactions.

4.1 What must I do?

You must:

- put in place policies and procedures relating to the prevention of money laundering and make your employees aware of them; and
- ensure that any suspicious activity or transactions are properly identified and disclosed

You also need to decide what systems you will put in place to deter or prevent money

laundering. These will differ according to your type of business, how you operate and the likelihood of criminals using your business to launder money. An important control is that you 'know your customer' and the source of their funds. Section 11 gives examples of threats and how you can identify them.

4.2 What is 'know your customer'?

The best protection against abuse by money launderers is for you to know who your customers are and the source of their funds. Although there is no legal requirement for you to do this, 'know your customer' should where possible include knowing your customer's business, as this will help you to assess whether a transaction is suspicious or not.

For example, is it reasonable for a customer to want to make a HVP for goods?

4.3 How do I identify and disclose suspicious activity?

The systems you put in place will help you and your staff to identify suspicious activity. Sections 5 and 6 provide guidance on when, how and to whom to disclose suspicion.

5. Disclosing Suspicion – Role of the Employee.

5.1 What is my role as an employee?

If you work for an HVD and are dealing with a payment or series of payments in cash, equivalent to €15,000 for a single transaction and have 'reasonable grounds for knowing or suspecting money laundering', you must report this to your Nominated Officer (see section 6) 'as soon as is practicable'

5.2 What do you mean by suspicion?

This is where there are circumstances to suggest to a reasonable individual that a person might be laundering money. Suspicion must be more than a mere hunch. It includes any activity, which does not fit with the normal course of business.

5.3 Suspicion indicators.

New customers

- Is checking their identity proving difficult? Is the customer reluctant to provide details?
- Is there a genuine reason for paying large sums of money in cash?
- Is the customer trying to introduce intermediaries either to protect their identity or hide their involvement?
- Is the customer paying in used notes and/or in small denominations?
- Is the source of the cash known and reasonable?
- Are there any unusual requests for collection or delivery?

Regular and established customers

- Is the transaction reasonable in the context of the normal business of this customer?
- Is the size and frequency of the transaction consistent with the normal activities of the customer?
- Has the pattern of transactions changed since the business relationship was established?

5.4 What does 'reasonable grounds' for knowing or suspecting money laundering mean?

You are the expert in your type of business. You know the type of customer your business generally attracts and how they normally deal with you. People, who deal with you differently or want things that you consider to be out of the ordinary for your type of business, may arouse your suspicion.

Therefore you can commit an offence if, when your suspicions are aroused you:

- wilfully turn a blind eye to the obvious;
- fail to adequately ascertain the facts; or
- fail to make adequate enquiries to assure yourself of the legitimacy of the transaction

5.5 What does ‘as soon as is practicable’ mean?

This means as soon as you reasonably can.

5.6 How do I report my suspicion to the Nominated Officer?

You should report the grounds for suspicion to your Nominated Officer in line with your employer’s internal procedures. You should include full details of the identification you have checked (see section 9) and any other customer information you have.

5.7 When should I report my knowledge or suspicion to the Nominated Officer?

You must do this as soon as is practicable after you have reasonable grounds for suspicion. If you do not do this you may be committing an offence.

5.8 What if I become suspicious before I complete the transaction?

You should make an internal report before the transaction is completed and wait for consent

from your Nominated Officer before you complete the transaction.

5.9 What should I say to delay the transaction without ‘tipping off’ the customer?

Give the customer an excuse that fits the circumstances. In difficult cases speak to your Nominated Officer or manager.

5.10 If I think delaying the transaction would ‘tip-off’ the customer can I go ahead?

Ask your Nominated Officer. They may let you proceed with the transaction, but this should not be done routinely.

Include in your report the reason why you think delaying the transaction would ‘tip off’ the customer.

5.11 What should I do if the customer asks for his money back before I get consent from the Nominated Officer?

Seek advice from the Nominated Officer urgently.

5.12 What if I become suspicious after the transaction has taken place?

Make an internal report to your Nominated Officer soon as you can.

5.13 What if I refuse the business?

If you refuse the business because you are suspicious you must still make a disclosure to the Nominated Officer.

6. Disclosing suspicion – Role of the Nominated Officer.

6.1 Who makes authorised disclosures to police or customs?

The Nominated Officer will normally be the person required to make disclosures to the police or customs.

6.2 What if I don't need to appoint an Nominated Officer?

If you are an individual who does not employ staff or act in association with anyone else you do not need to appoint a Nominated Officer. This means that you must disclose reasonable grounds for knowledge or suspicion of money laundering direct to police or customs. You will need to follow the guidance below where it is appropriate.

6.3 I am the Nominated Officer – What must I do when I receive an internal report from an employee or agent?

You must consider the report in the light of all other relevant information to decide whether or not the information in the report does give reasonable grounds for knowledge or suspicion of money laundering. Once you decide that those reasonable grounds exist, you must make a disclosure to police or customs as soon as you can.

6.4 How do I make a disclosure to police or customs?

Complete the disclosure form (a copy may be obtained from the Gibraltar Financial Intelligence Unit – see section 12) fully and accurately including full details of the identification taken and any other customer information you have. You should include the reasons for suspicion and any copy documents taken from your customer.

6.5 What should I do if I have allowed a transaction to proceed to avoid 'tipping off' the customer?

You should consider all relevant information and decide whether to report to police or customs as soon as possible afterwards.

6.6 What must I do when I receive an internal report before the transaction is completed?

If you decide that there are reasonable grounds to know or suspect money laundering, you must disclose to police or customs as soon as you can. You must then wait for consent from police or customs before you allow completion of the transaction.

Alternatively you can authorise the transaction to continue if you decide in the light of all relevant information, that there is no need to make a disclosure.

6.7 What should I do if the customer asks for his money back after I have disclosed on a transaction?

Seek urgent advice from police or customs.

6.8 Should I notify large cash transactions as soon as I have suspicion and delay reporting small credit transactions?

No. Once you have made a decision that you have reasonable grounds for knowledge or suspicion of money laundering you must make a disclosure as soon as you are able. You must not grade transactions once you come to this conclusion; you must notify each suspicious transaction as soon as you can.

6.9 Should I automatically disclose on transactions above a certain level?

No. You should only disclose those transactions where you have reasonable grounds for knowledge or suspicion of money laundering.

6.10 What do you mean by a transaction?

A transaction is anything you carry out by way of business. For a High Value Dealer it will involve accepting a cash payment or series of related cash payments equivalent to €15,000 (in any currency) or more for goods.

6.11 When should I refuse business?

That is a matter entirely for your own judgement. Your legal responsibility is to report your suspicion as soon as practicable after the information or other matter has come to your attention.

Making a disclosure provides you with a defence against any money laundering offence.

6.12 If I report a suspicious transaction can my customer sue me for breach of confidence?

No. You are legally obliged to report the transaction. You are protected against any claim for breach of confidence if the report is made in good faith.

6.13 Will my customer know I have made a report?

Your disclosure, other than in exceptional circumstances, will be treated as confidential.

7. CATCH – Appoint a Nominated Officer.

7.1 What is a Nominated Officer?

The Nominated Officer (also known as the Money Laundering Reporting Officer) is the focal point within an organisation for the oversight of all activity relating to anti-money laundering matters.

The Nominated Officer's responsibilities must include:

- receiving disclosures from staff (also known as internal reporting); and
- deciding if disclosures should be passed on to police or customs.

7.2 Who should I appoint?

The business must decide who to appoint. However the Nominated Officer must:

- be an employee of your business (you cannot appoint an agent to act on your behalf) and
- work in Gibraltar (you cannot appoint an overseas employee to act as the Nominated Officer).

The person you appoint must have reasonable access to all the information, which could help them when considering disclosures received from staff. Staff should be able to contact the Nominated Officer during your business hours because:

- they must disclose as soon as possible
- they may decide to disclose before a transaction is completed.

Many larger businesses decide to appoint a senior manager or other person of similar status because of the importance of the nominated officer.

7.3 What records must the Nominated Officer keep?

This depends on the responsibilities of your Nominated Officer. Section 10 gives details of what records your business must keep. However, Nominated Officers should retain copies of all disclosures (internal reports) they

receive and the decisions they make about what action, if any, should be taken on those reports.

8. CATCH – Training.

8.1 What training must I give?

All your managers and anyone in your business who deals with customers must be trained to be aware of:

- the law regarding money laundering offences
- your business's policies and procedures relating to the prevention of money laundering (see section 4 for details);
- identification and 'know your customer' procedures;
- recognition and handling of transactions which may be related to money laundering;
- internal reporting; and
- record-keeping.

9. CATCH – Confirm the identity (ID) of your customers.

9.1 When is identification required?

As a High Value Dealer you must satisfy yourself that your customer is who they say they are whenever they make a total cash payment equivalent to €15,000 or more for a single transaction

9.2 Why is evidence of identity important?

The first requirement of 'knowing your customer' is to be satisfied that they are who they claim to be, by checking evidence of their name and address.

Also, in order to follow the trail of laundered money, law enforcement authorities need to know the names of people involved.

People wishing to launder money normally try to hide their true identity. You may become suspicious if your customer is unable or unwilling to produce evidence of ID when required to do so. In these circumstances you should consider making a disclosure report.

9.3 Whose ID should I check and retain?

You must check and retain evidence of everyone in the chain. This includes when your customer is, or appears to be acting on behalf of someone else.

You should:

- check evidence of ID when you receive the first high value payment; and
- either retain a photocopy of the evidence, or record and retain information, which would enable a copy to be obtained.

9.4 What evidence of ID should I obtain from customers I do not meet?

You should obtain the same evidence as you would for 'face to face' customers. However, when there is no 'face to face' contact with your customer there is a far greater risk of false identity. You must take this additional risk into account.

9.5 My customer wants to fax me a certified copy of the ID.

Faxed copies of the certified documents are not acceptable as evidence of ID. Ask your customer for copies certified by a lawyer, accountant, post, banker, teacher or minister of religion, doctor or person of similar status.

They must be able to be contacted if necessary and their name and address should be included.

9.6 What should be written on the certified copies of ID?

Certified copies of identification should be dated and signed 'original seen'. Where there is not a good photograph on the certified copy of the ID, the copy should also be certified as providing a good likeness of the applicant.

9.7 What are the best forms of identification evidence?

You must satisfy yourself that you obtain acceptable evidence of ID.

Whatever procedures you adopt, they should give you confidence that you have obtained satisfactory identification and retained appropriate evidence.

We set out below some combinations of identification, which you may regard as appropriate when dealing with private citizens:

- full passport or identity card and full driving licence; or
- full passport or full driving licence and secondary identification; or
- full passport or identity card and secondary identification.

Secondary forms of identification may include credit cards, bank account statements or recent official correspondence such as a telephone, electricity/water bills in the same name.

9.8 What if my customer doesn't have a passport or full driving licence?

You must still obtain evidence to confirm the customers' identity. You should take a risk-based approach, guarding against impersonation.

9.9 What checks should I make on the ID evidence given to me?

You should:

- check any photographs for likeness;
- check the date of birth compared to the customer's apparent age;
- compare spelling of names and addresses on different identification documents; and
- compare the customer's signature with signatures included in the identification evidence

9.10 What must I do when my customer is another business?

As an HVD you must ensure that you obtain sufficient information about the nature of any new cash business you deal with, where you accept an HVP.

The first time you accept a total cash payment equivalent to €15,000 or more for a single transaction: You should:

- establish the nature and level of the activity to be undertaken; and
- consider why the customer is purchasing goods in cash.

Where your customer is a limited company you should consider the identity of the individuals you deal with and obtain details of the company's:

- registered number, corporate name and any trading names used;
- registered address and any separate principal trading addresses; and

- business activity.

We recommend you record the result of your checks in the account file. You should regularly review the relationship and consider reporting any suspicion. You must retain the account file or an equivalent record for five years after you stop dealing with the customer.

9.11 What is an account file?

An account file is a document containing:

- the name of your customer;
- evidence of identification;
- a record of your transactions; and
- copies of any disclosures you have made.

The account file is merely a system that enables you to retain all the relevant material for an individual in one place.

Setting up account files is only a suggestion.

Either retain a photocopy of the evidence of ID or record and retain information, which would enable a copy to be obtained;

You must keep these records for at least five years from the date when the relationship with your customer finishes.

Business records – you must keep a record of all High Value Payments for 5 years. The record should include the name and address of the customer. It should also include payment and transaction details.

All records of your disclosures, letters received from police or customs or any other correspondence with a law enforcement agency, should be retained by your nominated officer for at least 5 years.

10. CATCH – Holding records.

10.1 What records do I have to keep?

You only need to keep records relating to HVPs. You do not need to keep records of payments you accept less than €15,000 or by cheque or credit card.

11. Examples of anti-money laundering systems.

THREAT	IDENTIFICATION	CONTROL SYSTEMS
Staff ignorance/ apathy	Internal audit across range of completed business to identify HVPs and check that staff have identified and retained evidence	Set up systems so that all cash transactions equivalent to €15,000 are

	of identity of customers paying for goods in cash Get staff to complete questionnaires on anti-money laundering systems.	referred to the manager
Transactions outside normal range of activities	Monitor business trends and confirm reasonableness.	Check bank statements so that large cash payments can be identified
Unrecorded transactions	Initiate test transactions to confirm all activity caught.	Training

12. Useful contacts.

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