

Additional Guidance for Financial Instructions

This guidance note deals with matters specific to financial institutions.

It should be read in conjunction with the Guidance for Data Controllers document that provides details of general matters of data protection compliance, including an outline of the 8 principles, notification and subject access.

This guidance relates to both the Data Protection (Jersey) Law 2005 and the Data Protection (Bailiwick of Guernsey) Law, 2001.

Where the Laws differ and to show differences between the two jurisdictions the page will be split as shown below.

Jersey

Commissioner = Information
Commissioner

a = article within the Law

Guernsey

Commissioner = Data Protection
Commissioner

s = section of the Law

Where numbering of passages from the Laws are the same it will be shown as a/s.

Table of Contents

Notifications and company, trust & fund administrators	3
Suspicious Transaction Reports – compliance with the Law	3
Trusts and subject access requests	4
Data Transfers including intra-group transfers.....	5
Contact the Commissioner	6

Notifications and company, trust & fund administrators

The Law defines a data controller as a person who (either alone or jointly or in common with other persons) **determines the purposes for which and the manner in which any personal data are processed**. This is regardless of whether or not they do the processing themselves. Therefore, where organisations are classified – using this definition – as a data controller, they must be notified in their own right (unless an exemption applies).

Administrators often have many client entities within their portfolio and process the associated personal data on each entity's behalf. Where these client entities retain the decision making in relation to the personal data processed, they are data controllers in their own right and as such, need to notify.

In these situations, the administrator is acting as a data processor for the client entity. As such, there should be a data processing agreement between the two companies, covering the expectations of the data controller, that personal data should not be processed unless under instructions from the data controller and that suitable security should be in place. This is in order to meet the requirements of the 7th data protection principle.

Where an administrator retains full control of decision making in relation to all personal data associated with a client entity and is solely responsible for processing, the client entity is not a data controller and there is no requirement for its separate notification. In such instances it is advised that this arrangement is confirmed by contract and the client entity is listed as a trading name on the administrator's notification.

Suspicious Transaction Reports – compliance with the Law

The 1st data protection principle requires that processing of personal data is both fair and lawful. In this context, 'fair' effectively means letting the individual know what is going to happen with their personal data. However, this conflicts with one of the fundamental aspects of anti-money laundering reporting; that is that the individual suspected of dubious

financial activity is not made aware of any report made to organisations tasked with the investigation of financial crime.

The requirement of organisations to report suspicious transactions is one outlined in various pieces of legislation. As such, the exemption found at a/s 35 of the Law, that exempts processing from the need to comply with the fair aspect of the 1st principle where the processing is required by Law, can be used to cover such reports. This approach should be incorporated into the policy adopted by organisations in relation to anti-money laundering measures and its clear application outlined.

In addition, in order to avoid committing an offence of “tipping off” an organisation can use the exemption found at a/s 29 of the Law to withhold the information reported if a subject access request is made by the individual concerned. This enables the withholding of information where to provide it would prejudice crime prevention and detection and or apprehension or prosecution of offenders, by preventing the committing of the “tipping off” offence and therefore not alerting the individual to a potential investigation. It is advised that this is incorporated into the subject access request policy.

Trusts and subject access requests

Under the Law, an individual can make a subject access request to an organisation for the personal data held about themselves. In response to this request the organisation should disclose all the personal data the individual is entitled to, unless an exemption applies or the organisation owes a duty of confidentiality to someone else in relation to that information.

Such a disclosure may be incompatible with the establishment or operation of a Trust and contrary to Trust law in force in the Islands. To this end, the following legislation has been enacted to reinforce the non-disclosure aspects of local Trust law by way of exemption from subject access provisions.

	Jersey	Guernsey
SAR Exemption	The Data Protection (Subject Access Exemptions) (Jersey)	The Data Protection (Subject Access Exemptions)

	Regulations 2005	(Guernsey) Order, 2015
Relevant Trust Law	The Trusts (Jersey) Law 1984 Article 29	The Trusts (Guernsey) Law, 2007 Section 38

Data Transfers including intra-group transfers

Personal data should only be transferred outside the jurisdiction where it is adequately protected. This includes where personal data is transferred within a company or group of companies in disparate locations.

Further information in relation to data transfers can be found in the International Transfers guidance note found on our website – www.dataci.org

Contact the Commissioner

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