GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO

FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO

Ministry of Finance

# RECORD KEEPING GUIDANCE FOR SUPERVISED ENTITIES

**UPDATED 15 SEPTEMBER, 2022**

## Purpose

This Guidance is intended to provide assistance to Non-Regulated Financial Institutions and Listed Businesses supervised by the Financial Intelligence Unit of Trinidad and Tobago (collectively "Supervised Entities") in meeting their Record Keeping obligations under the Financial Obligations Regulations 2010.

**FIUTT REFERENCE: GN/001/2022**

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# 1. INTRODUCTION

This Guidance is intended to assist Non-Regulated Financial Institutions and Listed Businesses supervised by the Financial Intelligence Unit of Trinidad and Tobago ("FIUTT") ("Supervised Entities") in complying with their legal obligations **with regard to the retention of records**, to ensure compliance with the Anti-Money Laundering, Counter Financing of Terrorism and Counter Proliferation Financing ("AML/CFT/CPF") Laws.

The Financial Obligations Regulations of Trinidad and Tobago, 2010 ("the FORs") contain requirements for Supervised Entities and Financial Institutions to retain several types of records. These records include, but are not limited to, information obtained when conducting customer due diligence, transactional records, employee data and information related to SAR/STRs. This guidance is intended to assist Supervised Entities with understanding the types of records which must be kept, the manner in which they are recommended to be kept and for what time period.

This Guidance is a general, informative document and is not intended to replace the FORs or any of the AML/CFT/CPF Acts and Regulations. **This Guidance should not be construed as legal advice and should be read in conjunction with the said laws.**

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## 2. WHY ARE SUPERVISED ENTITIES REQUIRED TO KEEP RECORDS?

In the fight against Money Laundering, Terrorist Financing, Proliferation Financing ("ML/TF/PF") and other criminal conduct, Supervised Entities provide the first line of defence when they detect and report suspicious transactions and activities that are observed when conducting business with customers. When suspicious transaction/activity reports ("STR/SARs") are made to the FIUTT, or other criminal conduct to Law Enforcement Agencies, it can trigger further enquiry into the particular transactions, customers or other persons. Such transactions/persons may be of assistance in determining the source and/or legitimacy of the funds used to carry out the transaction.

The FIUTT and/or Law Enforcement Agencies ("LEAs") may, therefore, make lawful requests for transaction and/or customer records in order to reconstruct transactions and trace the funds back to its source. Such requests may be made pursuant to a local or foreign criminal investigation and may therefore require the Supervised Entity to make the required records available on short notice and within a short period of time in order to facilitate a speedy investigation.

The obligation to retain records will enable Supervised Entities to comply with lawful requests for information from auditors, other competent authorities, and LEAs for the purposes of such criminal investigations or prosecution of persons charged with criminal offences.

It is for this purpose that the Financial Action Task Force ("FATF") has established the requirement for Record Keeping at Recommendation 11 of the FATF's 40 Recommendations.

In addition to transaction records, Supervised Entities are also required to keep other records which would enable the FIUTT to confirm that the Supervised Entity is in compliance with their AML/CFT/CPF legislative obligations while undertaking compliance examinations, these include, *inter alia*, staff recruitment policies, training registers, and registers of enquiries. All required records are listed in part 3 of this Guidance.

## 3. WHAT TYPES OF RECORDS ARE REQUIRED TO BE KEPT?

Supervised Entities are required to establish a record retention policy which provides for the maintenance of a broad spectrum of records, including those related to the recruitment of staff, training of staff, customer due diligence, financial transactions with customers, and internal and external reporting. Please see Table 1 for a description of some of the records that are required to be kept by Supervised Entities. **The records listed at Table 1 is not an exhaustive list and should be read in conjunction with any other record keeping requirements that may be contained in the AML/CFT/CPF Laws**.

The Supervised Entity's record retention policy should explicitly provide for the keeping of records for a minimum of six (6) years unless extended at the request of the FIUTT or Law Enforcement by court order.

Customer records should be kept in a format which facilitates the reconstruction of individual transactions (including the amounts and types of currency involved), and in a manner which permits the swift provision of information upon requests from the FIUTT and Law Enforcement by court order.

These requirements apply whether or not the Supervised Entity stores records on site or off-site.

*Table 1 - Summary of Record Keeping Obligations*

| No. | Record | Law | Format in which Records must be kept | Period within which record must be kept |
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| 1. | ***Staff recruitment records*** – this includes the names, addresses, position titles and other official information pertaining to staff appointed or recruited by the Supervised Entity. | FOR 5(2). | Records should be kept up to date and in a manner which allows the Supervised Entity to provide them to the FIUTT upon request and in a timely manner. | From the appointment/recruitment of the staff, up to at least six (6) years after the termination of employment. |
| 2. | ***Training Register**** – for Directors and all members of staff annually. | FOR 6(1). | This Register should be kept up to date and in the manner described in Chapter 4 herein. The Supervised Entity should be able to provide this Register to the FIUTT upon request and in a timely manner. | At least six (6) years. |
| 3. | ***Compliance Programme*** | FOR 7(1). | The Compliance Programme consists of key policies which must be kept up to date and throughout the life of the Supervised Entity in a manner which enables it to be produced to the FIUTT upon request. | Must be kept updated throughout the life of the Supervised Entity using a risk based approached. |
| 4. | ***Self AML/CFT/CPF Risk Assessment.*** | FOR 7(2). | The Supervised Entity should be able to produce its up-to-date risk assessment to the FIUTT upon request and within such timeframe as the FIUTT may specify. | Must be kept updated throughout the life of the Supervised Entity. |
| 5. | ***Transaction Records*** (all domestic and international transactions). | FOR 31(1)(a) and 32(1)(a) | Transaction records must contain the details of a transaction, including the amount and type of currency used for the transaction and account files and business correspondences, including the results of any analysis undertaken in the course of a business relationship or one-off transaction to | At least At least six (6) years from:<br>i. The end of a business relationship with a customer with whom a business relationship was formed; and |

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| | | | provide the evidence necessary for the prosecution of criminal activity.<br><br>Transaction records must contain sufficient detail to permit reconstruction of individual transactions; and in a manner which can be made available to the FIUTT, upon its request and within such time frame as specified. | ii. The date of a one-off transaction or series of one-off transactions. |
| **6.** | ***Customer Due Diligence records and Ongoing Due Diligence records.*** | FOR 31(1)(a) and 32(1)(b) | Evidence of identity obtained in accordance with regulations 15, 16 and 17 should be kept in the following manner—<br>(i) a copy of that evidence;<br>(ii) the address of the place where a copy of that evidence may be obtained; or<br>(iii) information enabling the evidence of identity to be obtained a second time, but only where it is not reasonably practicable for the financial institution or listed business to comply with sub-regulation (i) or (ii). | At least six (6) years from:<br>i. The end of a business relationship with a customer with whom a business relationship was formed; and<br>ii. The date of a one-off transaction or series of one-off transactions. |
| **7.** | ***Customer account files and business correspondence records.*** | FOR 31(1)(c) and 31(1)(a) | The Supervised Entity is required to keep up to date customer account files, inclusive of copies of all correspondence between it and its customers which are pertinent to the business transactions undertaken.<br><br>These files must contain sufficient details to permit the reconstruction of individual transactions to provide the evidence necessary for the prosecution of criminal activity. | At least six (6) years from:<br>i. The end of a business relationship with a customer with whom a business relationship was formed; and<br>ii. The date of a one-off transaction or series of one-off transactions. |

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| | | | These records should also be kept in a manner which allows the Supervised Entity to provide them to the FIUTT upon request and within such time frame as specified. | |
| **8.** | ***Records of the results of any analysis undertaken related to an account or transaction.*** ** | FOR 31(1)(d) and 31(1)(a) | Analysis undertaken in the course of a business relationship or one-off transaction should be kept in a in such a manner and with sufficient detail to provide the evidence necessary for the prosecution of criminal activity. | At least six (6) years from:<br>i. The end of a business relationship with a customer with whom a business relationship was formed; and<br>ii. The date of a one-off transaction or series of one-off transactions. |
| **8(a)** | ***For MVTS ONLY- a list of all sub agents.*** | FOR 31A. | This list should be kept in a manner which can be made available to the FIUTT, upon its request and within such time frame as specified. | MVTS must be able to provide an up-to-date list to the FIUTT upon request. |
| **9.** | ***Internal SAR/STR Records and Records and Register of SARs/STRs filed with the FIUTT**** | FOR 4(1)(d) | • Records of *Internal SAR/STRs reported to the Compliance Officer* should be maintained in a location (either physical or electronic) which is secure and separate from general staff access. However, these records should be accessible by relevant staff to enable them to produce reports in a timely manner.<br><br>• Records of *SARs/STRs filed by the Compliance Officer to the FIUTT* should also be kept and maintained separately from the Internal SAR/STR records noted above. These records should also be maintained in a location (either physical or electronic) which is secure and separate from general staff access. However, | At least six (6) years |

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| | | | the records should be accessible by relevant staff to enable them to produce reports in a timely manner.<br><br>In addition to the above records, it is recommended that a *Register of Internal SAR/STRs reported to the Compliance Officer and a Register of SARs/STRs filed with the FIUTT* be kept (both separately). These Registers should be kept in the manner described in in Chapter 4 herein and be made available to the FIUTT, upon its request and within such time frame as specified to enable it to test for compliance with this regulation.<br><br>***The Register of SARs/STRs submitted to the FIUTT and any SARs/STRs filed with the FIUTT should be kept confidential and made available only to the FIUTT upon its request.*** | |
| **9(a)** | ***All records related to a SAR/STR which has been filed with the FIUTT for which there is an ongoing analysis.***** | FOR 36 | These records should be maintained in a location (either physical or electronic) which is secure and separate from general staff access. However, the records should be accessible by relevant staff to enable them to produce reports in a timely manner.<br><br>The records should be kept in a manner which can be made available to the FIUTT, upon its request and within such time frame as specified. | For the period requested by the FIUTT or until otherwise ordered by the Court. |

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| **10.** | ***Register of enquiries made by any Law Enforcement Authority or Local or Foreign Authorities.**** | FOR 38(1) | This register should be maintained in a location (either physical or electronic) which is secure and separate from general staff access. However, it should be accessible by relevant staff to enable them to produce responses to enquiries in a timely manner.<br><br>This register should be kept in accordance with the guidance at Chapter 4 herein and in a manner which can be made available to the FIUTT, upon its request and within such time frame as specified. | At least six (6) years. |
| *** Please see Chapter 4 for further details on keeping these Registers.**<br>**** Please see Chapter 5 for further details on confidentiality of records.** | | | | |

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# 4. REGISTERS

These are the registers that the Compliance Officer of a Supervised Entity should maintain.

With the exception of the LEA Register, which is mandated by Regulation 38 of the FORs[1], the Registers noted in this chapter represent best practices for AML/CFT/CPF compliance and provide the FIUTT with information which can be reviewed during a compliance examination to ensure the Supervised Entity is complying with the related regulations. Please see Table 2 for a summary of registers to be kept by Supervised Entities.

These registers should be kept in a format, either physically or electronically, which can be made available to the FIUTT, upon its request and within such time frame as the FIUTT specifies.

The information contained in the registers need not be as detailed as the other records noted in Table 1 as they are intended to provide brief details for ease of reference. The information contained on the Registers should enable the required staff of the Supervised Entity to locate the substantive information linked to the items contained in the register upon request.

It is recommended that the (i) Internal STR Register, (ii) the STR Register and (iii) the LEA Register be kept in a location, either physical or electronic, which is only accessible by staff with the required level of security clearance to access (i.e. the Compliance Officers/Compliance Department or other key staff as management sees fit). This is to maintain the integrity and confidentiality of the information contained in the registers and to limit the probability of unauthorised disclosure of information. Please see Chapter 5 for further information on Confidentiality.

*Table 2 - Summary of Registers*

| No | Register | Recommended Content |
|---|---|---|
| 1 | ***Training Register*** | • Date and time of training;<br>• Name of facilitator;<br>• Full Name of participant;<br>• Position Held<br>• Topics covered;<br>• Signature of attendee. |
| 2 | ***Internal STR Register*** | • Date submitted by staff;<br>• Nature of suspicion (ML, FT, CDD, Fraud, etc);<br>• Value of transaction;<br>• Date reviewed by Compliance Officer;<br>• Action Taken. |

[1] Regulation 38(1) of the FORs mandates that a Register of enquiries made by any law enforcement authority or other local or foreign authorities acting under the powers provided by the relevant laws or their foreign equivalent, be kept in the manner described in Regulation 38(2).

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| 3 | ***STR Register*** | • Date transaction deemed suspicious;<br>• Date submitted to FIUTT;<br>• Nature of suspicion (ML, FT, Fraud, etc);<br>• Value of transaction;<br>• Signature of Compliance Officer. |
| 4 | ***LEA Register*** | • Date and nature of enquiry;<br>• Name of agency and enquiring officer;<br>• Powers being exercised (Act or Regulations). |

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# 5. CONFIDENTIALITY

In addition to the Supervised Entity's internal policies on confidentiality and protection of customer data, there is additional information which the Supervised Entity is required, by law, to treat with the highest level of confidentiality. These include the identity of the Supervised Entity's Compliance Officer and Alternate Compliance Officer, and **information about or related to SARs/STRs that are being or will be filed with the FIUTT.**

## Tipping-off

It is an offence for employees, directors, officers or agents of a Supervised Entity to disclose, even indirectly, that a SAR/STR or related information on a specific transaction **has been, is being, or shall be filed** with the FIUTT.

This offence is known as "tipping off' and is set out at Section 51 of the Proceeds of Crime Act, Chap. 11:27 ("POCA"). The Supervised Entity's internal investigations into SAR/STRs filed internally with its Compliance Officer, where conducted properly and in good faith, are not regarded as tipping off. Section 52(5) of the POCA advises that it is a defence to the charge of tipping-off if an employee, during the course of his employment, discloses the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures. It is, therefore, important that all relevant employees are aware of and are trained in the Supervised Entity's procedures for internal reporting of Suspicious Activities or Transactions.

## Requirement to file SAR/STR with the FIUTT trumps other policy or statute on confidentiality

In accordance with section 52(6) of the POCA when a SAR/STR is made to the FIUTT in good faith, Supervised Entity's, their employees, directors, owners or other representatives will be deemed to not be in breach of any restriction imposed by any other statute or otherwise, for the disclosure of the information to which the SAR/STR relates, regardless of the result of the communication.

***Except where information comes into the possession of a legal adviser in privileged circumstances***, if the Supervised Entity is required by any other policy or law to maintain confidentiality of any information or records which forms the subject or contents of a SAR/STR, the provisions of the POCA will prevail and the Supervised Entity will be required to disclose the information in question to the FIUTT.

## Staff access to confidential records

The liability for compliance with the obligations of the POCA and FORs rests with the Supervised Entity itself. In accordance with section 55(1) of the POCA the Supervised Entity is required to keep and retain records in accordance with the FORs.

Further, in accordance with section 57 of the POCA if the Supervised Entity knowingly fails to comply with section 55, it commits an offence and is liable on **summary conviction to a fine of $500,000.00 and to imprisonment for 2 years; or on conviction on indictment to a fine of $3,000,000.00 and to imprisonment for 7 years.**

If the Supervised Entity commits an offence, any officer, director or agent of the Supervised Entity who directed, authorised, assented to, acquiesced in or participated in the commission of the offence is a party to the offence and is liable on conviction to the punishment stated above.

Supervised Entities should, therefore, create strict internal confidentiality policies for access to sensitive records and registers, particularly those associated with SARs/STRs both filed and in the process of being filed with the FIUTT. It is recommended that such records and registers, if stored physically, are kept in separate filing cabinets to which staff have limited access or to which access is granted to only the specified relevant staff. If records are stored electronically, it is recommended that a similar separation exists in the virtual environment where only specified relevant staff are permitted access to these records.

***Ensuring that only specified and necessary staff are permitted and enabled access to such records can mitigate the Supervised Entity's risk of unauthorised disclosures and prevent the Supervised Entity from incurring criminal liability.***

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