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EVALUATION OF ANTI-MONEY  
LAUNDERING MEASURES AND  
THE FINANCING OF TERRORISM  
(MONEYVAL)

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# Guernsey

## Progress report<sup>1</sup> and written analysis by the Secretariat of Core Recommendations

13 December 2013

<sup>1</sup> First 3<sup>rd</sup> Round Written Progress Report Submitted to MONEYVAL

Guernsey is one of the United Kingdom Crown Dependencies evaluated by MONEYVAL. This progress report was adopted at MONEYVAL's 43<sup>rd</sup> plenary meeting (Strasbourg, 9-13 December 2013). For further information on the examination and adoption of this report, please refer to the Meeting Report of the 42<sup>nd</sup> plenary meeting at <http://www.coe.int/moneyval>

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**This is the first 3<sup>rd</sup> round written progress report submitted to MONEYVAL by Guernsey. This document includes a written analysis by the MONEYVAL Secretariat of the information provided by the United Kingdom Crown Dependency of Guernsey on the Core Recommendations (1, 5, 10, 13, SR.II and SR.IV), in accordance with the decision taken at MONEYVAL's 32<sup>nd</sup> plenary in respect of progress reports.**

# United Kingdom Crown Dependency of Guernsey

## First 3rd Round Written Progress Report Submitted to MONEYVAL

### 1. *Written analysis of progress made in respect of the FATF Core Recommendations*

#### 1.1. *Introduction*

1. The purpose of this paper is to introduce the United Kingdom Crown Dependency of Guernsey's (Guernsey) first report back to the Plenary concerning the progress that it has made to remedy the deficiencies identified in its last assessment on the FATF Core Recommendations<sup>1</sup>.
2. The on-site visit to Guernsey was conducted by the IMF and took place from 17 May to 1 June 2010. The IMF published the assessment report of Guernsey in December 2010<sup>2</sup> (<https://www.imf.org/external/pubs/ft/scr/2011/cr1112.pdf>). As a result of the assessment, Guernsey was rated by the IMF as being Compliant (C) on 25 recommendations, Largely Compliant (LC) on 22 recommendations and Partially Compliant (PC) on 2 recommendations.
3. This paper is based on the MONEYVAL Rules of Procedure as revised in March 2010, which require a Secretariat written analysis of progress against the Core Recommendations. The full progress report is subject to peer review by the Plenary, assisted by the Rapporteur Country and the Secretariat (Rules 38-40). The procedure requires the Plenary to be satisfied with the information provided and the progress undertaken in order to proceed with the adoption of the progress report, as submitted by the country, and the Secretariat written analysis, with both documents being subject to subsequent publication.
4. Guernsey has provided the Secretariat and Plenary with a full report on its progress, including supporting material, according to the established progress report template. The Secretariat has drafted the present report to describe and analyse the progress made for each of the Core Recommendations.
5. Guernsey received the following ratings on the Core Recommendations:

R.1 – Money laundering offence (LC)
SR.II – Criminalisation of terrorist financing (C)
R.5 – Customer due diligence (LC)
R.10 – Record Keeping (C)
R.13 – Suspicious transaction reporting (C)
SR.IV – Suspicious transaction reporting related to terrorism (LC)

6. This paper provides a review and analysis of the measures taken by Guernsey to address the deficiencies in relation to the Core Recommendations (Section II) together with a summary of the main conclusions of this review (Section II). This paper should be read in conjunction with the progress report and annexes submitted by Guernsey.
7. It is important to note that the present analysis focuses only on the Core Recommendations and thus only a part of the Anti-Money Laundering/Combating the Financing of Terrorism

<sup>1</sup> The Core Recommendations as defined in the FATF procedures are R.1, R.5, R.10, R.13, SR.II and SR.IV.

<sup>2</sup> It should be pointed out that the FATF Recommendations were revised in 2012 and that there have been various changes, including their numbering. Therefore, all references to the FATF Recommendations in the present report concern the version of these standards before their revision in 2012.

(AML/CFT) system is assessed. Furthermore, when assessing progress made, effectiveness was taken into account, to the extent possible in a paper based desk review, on the basis of the information and statistics provided by Guernsey, and, as such, the assessment made does not confirm full effectiveness.

## ***1.2. Detailed review of measures taken by Guernsey in relation to the Core Recommendations***

### **A. Main changes since the IMF assessment**

8. The Guernsey authorities report that, since the IMF review, the number of STRs and MLA requests relating to terrorist financing (FT) remain very low. This is consistent with the view of the Guernsey authorities that, as at the time of the IMF review, FT does not present any significant risk to the jurisdiction.
9. The international nature of the customer base and activity of administered entities in the fiduciary and private banking sectors, together with subject matter of a significant proportion of the MLA requests received by the Guernsey authorities, have led the authorities to devote greater focus on anti-corruption since the last evaluation.
10. In terms of legislative developments, the Guernsey authorities report that In 2011 the legislation implementing United Nations Security Council Resolutions (UNSCRs) 1373 and 1267 was repealed and replaced in order to address the IMF's recommendations and also because of possible vires and human rights problems with the existing legislation that came to light as a result of a successful legal challenge to equivalent legislation in the United Kingdom (UK). The new legislation gives direct effect in Guernsey law to designations made by the European Union (EU) under Regulations that implement the two UNSCRs. In April 2013 the Policy Council, which is part of the Government of the island of Guernsey, revised Schedule 1 to the Criminal Justice (Proceeds of Crime Law) (Bailiwick of Guernsey) Law, 1999 (the Proceeds of Crime Law) in order to remove the provision of general insurance as financial services business requiring AML/CFT measures to be undertaken.
11. Additionally, in January 2013 the Companies (Alderney) (Amendment) Law, 2012 came into force. This law introduced a requirement for Alderney companies (subject to limited exemptions for listed companies and collective investment funds) to have a resident agent who is either an individual resident in Alderney, who is a director of the company, or a corporate service provider licensed by the GFSC. The resident agent has a responsibility to take reasonable steps to ascertain the identity of persons who are the beneficial owners of members' interests in the company.
12. In terms of structural developments, the Guernsey authorities report that The governance framework for dealing with AML/CFT and related areas of financial crime has been restructured and expanded throughout the period since the last evaluation with a new, overarching Financial Crime Strategic Steering Group being established. In November 2012, the Guernsey Financial Services Commission (GFSC), created a dedicated unit responsible for conducting AML/CFT inspections. In the same month the GFSC in the exercise of its prudential supervisory functions established an authorisations unit responsible for conducting identification and verification of certain individuals and legal entities seeking to conduct regulated business in or from within Guernsey.
13. An Enforcement Case Review Committee was established at an operational level between Guernsey's FIU, the Financial Intelligence Service (the FIS), and the GFSC during the autumn of 2013. The purpose of this committee is to ensure close liaison between the two authorities on cases and potential cases. Guernsey has also used the proceeds of crime confiscated in the jurisdiction to provide additional resources in support of major ML investigations.

### **B. Review of measures taken in relation to the Core Recommendations**

#### **Recommendation 1 - Money laundering offence (rated LC in the IMF report)**

Rating point – *Given the size of the Bailiwick's financial sector and its status as an international financial centre, the modest number of cases involving third party ML by financial sector participants and the disconnect between the number of ML cases investigated versus the number of cases prosecuted and eventually resulting in a conviction calls into question the effective application of the ML provisions..*

14. At the time of the IMF on-site visit it was reported that, of 31 investigations opened within the period 2006-2010, only five led to a prosecution (i.e. approx. 16%). Of the five prosecutions, two resulted in convictions based on a guilty plea for both the ML and the predicate offence and one case which was for autonomous ML was still ongoing. Two cases were terminated based on the failure or inability of the witness to testify in the first case and based on the defendant's agreement to plead guilty to the more serious predicate offences in the second case.
15. In the reference period, 2011-September 2013, 40 investigations were opened, 6 cases were prosecuted (c.18%) and 8 final convictions were obtained against individuals for the ML offences. 34 notifications were sent by the FIU to the LEA and it is noted that all of the convictions were achieved as a result of STRs received (see under R.13 below).
16. The authorities have reported that an analysis of the apparent discrepancy between the number of investigations and the number of prosecutions was undertaken. The authorities have reported that these conclusions were reached on the basis of factors that are common to many jurisdictions, including for example, insufficient evidence or the prosecutorial decision that as there was a pending prosecution for a predicate offence in circumstances an associated charge of self-laundering would not make a difference to any penalty imposed.
17. The Secretariat has not been provided with information about the modalities of this or the authorities involved in this analysis.
18. It is noted that no police-generated ML cases are reported as having resulted in prosecutions and convictions. This raises questions beyond the scope of this review involving the proactivity of law enforcement in following the ML aspects of proceeds-generating offences where there is no STR and their capacity to investigate ML cases related to predicate offences committed abroad.
19. It is unclear from the material provided whether the Guernsey authorities have fully analysed the underlying reasons for the disconnection between the number of ML investigations vis-à-vis the number of ML prosecutions and convictions.
20. The authorities have reported that the Financial Investigation Unit of the Guernsey Border Agency reviewed the effectiveness of the FIU by looking at its function, aims and practices with the objective of promoting a better identification of suitable cases for investigation into ML. As a result of this process the number of ML investigations and prosecutions has increased. In the period 2011- 2013 (end of September) 34 notifications were sent to the LEA by the FIU.
21. At one level, 40 cases investigated and 6 prosecutions (involving 9 persons) between 2011 and September 2013 may not reflect any substantial change in the approach to the prosecution of ML since the IMF assessment. The ratio of prosecutions/ investigations appears largely the same (c. 16% at the time of the IMF assessment). It is not considered possible to form a definitive view on the overall effectiveness of ML investigation and prosecution on a desk-based review. This issue will be examined in detail in the 2014 MONEYVAL on-site assessment and subsequent report.
22. The authorities nonetheless reported that they have given priority to the most serious cases and to cases of autonomous laundering; most of the cases involving either the finance industry or domestic drug trafficking. As a result of this approach about a half of the convictions appear to involve autonomous ML convictions, which is undoubtedly an improvement on the previous position.

23. From the jurisprudence presented by the authorities it appears that the courts understand that to achieve ML convictions inferences may need to be drawn from facts and circumstances with regard to both the existence of underlying predicate criminality and in respect of the mental element. This is particularly important in autonomous ML cases and should encourage the LEA and prosecutors to challenge the courts with more cases, especially those involving third party ML by financial participants.
24. The effectiveness of the screening of incoming MLA requests to identify possible criminal conduct within the domestic financial sector is not clear from the information provided in the questionnaire.

***Effectiveness***

25. The following chart summarises the investigations, prosecutions and final convictions for ML offences for the period 2008 to September 2013.

	Investigations		Prosecutions		Final Convictions	
	Cases	Persons	Cases	Persons	Cases	Persons
<b>2008</b>	7	9	1	1	1	1
<b>2009</b>	9	10	0	0	0	0
<b>2010</b>	9	11	2	2	0	0
<b>2011</b>	15	21	3	3	3	3
<b>2012</b>	17	24	2	4	3	4
<b>2013*</b>	8	8	1	2	1	1

\*January to September 2013

26. It can be seen that, there has been a significant increase in the level of final convictions for the ML offence in the period 2011-2013 compared with the preceding period. The response to the first question in Section 4 of the Progress Report sets out some details of cases that the Guernsey authorities consider to be significant ML convictions from 2010 and which indicates that a several cases have been brought successfully before the courts of varying degrees of seriousness. The sentences for ML in autonomous cases have been mainly in the range of 2½ years to 7 years, although the 7 years sentence does not appear to relate to financial sector participants.

**Conclusion on Recommendation 1**

27. It does appear that the Guernsey authorities have taken steps to address the identified deficiency and that in some cases final convictions have been achieved against financial sector participants for the ML offence. In real terms though, the numbers of ML convictions are still low, given the size of the Guernsey financial sector. It is a concern that all convictions appear to have resulted from STRs and subsequent FIU notifications with no LEA generated cases resulting in ML convictions. However, as stated above, it is not possible to form an overall view on the effectiveness of ML investigations and prosecutions on a desk-based review and this issue will be considered in more detail in the 2014 MONEYVAL on-site assessment and subsequent report.

**Special Recommendation II - Criminalisation of terrorist financing (rated C in the IMF report)**

28. There were no rating points in the 3<sup>rd</sup> round MER. The current effectiveness of implementation will be considered in more detail in the 2014 MONEYVAL on-site assessment and subsequent report.

## **Recommendation 5 - Customer due diligence (rated LC in the IMF report)**

Rating point – *List of customers to which EDD must be applied omits higher-risk categories relevant to Guernsey.*

29. No amendments have been made to regulation or legislation to introduce a requirement that enhanced due diligence must be applied to private banking and non-resident customers.
30. The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 (the FSB Regulations) set out requirements for when a financial services business must carry out enhanced due diligence. The mandatory categories listed are:-
  - Politically exposed persons;
  - Correspondent banking relationships, or similar relationships;
  - Where the customer is established or situated in a country or territory that does not apply or insufficiently applies the FATF Recommendations;
  - Where the financial services business considers there to be a high risk relationship, taking into account any notices, instructions or warnings issued from time to time by the Guernsey Financial Services Commission (GFSC); and
  - Where the internal risk assessment of the financial services business has identified the customer as presenting a high risk of money laundering.
31. The GFSC's Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing (the FSB Handbook) sets out a requirement that "*a financial services business must have regard to the attractiveness to money launderers of the availability of complex products and services that operate within reputable and secure wealth management environments that are familiar with high value transactions.*" The FSB Handbook then sets out the following factors that "*contribute to the increased vulnerability of wealth management*":
  - Wealthy customers, private banking customers and powerful customers - such customers may be reluctant or unwilling to provide adequate documents, details and explanations;
  - Multiple accounts and complex accounts - customers often have many accounts in more than one jurisdiction, either within the same firm or group, or with different firms;
  - Movement of funds - the transmission of funds and other assets by private customers often involve high value transactions, requiring rapid transfers to be made across accounts in different countries and regions of the world.
32. The authorities point out that the following changes have been made to the FSB Regulations and FSB Handbook since the publication of the IMF report:
  - Regulation 3 has been revised so as to require business risk assessments to be reviewed at least annually and to make any changes needed in order to keep it up to date.
  - Paragraph 52 has been widened from requiring only the general policy on the identification and assessment of risk to be documented and approved at Board level to requiring all policies, procedures and controls in this area to be documented and approved by the Board.
  - Paragraph 56 has been revised to include the geographic areas of customers, beneficial owners and underlying principals, together with products/services being provided and delivery channels, as information to be taken into account when undertaking a relationship risk assessment.
  - Paragraph 66 on inherent risks has been extended to include private banking customers as a factor contributing to the increased ML/FT vulnerability of wealth management.
  - Paragraph 70 has been revised to include more definitive reference to bribery and corruption.
33. There has, however, been no extension of the mandatory categories of customer to which enhanced due diligence should be applied as set out in the FSB Regulations.



## ***Effectiveness***

34. Table c as set out under section 6 of the Progress Report sets out information on sanctions applied to financial institutions and DNFBP. It is clear from these tables that the authorities have identified a number of AML/CFT breaches although this is not broken down by specific category of breach. It is understood that in each case an action plan is provided to remedy the breach. This does indicate a robust approach to the identification and remedying of breaches and is an indicator that effective implementation of all AML/CFT requirements, including CDD measures, is being taken seriously.

### **Conclusion on Recommendation 5**

35. There have been a number of changes to legislation and regulation related to risk assessment that have a peripheral impact on the enhanced due diligence requirement. There has, however, been no extension of the mandatory categories of customer to which enhanced due diligence should be applied as set out in the FSB Regulations.

### **Recommendation 10 – Record keeping (rated C in the IMF report)**

36. There were no rating points in the 3<sup>rd</sup> round MER. The current effectiveness of implementation will be considered in more detail in the 2014 MONEYVAL on-site assessment and subsequent report.

### **Recommendation 13 – Suspicious transaction reporting (rated C in the IMF report)**

37. Although there were no rating points in the 3<sup>rd</sup> round MER, the Guernsey authorities have submitted information on progress against the two recommended action points and as this has a bearing on the Secretariat's assessment of Recommendation 1, above, and Special Recommendation IV, below, the Secretariat has analysed the response
38. The first recommended action point was that the Guernsey authorities consider amending DL and TL and/or relevant guidance to explicitly require the reporting of attempts, or issuing guidance to clarify the requirement. The Disclosure (Bailiwick of Guernsey) Law, 2007 (DL) and the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (TL) set out the reporting requirements under R.13 and SR.IV.
39. The Guernsey authorities report that under the DL and the TL, the obligation to report suspicion does not depend on a definition of transaction, but goes wider in that it requires a report to be made if a person is suspected of engaging in ML/FT, which is expressly defined as including attempts. They have therefore concluded that it has not been necessary to make any changes to the DL or TL.
40. It is to be noted that, in the Progress Report, the Guernsey authorities that a report is to be made "if a person is suspected of engaging in ML/FT". This falls short of the FATF requirement to report if there are grounds to "suspect that the funds are the proceeds of criminal activity". This issue will be considered in more detail in the 2014 MONEYVAL on-site assessment and subsequent report.
41. The guidance on reporting of suspicion contained in chapter 10 of the GFSC's FSB Handbook has nonetheless been amended to clarify the requirement as follows:
- "References in this chapter to a transaction or activity also include attempts or proposals to enter into a business relationship or to undertake an occasional transaction."*
42. The second recommended action point was that the Guernsey authorities review the STR process to determine whether timeliness could be improved by revising and possibly simplifying the procedure. Although no instances of delay were noted by the IMF during its evaluation, the Guernsey authorities report that there have been changes in relation to reporting mechanisms and the language of chapter 10 of the FSB Handbook which are directly relevant to the reporting of suspicion. In particular, the following steps have been taken:

- the Disclosure (Bailiwick of Guernsey) (Amendment) Regulations, 2011 and the Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Regulations, 2011 have introduced a requirement for reporting entities to use THEMIS, an online reporting mechanism introduced by the FIS. The authorities report that this mechanism has increased the speed of disclosure and led to further changes to chapter 10 of the FSB Handbook, by for example removing the language and procedure around the use of post, fax and email.
- the relevant language has been simplified by increasing focus on the DL and the TL and reducing cross references to other legislation; and
- the reporting obligations of FT sanctions legislation, which had been set out in chapter 10 of the FSB Handbook, were moved to another chapter, thus improving the focus of chapter 10.

### *Effectiveness*

43. The following chart sets out the number of STRs received from reporting entities. It is noted that there is a good spread across reporting entities. With regard to DNFBPs, there are also a significant number of reports submitted, mainly from the e-gaming sector and fiduciaries although lawyers and accountants are also regularly submitting reports.

<b>Statistical Information on reports received by the FIU</b>												
<b>Monitoring entities</b>	<b>reports about suspicious transactions</b>											
	<b>2008</b>		<b>2009</b>		<b>2010</b>		<b>2011</b>		<b>2012</b>		<b>2013*</b>	
	<b>ML</b>	<b>FT</b>	<b>ML</b>	<b>FT</b>	<b>ML</b>	<b>FT</b>	<b>ML</b>	<b>FT</b>	<b>ML</b>	<b>FT</b>	<b>ML</b>	<b>FT</b>
<b>Accountants</b>	5	0	14	0	20	0	19	0	13	0	19	0
<b>Community Banks</b>	86	0	95	0	89	2	190	0	91	0	58	0
<b>Deposit Gatherers</b>	74	0	53	0	86	0	205	0	5	0	4	0
<b>E-Gaming Sector</b>	9	0	18	0	64	0	37	0	50	0	82	0
<b>Fiduciary</b>	112	0	150	1	138	3	243	0	225	0	161	1
<b>Insurance</b>	9	0	20	0	7	0	12	0	14	0	12	0
<b>Investment/Private Banks</b>	132	1	168	2	180	0	261	0	163	0	135	0
<b>Investment Securities</b>	34	3	42	0	37	0	110	0	54	0	40	0
<b>Legal Professionals</b>	9	0	21	0	16	0	27	0	12	0	13	0
<b>Other</b>	8	1	2	1	18	0	12	0	26	0	21	2
<b>Post Office</b>	27	0	31	0	10	0	10	0	13	0	8	0
<b>Regulator</b>	8	1	9	0	10	0	10	0	7	0	7	0
<b>TOTAL</b>	<b>513</b>	<b>6</b>	<b>623</b>	<b>4</b>	<b>675</b>	<b>5</b>	<b>1136</b>	<b>0</b>	<b>673</b>	<b>0</b>	<b>560</b>	<b>3</b>

\* January to September 2013

44. The following table indicates that the submitted reports are generating cases and notifications to law enforcement agencies which have led to indictments and convictions. Indeed, taken in conjunction with the statistics set out under R.1 above it would appear that all ML convictions in 2011 to 2013 have all resulted from STR submissions.

Year	Reports about suspicious transactions		Cases opened by FCU		Notifications to Law Enforcement/ Prosecutions		Indictments				Convictions			
	ML	FT	ML	FT	ML	FT	ML		FT		ML		FT	
							Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons
2008	513	6					1	1	0	0	1	1	0	0
2009	623	4	12	0	0	0	0	0	0	0	0	0	0	0
2010	675	5	13	0	5	0	2	2	0	0	0	0	0	0
2011	1,136	0	35	0	14	0	0	0	0	0	3	3	0	0
2012	673	0	40	0	18	0	4	6	0	0	3	4	0	0
2013*	560	3	21	0	2	0	0	0	0	0	1	1	0	0

\* January to September 2013

45. It is concluded that, based on a desk review, the reporting regime is operating quite effectively.

#### Conclusion on Recommendation 13

46. Although no amendments have been made to legislation regarding attempted transactions it would appear that Guernsey has made acceptable progress in remedying the deficiencies in Recommendation 13. It is notable that STRs submissions and subsequent FIU notifications to LEAs have resulted in a number of ML convictions. There is a concern that the reporting requirement relates to suspicions of ML/TF rather than the proceeds of criminal activity and this issue will be need considered in more detail in the 2014 MONEYVAL on-site assessment and subsequent report.

#### **Special Recommendation IV– Suspicious transaction reporting related to terrorism (rated LC in the IMF report)**

*Rating point - The reporting requirement under the TL does not extend to Section 5 of the Terrorism (UN Measures) (Channel Islands) Order 2001.*

47. The authorities report that the Terrorism (UN Measures) (Channel Islands) Order 2001 has been replaced by the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law 2011 and the section 5 offence has been replaced by targeted FT offences at sections 10 to 13 of the new law. The definition of terrorist financing at section 79 of the TL has been amended to include these new offences. As a result the full range of FT offences now comes within the scope of the reporting requirement.

#### ***Effectiveness***

48. As set out in the table under Recommendation 13 above, there have been relatively few STRs submitted that relate to FT. Of the STRs submitted none has resulted in a case being opened or a notification being sent to law enforcement agencies. It is, however, noted that the Guernsey

authorities consider that, as at the time of the IMF review, FT does not present any significant risk to the jurisdiction.

#### Conclusion on Special Recommendation IV

49. This deficiency appears to have been addressed by the Guernsey authorities.

#### **1.3. Main conclusions**

50. Since the IMF evaluation, the Guernsey authorities have taken a number of steps to deal with the identified deficiencies and related recommended action points as set out in the IMF report. With regard to Recommendation 1, a review has been undertaken and there has been an improvement in the number of final ML convictions. Although there have been a number of changes in legislation and regulation related to risk assessment no steps have been taken to widen the mandatory categories of customer to which enhanced due diligence should be applied. A number of steps have been taken to improve the reporting regime and it is notable that STRs have contributed to all ML convictions in the period under review although there are questions concerning the scope of the reporting requirement.
51. Overall it is considered that Guernsey has made progress to address and remedy the deficiencies that were identified in the IMF report, though there remain some issues to address as set out above.
52. As a result of the discussions held in the context of the examination of this first progress report, the Plenary was satisfied with the information provided and the progress being undertaken and thus approved the progress report and the analysis of the progress on the core Recommendations. Pursuant to Rule 41 of the Rules of procedure, the progress report will be subject of an update in every two years between evaluation visits (i.e. December 2015), though the Plenary may decide to fix an earlier date at which an update should be presented.

**MONEYVAL Secretariat**

## **2. Information submitted by Guernsey for the first 3rd round progress report**

### **2.1. General overview of the current situation and the developments since the last evaluation relevant in the AML/CFT field**

The Crown Dependency of Guernsey, more usually known as the Bailiwick of Guernsey, includes the islands of Guernsey, Alderney and Sark. Each of these islands has its own parliament which can enact legislation. Except for criminal justice legislation, legislation which applies across the Dependency requires approval by all three parliaments (with primary legislation also needing agreement by the Privy Council in the UK). Criminal justice legislation requires the approval only of the Guernsey parliament. Legislation which applies in one or two islands requires the approval only of the parliaments of the islands where the legislation will have effect. References to Guernsey in this questionnaire response should be taken to mean the Bailiwick of Guernsey unless otherwise stated.

The AML/CFT framework continues to be monitored by the Guernsey authorities.

The position in relation to ML/TF remains as it was at the time of the International Monetary Fund (IMF) evaluation in 2010, as articulated below.

Guernsey continues to experience low levels of domestic criminality with a year on year fall in the number of reported offences. The principal funds-generating offence committed remains drug trafficking, followed by theft.

The trust and company service provider (together known as fiduciaries) and the private banking sectors are still considered to be the sectors with the greatest vulnerability to money laundering (ML) because of the combination of the cross border nature of the business; the geographical diversity of the customers; the perceived attractiveness of company and trust structures for ML purposes; the fact that wealth management structures with the use of trusts and companies in several jurisdictions can be more complex than business relationships in other sectors; the number and content of suspicious transaction reports (STRs); and the sectors covered by mutual legal assistance (MLA) requests. The greatest risk of these sectors being used for ML concerns the laundering of the proceeds of different types of fraud and corruption. ML is most likely to occur in the form of layering or integration to maximise investment performance and to spread risk in the same way as legitimate investors.

The number of STRs and MLA requests relating to terrorist financing (FT) remain very low, consistent with the view of the Guernsey authorities that, as at the time of the IMF evaluation, FT does not present any significant risk to the jurisdiction.

The international nature of the customer base and activity of administered entities in the fiduciary and private banking sectors, together with subject matter of a significant proportion of the MLA requests received by the Guernsey authorities, have led the authorities to devote greater focus on anti-corruption since the last evaluation.

More generally, there have been a number of significant legislative and structural developments since the last evaluation as follows:

- The governance framework for dealing with AML/CFT and related areas of financial crime has been restructured and expanded throughout the period since the last evaluation. A new, overarching Financial Crime Strategic Steering Group has been established, with a high level membership drawn from the law enforcement, prosecutorial and financial supervisory authorities. Below this steering group are a number of specialist committees with a more operational focus. These include a committee focussing on AML/CFT and relatively new committees on bribery and corruption and on international sanctions in order to ensure specific and dedicated focus on these areas, including the dissemination of information on trends and areas of concern. These committees have memberships drawn from the authorities referred to above and also some other authorities with specific responsibilities in relevant areas such as the Alderney Gambling Control Commission (AGCC) and the Registrar for Charities and Non-Profit Organisations in Guernsey and Alderney, whose representatives will

be present at the MONEYVAL plenary in December 2013 in order to participate in the discussions on the follow up review of Guernsey.

- In 2011 the legislation implementing United Nations Security Council Resolutions (UNSCRs) 1373 and 1267 was repealed and replaced in order to address the IMF's recommendations and also because of possible *vires* and human rights problems with the existing legislation that came to light as a result of a successful legal challenge to equivalent legislation in the United Kingdom (UK). The new legislation gives direct effect in Guernsey law to designations made by the European Union (EU) under Regulations that implement the two UNSCRs. As a result, in order to facilitate effective implementation of these and other sanctions-related EU measures, representatives from Guernsey visited the European Commission in 2012 in order to explore ways to improve communication and information sharing on asset freezes and related issues within the EU.
- Guernsey has used the proceeds of crime confiscated in the jurisdiction to provide additional resources in support of major ML investigations. This innovative and pro-active approach has enabled a significant investment in ediscovery hardware and software, and has been used to pay for a number of specialist dedicated investigators to assist with particularly complex ML investigations. These measures have had a major impact on the progression of the investigations in question.
- The Charities and Non Profit (Registration) (Sark) (Amendment) Ordinance, 2011 introduced administrative penalties which can be imposed by the Sark Registrar in relation to Sark charities and non profit organisations identical to those for charities and non profit organisations in the islands of Guernsey and Alderney.
- As part of its focus on anti-bribery and corruption, in May 2012 the Anti-Bribery and Corruption Committee hosted a conference on this subject, which was attended by over 400 representatives from financial institutions and designated non-financial professions and businesses (DNFBPs). This conference included a range of eminent international speakers in order to ensure the event was current and authoritative.
- In November 2012, the AML/CFT supervisory body for financial services businesses, legal professionals, accountants and estate agents, the Guernsey Financial Services Commission (GFSC), created a dedicated unit responsible for conducting AML/CFT inspections. In the same month the GFSC in the exercise of its prudential supervisory functions established an authorisations unit responsible for conducting identification and verification of certain individuals and legal entities seeking to conduct regulated business in or from within Guernsey. These activities include sanction list verification checks, criminal background checks and verification as to the probity and integrity of particular individuals and entities, which had previously been carried out by sector - specific supervisory Divisions of the GFSC. The objective in establishing the two new units was to create centres of excellence. In July 2013 the units were merged into a Financial Crime and Authorisations Division, which also assumed responsibility for the development, communication and monitoring of financial crime policy by the GFSC. This Division was complemented by the creation of a dedicated Enforcement Division under a new Director, in July 2013, also intended to be a centre of excellence.
- In January 2013 the Companies (Alderney) (Amendment) Law, 2012 came into force. This law introduced a requirement for Alderney companies (subject to limited exemptions for listed companies and collective investment funds) to have a resident agent who is either an individual resident in Alderney, who is a director of the company, or a corporate service provider licensed by the GFSC under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (the Regulation of Fiduciaries Law). The resident agent has a responsibility to take reasonable steps to ascertain the identity of persons who are the beneficial owners of members' interests in the

company. This new requirement for Alderney companies is in line with existing requirements for companies in the island of Guernsey.

- In January 2013 the Foundations (Guernsey) Law, 2012 came into force and established a statutory framework for the establishment and operation of foundations in the island of Guernsey. In light of this, the GFSC updated the provisions on legal persons in its two AML/CFT Handbooks to include dedicated requirements and guidance in relation to persons establishing, operating and benefitting from foundations
- In April 2013 the Policy Council, which is part of the Government of the island of Guernsey, revised Schedule 1 to the Criminal Justice (Proceeds of Crime Law) (Bailiwick of Guernsey) Law, 1999 (the Proceeds of Crime Law) in order to remove the provision of general insurance as financial services business requiring AML/CFT measures to be undertaken. This change was made on the basis of very low ML/FT risk in relation to general insurance in order to allow AML/CFT resources in the Bailiwick to more effectively be directed towards higher risk areas. At the same time, the GFSC amended its two AML/CFT Handbooks in order to include specific guidance on anti-bribery and corruption as part of the authorities' commitment to mitigating potential ML/FT risk from this area. The chapters of the Handbooks dealing with the identification, assessment, management and mitigation of ML/FT risk were also updated (significant extracts are included in the text below in relation to FATF Recommendation 5).
- In May 2013 the Alderney Gambling Control Commission revised the Alderney eGambling Regulations 2009 in order make the revisions referred to in the rest of this response.
- In September 2013 the GFSC introduced a dedicated whistle blower hotline, which facilitates the reporting of financial crime and AML/CFT non-compliance in a secure and confidential manner.
- An Enforcement Case Review Committee was established at an operational level between Guernsey's FIU, the Financial Intelligence Service (the FIS), and the GFSC during the autumn of 2013. The purpose of this committee is to ensure close liaison between the two authorities on cases and potential cases.

## 2.2. Core recommendations

Please indicate improvements which have been made in respect of the FATF Core Recommendations (Recommendations 1, 5, 10, 13; Special Recommendations II and IV) and the Recommended Action Plan (Appendix 1).

<b>Recommendation 1 (Money Laundering offence)</b>	
<b>Rating: Largely compliant</b>	
Recommendation of the IMF Report	The authorities should continue to focus their attention on identifying ML crimes within the domestic financial sector. Furthermore, the authorities should further examine the underlying reasons for the disconnect between the number of ML investigations vis-à-vis the number of ML prosecutions and convictions and take measures to overcome any identified obstacles.
Measures taken to implement the Recommendation of the Report	The authorities have taken a number of steps to implement this recommendation.  An analysis of the apparent discrepancy between the number of investigations and the number of prosecutions was undertaken. This disclosed that prosecutions had not been pursued in the cases referred to by the IMF because the prosecuting authority (the Attorney General) had concluded that it would not be in the public interest to proceed. These conclusions were reached on the basis of factors that are common to many jurisdictions, including for example insufficient evidence

or the fact that there was a pending prosecution for a predicate offence in circumstances where an associated charge of self-laundering would not make a difference to any penalty imposed.

Although Guernsey's AML/CFT authorities did not find any underlying legislative or structural obstacles to prosecution in the jurisdiction, they recognised that more needed to be done to increase focus on the domestic financial sector and to raise the level of investigations and prosecutions for ML. Therefore, the Financial Investigation Unit of the Guernsey Border Agency reviewed the effectiveness of the FIS by looking at its functions, aims and practices with the objective of promoting better identification of suitable cases for investigation into ML. This was accompanied by improved training for investigators in financial crime and analysis.

This has led to a growth in the number of ML investigations and prosecutions. Guernsey has been able to increase the level of resources available to support these investigations by using the proceeds of crime confiscated in the jurisdiction (apart from those proceeds which are to be used to compensate victims or are to be transferred to the authorities of another jurisdiction under an asset sharing agreement). This has enabled Guernsey to invest in a sophisticated computer programme (NUIX) to facilitate electronic investigation of cases involving a large volume of documents and also to engage specialist investigators to support particular investigations as necessary. In addition, increasing use of the mutual legal assistance process has been made to obtain evidence from other jurisdictions, with 8 requests having been made to date in 2013 alone.

Guernsey has given priority to the most serious cases and to cases of autonomous laundering. Most cases have involved either the finance industry or domestic drug trafficking. This pattern is consistent with Guernsey's position as an international finance centre where the only significant domestic predicate offending is drug-related. To date, there have been 4 convictions involving autonomous laundering, 2 related to the finance sector and 2 related to drug trafficking. The finance sector cases involved a professional from the insurance sector and a client wealth manager at a private bank respectively, while both drug trafficking cases involved third party laundering by relatives of the predicate offenders.

In keeping with its zero tolerance policy towards ML offences, Guernsey has also continued to investigate possible self laundering in all cases of acquisitive predicate offending, even if in such cases it often proves ultimately not to be in the public interest to prosecute for ML for the reason outlined above. The benefit of this approach is demonstrated by the successful prosecution of a self launderer in 2012 for drug-related ML in circumstances where, because of a lack of evidence, it was not possible to prosecute for the predicate offence but the defendant was convicted of ML on the basis of inferences drawn from a series of financial transactions that he was unable to explain.

Resources are currently being focused on two major investigations into autonomous ML involving millions of pounds arising from activity in a number of different jurisdictions.

The first involves an unlicensed corporate services provider who has been charged with several counts of autonomous laundering in respect of the proceeds of securities fraud carried out by an individual who has been convicted in the USA but who was based in Costa Rica. One of the charges involves the use of



	<p>different bank accounts across multiple jurisdictions. Further charges of autonomous laundering are expected to follow shortly.</p> <p>The second case involves autonomous laundering of the proceeds of international corruption, and a criminal trial in respect of the predicate offending is ready for hearing in London. If the Guernsey ML investigation results in a prosecution it will be the largest and most complex criminal case yet heard by the Guernsey courts.</p>
(Other) changes since the last evaluation	

<b>Recommendation 5 (Customer due diligence)</b>	
<b>I. Regarding financial institutions</b>	
<b>Rating: Largely compliant</b>	
Recommendation of the IMF Report	The authorities should expand the list of higher-risk customers to which enhanced due diligence must be applied and consider including private banking and non-resident customers.
Measures taken to implement the Recommendation of the Report	<p>From an AML/CFT perspective persons supervised by the GFSC are divided into financial services businesses and prescribed businesses. Financial services businesses comprise the FATF concept of financial institutions and fiduciaries. Financial services businesses must comply with the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 (the FSB Regulations) and the rules in the GFSC’s Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing (the FSB Handbook). The regulations and rules specify the counter measures to be undertaken by financial services businesses.</p> <p>Regulation 3 of the FSB Regulations states:</p> <p><b>“Risk assessment and mitigation.</b></p> <p><b>3. (1) A financial services business must -</b></p> <p style="padding-left: 40px;"><i>(a) carry out and document a suitable and sufficient money laundering and terrorist financing business risk assessment which is specific to the financial services business-</i></p> <p style="padding-left: 80px;"><i>(i) as soon as reasonably practicable after these Regulations come into force, or</i></p> <p style="padding-left: 80px;"><i>(ii) in the case of a financial services business which only becomes such on or after the date these Regulations come into force, as soon as reasonably practicable after it becomes such a business, and</i></p> <p style="padding-left: 40px;"><i>(b) regularly review its business risk assessment, at a minimum annually, so as to keep it up to date and, where, as a result of that review, changes</i></p>

*to the business risk assessment are required, it must make those changes,*

*(2) A financial services business must-*

*(a) prior to the establishment of a business relationship or the carrying out of an occasional transaction, undertake a risk assessment of that proposed business relationship or occasional transaction,*

*(b) regularly review any risk assessment carried out under subparagraph (a) so as to keep it up to date and, where changes to that risk assessment are required, it must make those changes, and*

*(c) ensure that its policies, procedures and controls on forestalling, preventing and detecting money laundering and terrorist financing are appropriate and effective, having regard to the assessed risk.*

*(3) A financial services business must have regard to -*

*(a) any relevant rules and guidance in the Handbook; and*

*(b) any notice or instruction issued by the Commission under the Law, in determining, for the purposes of these Regulations, what constitutes a high or low risk.”*

Regulation 5(1) of the FSB Regulations states:

**“Additional customer due diligence.**

**5.(1) Where a financial services business is required to carry out customer due diligence, it must also carry out enhanced customer due diligence in relation to the following business relationships or occasional transactions -**

*(a) a business relationship or occasional transaction in which the customer or any beneficial owner or underlying principal is a politically exposed person,*

*(b) a business relationship which is-*

*(i) a correspondent banking relationship, or*

*(ii) similar to such a relationship in that it involves the provision of services, which themselves amount to financial services business or facilitate the carrying on of such business, by one financial services business to another,*

*(c) a business relationship or an occasional transaction -*

*(i) where the customer is established or situated in a country or territory that does not apply or insufficiently applies the Financial Action Task Force Recommendations on Money Laundering, or*

*(ii) which the financial services business considers to be a high risk relationship, taking into account any notices, instructions or warnings issued from time to time by the Commission, and*

*(d) a business relationship or an occasional transaction which has been assessed as a high risk relationship pursuant to regulation 3(2)(a).”*

Chapter 3 of the FSB Handbook is devoted to the risk based approach. Relevant rules which must be followed by financial services businesses include:

**“ 3.5 Relationship Risk Assessment - Management and Mitigation**

*52. The policies, procedures and controls of each financial services business towards the identification and assessment of risk in its customer base must be appropriate, effective, documented and approved at Board level.*

*53. For a financial services business to consider the extent of its potential exposure to the risk of money laundering and terrorist financing it must assess the risk of any proposed business relationship or occasional transaction. Based on this assessment, the financial services business must decide whether or not to accept each business relationship and whether or not to accept any instructions to carry out any occasional transaction.*

*54. In addition, the assessment will allow a financial services business to determine, on a risk basis, the extent of the identification information (and other CDD information) that must be obtained, how that information will be verified, and the extent to which the resulting business relationship will be monitored.*

*55. When assessing the risk of a proposed business relationship or occasional transaction a financial services business must ensure that all the relevant risk factors are considered before making a determination on the level of overall assessed risk.*

*56. Information which must be taken into consideration when undertaking a relationship risk assessment includes but is not limited to:*

- *the identity of the customer, beneficial owners and underlying principals;*
- *the associated geographic areas;*
- *the products/services being provided and the delivery channel;*
- *the purpose and intended nature of the business relationship or occasional transaction, including the possibility of legal persons and legal arrangements forming part of the business relationship or occasional transaction; and*
- *the type, volume and value of activity that can be expected within the business relationship.*

*57. Where one or more aspects of the business relationship or occasional transaction indicates a high risk of money laundering or terrorist financing but the financial services business does not assess the overall risk as high because of strong and compelling mitigating factors, the financial services business must identify the mitigating factors and, along with the reasons for the decision, document them.*

*58. A financial services business must ensure that any proposed or existing business relationship or any proposed occasional transaction which:*

- *has characteristics identified in Regulation 5(1)(a) to (c); or*
- *is connected to any of the countries or territories listed in Part A or Part C of Instructions on Business from Sensitive Sources issued by the Commission;*

*is designated as high risk.*

*59. A financial services business must have documented procedures which will allow it to demonstrate how the assessment of each business relationship or occasional transaction has been reached, and which take into account the nature and complexity of its operation.*

*60. Such procedures may provide for standardised profiles to be used where the financial services business has satisfied itself, on reasonable grounds, that such an approach effectively assesses the risk for each particular business relationship or occasional transaction. However, a financial services business with a diverse customer base or where a wide range of products and services are available must develop a more structured and rigorous system to show that judgement has been exercised on an individual basis rather than on a generic or categorised basis.*

*61. Whatever method is used to assess the risk of a business relationship or occasional transaction there must be clear documented evidence as to the basis on which the assessment has been made.”*

*“64. Care must be taken when dealing with customers, beneficial owners and underlying principals from countries or territories which are associated with the production, processing and trafficking of illegal drugs. Financial services businesses must also exercise a higher degree of awareness of the potential problems associated with taking on politically sensitive and other customers from countries or territories where bribery and corruption are widely considered to be prevalent.”*

**“Inherent risks 3.5.2**

*66. A financial services business must have regard to the attractiveness to money launderers of the availability of complex products and services that operate within reputable and secure wealth management environments that are familiar with high value transactions. The following factors contribute to the increased vulnerability of wealth management:*

- *wealthy customers, private banking customers and powerful customers - such customers may be reluctant or unwilling to provide adequate documents, details and explanations;*
- *multiple accounts and complex accounts - customers often have many accounts in more than one jurisdiction, either within the same firm or group, or with different firms;*
- *movement of funds - the transmission of funds and other assets by private customers often involve high value transactions, requiring rapid transfers to be made across accounts in different countries and regions of the world.*

*67. In order to counter the perceived and actual risks of such relationships, a financial services business must ensure it recognises, manages and mitigates the potential risks arising from relationships with high net worth customers.”*

The chapter includes guidance on the identification, assessment, management and mitigation of risk. It also includes guidance on risk profile indicators in relation to customers, products and services. Relevant extracts include:

*“48. A financial services business should ask itself what is the threat of it being used for money laundering or terrorist financing. For example:*

- *What risk is posed/mitigated by the customers of the financial services business, taking into account:*
  - *their wealth;*
  - *their influence;*
  - *their geographical origin;*
  - *the complexity of their transaction structures;*
  - *the complexity of legal persons and legal arrangements;*
  - *whether they were introduced to the financial services business; and*
  - *any unwillingness of customers who are not individuals to give the names of their underlying owners and principals.*
- *What risk is posed/mitigated by the products/services offered by the financial services business? For example:*
  - *whether the value of a transaction is particularly high;*
  - *whether payments to third parties are allowed;*
  - *whether the product/service/structure is of particular, or unusual, complexity.”*

*“70. This paragraph provides examples of high risk indicators for customers and for products and services which a financial services business may consider when preparing a profile.*

*(a) Customers - High Risk Indicators*

- *complex ownership structures, which can make it easier to conceal underlying beneficial owners and beneficiaries;*
- *structures where there is no apparent legitimate economic or other rationale;*
- *customers or structures which are associated with a specific industry activity which carries a higher exposure to the possibility*

*of bribery and corruption (such as in natural resource extraction, infrastructure construction or the defence industry); an individual who may be regarded as a commercially exposed person because of his or her position as a senior executive of a well known commercial enterprise;*

- *customers based in, or conducting business in or through, a country or territory with known higher levels of bribery and corruption, or organised crime, or involved in illegal drug production/processing/distribution, or associated with terrorism; involvement of an introducer from a country or territory which does not have an adequate AML/CFT infrastructure;*
- *where a customer wants a product or service in one country or territory when there are very similar products or services in his home country or territory, and where there is no legitimate economic or other rationale for buying the product or service abroad;*
- *requests to adopt undue levels of secrecy with a transaction; and*
- *business relationships or occasional transactions where the source of wealth and source of funds cannot be easily verified or where the audit trail has been deliberately broken and/or unnecessarily layered.*

*(b) Products and Services - High Risk Indicators*

- *complex structures of legal persons and/or legal arrangements;*
- *hold mail or retained mail arrangements;*
- *safe custody arrangements;*
- *significant and/or frequent cash transactions;*
- *high value balances or investments, which are disproportionately large to that particular customer, product or service set;*
- *bearer shares and other bearer instruments; and*
- *inappropriate delegation of authority.”*

The FSB Regulations and FSB Handbook were first issued in 2007 as part of Guernsey’s approach to meeting the 2003 FATF Recommendations and 2004 Methodology. Both documents have been revised since 2007, for example, in order to reflect the GFSC’s experience of monitoring compliance with the framework. The Regulations and Handbook have always contained substantial text in relation to risk. Nevertheless, a number of changes have been made in this area since the IMF evaluation. With specific reference to the IMF’s recommendation on private banking and non-resident customers, the changes to the Regulations and Handbook made since the evaluation (2010 and April 2013) include the following:

	<ul style="list-style-type: none"> <li>• Regulation 3 has been revised so as to require business risk assessments to be reviewed at least annually and make any changes needed in order to keep it up to date.</li> <li>• Paragraph 52 has been widened from requiring only the general policy on the identification and assessment of risk to be documented and approved at Board level to requiring all policies, procedures and controls in this area to be documented and approved by the Board.</li> <li>• Paragraph 56 has been revised to include the geographic areas of customers, beneficial owners and underlying principals, together with products/services being provided and delivery channels, as information to be taken into account when undertaking a relationship risk assessment.</li> <li>• Paragraph 66 on inherent risks has been extended to include private banking customers as a factor contributing to the increased ML/FT vulnerability of wealth management.</li> <li>• Paragraph 70 has been revised to include more definitive reference to bribery and corruption.</li> </ul> <p>The foregoing revisions (included in the extracts quoted above) were complemented by the creation of a new chapter in the Handbook on bribery and corruption in April 2013.</p> <p>The GFSC considers that the foregoing changes make a valuable contribution to identifying and mitigating the risk presented by cross border business relationships and occasional transactions. Particular account has been taken of wealth management (including private banking), and address underlying risk factors such as the potential laundering of the proceeds of corruption, which might lead to the use of cross border private banking services.</p> <p>The GFSC has also noted developments outside Guernsey in relation to views about risks arising from wealth management. These views, particularly on layers of risk, have formed part of oral feedback provided to the banking and fiduciary sectors in a series of events in the autumn of 2013. The GFSC will take account of these views when it reviews and revises the FSB Handbook during 2014 as part of Guernsey's response to the revised FATF Recommendations and Methodology. In addition, all of the Guernsey authorities will take account of the developments referred to above and any other developments when revising the national risk assessment next year so as to satisfy Recommendation 1 of the revised FATF Recommendations.</p>
(Other) changes since the last evaluation	

<b>Recommendation 5 (Customer due diligence)</b>
<b>II. Regarding DNFBP<sup>3</sup></b>

<sup>3</sup> i.e. part of Recommendation 12.

Recommendation of the IMF Report	<p><b>TCSPs, legal professionals, accountants and real estate agents</b> Amend the exemption for individuals who act as a director for six companies or less in line with the standard.</p>
Measures taken to implement the Recommendation of the Report	<p>Under the Regulation of Fiduciaries Law individuals who act as a company director by way of business are required to obtain a fiduciary licence from the GFSC. They must meet minimum criteria for licensing (persons which fail this test are not licensed) and are subject to the other requirements of the law. The exemption referred to by the IMF is that, when an individual is a director of up to six companies, that person is not required to be licensed by the GFSC. The GFSC can disapply this exemption in cases where it considers the individual is not fit and proper. This avoids the potential loophole of individuals who are unfit to act as a director being automatically entitled to do so by way of business without the GFSC being able to refuse a licence. The exemption was agreed by the parliaments in the Bailiwick on the basis of risk.</p> <p>Paragraph 23 of Schedule 1 to the Proceeds of Crime Law provides that, even though individuals holding a small number of directorship services might be exempt from licensing under the Regulation of Fiduciaries Law, they are still financial services businesses for the purposes of Guernsey's AML/CFT framework and are required to comply with the FSB Regulations and the FSB Handbook.</p> <p>Since 2009 no STRs or mutual legal assistance requests have been received whose subjects are individuals exempted under the Regulation of Fiduciaries Law. The pattern of STRs made by the fiduciary sector in relation to administered companies and other intelligence received by the FIS, together with the mutual legal assistance requests issued to Guernsey in respect of such companies, supports the view that an exemption for the provision of directorships (as opposed to the provision of administration services) is warranted on ML/FT grounds. Nevertheless, the Guernsey authorities will revisit the exemption in 2014 when revising the national risk assessment so as to satisfy Recommendation 1 of the revised FATF Recommendations.</p>
Recommendation of the IMF Report	<p><b>TCSPs, legal professionals, accountants and real estate agents</b> Identify legal arrangements or fiduciaries as high risk given their vulnerability to money laundering and their prevalence in the Bailiwick.</p>
Measures taken to implement the Recommendation of the Report	<p>From an AML/CFT perspective persons supervised by the GFSC are divided into financial services businesses and prescribed businesses.</p> <p>Financial services businesses include the FATF concept of financial institutions and fiduciaries. Financial services businesses must comply with the FSB Regulations and the rules in the GFSC's FSB Handbook. Fiduciaries (trust and company service providers) are included as financial services businesses in the Guernsey context. A description of the risk framework for such businesses and relevant provisions for the IMF recommendation being discussed here is included above in relation to financial institutions.</p> <p>In Guernsey prescribed businesses include legal professionals, accountants and real estate agents. Legal professionals, accountants and real estate agents must comply with the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 (the</p>



PB Regulations) and the rules in the GFSC's Handbook for Legal Professionals, Accountants and Estate Agents on Countering Financial Crime and Terrorist Financing (the PB Handbook). The Regulations and rules specify the counter measures to be undertaken by legal professionals, accountants and real estate agents.

Regulations 3 and 5(1) of the PB Regulations state:

*“3.(1) A prescribed business must-*

*(a) carry out and document a suitable and sufficient money laundering and terrorist financing business risk assessment which is specific to the prescribed business-*

*(i) as soon as reasonably practicable after these Regulations come into force, or*

*(ii) in the case of a prescribed business which only becomes such on or after the date these Regulations come into force, as soon as reasonably practicable after it becomes such a business, and*

*(b) regularly review its business risk assessment, at a minimum annually, so as to keep it up to date and, where, as a result of that review, changes to the business risk assessment are required, it must make those changes.*

*(2) A prescribed business must-*

*(a) prior to the establishment of a business relationship or the carrying out of an occasional transaction, undertake a risk assessment of that proposed business relationship or occasional transaction,*

*(b) regularly review any risk assessment carried out under subparagraph (a) so as to keep it up to date and, where changes to that risk assessment are required, it must make those changes, and*

*(c) ensure that its policies, procedures and controls on forestalling, preventing and detecting money laundering and terrorist financing are appropriate and effective, having regard to the assessed risk.*

*(3) A prescribed business must have regard to -*

*(a) any relevant rules and guidance in the Handbook, and*

*(b) any notice or instruction issued by the Commission under the Law, in determining, for the purposes of these Regulations, what constitutes a high or low risk.”*

*“5.(1) Where a prescribed business is required to carry out client due diligence, it must also carry out enhanced client due diligence in relation to the following business relationships or occasional transactions -*

*(a) a business relationship or occasional transaction in which the client or any beneficial owner or underlying principal is a politically exposed person,*

*(b) a business relationship or an occasional transaction -*

*(i) where the client is established or situated in a country or territory that does not apply or insufficiently applies the Financial Action Task Force Recommendations on Money Laundering, or*

*(ii) which the prescribed business considers to be a high risk relationship, taking into account any notices, instructions or warnings issued from time to time by the Commission, and*

*(c) a business relationship or an occasional transaction which has been assessed as a high risk relationship under regulation 3(2)(a).”*

Chapter 3 of the PB Handbook is devoted to the risk based approach. Relevant rules which must be followed by legal professionals, accountants and real estate agents include:

*“65. The policies, procedures and controls of each prescribed business towards the identification and assessment of risk in its client base must be appropriate, effective, documented and approved at Board level.*

*66. For a prescribed business to consider the extent of its potential exposure to the risk of money laundering and terrorist financing it must assess the risk of any proposed business relationship or occasional transaction. Based on this assessment, the prescribed business must decide whether or not to accept each business relationship and whether or not to accept any instructions to carry out any occasional transactions.*

*67. In addition, the assessment will allow a prescribed business to determine, on a risk basis, the extent of identification information (and other CDD information) that must be obtained, how that information will be verified, and the extent to which the resulting business relationship will be monitored.*

*68. When assessing the risk of a proposed business relationship or occasional transaction a prescribed business must ensure that all the relevant risk factors are considered before making a determination on the level of overall assessed risk.*

*69. Information which must be taken into consideration when undertaking a relationship risk assessment includes but is not limited to:*

- the identity of the client, beneficial owners and underlying principals;*
- the associated geographic areas;*
- the products/services being provided and the delivery channel;*
- the purpose and intended nature of the business relationship or occasional transaction, including the possibility of legal persons and legal arrangements forming part of the business relationship or occasional transaction; and*
- the type, volume and value of activity that can be expected within the business relationship.*

*70. Where one or more aspects of the business relationship or occasional*

*transaction indicates a high risk of money laundering or terrorist financing but the prescribed business does not assess the overall risk as high because of strong and compelling mitigating factors, the prescribed business must identify the mitigating factors and, along with the reasons for the decision, document them.*

*71. A prescribed business must ensure that any proposed or existing business relationship or any proposed occasional transaction which:*

- has characteristics identified in Regulation 5(1)(a) to (b); or*
- is connected to any of the countries or territories listed in Part A or Part C of Instructions on Business from Sensitive Sources issued by the Commission;*

*is designated as high risk.*

*72. A prescribed business must have documented procedures which will allow it to demonstrate how the assessment of each business relationship or occasional transaction has been reached, and which take into account the nature and complexity of its operation.*

*73. Such procedures may provide for standardised profiles to be used where the prescribed business has satisfied itself, on reasonable grounds, that such an approach effectively assesses the risk for each particular business relationship or occasional transaction. However, a prescribed business with a diverse client base or where a wide range of products and services are available must develop a more structured and rigorous system to show that judgement has been exercised on an individual basis rather than on a generic or categorised basis.*

*74. Whatever method is used to assess the risk of a business relationship or occasional transaction there must be clear documented evidence as to the basis on which the assessment has been made.”*

*“78. Care must be taken when dealing with clients, beneficial owners and underlying principals from countries or territories which are associated with the production, processing and trafficking of illegal drugs. Prescribed businesses must also exercise a higher degree of awareness of the potential problems associated with taking on politically sensitive and other clients from countries or territories where bribery and corruption are widely considered to be prevalent.”*

*“80. A prescribed business must have regard to the attractiveness to money launderers of the availability of complex products and services that operate within reputable and secure wealth management environments that are familiar with high value transactions. The following factors contribute to the increased vulnerability of wealth management:*

- wealthy clients, private banking clients and powerful clients - such clients may be reluctant or unwilling to provide adequate documents, details and explanations;*
- multiple accounts and complex accounts - clients often have many accounts in more than one jurisdiction, either within the same firm or group, or with different firms;*

- *movement of funds - the transmission of funds and other assets by private clients often involve high value transactions, requiring rapid transfers to be made across accounts in different countries and regions of the world.*

*81. In order to counter the perceived and actual risks of such relationships, a prescribed business must ensure it recognises, manages and mitigates the potential risks arising from relationships with high net worth clients.”*

As with the equivalent chapter in the FSB Handbook, there is also guidance on the identification, assessment, management and mitigation of risk. It also includes guidance on risk profile indicators in relation to customers, products and services. Relevant extracts include:

*“61. A prescribed business should ask itself what is the threat of it being used for money laundering or terrorist financing. For example:*

- *What risk is posed/mitigated by the clients of the prescribed business, taking into account:*
  - *their wealth;*
  - *their influence;*
  - *their geographical origin;*
  - *the complexity of their transaction structures;*
  - *the complexity of legal persons and legal arrangements;*
  - *whether they were introduced to the prescribed business; and*
  - *any unwillingness of clients who are not individuals to give the names of their underlying owners and principals.*
- *What risk is posed/mitigated by the products/services offered by the prescribed business? For example:*
  - *whether the value of a transaction is particularly high;*
  - *whether payments to third parties are allowed.”*

*“84. This paragraph provides examples of high risk indicators for clients and for products and services which a prescribed business may consider when preparing a profile.*

*(a) Clients - High Risk Indicators*

- *complex ownership structures, which can make it easier to conceal underlying beneficial owners and beneficiaries;*
- *structures where there is no apparent legitimate economic or other rationale;*
- *clients or structures which are associated with a specific industry*

*activity which carries a higher exposure to the possibility of bribery and corruption (such as in natural resource extraction, infrastructure construction or the defence industry); an individual who may be regarded as a commercially exposed person because of his or her position as a senior executive of a well-known commercial enterprise;*

- *clients based in, or conducting business in or through, a country or territory with known higher levels of bribery and corruption, or organised crime, or involved in illegal drug production/processing/distribution, or associated with terrorism;*
- *involvement of an introducer from a country or territory which does not have an adequate AML/CFT infrastructure;*
- *requests to adopt undue levels of secrecy with a transaction; and*
- *business relationships or occasional transactions where the source of wealth and source of funds cannot be easily verified or where the audit trail has been deliberately broken and/or unnecessarily layered.*

*(b) Products and Services - High Risk Indicators*

- *complex structures of legal persons and/or legal arrangements;*
- *hold mail or retained mail arrangements;*
- *safe custody arrangements;*
- *significant and/or frequent cash transactions; and*
- *inappropriate delegation of authority.”*

The PB Regulations and PB Handbook were first issued in 2008 as part of Guernsey's approach to meeting the 2003 FATF Recommendations and 2004 Methodology. Both documents have been revised since 2008, for example, in order to reflect the GFSC's experience of monitoring compliance with the framework. The Regulations and Handbook have always contained substantial text in relation to risk. Nevertheless, a number of changes have been made in this area since the IMF evaluation. With specific reference to the IMF's recommendation on legal arrangements and fiduciaries, the changes to the Regulations and Handbook made since the evaluation (2010 and April 2013) include the following:

- Regulation 3 has been revised so as to require business risk assessments to be reviewed at least annually and make any changes needed in order to keep it up to date.
- Paragraph 65 has been widened from requiring only the general policy on the identification and assessment of risk to be documented and approved at Board level to requiring all policies, procedures and controls in this area to be documented and approved by the Board.

	<ul style="list-style-type: none"> <li>• Paragraph 69 has been revised to include the geographic areas of customers, beneficial owners and underlying principals, together with products/services being provided and delivery channels, as information to be taken into account when undertaking a relationship risk assessment.</li> <li>• Paragraph 66 on inherent risks has been extended to include private banking customers as a factor contributing to the increased ML/FT vulnerability of wealth management.</li> <li>• Paragraph 84 has been revised to include more definitive reference to bribery and corruption.</li> </ul> <p>The foregoing revisions were complemented by the creation of a new chapter on bribery and corruption in the Handbook in April 2013.</p> <p>The GFSC considers that the foregoing changes, together with the other requirements, make a valuable contribution to identifying and mitigating the risk presented by legal arrangements and fiduciary business. Particular account has been taken of wealth management and the text addresses underlying risk factors such as the potential laundering of the proceeds of corruption, which might lead to the use of cross border wealth management services (including the use of legal arrangements).</p> <p>The GFSC has also noted developments outside Guernsey in relation to views about risks arising from wealth management. These developments, particularly on layers of risk, have formed part of oral feedback provided to the banking and fiduciary sectors in a series of events in the autumn of 2013. The GFSC take account of these views when it reviews and revises the PB Handbook during 2014 as part of Guernsey’s response to the revised FATF Recommendations and Methodology. In addition, all of the Guernsey authorities will take account of the developments referred to above and any other developments when revising the national risk assessment next year so as to satisfy Recommendation 1 of the revised FATF Recommendations.</p>
<p>Recommendation of the IMF Report</p>	<p><b>ECasinos</b>  On-line verification software used by eCasinos for client identification purposes are not sufficiently reliable to be used as the only form of identification in non-face-to-face transactions. Ecasinos should be required to apply additional specific and effective CDD measures to mitigate against the impreciseness of on-line verification methods.</p>
<p>Measures taken to implement the Recommendation of the Report</p>	<p>ECasinos are required by legislation to undertake additional customer due diligence measures in order to supplement online verification methods to address the risks associated with non-face-to-face customer relationships or transactions and forestall, prevent and detect money laundering and terrorist financing.</p> <p>This requirement was introduced by an amendment to the Alderney eGambling Regulations which came into force in May 2013. The amendment introduced a new paragraph 5A to Schedule 16 to the eGambling Regulations, which contains a new provision under item (b) and some existing provisions which were transposed from regulation 175(5) under items (a) and (c). Paragraph 5A provides as follows:</p>

	<p><b>“Customer Identification and Verification Systems.</b>  <b>5A. The Category 1 eGambling licensee's customer identification and verification systems shall -</b></p> <p><i>(a) incorporate robust and effective client identification methods and measures in order to adequately manage and mitigate the specific risks of non-face-to-face customer relationships or transactions inherent in the eGambling industry;</i></p> <p><i>(b) supplement identification verification software with additional forms of customer due diligence and identity verification procedures in circumstances which are appropriate and effective for the purposes of managing and mitigating the risks referred to in item (a) and forestalling, preventing and detecting money laundering and terrorist financing, including, without limitation, where a Category 1 eGambling licensee is required to carry out enhanced customer due diligence under this Schedule; and</i></p> <p><i>(c) refer only to identification verification software and additional or alternative identification methods that have been approved by the Commission.”</i></p> <p>Compliance with this requirement is verified by the AGCC during its on-site inspections and off-site supervisory activities in order to ensure effective implementation.</p>
<p>Recommendation of the IMF Report</p>	<p><b>ECasinos</b>  Implement methods and measures to manage and mitigate the specific risks associated with non-face-to-face transactions in the eCasinos, including having additional CDD procedures in place when using on-line verification software for non-face-to-face transactions, to bring the sector in line with the standard.</p>
<p>Measures taken to implement the Recommendation of the Report</p>	<p>The AGCC has introduced specific legislative requirements in order to implement this recommendation. These are contained in new paragraphs 5A(b) and 9A(1)(c) of Schedule 16 to the eGambling Regulations, which came into force in May 2013.</p> <p>The full text of paragraph 5A(b) is set out above. Paragraph 9A(1)(c) states -</p> <p><i>“9A.(1) An eGambling licensee or Category 2 associate certificate holder must, in addition to complying with the preceding requirements in this Schedule,</i></p> <p><i>(c) establish and maintain policies and procedures to address any specific risks associated with non face to face customer relationships or transactions, in particular before registering a customer in accordance with regulation 227, and when performing its ongoing monitoring of any customer relationship in accordance with paragraph 6;”.</i></p> <p>In accordance with regulation 175(2)(j) of the eGambling Regulations, the policies and procedures referred to in paragraphs 5A(b) and 9A(1)(c) must form part of, and be documented in, an eCasino's internal control system (ICS). This</p>

	<p>is also reflected in sections 1.8.9 and 3.2.1 of the ICS Guidelines.</p> <p>Compliance with these requirements is verified by the AGCC during its on-site inspections and off-site supervisory activities in order to ensure effective implementation.</p>
Recommendation of the IMF Report	ECasinos should be required to have additional CDD procedures in place when using on-line verification software for non-face-to-face transactions
Measures taken to implement the Recommendation of the Report	<p>The AGCC has introduced a specific legislative requirement in order to implement this recommendation.</p> <p>Paragraph 5A(b) of Schedule 16 to the eGambling Regulations came into force in May 2013. It requires licensees to supplement identification verification software with additional forms of customer due diligence and identity verification procedures in circumstances which are appropriate and effective for the purposes of managing and mitigating the risks associated with non face-to-face customer relationships or transactions and forestalling, preventing and detecting money laundering and terrorist financing.</p> <p>The full text of paragraph 5A is set out above.</p> <p>ECasinos are therefore required by legislation to have additional customer due diligence measures in place when using on-line verification software for non face-to-face transactions. Compliance with this requirement is verified by the AGCC during its on-site inspections and off-site supervisory activities in order to ensure effective implementation.</p>
(Other) changes since the last evaluation	

<b>Recommendation 10 (Record keeping)</b>	
<b>I. Regarding Financial Institutions</b>	
<b>Rating: Compliant</b>	
Recommendation of the IMF Report	None.
Measures taken to implement the Recommendation of the Report	
(Other) changes since the last evaluation	



<b>Recommendation 10 (Record keeping)</b> <b>II. Regarding DNFBP<sup>4</sup></b>	
Recommendation of the IMF Report	Competent authorities other than the AGCC should be able to extend the document retention period for eCasinos.
Measures taken to implement the Recommendation of the Report	<p>The AGCC has introduced a specific legislative requirement in order to implement this IMF recommendation. By an amendment that came into force in May 2013, paragraph 9(1) of Schedule 16 to the eGambling Regulations empowers competent authorities other than the AGCC, namely the FIS and the police, to extend the document retention period for eCasinos.</p> <p>Paragraph 9(1) states:</p> <p><i>“9. (1) A Category 1 eGambling licensee, a Category 2 eGambling licensee, a Category 2 associate certificate holder and a Temporary eGambling licensee (in respect of the activities under its Temporary eGambling licence) shall keep such of the following as is appropriate to their licence or certificate —</i></p> <p><i>(a) a transaction document or a copy thereof for five years starting from the date that both the transaction and any related transaction were completed; and</i></p> <p><i>(b) any customer due diligence information or a copy thereof for five years starting from the date the person concerned ceased to be a registered customer,</i></p> <p><i>or, in either case, for such other longer period as the Commission, the Financial Intelligence Service, or an officer of police may direct.”</i></p>
(Other) changes since the last evaluation	

<b>Recommendation 13 (Suspicious transaction reporting)</b> <b>I. Regarding Financial Institutions</b>	
<b>Rating: Compliant</b>	
Recommendation of the IMF Report	Consider amending DL and TL and/or relevant guidance to explicitly require the reporting of attempts, or issuing guidance to clarify the requirement.
Measures taken to implement the Recommendation of the Report	The AML/CFT authorities considered the recommendation made by the IMF to amend the DL (the Disclosure (Bailiwick of Guernsey) Law, 2007) and the TL (the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002) and/or relevant guidance. The authorities concluded that it was not necessary to make any changes.

<sup>4</sup> i.e. part of Recommendation 12.

	<p>Under the DL and the TL, the obligation to report suspicion does not depend on a definition of transaction, but goes wider in that it requires a report to be made if a person is suspected of engaging in ML/FT, which is expressly defined as including attempts.</p> <p>At the time of the IMF evaluation the guidance on reporting of suspicion contained in chapter 10 of the GFSC’s FSB Handbook specifically stated that the requirement to report suspicion included an attempted or proposed transaction or activity. Nevertheless, in 2011 the language was slightly broadened to state:</p> <p><i>“References in this chapter to a transaction or activity also include attempts or proposals to enter into a business relationship or to undertake an occasional transaction.”</i></p> <p>Experience to date is that the financial services business sector understands its reporting obligations to include attempted transactions. This is evidenced by the fact that the FIS continues to receive STRs which relate to attempts.</p> <p>The AML/CFT authorities are aware of the need to make sure that attempted transactions continue to be reported to the FIS. As a consequence, this issue will continue to be monitored.</p>
<p>Recommendation of the IMF Report</p>	<p>Review STR process to determine whether timeliness could be improved by revising and possibly simplifying the procedure.</p>
<p>Measures taken to implement the Recommendation of the Report</p>	<p>The IMF’s recommendation refers to the processes specified in chapter 10 of the GFSC’s FSB Handbook could have had the potential to delay the reporting process.</p> <p>No incidences of delay were noted by the IMF during its evaluation. Nevertheless, there have been changes in relation to reporting mechanisms and the language of chapter 10 of the handbook which are directly relevant to the reporting of suspicion.</p> <p>First, changes to chapter 10 in June 2010 (ie the month after the on-site element of the evaluation) simplified the language by increasing focus on the DL and the TL and reducing cross references to other legislation. In addition, the reporting obligations of FT sanctions legislation, which had been in chapter 10, were moved to another chapter, thus improving the focus of chapter 10.</p> <p>Second, and more fundamentally, the Disclosure (Bailiwick of Guernsey) (Amendment) Regulations, 2011 and the Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Regulations, 2011 required reporting entities to use THEMIS, an online reporting mechanism introduced by the FIS. This mechanism increased the speed of disclosure and led to further changes to chapter 10 of the handbook, by for example removing the language and procedure around the use of post, fax and email.</p>
<p>(Other) changes since the last</p>	

evaluation	
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<b>Recommendation 13 (Suspicious transaction reporting) II. Regarding DNFBP<sup>5</sup></b>	
Recommendation of the IMF Report	Although the definition of money laundering and terrorist financing includes attempts, the reporting of attempted transactions is not explicitly stated within the sections requiring the reporting requirements (Section 1 and 3 of the DL and 12 and 15 of the TL) and must be inferred. Authorities should consider amending the DL and TL and providing guidance to businesses to explicitly require the reporting of suspicious attempted transactions.
Measures taken to implement the Recommendation of the Report	The Guernsey authorities have considered the IMF’s recommendation and have not considered it to be necessary to amend the DL and the TL. The reasons outlined above in relation to financial services businesses apply equally to DNFBPs as the framework for the two sectors is identical.
Changes since the last evaluation	

<b>Special Recommendation II (Criminalisation of terrorist financing)</b>	
<b>Rating: Compliant</b>	
Recommendation of the IMF Report	Consider the impact of including in the FT offense —intention of advancing a political, religious, or ideological cause on the Bailiwick’s ability to successfully prosecute in the factual settings contemplated by the FT Convention.
Measures taken to implement the Recommendation of the Report	The AML/CFT authorities have considered the proposed wording and do not regard it as affecting the ability to prosecute the offences in the FT Convention. The language used in the legislation, and in particular the reference to an ideological cause, is very broad and the authorities cannot envisage any action of the type covered by the FT Convention which would fall outside its scope.
(Other) changes since the last evaluation	At the time of the IMF evaluation, UNSCR 1267 was implemented by the Al-Qa’ida and Taliban (United Nations Measures) (Channel Islands) Order 2002 and UNSCR 1373 was implemented by the Terrorism (United Nations Measures) (Channel Islands) Order 2001. The legal basis for an asset freeze under this legislation was an administrative freezing of funds notice issued by the Attorney General, to persons believed to be holding the assets of a designated person in the case of the UNSCR 1267 measures and persons involved in or suspected of involvement in terrorism under the UNSCR 1373 measures.  Guernsey has enacted new legislation to implement the UNSCRs. UNSCR 1267 and UNSCR 1373 are now implemented by the Al-Qaida (Restrictive Measures) (Guernsey) Ordinance 2013 and the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law 2011 respectively. This new legislation was enacted because of

<sup>5</sup> i.e. part of Recommendation 16.

	<p>some general concerns about the validity of the existing legislation arising from a legal challenge to corresponding legislation in the UK in the <i>Ahmed</i> case, and because of some reservations set out in the IMF report about its effectiveness. These reservations primarily concerned the need for an administrative freezing of funds notice, on the basis that this could lead to a delay in implementation of an asset freeze, there was no explicit prohibition on prior notice of an administrative freezing of funds notice, and it was unclear whether an asset freeze would apply only to the recipient of an administrative freezing of funds notice or more widely. An additional reservation was that enforcement of the measures relating to UNSCR 1373 could be difficult in the absence of a pre-existing list of designated persons.</p> <p>The new legislation address all of the issues identified above by incorporating directly into Guernsey law asset freezes applicable to designated entities under EU Regulations implementing the relevant UNSCR lists, as well as autonomous designations made by HM Treasury in the case of the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011. There is no need for any administrative notice or other additional measure. The obligation to comply with an asset freeze is immediately effective so the issues of prior notice and delay do not arise, all asset freezes applies to the entire jurisdiction and they are targeted at designated persons.</p>
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<p><b>Special Recommendation IV (Suspicious transaction reporting)</b>  <b>I. Regarding Financial Institutions</b></p>
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<p><b>Rating: Largely compliant</b></p>	
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<p>Recommendation of the IMF Report</p>	<p>The reporting requirement in the TL should be amended to also extent to conduct under Section 5 of the Terrorism (UN Measures) (Channel Islands) Order 2001.</p>
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<p>Measures taken to implement the Recommendation of the Report</p>	<p>Section 5 of the Terrorism (UN Measures) (Channel Islands) Order 2001 contained a prohibition on making funds or financial services available to persons involved in the commission of terrorism. It was not included in the definition of terrorist financing in the TL and therefore did not come within the scope of the reporting requirements under that law. As indicated immediately above, the Terrorism (UN Measures) (Channel Islands) Order 2001 has been replaced by the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law 2011 and the section 5 offence has been replaced by targeted FT offences at sections 10 to 13 of the new law, which are set out below. The definition of terrorist financing at section 79 of the TL has been amended to include these new offences, and this is also set out below. As a result the full range of FT offences now comes within the scope of the reporting requirement.</p> <p>Sections 10 to 13 of the Terrorist Asset Freezing Law (Bailiwick of Guernsey) Law, 2011 provide as follows:</p> <p><b><i>“Freezing of funds and economic resources.</i></b></p> <p>9. (1) A person (“P”) must not deal with funds or economic resources owned, held or controlled by a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.</p> <p>(2) In subsection (1) “deal with” means -</p>
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(a) in relation to funds -

- (i) use, alter, move, allow access to, or transfer, the funds,
- (ii) deal with the funds in any other way that would result in any change in their volume, amount, location, ownership, possession, character or destination, or
- (iii) make any other change that would enable use of the funds, including by way of, or in the course of, portfolio management, or

(b) in relation to economic resources, exchange, or use in exchange, for funds, goods or services.

(3) A person who contravenes subsection (1) commits an offence.

**Making funds or financial services available to designated person.**

10. (1) A person (“P”) must not make funds or financial services available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or financial services so available.

(2) A person who contravenes subsection (1) commits an offence.

**Making funds or financial services available for benefit of designated person.**

11. (1) A person (“P”) must not make funds or financial services available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or financial services so available.

(2) For the purposes of subsection (1) –

(a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and

(b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

(3) A person who contravenes subsection (1) commits an offence.

**Making economic resources available to designated person.**

12. (1) A person (“P”) must not make economic resources available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect -

(a) that P is making the economic resources so available, and

(b) that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.

(2) A person who contravenes subsection (1) commits an offence.

**Making economic resources available for benefit of designated person.**

13. (1) A person (“P”) must not make economic resources available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the economic resources so available.”

	<p>The definition of terrorist financing at section 79 of the Terrorism and Crime (Bailiwick of Guernsey) Law 2002 is as follows:</p> <p><i>““terrorist financing” means doing any act which -</i></p> <p><i>(a) constitutes an offence under section 8, 9, 10 or 11 (i.e. of the Terrorism and Crime (Bailiwick of Guernsey) Law 2002 itself), or section 9, 10, 11, 12 or 13 of the Terrorist Asset Freezing (Bailiwick of Guernsey) Law, 2011 and, for the purposes of this definition, the “purposes of terrorism” shall include, to the extent that they do not already do so -</i></p> <p><i>(i) any attempt, conspiracy or incitement to carry out terrorism within the meaning of section 1, or</i></p> <p><i>(ii) aiding, abetting, counselling or procuring the carrying out of such terrorism,</i></p> <p><i>(b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),</i></p> <p><i>(c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or</i></p> <p><i>(d) would, in the case of an act done otherwise than in the Bailiwick, constitute an offence specified in paragraph (a), (b) or (c) if done in the Bailiwick, irrespective of the value of the property involved, and for the purposes of this definition having possession of any property shall be taken to be doing an act in relation to it.”</i></p>
(Other) changes since the last evaluation	

<b>Special Recommendation IV (Suspicious transaction reporting)</b> <b>II. Regarding DNFBP</b>	
Recommendation of the IMF Report	None
Measures taken to implement the Recommendation of the Report	
(Other) changes since the last evaluation	The amendments outlined above to the FT offences and reporting obligations apply equally to DNFBPs and financial services businesses.

### 2.3. Other Recommendations

In the last report the following FATF recommendations were rated as “partially compliant” (PC) or “non compliant” (NC) (see also Appendix 1). Please, specify for each one what measures, if any, have been taken to improve the situation and implement the suggestions for improvements contained in the evaluation report.

<b>Recommendation 12 (DNFBP - R. 6, 8 &amp; 11)</b>	
<b>Rating: Partially compliant</b>	
Recommendation of the IMF Report	Determine when Legal profession, accountants and real estate agents could rely on foreign introducers or intermediaries who are DNFBPs.
Measures taken to implement the Recommendation of the Report	<p>The IMF’s recommendation is to do with how prescribed businesses (legal professionals, accountants and estate agents) would go about satisfying themselves that a business is an appendix C business.</p> <p>Regulation 10 of the PB Regulations and the rules in section 4.9 of the PB Handbook specify the circumstances in which legal professionals, accountants and estate agents may place reliance on third parties in the context of FATF Recommendation 9 of 2003 FATF Recommendations. Reliance may be placed on an appendix C business or certain group entities in limited situations. A prescribed business may only place reliance on third parties who can make copies of identification data and any other relevant documentation available to the business upon request without delay; businesses must have a programme of testing third parties to ensure that such parties are able to fulfil this requirement. Prescribed businesses are also required to adopt ongoing procedures to ensure they have the means to obtain the information. Responsibility for compliance with customer due diligence obligations remains with prescribed businesses.</p> <p>Regulation 30 of the PB Regulations defines “appendix C business”. With regard to DNFBPs outside Guernsey the definition allows some reliance to be placed on legal professionals, accountants and estate agents in a list of jurisdictions in Appendix C to the PB Handbook. The definition goes on to specify that these DNFBPs must be regulated, subject to AML/CFT requirements consistent with those in the FATF Recommendations and supervised for compliance with these requirements.</p> <p>Appendix C to the PB Handbook states:</p> <p><i>“Guernsey prescribed businesses are not obliged to deal with regulated financial services businesses or prescribed businesses in the jurisdictions listed above as if they were local, notwithstanding that they meet the requirements listed in this Appendix. Guernsey prescribed businesses should use their commercial judgement in considering whether or not to deal with a regulated financial services business or prescribed business and may, if they wish, impose higher standards than the minimum standards identified in this Handbook.”</i></p> <p>A cautious approach has been adopted so as not to provide legal professionals, accountants and real estate agents with comfort that the existence of a list of jurisdictions in any way replaces their own judgement in considering whether or not to place reliance on a third party. In practice, reliance on third parties which are DNFBPs outside Guernsey by legal professionals, accountants and real estate</p>

	<p>agents in the context of FATF 9 Recommendation context is not common. Reliance is considered by the GFSC during on-site inspections. Where there is reliance on third parties the business must demonstrate to the GFSC that it has policies, procedures and controls establishing the grounds on which third parties may be relied upon, that its Board considers the effectiveness of these, and that they are effective by conducting appropriate due diligence (including due diligence on compliance with the definition of appendix C business). There is effective compliance with the requirements on ascertaining the use of such third parties and also the testing of requirements to ascertain whether customer information is available in practice upon request without delay.</p> <p>The GFSC will be reviewing the PB Handbook in 2014 as part of the programme of change to meet the revised FATF Recommendations. That review will include focus on reliance on third parties. The AML/CFT authorities will also be considering reliance on third parties as part of updating the national risk assessment so as to meet Recommendation 1 of the FATF's revised Recommendations.</p>
<p>Recommendation of the IMF Report</p>	<p>Not all eCasinos have effectively implemented the requirement to pay special attention to complex and unusual transactions. Ensure that gambling transactions facilitated by Category 2 licensees are subject to AML/CFT monitoring activities by Category 1 licensees. As the eCasino responsible for establishing the relationship with the customer, facilitating the financial transaction and providing the gateway for gambling activity Category 1 licensees should be required to monitor gambling transactions to identify complex, unusual or large transactions.</p>
<p>Measures taken to implement the Recommendation of the Report</p>	<p>This recommendation by the IMF concerns effective implementation rather than legislative amendments (paragraphs 987 to 989 of the IMF's report recognise that the necessary legislative requirements in relation to the monitoring of complex, unusual and large transactions by eCasinos are in place). The measures taken to implement the recommendation therefore relate to enforcement via the supervisory process.</p> <p>By way of background, the difference between the two categories of eGambling licence is as follows:</p> <ul style="list-style-type: none"> <li>• The Category 1 eGambling license enables the holder to conduct operations associated with eGambling, including customer registration, the management of customer funds and offering gambling. Only Category 1 eGambling licensees are eCasinos.</li> <li>• The Category 2 eGambling licensee acts as the gaming platform provider, providing approved games to customers, and effecting gambling transactions on behalf of the Category 1 eGambling license. Category 2 eGambling licensees do not have customers who engage in financial transactions, nor do they have a direct relationship with the customer. They are, therefore, not eCasinos.</li> </ul> <p>The AGCC has carried out a detailed review of the examination and inspection reports used on on-site inspections. As a consequence of this review, the AGCC revised the content of its inspection reports at the beginning of 2013 so as to</p>



	<p>make certain that compliance with these monitoring requirements is being systematically checked during on-site inspections.</p> <p>The AGCC's findings from the most recent round of on-site inspections demonstrate that Category 1 eGambling licensees monitor the Category 2 eGambling licensees gambling transactions as part of their ongoing monitoring process, and that this aspect of monitoring is an essential part of the Category 1 eGambling licensee's monitoring activities. A significant proportion of licensees hold both Category 1 and Category 2 eGambling licenses. Inspections have confirmed that, where the Category 1 and Category 2 eGambling licensee are separate entities, the Category 1 eGambling licensee either has direct access to customer activity, or is provided with the information relating to customer activity from the Category 2 eGambling licensee, and is therefore able to effectively monitor the customer activity and gambling transactions.</p> <p>Furthermore, the on-site inspections and off-site supervisory activities verify that the monitoring of complex, unusual and large transactions forms part of a Category 1 eGambling licensee's procedures and that this monitoring is carried out in practice.</p> <p>These findings demonstrate that all eCasinos inspected to date have effectively implemented their monitoring obligations, including the requirement to pay special attention to complex, unusual and large transactions.</p>
(Other) changes since the last evaluation	

<b>Special Recommendation VIII (Non-profit organisations)</b>	
<b>Rating: Partially compliant</b>	
<p>Introduction: Charities and NPOs in the islands of Guernsey and Alderney are subject to the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (the Charities and Non Profit Organisations Guernsey and Alderney Law). These two islands have a single registrar of charities and NPOs. This legislation provides for the concept of manumitted NPOs, which are NPOs administered by service providers licensed by the GFSC (in practice fiduciaries licensed under the Regulation of Fiduciaries Law) and subject to the requirements of the FSB Regulations and the FSB Handbook to have comprehensive AML/CFT measures in place. Manumitted NPOs themselves are required to make, keep and retain records of all financial transactions in order to evidence the application or use of assets, funds and income. Charities and NPOs in Sark are subject to the Charities and Non Profit Organisations (Registration) (Sark) Law, 2010. Sark has its own registrar of charities and NPOs. The Sark legislation does not provide for manumitted NPOs.</p>	
Recommendation of the IMF Report	Manumitted organizations could be vulnerable to terrorism financing activities and should be subject to registration.
Measures taken to implement the Recommendation of the Report	As the extension of the registration requirement to manumitted organisations would involve major changes to the NPO framework, the Guernsey authorities considered it advisable to await publication of the revised FATF Recommendations and Methodology so that changes arising from the new FATF

	<p>standards could be considered in a rounded way at the same time. The authorities also concluded that it would be beneficial to take into account experience in other comparable jurisdictions such as the UK where there are ongoing changes to their charities and NPO frameworks. The authorities have therefore established a working group to examine all aspects of the oversight of charities and NPOs. This group will make recommendations as early in 2014 as possible as to legal changes when all the issues have been fully considered.</p> <p>It should be noted that the GFSC, as a result of its supervision of the fiduciary sector, collects considerable information on that sector in its annual surveys. Part of this information includes the names of manumitted organisations, their purpose or activities, their asset value, the jurisdictions where the assets are held and the jurisdictions where the activities are conducted. The collection of information on manumitted organisations began after the IMF’s evaluation in 2010.</p>
<p>Recommendation of the IMF Report</p>	<p>Outreach focused on the raising awareness on the risks of terrorist abuse and the available measures to protect against such abuses should be provided to the entire NPO sector.</p>
<p>Measures taken to implement the Recommendation of the Report</p>	<p>The Registrar of Non Profit Organisations for Guernsey and Alderney (“the Guernsey and Alderney Registrar”) has raised the awareness on the risks of terrorist abuse and the available measures to protect against such abuses by implementing the following measures:</p> <ul style="list-style-type: none"> <li>• A list of reports and case studies which specifically deal with issues surrounding the potential abuse of NPOs relating to money laundering and terrorist financing is included on the charities and NPO section of the Guernsey Government website, which can be found using the following link: <a href="http://www.gov.gg/article/3541/Charities-and-Non-Profit-Organisations">http://www.gov.gg/article/3541/Charities-and-Non-Profit-Organisations</a>.</li> <li>• The list of reports and case studies has been recently updated and includes papers from the FATF and the OECD as well as case studies and typologies prepared by the authorities in Guernsey and the UK.</li> <li>• The Guernsey and Alderney Registrar has contacted all registered charities and other NPOs to advise them of the availability of such material and highlighted the importance of ensuring all organisations understand the risks.</li> <li>• The application form (which must be completed by all new charities and other NPOs who are either required to or volunteer to register) highlights the importance of ensuring the organisation is aware of the risks of the abuse of NPOs and requires the applicant to confirm that they are aware of the risks, while directing them to the relevant reports on the Guernsey Government website.</li> <li>• The annual registration renewal form includes the same advice and requires all applicants to confirm annually that they are aware of these risks. This form also directs the applicants to the relevant reports on the Guernsey Government website.</li> </ul>

	<p>In order to ensure manumitted organisations are included within the programme of feedback, the Guernsey and Alderney Registrar is planning to provide information to licensed fiduciaries.</p> <p>There has been coordination between the two Registrars; the Sark Registrar has provided feedback by writing to charities it has licensed by referring them to the Guernsey Government website.</p>
Recommendation of the IMF Report	Information on the purpose and objectives of the NPO and the identity of the persons who own, control or direct their activities is not publicly available.
Measures taken to implement the Recommendation of the Report	<p>The Guernsey and Alderney Registrar has written to the NPO sector advising it that in future the following information will be available on the public register of charities and NPOs:</p> <ul style="list-style-type: none"> <li>• the identity of the persons who own, control or direct the activities of a registered Charity or NPO (including directors, officers and trustees);</li> <li>• a summary of the purpose and objectives of the registered charity or NPO.</li> </ul> <p>In addition, the application form to renew registration for 2014 has been revised to request details of the purpose and objectives of the Charity or NPO and the Registrar will require this information to be provided when the application form is completed.</p> <p>The changes outlined above are expected to be in place by May 2014. Once this has happened, the position with regard to registered entities in Sark will be addressed as soon as possible, taking into account any lessons learned from the process in Guernsey and Alderney. Sark is a very small community (population 600) and there are only 16 registered charities and NPOs. All of these are small, established for the benefit of islanders, publically known within Sark and do not raise funds abroad.</p>
Recommendation of the IMF Report	Supervision of manumitted organizations should be undertaken with respect to their obligations under the NPO Law.
Measures taken to implement the Recommendation of the Report	<p>Under paragraph 8 of Schedule 1 of the Charities and Non Profit Organisations Guernsey and Alderney Law, manumitted organisations must make, keep and retain records of all financial transactions (with whosoever made) in order to evidence the application or use of the organisation's assets, funds and income. The records referred must be retained in a readily retrievable form for a period of not less than six years after the date of being made. They must also be sufficiently detailed to enable verification that the organisation's assets, funds and income have been applied or used in a manner consistent with the purposes, objectives and objects of the organisation stated in the Register. An organisation which, without reasonable excuse, fails to comply with these requirements is guilty of an offence and liable on summary conviction to a fine of up to £10,000.</p> <p>In light of the recommendation by the IMF, in its on-site supervision of licensed</p>

	<p>fiduciaries the GFSC, on a risk basis, reviews compliance with the FSB Regulations and the rules in the FSB Handbook in their administration of manumitted NPOs.</p> <p>The reviews consider the activities of manumitted NPOs and whether the fiduciary understands the ML/FT risks posed by the NPOs under administration. Also in relation to its supervision of fiduciaries, the GFSC collects information on activity by fiduciaries and administered products in its annual survey of fiduciaries, including information on each manumitted charity and NPO. This information includes the name of the charity or NPO, its purpose or activities, the asset value, the jurisdiction where the assets are held and the jurisdiction where the activities are conducted.</p> <p>The working group established to consider all aspects of oversight of charities and NPOs will also revisit the framework which applies to manumitted NPOs and make recommendations as early as possible in 2014.</p>
<p>Recommendation of the IMF Report</p>	<p>Sanctions for non-compliance with registration requirements should be strengthened to ensure that they are effective and dissuasive.</p>
<p>Measures taken to implement the Recommendation of the Report</p>	<p>This recommendation was addressed by amending the Charities and Non Profit Organisations Guernsey and Alderney Law in July 2010 to introduce a range of administrative sanctions. (As is clear from the underlying comments at paragraph 1197 of the IMF report, the recommendation relates to the absence of administrative sanctions). The comment at paragraph 1197 that the range of the administrative penalties from £10 to £500 does not seem dissuasive does not take into account the fact that the penalties are cumulative. There is a rising scale for each month that an NPO is in default, and there is no upper limit. As a result, the overall penalty could be well in excess of £500. The authorities consider that the introduction of these penalties strengthened the range of sanctions sufficiently to enable them to deal effectively with less serious cases of non-compliance, while the existing criminal sanctions would be invoked to deal with more significant failures of compliance.</p> <p>An amendment to the Charities and Non Profit Organisations (Registration) (Sark) Law, 2010 in 2011 means that it includes the full range of administrative penalties and criminal sanctions contained in the Guernsey and Alderney legislation.</p> <p>The issue of sanctions more generally will be considered by the working group.</p>
<p>(Other) changes since the last evaluation</p>	

## 2.4. Specific Questions

1. Please provide details of any significant money laundering convictions (including autonomous money laundering) and related confiscations connected to major funds generating or organised crime.

Significant ML convictions and related confiscations from 2010 to date are as follows:

- Law Officers of the Crown v Taylor - in 2011 the prosecution of a professional from the insurance sector was finalised when his conviction for 9 counts of autonomous laundering and custodial sentence of two and half years were upheld on appeal. £68,000 was confiscated.
- Law Officers of the Crown v Curson - in 2011 a person occupying a financial accounting role at the local branch of an international oil company was convicted of fraud against his employers and of laundering the proceeds by the purchase of luxury cars valued at over £100,000. He received an overall custodial sentence of 3 years and the cars were confiscated.
- Law Officers of the Crown v Ludden - in 2012 a client wealth manager at a private bank was convicted of entering into an autonomous ML arrangement related to a tax evasion scheme being operated in the UK over a 7 year period. He was given a custodial sentence of 5 years and £550,000 was confiscated.
- Law Officers of the Crown v Falla - in 2012 a married couple were convicted of third party laundering and a number of other offences including self-laundering arising out of a major drug trafficking operation carried on by some of their adult children. Each received a custodial sentence of 8 years, reduced to 7 years on appeal. The defendants are believed to have benefited by in excess of £184,000 but the proceeds have not yet been traced and this aspect of the investigation is ongoing.
- Law Officers of the Crown v Domaille - in 2012 a self-launderer was convicted of a number of counts of ML on the basis of inferences drawn from a series of financial transactions that he was unable to explain; he received a custodial order of 2 years for these offences. Although less than £6,000 was confiscated, the case is significant because it involved a conviction for ML without a conviction for the predicate offence on an inferential basis.
- Law Officers of the Crown v Apskalns - in 2013 the defendant was convicted of credit card fraud and associated ML which concerned the conversion of the proceeds of the fraud and their transfer to another jurisdiction. The sums involved exceeded £200,000 but only £1500 remained in Guernsey. This was confiscated and although the Guernsey authorities worked with the authorities in the other jurisdiction, to date the assets these have not been traced.

2. Please indicate the major funds-generating crimes in Guernsey and your assessment of the main money laundering risks for the Island.

The situation remains as it was at the time of the IMF visit, as articulated below.

Guernsey continues to experience low levels of domestic criminality with a year on year fall in the number of reported offences. The principal funds-generating offence committed remains drug trafficking, followed by theft.

The trust and company service provider and the private banking sectors are still considered to be

the sectors with the greatest vulnerability to money laundering because of the combination of cross border nature of the business; the geographical diversity of the customers; the perceived attractiveness of company and trust structures for ML purposes; the fact that wealth management structures with the use of trusts and companies in several jurisdictions can be more complex than business relationships in other sectors; the number and content of STRs; and the sectors covered by MLA requests. The greatest risk of these sectors being used for ML concerns the laundering of the proceeds of different types of fraud and corruption. ML laundering is most likely to occur in the form of layering or integration to maximize investment performance and to spread risk in the same way as legitimate investors.

3. Have any measures been implemented to ensure that accurate, complete, and current beneficial ownership information is available for legal arrangements that are not administered by a licensed TCSP.

The ability to obtain beneficial ownership information for legal persons has been increased by extending resident agent requirements to Alderney companies. Following an amendment in January 2013 to the Companies (Alderney) Law, 1994, all Alderney companies are obliged to appoint a resident agent, who must be either a director of the company or a corporate service provider. The resident agent must take reasonable steps to ascertain the identity of the beneficial owners of all members' interests, and in every case where the resident agent ascertains that a member is not the beneficial owner of his or her interest, the resident agent must maintain details as to the name, usual residential address, nationality and date of birth of the person who is the beneficial owner. A resident agent must disclose to the Attorney General, the GFSC or the law enforcement agencies upon request any information he or she holds as required under the legislation, including beneficial ownership information. In addition to this specific provision, the AML/CFT authorities may also use their general powers to obtain information under the regulatory and criminal justice frameworks.

Access to beneficial ownership information has also been provided for in new legislation governing the creation of foundations. In January 2013 the Foundations (Guernsey) Law, 2012 came into force. In all cases where none of the foundation officials is a Guernsey licensed fiduciary or authorised person, a resident agent must be appointed who is an island of Guernsey licensed fiduciary or authorised person resident in the island of Guernsey. Such persons therefore come within the existing obligations as to beneficial ownership within the regulatory framework and are also subject to the general powers to obtain information under that framework and the criminal justice framework.

In addition to these legislative changes, Guernsey has been involved in international developments on transparency, including taking part in meetings with the UK and other G8 members. In response to the G8 initiative on beneficial ownership, in June 2013 Guernsey published an action plan which undertook to:

- Update its existing assessment of money laundering and terrorist financing risks as part of its preparations for implementing the 2012 FATF recommendations.
- Review and implement legislative measures for legal persons (other than companies and foundations) to ensure that the existing obligations currently placed on Guernsey companies and foundations also apply equally to other legal persons registered in the jurisdiction.
- Carry out an assessment of the costs and benefits of a central register of information on companies' beneficial ownership available to law enforcement and tax authorities; and in the event that a central register proves to be more effective than Guernsey's current regime, commit to implementing such a register following its implementation by G8 members and the

other Crown Dependencies and Overseas Territories.

- Implement legislation to ensure that Guernsey is compliant with FATF Recommendation 25 on legal arrangements.
- Continue to support international cooperation on the timely and effective exchange of information for criminal and civil tax purposes.
- Continue to work with the UK authorities to achieve recognition that Guernsey's AML/CFT framework is equivalent to EU standards.

The assessment of costs and benefits referred to above is currently being undertaken.

4. Have any changes been made to the sanctioning regime since the third round report? Please provide details of disciplinary measures taken for AML/CFT breaches by financial institutions since the last evaluation. (Please reply using the table attached to this questionnaire)

The GFSC is the AML/CFT supervisor for financial services businesses in Guernsey. The opening section of this document referred to structural changes at the GFSC which led to the establishment of a dedicated Enforcement Division earlier in 2013. This Division will be a centre of excellence in the important area of enforcement.

In addition, the GFSC is in discussion with Guernsey's Government about the level of discretionary penalties available to the GFSC, and whether legislation should be taken forward on increasing the maximum level of penalty (£200,000 in relation to each person, whether a legal person or individual, although there is no limit on the number of persons who can be subject to penalties in any particular case).

The table attached to the questionnaire provides information on disciplinary measures imposed by the GFSC.

5. Have any steps been taken to improve the direct access of the FIU to financial information?

Guernsey has been monitoring this issue closely. Existing practices continue to work well and no difficulties in obtaining financial information have been experienced to date. The range of legal powers available to obtain financial information is wide and is considered sufficient. There is an obligation on reporting entities to provide additional information to the FIS on request following the making of an STR, and the court has the power to order the production of documents and to issue warrants of entry search and seizure as necessary. Experience to date is that financial institutions are very familiar with their reporting obligations, which they take extremely seriously, and less formal enquiries in advance of the making of an STR have also proved effective. Against that background Guernsey has not considered it necessary to take any further steps to improve direct access to financial information.

6. Please provide examples of international cooperation and/or mutual legal assistance related to major funds generating or organised crime.

Guernsey continues to be extremely active in the area of mutual legal assistance. Some recent examples of significant cases are as follows:

- Assistance given in respect of a serious fraud case led to a successful prosecution in the

requesting country, in which 80% of the evidence at trial was supplied by Guernsey. This evidence had been obtained using production notices, production orders and Commission Rogatoire hearings. In addition, Guernsey restrained assets in excess of £3 million.

- Production orders were served and assets in excess of £3 million were restrained in support of an overseas investigation into a major drug trafficking operation.
- Evidence was obtained under a Commission Rogatoire hearing in support of an overseas investigation into serious organised crime involving large-scale frauds.
- Guernsey has restrained assets of over £112 million and has provided evidence obtained using a production order in support of an ongoing investigation into misappropriation of state funds, money laundering and bribery and corruption at the request of 2 jurisdictions.
- Guernsey has provided evidence relating to a multi-jurisdictional investigation into bribery of foreign officials, forgery of documents and money laundering which is believed to involve millions of pounds. Guernsey obtained the evidence using production notices, production orders, Commission Rogatoire hearings and search warrants. The use of search warrants and the onward transmission of evidence was the subject of a legal challenge which Guernsey successfully defended in its appellate courts.
- Guernsey has provided evidence using production notices and production orders and restrained £97 million in support of an investigation into serious tax fraud. The restraint order was subject to a legal challenge, which Guernsey successfully defended on appeal.
- Another high-profile case in which Guernsey is continuing to provide assistance relates to conspiracy to defraud, money laundering and obtaining property by deception. The case involves multiple defendants including a foreign politically exposed person. Guernsey has obtained information using production notices, production orders and Commission Rogatoire hearings, and has restrained assets valued at £4.5 million.
- Guernsey played an active part in a joint investigation relating to eGaming with two other jurisdictions. Guernsey's proactive approach and the rapid and comprehensive assistance it provided prevented the misappropriation of millions of pounds. £17 million has been restrained.
- Guernsey provided assistance over a number of years in support of a high profile investigation into tax evasion, conspiracy to defraud and conspiracy to falsify documents. Significant documentary and witness evidence was provided in response to 6 separate requests for assistance and the trial in the case is currently underway in the requesting state.

7. Are there any measures in place to enable competent authorities (including law enforcement authorities in their investigations) to identify the real beneficial owner in respect of assets held by protected cell companies and exchange information with foreign counterparts upon request?

The protected cell company (PCC) concept was developed in 1997. These companies are one legal entity and can provide an unlimited number of cells. This offers flexibility in the allocation of capital whereby a PCC may create its own core shares and cell shares providing two classes of assets - core (or non-cellular) attributable to the PCC directly and cellular, attributable to the cells. Creditors of an individual cell of a PCC will only have recourse to the funds of that cell and the core capital. PCCs are used particularly in the captive insurance and collective investment scheme sectors.



Both the Companies (Guernsey) Law, 2008 and the Companies (Alderney) Law, 1994 require PCCs, like other categories of company, to appoint a resident agent. The resident agent must take reasonable steps to ascertain the identity of the beneficial owners of all members' interests, and in every case where the resident agent ascertains that a member is not the beneficial owner of his or her interest, the resident agent must maintain details as to the name, usual residential address, nationality and date of birth of the person who is the beneficial owner. No distinction is drawn between beneficial owners within the different cells of a PCC and those within a standard corporate structure. Under both the Guernsey and Alderney legislation a resident agent must disclose to the Attorney General, the GFSC or the law enforcement agencies upon request any information he or she holds as required under the legislation, including beneficial ownership information. No distinction is drawn between protected cell companies and other types of company for these purposes. Similarly, the AML/CFT authorities' general powers to obtain information under the regulatory and criminal justice frameworks apply to protected cell companies in the same way as to any other type of company.

There is a wide range of general information-sharing gateways available to the authorities which could be used to exchange information with foreign counterparts. These gateways apply to beneficial ownership information relating to PCCs in the same way as they apply to information from any other source.

**2.5. Questions related to the Third Directive (2005/60/EC) and the Implementation Directive (2006/70/EC)<sup>6</sup>**

<b>Implementation / Application of the provisions in the Third Directive and the Implementation Directive</b>	
<p>Please indicate whether the Third Directive and the Implementation Directive have been fully implemented / or are fully applied and since when.</p>	<p>Guernsey is not an EU Member State and is therefore not subject to the Third Directive. The objective of the authorities has been to comply with the FATF Recommendations, albeit taking account of the Directive and making revisions to the AML/CFT framework specifically in order to comply with the Directive. The last of these changes was in 2010 when auditors, external accountants and tax advisers were included as prescribed businesses and became subject to the requirements to have AML/CFT measures in place and subject to on-site and off-site supervision by the GFSC. As a consequence, the AML/CFT framework in Guernsey is broadly compatible with the Directive as the Directive is the EU's response to the FATF standards and as Guernsey has taken some steps to legislate where the Directive is different to the FATF standards, although there are a few technical omissions. For example, with reference to the response on PEPs below, the definition of person known to be a close associate of a PEP differs from the Directive. In addition, with reference to the response on traders below, the AML/CFT framework does not include traders in goods outside dealers in precious metals and precious stones.</p>

<b>Beneficial Owner</b>	
<p>Please indicate whether your legal definition of beneficial owner corresponds to the definition of beneficial owner in the 3<sup>rd</sup> Directive<sup>7</sup> (please also provide the legal text with your reply)</p>	<p>Regulation 19 of the FSB Regulations and Regulation 30 of the PB Regulations state that "beneficial owner" means, in relation to a business relationship or occasional transaction -</p> <p style="padding-left: 40px;"><i>(a) the natural person who ultimately owns or controls the customer, and</i></p> <p style="padding-left: 40px;"><i>(b) a person on whose behalf the business relationship or occasional transaction is to be or is being conducted and,</i></p> <p><i>in the case of a foundation or trust or other legal arrangement, this shall mean</i></p> <p style="padding-left: 40px;"><i>(i) any beneficiary in whom an interest has vested, and</i></p> <p style="padding-left: 40px;"><i>(ii) any other person who benefits from that foundation or trust or other legal arrangement."</i></p> <p>Regulation 265(1) of the Alderney eGambling Regulations, 2009, defines the term "beneficial owner", in relation to a customer relationship, as follows:</p> <p style="padding-left: 40px;"><i>"(a) the natural person who ultimately owns or controls the customer; and</i></p> <p style="padding-left: 40px;"><i>(b) a person on whose behalf the customer relationship is to be or is</i></p>

<sup>6</sup> For relevant legal texts from the EU standards see Appendix II.

<sup>7</sup> Please see Article 3(6) of the 3<sup>rd</sup> Directive reproduced in Appendix II.

	<p><i>being conducted and, in the case of a trust or other legal arrangement, this shall mean -</i></p> <p><i>(i) any beneficiary in whom an interest has vested, and</i></p> <p><i>(ii) any other person who appears likely to benefit from that trust or other legal arrangement;”.</i></p>
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<b>Risk-Based Approach</b>	
<p>Please indicate the extent to which financial institutions have been permitted to use a risk-based approach to discharging certain of their AML/CFT obligations.</p>	<p>Financial institutions are subject to the FSB Regulations and the FSB Handbook. The text included at Recommendation 5 above articulates the approach to risk specified in the Regulations and handbook.</p>

<b>Politically Exposed Persons</b>	
<p>Please indicate whether criteria for identifying PEPs in accordance with the provisions in the Third Directive and the Implementation Directive<sup>8</sup> are provided for in your domestic legislation (please also provide the legal text with your reply).</p>	<p>Regulation 19 of the FSB Regulations states that “politically exposed person” shall be construed in accordance with regulation 5(2)(b). Regulation 5(2)(b) states that “politically exposed person” means:</p> <p><i>“(i) a person who has, or has had at any time, a prominent public function or who has been elected or appointed to such a function in a country or territory other than the Bailiwick including, without limitation -</i></p> <p style="padding-left: 40px;"><i>(A) heads of state or heads of government,</i>  <i>(B) senior politicians and other important officials of political parties,</i>  <i>(C) senior government officials,</i>  <i>(D) senior members of the judiciary,</i>  <i>(E) senior military officers, and</i>  <i>(F) senior executives of state owned body corporates,</i></p> <p><i>(ii) an immediate family member of such a person including, without limitation, a spouse, partner, parent, child, sibling, parent-in-law or grandchild of such a person and in this subparagraph “partner” means a person who is considered by the law of the country or territory in which the relevant public function is held as being equivalent to a spouse, or</i></p> <p><i>(iii) a close associate of such a person, including, without limitation -</i></p>

<sup>8</sup> Please see Article 3(8) of the 3<sup>rd</sup> Directive and Article 2 of Commission Directive 2006/70/EC reproduced in Appendix II.

	<p style="text-align: center;">(A) a person who is widely known to maintain a close business relationship with such a person, or  (B) a person who is in a position to conduct substantial financial transactions on behalf of such a person.”</p> <p>Regulation 30 of the PB Regulations states that “politically exposed person” shall be construed in accordance with regulation 5(2)(b). The definition is identical to that for financial services businesses as specified immediately above.</p> <p>Paragraph 10(1) of Schedule 16 to the Alderney eGambling Regulations, 2009, defines the term “politically exposed person” as:</p> <p style="text-align: center;">“(a) a person who has, or has had at any time, a prominent public function or who has been elected or appointed to such a function in a country or territory other than the Bailiwick of Guernsey including, without limitation —</p> <p style="text-align: center;">(i) heads of state or heads of government,  (ii) senior politicians and other important officials of political parties,  (iii) senior government officials,  (iv) senior members of the judiciary,  (v) senior military officers, and  (vi) senior executives of state owned body corporates,</p> <p style="text-align: center;">(b) an immediate family member of such a person including, without limitation, a spouse, partner, child, sibling, parent-in-law or grandchild of such a person and, for the purposes of this definition, “<b>partner</b>” means a person who is considered by the law of the country or territory in which the relevant public function is held as being equivalent to a spouse, or</p> <p style="text-align: center;">(c) a close associate of such a person, including, without limitation —</p> <p style="text-align: center;">(i) a person who is widely known to maintain a close business or professional relationship with such a person, or  (ii) a person who is in a position to conduct substantial financial transactions on behalf of such a person;”.</p>
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<b>“Tipping off”</b>	
Please indicate whether the prohibition is limited to the transaction report or also covers ongoing ML or TF investigations.	<p>The tipping off prohibitions for ML and FT are not limited to the transaction report but extend to information or any other matter relating to it. This therefore includes any ongoing investigations.</p> <p>The relevant legislation is the DL for ML and the TL for FT.</p> <p>Section 4 of the DL provides as follows:</p> <p><b>“4. (1) A person is guilty of an offence if -</b></p> <p style="text-align: center;">(a) he knows, or suspects, that -</p> <p style="text-align: center;">(i) a required disclosure (i.e. an STR) has been or will be made to a</p>

	<p><i>prescribed police officer, or a nominated officer, under section 1, 2 or 3, or</i></p> <p><i>(ii) any information or other matter concerning the required disclosure has been or will be communicated to a prescribed police officer, or nominated officer, whether or not in the form and manner (if any) prescribed for the purposes under section 11, and</i></p> <p><i>(b) he discloses to any other person information or any other matter about, or relating to, that knowledge or suspicion”.</i></p> <p>Section 40 of the TL has similar provisions and also goes further in that there are specific prohibitions on making disclosures about or otherwise interfering with a terrorist investigation. It provides as follows:</p> <p><i>“40. (1) Subsection (2) applies where a person knows or suspects or has reasonable cause to suspect that a police officer is conducting or proposes to conduct a terrorist investigation.</i></p> <p><i>(2) The person commits an offence if he -</i></p> <p><i>(a) discloses to any other person information or any other matter about, or relating to, that knowledge or suspicion, or</i></p> <p><i>(b) interferes with material which is likely to be relevant to the investigation.</i></p> <p><i>(3) Subsection (4) applies where a person knows or suspects or has reasonable cause to suspect that a disclosure has been or will be made under any of sections 12 to 15A or 38 (i.e. an STR).</i></p> <p><i>(4) The person commits an offence if he -</i></p> <p><i>(a) discloses to any other person information or any other matter about, or relating to, that knowledge or suspicion, or</i></p> <p><i>(b) interferes with material which is likely to be relevant to an investigation resulting from the disclosure under that section.”</i></p>
<p>With respect to the prohibition of “tipping off” please indicate whether there are circumstances where the prohibition is lifted and, if so, the details of such circumstances.</p>	<p>The prohibitions outlined above do not apply if the disclosure is made for any of the following purposes:</p> <ul style="list-style-type: none"> <li>• the prevention, detection, investigation or prosecution of criminal offences, whether in Guernsey or elsewhere;</li> <li>• the prevention, detection, or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of Guernsey or of any country outside Guernsey;</li> <li>• the carrying out of its functions by the GFSC;</li> <li>• the carrying out of its functions by a body in another country which carries out similar functions to the GFSC;</li> </ul>

	<ul style="list-style-type: none"> <li>• the carrying out of any functions of any intelligence service;</li> <li>• any designated public functions (none has been delegated to date).</li> </ul> <p>In addition, the tipping off offences do not apply to a professional legal adviser disclosing any information to a client or a client’s representative in connection with the provision of legal advice or in connection with legal proceedings. This exemption does not apply to information which is disclosed with a view to furthering any criminal purpose.</p>
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<b>“Corporate liability”</b>
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Please indicate whether corporate liability can be applied where an infringement is committed for the benefit of that legal person by a person who occupies a leading position within that legal person.	Corporate liability can be applied in all cases where an infringement for the benefit of a legal person is committed by a person who occupies a leading position within it. This is on the basis of the well-established common law principle that a legal person is liable for the acts of its controlling minds.
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Can corporate liability be applied where the infringement is committed for the benefit of that legal person as a result of lack of supervision or control by persons who occupy a leading position within that legal person.	Corporate liability will be applied in cases where the infringement for the benefit of a legal person results from a lack of supervision or control by persons who occupy a leading position within it, provided that the mental element of the infringement includes negligence or if there is an objective mental element such as having reasonable grounds to suspect etc. Again, this is based on well-established common law principles.
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<b>DNFBPs</b>
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Please specify whether the obligations apply to all natural and legal persons trading in all goods where payments are made in cash in	<p>A distinction is made between bullion dealers and other persons dealing in precious metal, precious stone or jewellery.</p> <p>Schedule 1 to the Proceeds of Crime Law, which specifies the financial services business in respect of which AML/CFT measures are required, includes buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion as such business. There is an exemption, which is where the business consists only of buying, selling or arranging for the buying or selling of bullion, or otherwise dealing in bullion, and where the value of the purchase, sale or deal does not</p>
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<p>an amount of € 15 000 or over.</p>	<p>exceed £10,000 in total, whether the transaction is executed in a single transaction or in two or more transactions which appear to be linked. This means that, subject to the exemption, bullion dealers must comply with the FSB Regulations and the FSB Handbook and be subject to on-site and off-site supervision by the GFSC.</p> <p>In addition, bullion dealers must be registered with the GFSC under section 2 of the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008. Schedule 1 to the law contains the same definition of bullion dealers as that contained in Schedule 1 to the Proceeds of Crime Law.</p> <p>Under Regulation 1 of the Criminal Justice (Proceeds of Crime) (Restrictions on Cash Transactions) (Bailiwick of Guernsey) Regulations, 2008 a person shall not, in the course of high value dealing sell or purchase any precious metal, precious stone or jewellery, where the payment consists of cash in excess of £10,000 or any currency equivalent to that amount. The business of high value dealing means the business described in paragraph 2 of Schedule 2 to the Proceeds of Crime Law where the business consists of dealing in any precious metal, precious stone or jewellery. Schedule 2 to the Proceeds of Crime Law defines high value dealing as trading in goods when there is received, in respect of any transaction, a payment or payments in cash of at least £7,500 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked.</p> <p>A person who contravenes this requirement commits an offence under Regulation 2 of the Restrictions on Cash Transactions Regulations and is liable on summary conviction, in the case of (a) a first offence, to a fine of up to £1,000 or (b) a second or subsequent offence, to a fine of up to twice the value of the cash involved in the offence.</p> <p>Other persons trading in goods are not covered by requirements in relation to accepting payment by way of cash or in having to undertake AML/CFT measures.</p>
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## 2.6. Statistics

### 2.6.1 Money laundering and financing of terrorism cases

2008												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	Cases	Persons	Cases	Persons	Cases	Persons	Persons	Amount (in EUR)	Cases	Amount (in EUR)	Cases	Amount (in EUR)
ML	7	9	1	1	1	1	8	€276,989	1	€202,046	5	€80,377
FT	-	-	-	-	-	-	-	-	-	-	-	-

2009												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	Cases	Persons	Cases	Persons	Cases	Persons	Persons	Amount (in EUR)	Cases	Amount (in EUR)	Cases	Amount (in EUR)
ML	9	10	-	-	-	-	11	€2,930,844	4	€2,906,525	7	€2,877,917
FT	-	-	-	-	-	-	-	-	-	-	-	-

2010												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	Cases	Persons	Cases	Persons	Cases	Persons	Persons	Amount (in EUR)	Cases	Amount (in EUR)	Cases	Amount (in EUR)
ML	9	11	2	2	-	-	29	€7,402,699	8	€7,352,702	6	€1,166,940
FT	-	-	-	-	-	-	-	-	-	-	-	-

2011												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	Cases	Persons	Cases	Persons	Cases	Persons	Persons	Amount (in EUR)	Cases	Amount (in EUR)	Cases	Amount (in EUR)
ML	15	21	3	3	3	3	33	€22,296,138	7	€22,130,140	10	€87,073
FT	-	-	-	-	-	-	-	-	-	-	-	-

2012												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	Cases	Persons	Cases	Persons	Cases	Persons	Persons	Amount (in EUR)	Cases	Amount (in EUR)	Cases	Amount (in EUR)
ML	17	24	2	4	3	4	27	€4,225,143	7	€4,169,745	7	€783,727
FT	-	-	-	-	-	-	-	-	-	-	-	-

2013 - up to date												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	Cases	Persons	Cases	Persons	Cases	Persons	Persons	Amount (in EUR)	Cases	Amount (in EUR)	Cases	Amount (in EUR)



ML	8	8	1	2	1	1	12	€48,136	1	€15,999	13	€127,496
FT	-	-	-	-	-	-	-	-	-	-	-	-

*Please note: Proceeds seized are restraints following a court order initiated by a competent authority. The figures given for proceeds frozen are overall figures which include proceeds restrained as well as funds seized or held as exhibits by the law enforcement agencies during the course of their duties, e.g. cash seized under the cash controls regime or in the execution of warrants. Proceeds confiscated include those subject to civil forfeiture.*

## 2.6.2 STR/CTR

Statistical Information on reports received by the FIU												
Monitoring entities, e.g.	Reports about suspicious transactions											
	2008		2009		2010		2011		2012		2013 to end of Sept	
	ML	FT	ML	FT	ML	FT	ML	FT	ML	FT	ML	FT
Accountants	5	-	14	-	20	-	19	-	13	-	19	-
Community Banks	86	-	95	-	89	2	190	-	91	-	58	-
Deposit Gatherers	74	-	53	-	86	-	205	-	5	-	4	-
E-Gaming Sector	9	-	18	-	64	-	37	-	50	-	82	-
Fiduciary	112	-	150	1	138	3	243	-	225	-	161	1
Insurance	9	-	20	-	7	-	12	-	14	-	12	-
Investment/Private Banks	132	1	168	2	180	-	261	-	163	-	135	-
Investment Securities	34	3	42	-	37	-	110	-	54	-	40	-
Legal Professionals	9	-	21	-	16	-	27	-	12	-	13	-
Other	8	1	2	1	18	-	12	-	26	-	21	2
Post Office	27	-	31	-	10	-	10	-	13	-	8	-
Regulator	8	1	9	-	10	-	10	-	7	-	7	-
<b>TOTAL</b>	<b>513</b>	<b>6</b>	<b>623</b>	<b>4</b>	<b>675</b>	<b>5</b>	<b>1136</b>	<b>-</b>	<b>673</b>	<b>-</b>	<b>560</b>	<b>3</b>

*Please note: The categories of monitoring entities given are those used by Guernsey for statistical purposes. They are similar but not identical to those used in the Moneyval template. The reporting sector categorised as 'Other' encompasses travel agents, high value goods dealers and the general public.*

Statistical Information on reports received by the FIU												
	2008		2009		2010		2011		2012		2013 to end of Sept	
	ML	FT	ML	FT	ML	FT	ML	FT	ML	FT	ML	FT
Cases Opened by FIU			12	-	13	-	35	-	40	-	21	-
Notification to Law Enforcement/prosecutors			-	-	5	-	14	-	18	-	2	-
Judicial Proceedings												
	2008		2009		2010		2011		2012		2013 to end of Sept	
	ML	FT	ML	FT	ML	FT	ML	FT	ML	FT	ML	FT
	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons
Indictments	1	1	-	-	-	-	1	1	-	-	-	-
Convictions	1	1	-	-	-	-	-	-	-	-	2	3

*Please note:*

*All Guernsey STRs are subject to more than registration or IT-based analysis, as they are all assigned to an individual for review. The cases listed above as having been opened are those where as a result of that review, a need for further action has been identified. These statistics are not currently available for 2008.*

*The convictions in the table are those that followed an investigation instigated as the result of an STR. There have been 4 additional convictions for ML in the relevant period which did not arise as a result of an STR (although in some cases STRs were made during the course of an existing investigation). These include 2 cases of autonomous laundering (one involving a finance sector professional) and a case of self-laundering where there was no conviction for the predicate offence.*

### 2.6.3 AML/CFT sanctions imposed by supervisory authorities.

Please note: Dealers in precious metals and precious stones are subject to legislation, which makes it an offence to engage in a cash transaction for a client above £10,000. Bullion dealers, however, must be registered with the GFSC. See the text under “DNFBPs” in section 5 of the report on questions related to the Third Directive.

2009										
GFSC	Type of Sanction / Measure Applied (including non-visit related sanctions)								Number of Sanctions Taken to Court	Other (Remediation Measures)
	Written warnings	Fines		Removal / Prohibition of Individual	Withdrawal of License	Other (please specify)				
		Number	Amount (GBP)			Conditions / Directions	Public Statement	Voluntary Undertaking		
<b>Financial Sector</b>										
Banks	-	-	-	-	-	1	-	-	-	12
Securities	-	-	-	-	-	4	-	-	-	34
Insurance	-	-	-	-	-	3	-	3	-	22
Other Financial Institutions	-	-	-	-	-	5	-	-	-	4
<b>Non Financial Sector</b>										
Estate Agents	-	-	-	-	-	-	-	-	-	4
Lawyers	-	-	-	-	-	-	-	-	-	2
Accountants & Auditors	-	-	-	-	-	2	-	-	-	1
Trust and Company Service Providers (including Personal Fiduciary Licensees)	1	-	-	2	-	6	1	-	1	13
<b>Total</b>	<b>1</b>	<b>-</b>	<b>-</b>	<b>2</b>	<b>-</b>	<b>21</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>92</b>

2010										
GFSC	Type of Sanction / Measure Applied (including non-visit related sanctions)								Number of Sanctions Taken to Court	Other (Remediation Measures)
	Written warnings	Fines		Removal / Prohibition of Individual	Withdrawal of License	Other (please specify)				
		Number	Amount (GBP)			Conditions / Directions	Public Statement	Voluntary Undertaking		
<b>Financial Sector</b>										
Banks	-	-	-	-	-	1	-	-	-	18
Securities	-	-	-	1	-	2	-	-	-	23
Insurance	-	-	-	-	-	1	-	-	-	18
Other Financial Institutions	-	-	-	-	-	3	-	-	-	4
<b>Non Financial Sector</b>										
Estate Agents	-	-	-	-	-	2	-	-	-	2
Lawyers	-	-	-	-	-	-	-	-	-	1
Accountants & Auditors	-	-	-	-	-	-	-	-	-	3
Trust and Company Service Providers (including Personal Fiduciary Licensees)	-	3	£35,000	1	-	6	1	1	-	23
<b>Total</b>	<b>-</b>	<b>3</b>	<b>£35,000</b>	<b>2</b>	<b>-</b>	<b>15</b>	<b>1</b>	<b>1</b>	<b>-</b>	<b>92</b>

2011										
GFSC	Type of Sanction / Measure Applied (including non-visit related sanctions)								Number of Sanctions Taken to Court	Other (Remediation Measures)
	Written warnings	Fines		Removal/ Prohibition of Individual	Withdrawal of License	Other (please specify)				
		Number	Amount (GBP)			Conditions / Directions	Public Statement	Voluntary Undertaking		
<b>Financial Sector</b>										
Banks	-	-	-	-	-	1	-	-	-	5
Securities	-	-	-	-	-	4	-	-	-	13
Insurance	-	-	-	-	-	3	-	-	1	17
Other Financial Institutions	-	-	-	-	-	1	-	-	-	2
<b>Non Financial Sector</b>										
Estate Agents	1	-	-	-	-	-	-	-	-	-
Lawyers	-	-	-	-	-	-	-	-	-	-
Accountants & Auditors	-	-	-	-	-	2	-	-	-	3
Trust and Company Service Providers (including Personal Fiduciary Licensees)	-	-	-	-	-	1	-	-	-	27
<b>Total</b>	<b>1</b>					<b>12</b>			<b>1</b>	<b>67</b>

2012										
GFSC	Type of Sanction / Measure Applied (including non-visit related sanctions)								Number of Sanctions Taken to Court	Other (Remediation Measures)
	Written warnings	Fines		Removal/ Prohibition of Individual	Withdrawal of License	Other (please specify)				
		Number	Amount (GBP)			Conditions / Directions	Public Statement	Voluntary Undertaking		
<b>Financial Sector</b>										
Banks	-	-	-	-	-	-	-	-	-	4
Securities	-	-	-	-	-	-	-	-	-	3
Insurance	-	1	£400	1	-	2	-	-	1	3
Other Financial Institutions	-	-	-	-	-	-	-	-	-	3
<b>Non Financial Sector</b>										
Estate Agents	-	-	-	-	-	1	-	-	-	2
Lawyers	2	-	-	-	-	-	-	-	-	2
Accountants & Auditors	-	-	-	-	-	-	-	-	-	-
Trust and Company Service Providers (including Personal Fiduciary Licensees)	-	-	-	-	-	-	-	-	-	4
<b>Total</b>	<b>2</b>	<b>1</b>	<b>£400</b>	<b>1</b>		<b>3</b>			<b>1</b>	<b>21</b>

to 21 November 2013										
GFSC	Type of Sanction / Measure Applied (including non-visit related sanctions)								Number of Sanctions Taken to Court	Other (Remediation Measures)
	Written warnings	Fines		Removal / Prohibition of Individual	Withdrawal of License	Other (please specify)				
		Number	Amount (GBP)			Conditions / Directions	Public Statement	Voluntary Undertaking		
<b>Financial Sector</b>										
Banks	-	-	-	-	-	-	-	-	-	4
Securities	-	-	-	-	-	-	-	-	-	4
Insurance	-	2	£160,000	1	-	-	2	-	-	3
Other Financial Institutions	1	-	-	-	-	-	-	-	-	1
<b>Non Financial Sector</b>										
Estate Agents	-	-	-	-	-	1	-	-	-	-
Lawyers	-	-	-	-	-	-	-	-	-	-
Accountants & Auditors	-	-	-	-	-	-	-	-	-	-
Trust and Company Service Providers (including Personal Fiduciary Licensees)	-	-	-	-	-	3	-	-	-	5
<b>Total</b>	<b>1</b>	<b>2</b>	<b>£160,000</b>	<b>1</b>		<b>4</b>	<b>2</b>			<b>17</b>

GFSC	2009	2010	2011	2012	21 November 2013
<b>Number of AML/CFT violations identified by the supervisor</b>	<b>113</b>	<b>107</b>	<b>74</b>	<b>25</b>	<b>27</b>
<b>Type of measure/sanction</b>					
Written warnings	1	-	1	2	1
Fines	-	3	-	1	2
Removal/Prohibition of Individual	2	2	-	1	1
Withdrawal of license	-	-	-	-	-
Conditions/Directions	21	16	12	3	4
Public Statements	1	1	-	-	2
Voluntary Undertaking	3	1	-	-	-
<b>Total amount of fines</b>	-	<b>£35,000</b>	-	<b>£400</b>	<b>£160,000</b>
Number of sanctions taken to the court (where applicable)	1	-	1	1	-
Number of final court orders	-	-	1	1	-
Average time for finalising a court order	-	-	*	*	-

\* It is not possible to give an average time for finalising court orders, because in both court cases to date the process was stayed for a period due to on-going related proceedings. These were criminal proceedings in the first case, which resulted in the individual concerned serving a term of imprisonment for ML and so the court process could not be completed until his release. In the second case, the court process was stayed pending the resolution of related investigations and proceedings in two other jurisdictions on the basis of an agreement with those jurisdictions. In both cases the court process was swiftly resumed and finalised once the related matters had been concluded.

<b>AGCC (Casinos)</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>13.11.2013</b>
<b>Number of AML/CFT violations identified by the supervisor</b>	<b>64</b>	<b>53</b>	<b>74</b>	<b>59</b>	<b>47</b>
<b>Type of measure/sanction</b>					
Written warnings	-	1	2	-	-
Fines	-	3	-	-	-
Removal of manager/compliance officer	-	-	-	-	-
Withdrawal of license	-	-	-	-	-
Other (Suspension of License pending rectification)	-	1	-	-	-
Other (Remediation Measures)	<b>64</b>	<b>49</b>	<b>72</b>	<b>59</b>	<b>47</b>
<b>Total amount of fines</b>	-	<b>£50,000</b>	-	-	-
Number of sanctions taken to the court (where applicable)	-	-	-	-	-
Number of final court orders	-	-	-	-	-
Average time for finalising a court order	-	-	-	-	-

#### **2.6.4 AML/CFT supervisory on-site visits**

*Please note: With reference to the AML/CFT on-site inspections to eCasinos, the difference between the number of licensed entities and the number of on-site inspections conducted reflects the fact that a number of licensed entities are not operational. After a licence is granted, an eCasino is not authorised to commence live operations until all its gambling equipment has been tested and the eCasino's policies, procedures and controls have been approved. All eCasinos which are operational, and therefore conduct live business operations under their licence, are inspected annually on-site for compliance with AML/CFT requirements.*

<b>2009</b>				
<b>GFSC and AGCC</b>	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visits carried out
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b>FINANCIAL SECTOR</b>				
Banks	44	54	14	N/A
Securities	662	48 *	11	28
Insurance	760	33**	33	-
Other Financial Institutions	46	8	8	-
<b>NON FINANCIAL SECTOR</b>				
Casinos	44	22	-	22
Real estate	8	8	8	-
Dealers in precious metals and stones	-	-	-	-
Lawyers	19	4	4	-
Accountants & auditors	7	3	3	-
Trust and company service providers (including Personal Fiduciary Licensees)	197	23	-	23

\* The 48 on-site inspections also covered 317 collective investment funds and 71 administered licensees.

\*\* The 33 on-site inspections also covered 202 captive insurance companies/protected cell companies.



<b>2010</b>				
<b>GFSC and AGCC</b>	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b>FINANCIAL SECTOR</b>				
Banks	<b>38</b>	<b>19</b>	<b>19</b>	<b>-</b>
Securities	<b>662</b>	<b>34*</b>	<b>26</b>	<b>8</b>
Insurance	<b>742</b>	<b>20**</b>	<b>-</b>	<b>20</b>
Other Financial Institutions	<b>81</b>	<b>10</b>	<b>10</b>	<b>-</b>
<b>NON FINANCIAL SECTOR</b>				
Casinos	<b>43</b>	<b>22</b>	<b>-</b>	<b>22</b>
Real estate	<b>26</b>	<b>4</b>	<b>4</b>	<b>-</b>
Dealers in precious metals and stones	<b>2</b>	<b>2</b>	<b>2</b>	<b>-</b>
Lawyers	<b>20</b>	<b>2</b>	<b>2</b>	<b>-</b>
Accountants & auditors	<b>49</b>	<b>3</b>	<b>3</b>	<b>-</b>
Trust and company service providers (including Personal Fiduciary Licensees)	<b>150</b>	<b>33</b>	<b>-</b>	<b>33</b>

\* *The 34 on-site inspections included inspections of 183 funds and 70 administered licensees.*

\*\* *The 20 on-site inspections included inspections of 379 captive insurance companies/protected cell companies.*

<b>2011</b>				
<b>GFSC and AGCC</b>	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b>FINANCIAL SECTOR</b>				
Banks	35	8	8	-
Securities	655	17*	-	17
Insurance	752	22**	-	22
Other Financial Institutions	90	6	6	-
<b>NON FINANCIAL SECTOR</b>				
Casinos	42	26	-	26
Real estate	30	2	2	-
Dealers in precious metals and stones	2	-	-	-
Lawyers	20	1	1	-
Accountants & auditors	52	5	5	-
Trust and company service providers (including Personal Fiduciary Licensees)	152	36	-	36

\* The 17 on-site inspections included inspections of 501 funds and 195 administered licensees.

\*\* The 22 on-site inspections included inspections of 55 captive insurance companies/protected cell companies.

<b>2012</b>				
<b>GFSC and AGCC</b>	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b>FINANCIAL SECTOR</b>				
Banks	32	6	6	-
Securities	645	12*	-	12
Insurance	804	7	-	7
Other Financial Institutions	95	4***	4	-
<b>NON FINANCIAL SECTOR</b>				
Casinos	43	28	-	28
Real estate	31	10	3	-
Dealers in precious metals and stones	2	-	-	-
Lawyers	22	10	2	-
Accountants & auditors	54	5	-	-
Trust and company service providers (including Personal Fiduciary Licensees)	152	7**	-	7

\* *The 12 on-site inspections included inspections of 154 funds and 41 administered licensees.*

\*\* *The number of visits to licensed fiduciaries had been increasing prior to 2012 under the Commission's third programme of visits to fiduciaries since fiduciary licensing was introduced in the Bailiwick in 2001. During 2012 the on-site programme to fiduciaries was suspended as staff resource was diverted to work on GFSC-wide restructuring projects. This included the creation of a dedicated unit for undertaking AML/CFT visits.*

\*\*\* *The resources within the division responsible for fiduciaries was also utilised on running a programme of educational GFSC AML/CFT visits to the registered business sector (other financial institutions and firms of lawyers, estate agents and accountants) which were only required to register with the GFSC for AML/CFT supervisory purposes since 2008. Following the restructuring within the GFSC referred to in the previous footnote the number of visits to fiduciaries has increased.*

<b>2013</b>				
<b>GFSC and AGCC</b>	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b><i>FINANCIAL SECTOR</i></b>				
Banks	<b>32</b>	<b>9</b>	<b>9</b>	<b>-</b>
Securities	<b>651</b>	<b>6</b>	<b>-</b>	<b>6</b>
Insurance	<b>845</b>	<b>4</b>	<b>1</b>	<b>3</b>
Other Financial Institutions	<b>89</b>	<b>2</b>	<b>2</b>	<b>-</b>
<b><i>NON FINANCIAL SECTOR</i></b>				
Casinos	<b>38</b>	<b>29</b>	<b>-</b>	<b>29</b>
Real estate	<b>30</b>	<b>1</b>	<b>1</b>	<b>-</b>
Dealers in precious metals and stones	<b>1</b>	<b>-</b>	<b>-</b>	<b>-</b>
Lawyers	<b>21</b>	<b>-</b>	<b>-</b>	<b>-</b>
Accountants & auditors	<b>52</b>	<b>14</b>	<b>1</b>	<b>-</b>
Trust and company service providers (including Personal Fiduciary Licensees)	<b>154</b>	<b>20</b>	<b>13</b>	<b>7</b>

### 3. Appendices

#### 3.1. APPENDIX I - Recommended Action Plan to Improve the AML / CFT System

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
<b>1. General</b>	
<b>2. Legal System and Related Institutional Measures</b>	
<b>2.1 Criminalization of Money Laundering (R.1 &amp; 2)</b>	<ul style="list-style-type: none"> <li>• The authorities should continue to focus their attention on identifying ML crimes within the domestic financial sector. Furthermore, the authorities should further examine the underlying reasons for the disconnect between the number of ML investigations vis-à-vis the number of ML prosecutions and convictions and take measures to overcome any identified obstacles.</li> </ul>
<b>2.2 Criminalization of Terrorist Financing (SR.II)</b>	
<b>2.3 Confiscation, freezing, and seizing of proceeds of crime (R.3)</b>	<ul style="list-style-type: none"> <li>• The authorities should increase efforts to use their robust framework in a more effective way to address financial sector criminal activity in addition to drug trafficking and use the confiscation provisions in such matters.</li> </ul>
<b>2.4 Freezing of funds used for terrorist financing (SR.III)</b>	<ul style="list-style-type: none"> <li>• In the legal framework, it should be made explicit that a designated person does not receive prior notice of a freeze action.</li> <li>• For convictions under Section 5 of the Terrorism Order to be successful, there should be greater clarity in relevant statutes regarding who might fall under the category of a person who commits or attempts to commit or participates or facilitates the commission of terrorism or a person controlled by such a person.</li> <li>• At the time of the on-site visit, assessors were of the view that:               <ul style="list-style-type: none"> <li>○ GFSC public information, as it appeared on the website or elsewhere, should have a greater degree of clarity on the issue of the import of the lists appearing on the HM Treasury website and specifically which lists apply in Guernsey and in what manner. There should be additional clarity on the obligation of financial sector and other participants to locate and screen for funds of persons on the UNSCR 1267 list, and steps they might consider to determine who might be covered by UNSCR 1373, and thus should be part of their screening and CDD processes. There should be greater emphasis on the obligation not to make funds available that is irrespective of the STR process.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ At the time the Freezing of Funds Notice is served on the designated person, he should also receive information regarding the availability of revocation and the possibility of a license to permit access to some assets and advised that guides are available regarding these issues.</li> <li>○ Authorities should undertake efforts to enhance the monitoring of compliance with legislation, rules, and regulations relevant to the UN sanctions regime with such steps as including more in supervisory checklists.</li> </ul>
<b>2.5 The Financial Intelligence Unit and its functions (R.26)</b>	<ul style="list-style-type: none"> <li>● The FIU/FIS, as part of the Bailiwick law enforcement community, should implement steps to improve the effectiveness of the reporting system to support an increase in the number of investigations and prosecutions.</li> </ul>
<b>2.6 Law enforcement, prosecution and other competent authorities (R.27 &amp; 28)</b>	<ul style="list-style-type: none"> <li>● The authorities should implement steps to improve effectiveness by seeking to increase the number of investigations and prosecutions, particularly on autonomous money laundering.</li> </ul>
<b>2.7 Cross-Border Declaration &amp; Disclosure (SR IX)</b>	<ul style="list-style-type: none"> <li>● Legislative steps need to be taken to align the cross-border cash declaration control related to mail with the comprehensive approach of Cash Controls Law 2007, particularly in relation to the authority to enquire, the temporary restraint measures, and the adequate and uniform level of sanctions.</li> <li>● Although the practice of limiting the notification of the FIS to suspicious incidents when related to freight and post parcels formally complies with the standards, from an effectiveness perspective, it is recommended to adapt a uniform approach for all cross-border cash transportations.</li> </ul>
<b>3. Preventive Measures - Financial Institutions</b>	
<b>3.1 Risk of money laundering or terrorist financing</b>	
<b>3.2 Customer due diligence, including enhanced or reduced measures (R.5-8)</b>	<ul style="list-style-type: none"> <li>● The authorities should expand the list of higher-risk customers to which enhanced due diligence must be applied and consider including private banking and non-resident customers.</li> </ul>
<b>3.3 Third parties and introduced business (R.9)</b>	<ul style="list-style-type: none"> <li>● The authorities should not include lawyers and accountants in Guernsey, Jersey, the Isle of Man and the United Kingdom as Appendix C businesses, as they have not been subject to, nor supervised for compliance with, AML/CFT regulation and supervision for a sufficient period.</li> </ul>
<b>3.4 Financial institution secrecy or confidentiality (R.4)</b>	

<b>3.5 Record keeping and wire transfer rules (R.10 &amp; SR.VII)</b>	
<b>3.6 Monitoring of transactions and relationships (R.11 &amp; 21)</b>	
<b>3.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25, &amp; SR.IV)</b>	<p><b>R.13</b></p> <ul style="list-style-type: none"> <li>• Consider amending DL and TL and/or relevant guidance to explicitly require the reporting of attempts, or issuing guidance to clarify the requirement.</li> <li>• Review STR process to determine whether timeliness could be improved by revising and possibly simplifying the procedure.</li> </ul> <p><b>SR IV</b></p> <ul style="list-style-type: none"> <li>• The reporting requirement in the TL should be amended to also extent to conduct under Section 5 of the Terrorism (UN Measures) (Channel Islands) Order 2001.</li> </ul>
<b>3.8 Internal controls, compliance, audit and foreign branches (R.15 &amp; 22)</b>	<ul style="list-style-type: none"> <li>• The authorities should establish a direct obligation for FSB maintain an adequately resourced and independent audit function to test compliance with the AML/CFT policies, procedures, and controls.</li> </ul>
<b>3.9 Shell banks (R.18)</b>	
<b>3.10 The supervisory and oversight system-competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 &amp; 25)</b>	<ul style="list-style-type: none"> <li>• The authorities should consider enhancing the discretionary financial penalties regime and establishing a sanctions regime that is dissuasive and proportionate to the severity of the violation or level of non-compliance.</li> </ul>
<b>3.11 Money value transfer services (SR.VI)</b>	
<b>4. Preventive Measures-Nonfinancial Businesses and Professions</b>	
<b>4.1 Customer due diligence and record-keeping (R.12)</b>	<p><b>Legal profession, accountants and real estate agents</b></p> <ul style="list-style-type: none"> <li>• The GFSC authorities are recommended to: <ul style="list-style-type: none"> <li>○ amend the exemption for individuals who act as a director for six companies or less in line with the standard.</li> <li>○ identify legal arrangements or fiduciaries as high risk given their vulnerability to money laundering and their prevalence in the Bailiwick.</li> <li>○ determine when PB could rely on foreign introducers or intermediaries who are DNFBPs.</li> </ul> </li> </ul>

	<p><b>ECasinos</b></p> <ul style="list-style-type: none"> <li>• The AGCC authorities are recommended to require e-Casinos to: <ul style="list-style-type: none"> <li>○ apply additional specific and effective CDD measures to mitigate against the impreciseness of on-line verification methods.</li> <li>○ implement methods and measures to manage and mitigate the specific risks on non face-to-face transaction, including having additional CDD procedures in place when using on-line verification software for non face-to-face transactions.</li> <li>○ Monitor gambling transactions and pay special attention to complex and unusual transactions.</li> </ul> </li> </ul>
<p><b>4.2 Suspicious transaction reporting (R.16)</b></p>	<ul style="list-style-type: none"> <li>• The authorities are recommended to consider amending the DL and TL to create direct, explicit obligations to report suspicions of ML and TF and to explicitly require the reporting of suspicious attempted transactions.</li> </ul> <p><b>ECasinos</b></p> <ul style="list-style-type: none"> <li>• The authorities are recommended to require eCasinos to provide AML/CFT training to all eCasinos employees. The training should specifically include, <i>inter alia</i>, money laundering techniques and employee obligations regarding CDD and reporting.</li> </ul>
<p><b>4.3 Regulation, supervision, monitoring, and sanctions (R.17, 24, &amp; 25)</b></p>	<ul style="list-style-type: none"> <li>• Police record checks are not conducted systematically on key individuals seeking an eGambling license. The absence of police record checks increases the risk that a license may be granted to criminals or their associates.</li> <li>• The GFSC should, as it has recognized, increase the frequency of its on-site inspections for TCSPs. Examinations have been reduced by nearly half in the TCSP sector since 2006. All TCSPs should be inspected on a more frequent basis.</li> <li>• The AGCC should provide more guidance with respect to AML requirements particularly in the area of customer due diligence.</li> </ul>
<p><b>4.4 Other designated nonfinancial businesses and professions (R.20)</b></p>	
<p><b>5. Legal Persons and Arrangements &amp; Nonprofit Organizations</b></p>	
<p><b>5.1 Legal Persons-Access to beneficial ownership and</b></p>	



<b>control information (R.33)</b>	
<b>5.2 Legal Arrangements-Access to beneficial ownership and control information (R.34)</b>	<ul style="list-style-type: none"> <li>• The authorities should put in place specific measures to ensure the availability of accurate and complete beneficial ownership information for trusts and general partnerships that are not administered by licensed TCSPs.</li> </ul>
<b>5.3 Nonprofit organizations (SR.VIII)</b>	<ul style="list-style-type: none"> <li>• Manumitted organizations could be vulnerable to terrorism financing activities and should be subject to registration.</li> <li>• Outreach focused on the raising awareness on the risks of terrorist abuse and the available measures to protect against such abuses should be provided to the entire NPO sector.</li> <li>• Information on the purpose and objectives of the NPO and the identity of the persons who own, control or direct their activities is not publicly available.</li> <li>• Supervision of manumitted organizations should be undertaken with respect to their obligations under the NPO Law.</li> <li>• Sanctions for non-compliance with registration requirements should be strengthened to ensure that they are effective and dissuasive.</li> </ul>
<b>6. National and International Cooperation</b>	
<b>6.1 National cooperation and coordination (R.31)</b>	
<b>6.2 The Conventions and UN Special Resolutions (R.35 &amp; SR.I)</b>	<ul style="list-style-type: none"> <li>• The Bailiwick should work to resolve issues with the United Kingdom in order to be in a position to request an extension of the ratification of the Palermo Convention to it.</li> <li>• The authorities should continue efforts to improve the effective application of the ML provisions with the development of cases involving financial sector participants, and by addressing the disconnect between the number of ML cases investigated versus the cases prosecuted and eventually resulting in a conviction.</li> <li>• The recommendations set forth in the section on SR III should be addressed in order to fully implement the applicable UN Security Council resolutions.</li> </ul>
<b>6.3 Mutual Legal Assistance (R.36, 37, 38 &amp; SR.V)</b>	<ul style="list-style-type: none"> <li>• While the recent legislative amendments <i>de facto</i> eliminate the designation mechanism and thus any concern on this point for future cases, prior to July 2010 the designation mechanism may have had a negative impact on the overall effectiveness of Guernsey's MLA framework.</li> </ul>
<b>6.4 Extradition (R. 39, 37 &amp; SR.V)</b>	

<b>6.5 Other Forms of Cooperation (R. 40 &amp; SR.V)</b>	
<b>7. Other Issues</b>	
<b>7.1 Resources and statistics (R.30 &amp; 32)</b>	

### **3.2. APPENDIX II - Relevant EU texts**

Excerpt from Directive 2005/60/EC of the European Parliament and of the Council, formally adopted 20 September 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

#### **Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3<sup>rd</sup> Directive):**

(6) “beneficial owner” means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;

(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

#### **Article 3 (8) of the EU AML/CFT Directive 2005/60/EC (3<sup>rd</sup> Directive):**

(8) “politically exposed persons” means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

Excerpt from Commission directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of ‘politically exposed person’ and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

#### **Article 2 of Commission Directive 2006/70/EC (Implementation Directive):**

##### **Article 2**

##### **Politically exposed persons**

1. For the purposes of Article 3(8) of Directive 2005/60/EC, “natural persons who are or have been entrusted with prominent public functions” shall include the following:

(a) heads of State, heads of government, ministers and deputy or assistant ministers;

(b) members of parliaments;

- (c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
- (d) members of courts of auditors or of the boards of central banks;
- (e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
- (f) members of the administrative, management or supervisory bodies of State-owned enterprises.

None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.

The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, “immediate family members” shall include the following:

- (a) the spouse;
- (b) any partner considered by national law as equivalent to the spouse;
- (c) the children and their spouses or partners;
- (d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, “persons known to be close associates” shall include the following:

- (a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;
- (b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.