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# Anti-money laundering and counter-terrorist financing measures

# Guernsey

## Fifth Round Mutual Evaluation Report

December 2024

**The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL** is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

The fifth round mutual evaluation report on Guernsey was adopted by the MONEYVAL Committee at its 68th Plenary Session (Strasbourg, 2-6 December 2024).

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# EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering and combating financing of terrorism (AML/CFT) measures in place in Guernsey as at the date of the onsite visit (15 to 26 April 2024). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Guernsey's AML/CFT system and provides recommendations on how the system could be strengthened.

## Key Findings

a) Guernsey adopted a multi-agency approach during the NRA1 and NRA2 processes, which were conducted in close collaboration and involvement of all relevant authorities and other stakeholders, supported by top-level political commitment. However, more direct reference to concrete data used to draw the conclusions of the NRA would be beneficial, and some areas which would benefit from more in-depth analysis (VAs, TF risks or some sectorial specific areas). A commendable range of measures have been implemented to address the risks identified in the NRAs, however a significant number of the actions of the NRA Action Plan were implemented towards the end of the review period and some high priority actions (e.g. the increase of staff of the EFCB and LOC's ECU) are yet to be completed. The objectives and activities of competent authorities are consistent with the national AML/CFT policies and the ML/TF risks identified, however, the alignment is not fully demonstrated when considering the limited number of referrals for potential criminal proceedings/civil forfeiture, ML investigations and prosecutions or confiscations. The competent authorities of Guernsey extensively cooperate and coordinate the development and implementation of policies and activities.

b) The FIU and other competent authorities have access to a wide range financial intelligence and other information. The FIU produces high-quality analytical products and intelligence reports, however they are used to a limited extent to initiate ML and predicate offences investigations and some LEAs (especially EFCB) seek FIU's assistance to a limited extent. Most SARs come from the eGambling sector with generally limited intelligence value and the reporting from some high-risk and material sectors remains limited. The FIU has recently launched a feedback mechanism at the submission stage to improve SAR quality, which has shown initial positive results, but their impact is to be expected, given that the quality and relevance of SARs remained a concern (due to the effect caused by the abundance of SARs from the eGambling sector, the reactive nature and triggers for the identification of suspicions in other sectors; and the lower incidence of corruption-related SARs). The FIU also regularly produces strategic analysis in line with the main identified risks and relevant emerging trends; however, no specific procedures or guidelines were developed for producing and disseminating such analysis. The competent authorities cooperate extensively in the context of the various mechanisms set up to share financial intelligence but with limited impact on increasing the effectiveness of some AML/CFT key areas, such as investigation and prosecution of ML/TF and associated predicate offences.

c) The establishment of the EFCB as a dedicated and powerful LEA indicates a strategic shift towards pursuing ML activities more aligned with the jurisdiction's risks, but this

objective has only to a limited extent been achieved mainly because of insufficient human resources. As a result, the number of ML investigations and prosecutions is generally low and declining.

d) The types of ML investigated and prosecuted in the assessment period, with the dominance of proceeds from domestic predicate offending and the under-representation of sectors with a higher level of risk, have only to some extent been in line with the risk profile of the Bailiwick, mainly due to the previous, less risk-based approach of the authorities.

e) There were very few ML prosecutions and convictions in the period under review and, with the exception of one case, they mostly concerned unsophisticated ML conducts related to low-level domestic predicates. Despite the low numbers, however, all types of ML have occurred in the cases prosecuted and tried including stand-alone ML cases. Despite the country risks, no legal persons have been investigated or prosecuted for ML.

f) The confiscation of proceeds is pursued as a policy objective, as demonstrated by the commitment in allocating resources and providing guidance to the competent authorities albeit with limited results in obtaining sufficient human resources for the LEA.

g) Proceedings for conviction-based confiscation as well as civil forfeiture have been routinely launched as result of financial investigations pursued alongside investigations into ML and predicate crimes. The results of the application of the two regimes have however remained rather moderate throughout the assessment period considering the context of the jurisdiction.

h) The cross-border cash control regime is characterised by a robust legal framework and dedicated and well-resourced authorities. Undeclared cash is routinely detected and confiscated and violations are prosecuted, in which context the authorities' actions are aligned with the country's risk profile. As demonstrated by case studies, the authorities also demonstrated their capacity to detect and to restrain ML related cash and to successfully pursue ML in such cases.

i) The authorities acknowledge that, as an international financial centre, the Bailiwick has exposure to being used in the movement, storage or administration of funds linked to foreign terrorist activity through its formal financial system. In addition, TF may arise as a secondary activity to money laundering, i.e. where the proceeds of foreign criminality are laundered in the jurisdiction and then used to fund terrorism abroad.

j) All forms of TF activity are criminalised under the Bailiwick's legal framework. To date, there have been no TF investigations, prosecutions or convictions. Following discussions with the authorities, including the presentation of the (sanitised) cases, the AT takes comfort in that the financial aspect of the files has been thoroughly considered and that the authorities have the skills and the knowledge to successfully detect and prosecute TF cases, should they arise.

k) Most material sectors show a strong understanding of their specific ML risks and regularly conduct and update business and customer risk assessments. The investment sector needs to improve its understanding of ML risks. TF risk understanding is generally less nuanced. The application of AML/CFT measures is proportionate to risks

across all sectors, with a stable or decreasing risk appetite, particularly in banks and TCSPs. Most REs implement effective ML/TF preventive measures, risk-based CDD, EDD and record keeping. There remain concerns with the mitigation of risks associated with complex corporate structures in the TCSP and investment sectors, and the application of countermeasures in respect of tax-related ML. The investment sector needs to improve its understanding of control through other means and the application of SDD for financial intermediaries. The type of SARs align somewhat (and are largely aligned in case of non-gaming material sectors) with the jurisdiction's risk profile. Concerns exist about the overall number of SARs (excluding TCSPs), and the decline in reporting from key sectors like banks, TCSPs, and investment firms. Recent guidance from the FIU has improved reporting procedures, but further efforts are needed to enhance the quality and types of SARs related to tax evasion and corruption.

l) The Bailiwick has a robust market entry framework for all categories of REs. In case of lower materiality DNFBPs, the Administrator's framework needs to mature further, while all DPMSs need to be covered. The GFSC and AGCC have a very good understanding of risks, with room for improvement in risk data for TCSPs and a reconsideration of risk-categorisation. The GFSC has been implementing a risk-based supervisory model for several years, conducting thorough on-site examinations, supplemented by thematic reviews aligned with national ML/TF risks. The frequency of full-scope examinations for medium-high risk entities, and their extent in terms of client file sampling needs adjustment. The AGCC's supervision is likewise risk-based but needs strengthening when testing the ability to detect and scrutinise unusual transactions. The GFSC actively exercises its enforcement powers, including against senior officers. Issues were noted with the lengthiness of enforcement actions and the low number of pecuniary fines in high-risk sectors. While the AT found evidence of some administrative actions taken by the GFSC in respect of failures to report suspicions, no criminal sanctions were ever imposed for SAR reporting failures (considering that such failures are exclusively sanctioned criminally). The AGCC overly focuses on remedial actions and has legal impediments in sanctioning entities that withdraw their licenses.

m) Guernsey automatically applies relevant UK sanctions regimes implementing UNSCRs establishing TF-related TFS. The P&R Committee is the competent authority for designations, asset freezing, listing/de-listing proposals, granting access to frozen funds and unfreezing, while the Sanctions Committee is tasked with coordinating and ensuring compliance with TFS. Mechanisms to inform about designations and de-listings are in place, but could benefit from further automation. There have not been cases of implementation of TFS under TF-related sanctions regimes, but have been abundant cases under other international sanctions regimes, whose application has been, on average, timely. Monitoring and oversight of NPOs has been in place throughout the assessed period, albeit in a less detailed, risk-based and formal manner until 2022. Since 2022/2023, the framework has been significantly enhanced and is assessed as robust. There is room for further use of the Registry oversight (specially in relation to onsite activities) and sanctioning powers, while offsite actions have been more abundant. The GFSC has also conducted risk assessment and supervision of the sector through the TCSPs that administer NPOs, although the review of NPO customer files and enforcement actions derived from them have been, so far, on the low end (except for 2022). NPOs demonstrated a good level of awareness of their obligations

and TF risks, as a result of significant outreach and awareness actions from authorities, most notably the Registry.

n) Guernsey has put in place a framework for the automatic application of PF TFS, including procedures for designation, asset-freezing, de-listing, un-freezing, granting access to frozen assets and liaising with domestic and international authorities for such purposes. To date, no assets have been frozen under UNSCRs relating to PF, however, there have been abundant cases of asset-freezing in relation to other international sanctions regimes, whose implementation has been, on average, timely, and have triggered multiple follow-up actions from the P&R Committee. Authorities (most notably, the FIU and the Customs Service) have also demonstrated the capacity to identify assets/goods that could potentially have had PF links. REs generally have a very good understanding of their TFS obligations and their implementation under other, non-PF related, international sanctions has generally been robust, with some concerns in the investment sector (see IO.4). Supervision of compliance with TFS obligations by the GFSC has been commendable and focused on the effectiveness of the firms screening systems, as well broader aspects of TFS obligations, but there is room for deeper consideration of the latter in future thematic and targeted exercises, with a view to improve results of breaches detected, remedial and enforcement actions and sanctions imposed, which have remained on the low end for both the GFSC, and specially the AGCC. Significant cases of prompt action have occurred in relation to entities with exposure to a non-PF (or TF)-related sanctions regime.

o) The Bailiwick has comprehensive measures to prevent the misuse of legal persons and arrangements for ML/TF, and to ensure BO transparency for legal persons. There is a good and adequate understanding of ML and TF risks respectively, requiring some enhancements. Transparency measures for legal persons include public access to basic information, company and BO registers with ongoing checks, involvement of resident agents and REs in the formation and management of legal entities, and the supervisory roles of the Registries, the GFSC, and the Revenue Service. Implementation of CDD is good across material REs dealing with entities and arrangements, and resident agents. Registries perform effective checks at registration and upon changes to ensure data accuracy and that BOs are free from adverse information. On-site examinations by the GFSC, Revenue Service, and Registries are of good quality, but need to be more extensive (larger file sampling) and sustained in Guernsey Registry's case. BO information is readily accessible to competent authorities, with no reported issues. For legal arrangements the main source of information are banks and TCSPs, and while the GFSC carries out a series of inspections on both banks and TCSPs, the coverage of administered Guernsey trusts (throughout such inspections) remains somewhat limited. Overall while there were no indications of notable non-compliance with BO requirements, the enforcement actions are limited and impacted by the recent launch of on-site examinations by the Guernsey Registry, and gaps in extent of supervision by the authorities. The Registries take effective action to strike off defaulting companies.

p) LEAs seek and provide international cooperation through various formal and informal channels, but these possibilities appear to be far from being exhausted (such as the use of CARIN network by the EFCB). Other competent authorities of the Bailiwick, notably the supervisory authorities and the Revenue Service, actively seek and provide other

forms of international cooperation either to pursue domestic ML or other crimes, or for regulatory objectives.

q) The FIU cooperates regularly and effectively with its foreign counterparts (mainly the UK) actively seeking and providing information in a timely way and good quality, both spontaneously and upon request. However, the number of requests to foreign counterparts appears not to be in line with the country's risk profile as an IFC.

## Risks and General Situation

2. The primary money laundering risks for Guernsey arise from foreign criminality, including bribery, corruption, fraud, tax evasion, and drug trafficking. Criminal proceeds are most likely to originate from the UK, USA, and other major European countries. Criminal proceeds originating from other countries may also pass through international financial centres before reaching the Bailiwick. Foreign proceeds generally transit through the jurisdiction rather than remaining there long-term. The Bailiwick experiences low domestic crime rates, with most crimes being minor and unlikely to generate relevant proceeds for money laundering.

3. The Bailiwick faces a significantly lower threat of terrorist financing compared to money laundering. As an international financial centre, the Bailiwick is exposed to TF risks through the cross-border movement or storage of funds. This could involve sophisticated terrorist groups using the jurisdiction as a transit point for financing activities in other countries or for managing assets through structures that obscure beneficial ownership. It is also possible for funds raised in or sent from the jurisdiction in good faith to be used to support terrorism elsewhere. Despite these risks, the proportion of financial flows and business links with high-risk countries for terrorism or TF is extremely low. Most such relationships involve low-risk activities, such as wealth management for high-net-worth clients.

## Overall Level of Compliance and Effectiveness

4. Since its last evaluation, Guernsey made significant efforts to strengthen its legal and regulatory AML/CFT framework. These include amongst others; the publishing of its first National Risk Assessments in 2020 and 2023, and a specific legal persons and arrangements risk assessment in 2024; the setting up of the Economic and Financial Crime Bureau (EFCB) in 2021 to detect and investigate financial crime, and the introduction of beneficial ownership registers (in 2018) and ancillary supervisory powers to the Guernsey Registry (in 2023) to ensure compliance by legal persons with BO obligations.

5. The fundamental components of an effective AML/CFT system are largely in place, with a substantial level of compliance achieved in six out of the eleven immediate outcomes assessed. Improvements are needed in certain areas to achieve substantial compliance. Fundamental improvements are necessary to ensure the effective investigation, prosecution and conviction of ML cases in line with the country's risk profile. Other key areas requiring attention include AML/CFT supervision, RE's compliance with preventive measures and in particular improvements in the numbers and quality of SARs, use of FIU financial intelligence, and confiscation of proceeds of crime.

6. Guernsey has a robust AML/CFT legal framework for technical compliance, which is rated as either compliant or largely compliant with all the 40 technical recommendations. The outstanding deficiencies are deemed to be minor.

*Assessment of risk, coordination, and policy setting (Chapter 2; IO.1, R.1, 2, 33 & 34)*

7. Guernsey completed its first formal and comprehensive NRA in 2020 (NRA1), followed by the second NRA adopted in 2023 (NRA2) which was supplemented by a separate legal persons and arrangements risk assessment in April 2024. Both NRAs, informed by a variety of sources, reached similar conclusions in terms of ML/TF risks and are of high quality. However, more direct reference to concrete data (investigations, TF pre-investigations, prosecutions, SARs, MLAs, supervisory enforcement actions, etc.) used to draw these conclusions would be beneficial for both ML and TF risk understanding. Some sector-specific (i.e. legal and TCSPs sectors) aspects don't seem to be fully explored. Additionally, considerable work has been done to understand the TF risks emanating from countries with which Guernsey has financial flows, nevertheless, since the main TF risks lie within it being used as a transit jurisdiction, more analysis is needed to fully grasp the level of TF risk in that regard.

8. All competent authorities demonstrated a strong and well-developed understanding of the extent to which ML/TF risks can materialise and awareness of the main ML risks and methods identified in the NRAs, due to their close involvement and collaboration in both processes, which included the private sector, mainly through data and feedback provision. This notwithstanding, this understanding might be restricted by some limitations such as those resulting from the difficulty of detecting links between the assets and the underlying criminality, lack of in-depth analysis for ML/TF risks stemming from virtual assets (VA) and the lack of cases (i.e. investigations, case studies or relevant scenarios, etc.) related to TF.

9. Guernsey implemented a commendable range of measures targeted at the jurisdiction's risks. This implementation was monitored by the Strategic Coordination Forum and the Anti-Financial Crime Delivery Group (and the AFAC[1] pre-2022) and prioritised through an action tracker (from Q1 2023), but there was no formalized NRA1 action plan. In response to NRA2, Guernsey either adopted or updated several AML/CFT-related strategies[2], most notably the National Strategy for Combatting ML/TF/PF in October 2023. A formal Action Plan was adopted in March 2024, mirroring the structure of the National Strategy and containing actions and milestones, with different degrees of concreteness and measurability. A significant number of the actions of the NRA Action Plan were implemented towards the end of the review period and some high priority actions which might have an impact on the implementation of measures to manage and mitigate the risks (e.g. the increase staff complement of the EFCB and LOC's ECU) are yet to be completed. A more standardised and interconnected monitoring of the NRA Action Plan items, the objectives of the multiple strategies and other relevant projects and workstreams, as well their implementation and adherence to the national risks, will have to be pursued and sustained over time.

10. The objectives and activities of competent authorities are consistent with the national AML/CFT policies and with the ML/TF risks identified, which were reflected in their respective risk-based policies and operational procedures, generally formalised after NRA1 and more recently updated after NRA2. Other measures such as staff increases and restructurings, enhancements of IT systems or tailored trainings have also been common across all authorities and in line with risks. However, this alignment is not fully demonstrated when taking into account the limited number referrals for potential criminal proceedings/civil forfeiture, ML investigations and prosecutions, confiscations, etc. throughout the whole period under review.

[1] AML/CFT Advisory Committee.

[2] Including an updated AML/CFT Strategy, and updated Anti-Bribery and Corruption Strategy, Tax Strategy, Counter Terrorism Strategy, Statement on an Overarching Approach to Guernsey and Alderney NPOs and Statement of Support for International Cooperation.

11. The competent authorities of Guernsey extensively cooperate and coordinate the development and implementation of policies and activities. Such cooperation and coordination are ensured by The Anti-Financial Crime Advisory Committee (AFCAC), which reports regularly to "The Five Committees[3]". The strategic direction and objectives for AML/CFT/CFP is set by The Strategic Coordination Forum and delivered by the Anti-Financial Crime Delivery Group. These and other relevant committees meet regularly, maintaining a strong level of coordination and cooperation.

12. The risk assessments findings were widely disseminated to the private sector through presentations, outreach events and online publications. The private sector demonstrated a high level of awareness of the risk assessments findings.

*Financial intelligence, ML investigations, prosecutions and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)*

13. Financial intelligence and relevant information are regularly accessed by the FIU and other competent authorities through a variety of databases and sources, facilitated by online tools and close international cooperation with the UK. The FIU is a key source of financial intelligence; yet some LEAs do not seem to seek its assistance to the full extent during their investigations.

14. Although all relevant authorities confirmed the close collaboration with the FIU and its ability to support their operational needs, FIU's intelligence reports and other products resulted in a limited number of referrals for possible criminal proceedings or civil forfeiture, which were used to initiate an even lower number of ML and predicate offences investigations; and none triggered TF investigations giving the lower risk.

15. The FIU receives approximately 2600 reports of SARs annually, predominantly from the e-gambling sector, but most of these reports are of limited monetary and intelligence value, which is not in line with the risk profile of Guernsey. Reports from other sectors, especially high-risk and material sectors, remain limited (with the exception of TCSPs) and slightly declining which may impact the provision of financial intelligence in relation to those sectors. The FIU has launched commendable measures to improve the quality of SARs through feedback at the submission stage and extensive outreach, with initial positive results, however their impact is yet to be expected, considering that the quality and relevance of SARs remained a concern throughout the review period (due to the effect caused by the abundance of SARs from the eGambling sector, the reactive nature and triggers for identification of suspicions in other sectors; and the lower incidence of corruption-related SARs).

16. The prioritization of SARs appears to be risk-based and the FIU produces high-quality analytical products and intelligence reports for dissemination, however the length of its operational analysis and the timeliness of its disseminations raise some concerns, especially in complex ML cases and when there was reliance on information from international partners.

17. Guernsey has made significant improvements since the last evaluation regarding the FIU's operational independence and resources. Since 2022, the FIU operates as an independent and autonomous law enforcement style FIU under the umbrella of the EFCB. The FIU has also increased its resources in both operational and strategic areas, reinforced its technical resources (including IT and analytical tools) and has appropriate arrangements to protect the confidentiality of its information. There is also engagement with the Egmont Group, internal and external training providers.

[3] The Policy& Resources Committee, the Committee for Home Affairs, and the Committee for Economic Development of the States of Guernsey, the Policy & Finance Committee of the States of Alderney and the Policy & Finance Committee of the Chief Pleas of Sark.

18. The FIU's dedicated analysts have developed several strategic analysis reports, mostly in line with the findings of Bailiwick's NRAs findings and emerging trends, which have been widely disseminated to domestic and international partners. Positive feedback from competent authorities met during onsite indicate the usefulness of such products to support their operational needs. However, the FIU didn't develop any specific procedures or guidelines for producing and disseminating such analysis.

19. The Bailiwick consent regime has regularly been used by the FIU to prevent the dissipation of funds, some cases resulting in the return of large amounts to international partners, but with very limited outcomes domestically.

20. Guernsey has robust cooperation mechanisms among competent authorities, ensuring regular and secure information exchange, including through bilateral and multilateral initiatives and meetings, including via a recently formed Public Private Partnership (the GIMLIT) and membership to several AML/CFT committees, to foster cooperation, coordination and intelligence sharing. However, with limited impact on increasing the effectiveness of some AML/CFT key areas, such as investigation and prosecution of ML/TF and associated predicate offences.

21. Whereas the legal framework provides for the effective identification and investigation of ML and the establishment of the EFCB as a dedicated and powerful new LEA in 2021 indicates a strategic shift towards pursuing ML activities in line with the country risks, this objective has only to a limited extent been achieved mainly because of lack of human resources. As a result, the number of ML investigations and prosecutions is generally low and declining.

22. The main source to identify ML cases are financial intelligence referrals from the FIU or other authorities, and parallel financial investigations. The types of ML investigated and prosecuted can be characterized by the dominance of proceeds from domestic predicates and the under-representation of sectors with a higher level of risk and hence they are only to some extent in line with the risk profile of the jurisdiction, mainly due to the previous, less risk-based approach of the LEA involved.

23. The very few ML prosecutions and convictions in the assessment period mostly concerned unsophisticated ML conducts related to low-level domestic predicates, even though all types of ML have occurred in the few cases prosecuted and tried including stand-alone ML. No legal persons have been investigated or prosecuted for ML. The results of the remarkably lenient sentencing policy in ML cases is that criminal sanctions against natural persons are not dissuasive and only to some extent proportionate.

24. The Bailiwick comprehensive and robust regime of confiscation and provisional measures provides the necessary powers for the identification, restraint, and confiscation of criminal proceeds and instrumentalities. While it is indeed pursued as a policy objective and proceedings for conviction-based and civil forfeiture have routinely been conducted, the results of the application of the two regimes have remained rather moderate in light of the context of the jurisdiction.

25. The confiscation and forfeiture results so far achieved, both in terms of the number and nature of the cases and the volume of assets involved, only to a certain extent reflects the assessment of ML/TF risks and the national AML/CFT policies and priorities. Criminal confiscation is restricted to the property that is actually realisable which often results in undervalued or nominal value confiscation orders and necessitates subsequent revision and recalculation.

26. The cross-border cash control is carried out in a robust mechanism implemented by dedicated and well-resourced authorities, which demonstrated their capacity to detect and to restrain also ML related cash and to successfully pursue ML in such cases.

*Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5–8, 30, 31 & 39.)*

27. Largely in line with the jurisdiction's risk profile, to date there have been no TF investigations, prosecutions or convictions. There have been 10 cases where intelligence suggested possible TF links but those were all closed at the pre-investigative stage as no evidence of TF was identified. The competent authorities are generally aware of the TF threat and risks, with moderate improvements needed in certain areas.

28. All TF activities are criminalised under the Bailiwick's legal framework. Guernsey has a dedicated system in place for the identification and investigation of TF which involves a special intelligence management unit within BLE responsible with the investigative work. More focus should be put on the verifying the adequacy of TF SAR reporting. The division of responsibilities between BLE and EFCB when it comes to TF potential investigations remains informal.

29. As there have been no TF convictions to date, no sanctions or other measures have been applied against any natural or legal persons for TF offences. However, effective, proportionate and dissuasive sanctions are available, complemented by a robust confiscation regime.

30. Guernsey automatically applies relevant UK sanctions regimes implementing TF and PF-related UNSCRs through the Sanctions Implementation Regulations. The P&R Committee is the body responsible for making autonomous designations, making and receiving asset-freezing requests, making listing and de-listing proposals to the UN (through a MoU with the UK FCDO), granting licenses to access frozen assets and handling unfreezing requests. The Sanctions Committee, with representation of all the relevant AML/CFT competent authorities, is tasked with coordinating and ensuring effective compliance with international TFS. New designations, changes in designations and de-listings related to TF and PF TFS are notified to the private sector through "sanctions notices" that are circulated (typically on the same day, according to authorities) by the FIU through the THEMIS system and published in the GFSC website.

31. Guernsey has had measures in place for the oversight and monitoring of NPOs throughout the assessed period (albeit in a less detailed, risk-based and formal manner until 2022). In 2022 (quite recent in the period under assessment), the Charities Ordinance and the Charities Regulations were enacted (preceded by a guidance paper from 2018), which introduced multiple new governance and risk mitigation obligations for internationally active NPOs and brought TCSP-administered NPOs under registration. Monitoring and oversight by the Guernsey Registry (on the basis of the risk ratings it assigns to NPOs) has been frequent and detailed (specially in relation to offsite monitoring), but there is room for further use of onsite oversight and sanctioning powers. In the case of TCSP-administered NPOs, there is additional supervision by the GFSC, which, however, have not been driven by NPO risk and have only led to one enforcement case involving an NPO customer.

32. Authorities, most notably the Registry, have been particularly active throughout the assessed period in terms of trainings and outreach events aimed at the NPO sector and there is abundant guidance in this regard in the Registry website, which has led to NPOs exhibiting a good level of awareness of their obligations and potential TF risks and having anti-financial crime and CFT-specific policies and procedures in place.

33. To date there have been no instances where it has been necessary to apply measures to deprive terrorists, terrorist organisations and terrorist financers of assets and instrumentalities

related to TF, which is in line with the jurisdiction's TF risks (although the assessment of TF risks may have been limited due to the lack of TF investigations and limited use of incoming cooperation requests, SARs and TF pre-investigations (see IO.9)). Measures in place, focusing on international aspects (implementation of international TFS, focus on NPOs that are internationally active), are largely in line with the TF risks of a transit jurisdiction with and "IFC" status.

34. Guernsey has been given weight to countering the proliferation of WMDs and PF throughout the assessed period, most notably since the implementation of "Project Dragonfly" in 2021, an initiative that resulted in several measures, such strategic analysis reports, guidance, determining list of jurisdictions deemed as "PF hubs" or legislative amendments (in February 2024) to broaden the scope of the AML/CFT obligations applicable to FIs, DNFBPs and VASPs to also incorporate CPF.

35. Guernsey has established systems that could identify assets belonging to designated persons under PF sanctions regimes, should the case occur, mostly concerning information from the private sector and the Customs Service import and export licensing regime (using an electronic manifesting system (GEMS) to detect factors relevant to proliferation), with additional revision and checks by the FIU. The AT was presented with some cases of dual-use goods that could have proliferation implications, but, after liaising with domestic and international authorities, these were discarded.

36. Both the competent authorities and the private sector have had ample experience with asset freezing and associated procedures under other, not TF or PF-related, international sanctions regimes. The private sector demonstrated an overall very good understanding and application of TFS obligations, although some challenges were detected in the investment sector (see IO.4). Authorities provided abundant and remarkable outreach and guidance in relation to TFS compliance, including training and outreach events, public guidance and engagement with individual firms.

37. The GFSC and AGCC have monitored compliance of REs with TFS obligations throughout the assessed period. The risk scoring methodology of the GFSC takes into account several TFS-relevant factors, but the system does not allow to immediately have a view of the sanctions risks of particular entities or sectors, nor sanctions risks (exclusively) drive supervision. A remarkable effort has been the sanctions thematic review of 2021, which showed an overall good level of compliance by the involved REs (mostly banks) and whose results were disseminated to the public. GFSC's supervision has considered both the effectiveness of the firms' screening systems and wider aspects of TFS compliance (understanding of PF and TFS risks, CDD, ongoing and transaction monitoring, etc.), but the results in terms of breaches detected, remedial and enforcement actions and sanctions imposed have remained low (specially concerning findings not related to screening systems). Results of the AGCC inspections have been less significant, but eCasinos' exposure to sanctions and PF risks is lower than in other, more material, sectors. There have also been significant cases of prompt action (short-notice inspections, imposition of license conditions, etc.) in relation to entities with exposure to a non-PF (or TF)-related sanctions regime.

*Preventive measures (Chapter 5; IO.4; R.9–23)*

38. Majority of material sectors (i.e. banks, TCSPs and eCasinos) demonstrated a good understanding of their specific ML risks and systemically undertake and update risk assessments. The understanding of specific ML risks and typologies within the investment sector needs some improvement. TF risk understanding is generally less nuanced and concentrated mostly on high-risk countries and identification of persons designated by the targeted financial sanctions.

AML/CFT obligations are generally well understood across all sectors, though concerns with the interpretation of AML/CFT obligations for financial intermediaries were noted in the case of investment firms.

39. Application of AML/CFT measures is overall commensurate to risks across all sectors. Risk appetite is stable and even decreasing across various sectors, including Banks and TCSPs. Overall REs have effective measures to prevent their services from being misused for the type of ML to which the country is exposed. All REs seek to understand the rationale of complex corporate structures and apply sufficient mitigating measures. Some concerns with the appreciation and mitigation of risks associated with complex structures were noted with TCSPs and investment firms. All relevant REs apply tax-evasion targeted countermeasures, however the AT is unconvinced that these are applied effectively.

40. All REs demonstrated good knowledge and implementation of risk based CDD and record keeping requirements. CDD information is kept up to date and there are periodic risk-based reviews of customers risk profiles, CDD information and transactions/activities. The proper appreciation of the concept of control through other means and application of SDD within the investment sector is an area for improvement.

41. Overall, the specific measures applied to PEPs, new technologies, wire transfers, TF TFS and higher-risk countries, are robust. The concerns with the proper application of BO measures within the investment sector may impact the application of robust TFS measures. No entity is providing corresponding banking services. PEPs, their family members or close associates are identified and subject to appropriate risk-based EDD measures across all sectors.

42. The type of SARs are to some extent aligned with the Bailiwick's risk profile, and largely aligned when taking into account material non-gaming sectors. Concerns remain on the overall number and quality of SARs, with a decline in number across most material sectors (i.e. banks, TCSPs and investment firms). The majority of SARs originated from a single eCasino, however the number of SARs submitted by TCSPs are notable compared to other countries. SARs are mostly triggered due to adverse information, reluctance by clients to provide CDD information, retrospective activity reviews, or requests for information by authorities. This puts the quality of SARs into question. Recent FIU guidance is having a positive impact, however further efforts are needed to improve SARs linked to tax evasion and corruption and improve the detection of attempted suspicious transactions/activities. The prohibition of tipping-off is well-understood and communicated to staff via various forms of training.

43. REs have robust internal controls and procedures in place, commensurate to their size, complexity and risk profile. FIs and larger DNFBPs typically apply three lines of defence approach. Most REs belonging to international groups are also subjected to audit at a group level and group policies enhance their procedures. AML/CFT compliance functions are properly structured and resourced and adequate training tailored to specific roles is provided.

*Supervision (Chapter 6; IO.3; R.14, R.26–28, 34, 35)*

44. The Bailiwick has robust market entry frameworks for all REs. Each authority has the necessary powers and tools to screen all relevant individuals and entities, including on an on-going basis. Authorities liaise and exchange information with other domestic authorities, and, where applicable foreign counterparts. The AGCC does not undertake any proactive market surveillance for unlicensed eCasinos but relies exclusively on external sources. For less material sectors, market entry requirements have only recently been introduced (i.e. for VASPs and registered directors), while not all DPMSs are subject to market entry requirements. Moreover, the Administrator's market entry framework has to further mature.

45. The GFSC and AGCC have a very good understanding of the ML/TF threats and vulnerabilities to which the supervised sectors are exposed. The two authorities also have commensurate processes to understand the risks of specific REs, with some room for additional improvements and granularity. The AT is not fully convinced about the suitability of risk categorisation of individual REs in some material sectors (i.e. investment firms and TCSPs), and the extensiveness of risk data collected for TCSPs which may hamper supervisory plans.

46. The GFSC has been implementing a risk-based supervision for several years and conducts good quality and thorough on-site examinations. These are complemented by other supervisory tools, including thematic examinations whose themes are well aligned to national ML/TF risks and vulnerabilities. The extent of examinations in terms of client file sampling, and the frequency in case of medium-high risk entities, needs to be re-visited to ensure that it is risk-based. The AGCC's overall supervisory model may provide for the identification of AML/CFT issues before they become too serious but there is room to strengthen the same especially when it comes to testing the ability to detect and scrutinise unusual transactions.

47. The GFSC and AGCC have wide ranging remediation and enforcement powers to deal with AML/CFT breaches. The GFSC has been exercising its remediation powers to a significant extent and maintains an effective stance of taking enforcement action not only on REs but also their senior officers. The sometimes-lengthy enforcement actions however may detract from the effectiveness of the sanctioning measures taken. Moreover, the number of pecuniary fines taken is quite low considering the number of supervisory engagements, especially with regards to the higher-risk sectors. Failure to report SARs is subject to a criminal sanction, and while the AT found evidence of some administrative actions taken by the GFSC in this respect, no criminal sanction was ever imposed. The AGCC relies exclusively on remedial actions and during the review period it has never exercised its enforcement powers.

48. Both the GFSC and AGCC undertake a series of training and outreach initiatives to ensure that REs apply AML/CFT obligations in a commensurate manner. This has helped in improving the overall compliance levels of REs. Their actions are complemented by the publication of guidance documents and detailed handbooks that assist REs in complying with their obligations.

*Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)*

49. Information on the types and process of creation of legal persons and arrangements is publicly accessible. Bailiwick authorities have demonstrated a good understanding of how legal persons and arrangements can be used for ML purposes. The 2024 sectorial risk assessment presents a detailed and significant improvement on the analysis contained in the NRA1. The TF risk understanding is adequate but less developed. There remain aspects of the ML/TF risk analysis and understanding that need to be further enhanced.

50. There are various effective measures to prevent the misuse of legal persons and arrangements and to ensure the availability of adequate, accurate and up-to-date basic and BO information for legal persons. These include: (i) public availability of basic information (ii) company registers and fully populated BO registers with corresponding checks at registration and on an ongoing basis, (ii) the use of resident agents for legal persons, (iii) the involvement of REs in the creation and running of legal persons and (iv) the supervisory functions of the Registries, the GFSC and the Revenue Service. There is a good level of compliance with CDD obligations by material REs serving legal persons/arrangements, and resident agents.

51. The checks carried out by the Registries at registration and upon change notifications ensure that registered basic and BO data is adequate and accurate, and that BOs are not subject to adverse information. On-site examinations carried out by the GFSC and Revenue Service are of

good quality, and in 2023 started being complemented by the Guernsey Registry's on-site inspections which need to be sustained. On-site examinations would also benefit from a more extensive coverage of file samples. The Registries moreover undertake data analysis and thematic exercises to enhance compliance by resident agents with their BO disclosure obligations. Accuracy of the Registry information is confirmed annually by legal persons through provision of an annual validations.

52. BO information is accessible to competent authorities through various means. This include BO Registers that are directly accessible to the GFSC, the FIU, the EFCB and the Revenue Service. The authorities presented no issues with accessing BO data and effectively do so regularly on request of foreign counterparts.

53. In the case of trusts, the main source for basic and BO information are the REs. Overall, findings on the ID&V requirements applied by REs, especially banks and TCSP, are of a good quality. The GFSC carries out a series of inspections on both banks and TCSPs to assess the level of BO controls applied but the coverage of Guernsey trusts administered by its licensees is somewhat limited. These are complemented by the supervisory initiatives of the Revenue Service, although in view of data limitations the AT could not verify their effectiveness.

54. There are various sanctions and measures available to deal with breaches of basic and BO related obligations. While the GFSC did impose administrative sanctions for breaches of BO obligations, it mainly focuses on the imposition and monitoring of remedial actions. The penalties imposed by the Registries and the Revenue Service were not always deemed to be proportionate, effective, and dissuasive, and there were no pecuniary fines for breaches of BO obligations. While there is no indication of notable non-compliance with BO requirements, the limited enforcement action is also impacted by the recent launch of on-site examinations by the Guernsey Registry, and the gaps in extent of supervision by the authorities. The Registries take effective action to strike off companies that do not adhere basic information obligations.

*International cooperation (Chapter 8; IO.2; R.36–40)*

55. The Bailiwick of Guernsey has the legal and institutional framework in place so that it can provide the widest possible range of MLA. The Law Officers' Chambers (through the person of the Attorney General) are the competent central authority for responding to requests for MLA and extradition which are dealt with by a dedicated MLA Team within the Economic Crime Unit (ECU) of the LOC Criminal Directorate. The MLA Team comprises a full-time Lawyer and Senior Officer, supported by a paralegal, and executive legal assistants (ELAs) who also assist other teams in the ECU. The authorities advised that both the ECU and its MLA Team are well-resourced to make and coordinate requests for MLA and extradition.

56. In the assessed period, requests for assistance have been made in relation to both criminal investigations and in investigations for the purposes of possible civil forfeiture. In most cases the suspected criminality was ML, fraud, or drug trafficking, which range of offences is in line with the jurisdiction's risks. The majority were for the purposes of evidence gathering (primarily bank records), but requests were also made for the restraint or freezing and confiscation of assets.

57. In addition to making Egmont requests, the FIU seeks assistance internationally from other agencies such as LEAs and tax authorities, via cooperation agreements[4], and through the FIU membership to several international/regional joint initiatives, networks and forums such as

[4] For example, a Letter of Understanding signed in 2018 allows the FIU to seek assistance directly from the HMRC in the UK.

the IACC, JIMLIT, CARIN and the Quad Island Forum of FIUs (QIFF)[5] which helps fostering collaborative working and the sharing of intelligence, operational, and tactical objectives in the global fight against ML/FT/PF.

## Priority Actions

a) The Bailiwick should increase their efforts to obtain the necessary resources particularly in terms of well-trained and skilled investigative specialists for the EFCB to the extent it is required for pursuing complex, transnational ML investigations and investigations against legal persons, in line with the jurisdiction's risk profile.

b) The authorities should continue to provide the necessary trainings for practitioners at the LEAs, the prosecutors, and the judiciary so as to maintain and develop sufficient knowledge of the country-specific ML risks and particularly how entities from high-risk sectors and complex corporate structures can be used as vehicles for laundering foreign criminal proceeds.

c) The EFCB should revisit the time required for case development, identify potential factors of delay and exploit the possibilities provided by the case management system applied so as to achieve a more timely pursuit of ML activities and the opening of more ML investigations in line with the country risks.

d) The FIU should reduce the length of its operational analysis, and increase the number (in line with the identified risks of the jurisdiction as an IFC) and improve the timeliness of its referrals for possible criminal proceedings or civil forfeiture to the EFCB, especially in complex ML cases.

e) The FIU and the GFSC should continue and intensify their actions to address underreporting and improve the quality and relevance (in accordance with the main identified risks) of SARs, and monitoring thereof, especially for high-risk and material sectors. In particular such authorities should: (i) conduct further guidance and awareness raising initiatives focusing on the prevention and detection of tax and corruption-related suspicions and reporting of attempted transactions, (ii) providing clear guidance around the suspicion threshold required for the submission of tax-related SARs; and (iii) complementing guidance and outreach efforts with AML/CFT supervisory and enforcement initiatives.

f) The GFSC should further enhance its AML/CFT/CPF and TFS supervisory process by: (i) recalibrating its risk categorisation process for investment firms and TCSPs, and (ii) revisiting the extent (in terms of client file sample size) of examinations, and frequency for medium-high risk entities to ensure these are adapted to size and risks. The AGCC should further enhance, with more effective testing, its monitoring of e-Casinos' procedures and systems particularly when it comes to the detection and scrutiny of unusual transactions, and it should rethink and clarify the circumstances under which it takes enforcement action.

[5] A forum composed by FIUs from Gibraltar, Isle of Man, Jersey, and Guernsey, with sub-forums focused on TF, strategic analysis and tax evasion.

g) Competent authorities should effectively implement and exploit the new powers for civil confiscation granted in the recently adopted legislation (FOAL) as well as the recently issued policies and mechanisms relating to the confiscation of criminal proceeds.

h) The equally recently introduced systematic mechanism for revisiting undervalued (particularly nominal value) confiscation orders by means of identifying subsequent increases in the defendants' property and wealth needs to be effectively implemented.

i) The GFSC, Registries and the Revenue Service should continue and increase their supervisory activities to ensure that REs, legal persons and resident agents are complying with their basic and BO information obligations. The authorities should widen the sample of corporate files reviewed at on-site inspections, while the GFSC should consider extending cross-checks against BO information held in the Registries for all legal persons' files sampled during inspections, and not a selection thereof.

j) The authorities should revisit the TF risk assessment to: i) make fuller use of the incoming cooperation requests, the SARs and the TF pre-investigations; ii) further analyse the risk related to Guernsey being used as a transit jurisdiction; iii) further look into TF risks related to legal persons and arrangements.

k) The LOC and other competent authorities should continue their efforts in implementing the recently adopted set of guidance documents in the field of MLA and extradition so as to ensure that the current, smooth processes will remain as effective for handling an increased number of incoming and outgoing requests.

## Effectiveness & Technical Compliance Ratings

### *Effectiveness Ratings*[6]

| IO.1 – Risk, policy and coordination | IO.2 – International cooperation | IO.3 – Supervision | IO.4 – Preventive measures | IO.5 – Legal persons and arrangements | IO.6 – Financial intelligence |
|---|---|---|---|---|---|
| SE | SE | ME | ME | SE | ME |
| **IO.7 – ML investigation & prosecution** | **IO.8 – Confiscation** | **IO.9 – TF investigation & prosecution** | **IO.10 – TF preventive measures & financial sanctions** | **IO.11 – PF financial sanctions** | |
| LE | ME | SE | HE | HE | |

### *Technical Compliance Ratings*[7]

| R.1 - assessing risk & applying risk-based approach | R.2 - national cooperation and coordination | R.3 - money laundering offence | R.4 - confiscation & provisional measures | R.5 - terrorist financing offence | R.6 - targeted financial sanctions – terrorism & terrorist financing |
|---|---|---|---|---|---|
| LC | C | C | C | C | LC |
| **R.7- targeted financial sanctions – proliferation** | **R.8 -non-profit organisations** | **R.9 – financial institution secrecy laws** | **R.10 – Customer due diligence** | **R.11 – Record keeping** | **R.12 – Politically exposed persons** |
| LC | LC | C | LC | C | LC |
| **R.13 – Correspondent banking** | **R.14 – Money or value transfer services** | **R.15 – New technologies** | **R.16 – Wire transfers** | **R.17 – Reliance on third parties** | **R.18 – Internal controls and foreign branches and subsidiaries** |
| C | C | LC | C | LC | LC |
| **R.19 – Higher-risk countries** | **R.20 – Reporting of suspicious transactions** | **R.21 – Tipping-off and confidentiality** | **R.22 - DNFBPs: Customer due diligence** | **R.23 – DNFBPs: Other measures** | **R.24 – Transparency & BO of legal persons** |
| C | C | C | LC | LC | LC |
| **R.25 - Transparency & BO of legal arrangements** | **R.26 – Regulation and supervision of financial institutions** | **R.27 – Powers of supervision** | **R.28 – Regulation and supervision of DNFBPs** | **R.29 – Financial intelligence units** | **R.30 – Responsibilities of law enforcement and investigative authorities** |
| C | LC | C | LC | C | C |
| **R.31 – Powers of law enforcement and investigative authorities** | **R.32 – Cash couriers** | **R.33 – Statistics** | **R.34 – Guidance and feedback** | **R.35 – Sanctions** | **R.36 – International instruments** |
| C | C | C | C | LC | C |
| **R.37 – Mutual legal assistance** | **R.38 – Mutual legal assistance: freezing and confiscation** | **R.39 – Extradition** | **R.40 – Other forms of international cooperation** | | |
| C | C | C | C | | |

[6] Effectiveness ratings can be either a High - HE, Substantial - SE, Moderate - ME, or Low - LE, level of effectiveness.

[7] Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – noncompliant.

# MUTUAL EVALUATION REPORT

## Preface

1. This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system and recommends how the system could be strengthened.

2. This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to the country from 15-26 April 2024.

3. The evaluation was conducted by an assessment team consisting of:

Mr Lajos KORONA, Head of Unit, Metropolitan Prosecutor's Office, Hungary, legal evaluator

Mr Daniel Marius STAICU, Director, FIU Moldova, legal evaluator

Mr Michal VOLNÝ, Head of AML/CFT Unit, Czech National Bank, Czechia, financial evaluator

Mr Jonathan PHYALL, Head of Legal Affairs Section, FIAU Malta, financial evaluator

Ms Fedoua EL FILALI, Head of national and international financial investigations division, FIU Morocco, law enforcement evaluator

MONEYVAL Secretariat:

Ms Irina TALIANU, Head of Unit

Mr Alexander MANGION, Administrator

Mr Gerard PRAST, Administrator

4. The report was reviewed by Mr Louis DANTY (Monaco), Ms Dana BURDUJA (Romania) and the FATF Secretariat.

5. Guernsey previously underwent a FATF Mutual Evaluation in 2015, conducted according to the 2004 FATF Methodology. The 2015 evaluation report has been published and is available at https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/16807160f3.

6. That Mutual Evaluation concluded that the country was compliant with 28 Recommendations; largely compliant with 20 Recommendations; partially compliant with 1 Recommendation. Guernsey was rated C or LC for the 16 Core and Key Recommendations.

# 1. ML/TF RISKS AND CONTEXT

**Background general information**

7. The Bailiwick of Guernsey (the Bailiwick) is located in the English Channel, in the gulf of St Malo off the north-west coast of France. It comprises a small number of closely-knit island communities. The principal islands of the Bailiwick are Guernsey (area of 63.4 square km, population of 63,000), Alderney (area of 7.8 square km, population of 2,000) and Sark (area of 5.5 square km, population of 600). Guernsey, Alderney and Sark each have their own legislative assemblies. These are, respectively, the States of Deliberation (also known as the States of Guernsey), the States of Alderney and the Sark Chief Pleas. The States of Guernsey may enact legislation for the entirety of the Bailiwick as well as for the island of Guernsey.

8. While geographically the islands of the Bailiwick form part of the British Isles, politically they do not form part of the United Kingdom. The Bailiwick is a Crown Dependency (i.e. a dependency of the English Crown). It is not, and has never been, represented in the UK parliament but rather has always been legislatively independent from the UK with the full capacity to legislate for the islands' insular affairs. The Bailiwick's right to raise its own taxes is a long recognised constitutional principle, and the government of the UK does not provide any direct financial assistance to the Bailiwick. The UK is however responsible for the Bailiwick's international relations and for its defence.

9. GDP across the Bailiwick as a whole is approximately £3,500 million. In the last 35 years financial services businesses have overtaken tourism, horticulture and the building trade as the mainstays of the local economy, and the jurisdiction is now a major financial centre with clients from all over the world. The currency of the Bailiwick is the pound sterling (£). The States of Guernsey issues Guernsey bank notes and coin. The Guernsey note issue and other notes denominated in pound sterling (for example, those issued by the Bank of England and the Jersey note issue) can be used in the Bailiwick. The bank base rate in Guernsey is that set by the Bank of England.

10. There are three respects in which the framework applicable to AML/CFT differs as between Guernsey, Alderney and Sark. First, only Alderney has an eCasino sector so the regulatory framework governing this only applies in Alderney. Second, there is a registration regime for Guernsey and Alderney NPOs which is different from that for Sark NPOs. Third, the law governing the creation of legal persons and legal arrangements varies across the three islands. Other than in these respects, the AML/CFT regime applies in the same way across the Bailiwick as a whole.

## 1.1. ML/TF Risks and Scoping of Higher Risk Issues

### *1.1.1. Overview of ML/TF Risks*

*Money Laundering*

11. The Bailiwick has a low domestic crime rate and the majority of crimes that occur are not proceeds-generating. (In 2022, the total number of recorded crimes was 2070 and the vast majority of these were minor public order offences, offences against the person, damage to property or offences of dishonesty that were highly unlikely to lead to money laundering e.g. taking a car or a bicycle without authority). The money laundering threats from domestic criminality principally relate to drug trafficking, fraud and tax evasion, which are the most

significant domestic proceeds-generating crimes. These offences usually involve small-scale activity that is carried out entirely within the jurisdiction and generates low levels of proceeds. However, there have been a small number of drug trafficking cases involving organised criminal groups and these cases typically generate higher levels of proceeds.

12. The Bailiwick's primary money laundering threats arise from foreign criminality. This is most likely to involve bribery and corruption, fraud, tax evasion and drug trafficking. Based on the sources of the Bailiwick's cross-border business, criminal proceeds are most likely to be sent from or otherwise linked to the UK, followed by the USA, major countries within Europe and, to a lesser extent, other countries such as the Russian Federation, South Africa, China, Nigeria, India and the UAE. Proceeds of foreign criminality are also likely to come via other international financial centres that are likely used as entrepots where the underlying criminality has taken place elsewhere. In some cases, particularly those involving the proceeds of drug trafficking, links to international organised criminal groups have been identified, but there is no evidence that these links exist to any significant extent. Criminal proceeds are more likely to pass through the Bailiwick than to be located within the jurisdiction for any significant length of time. The opportunities to acquire tangible high value assets such as real property within the jurisdiction itself are limited. Therefore, while title to or control of these types of assets may be linked to the Bailiwick (e.g. where they are held by a company incorporated in or administered from the Bailiwick), the assets themselves are likely to be located elsewhere.

*Terrorist Financing*

13. The terrorist financing threat to the Bailiwick is much lower than the threat of money laundering. The Bailiwick's demographic, political, geographical and cultural profile is such that domestic terrorist activity is unlikely to take place. The same applies to the local residents being recruited as foreign terrorist fighters. While the prospect of domestic terrorist activity is higher with regard to politically motivated terrorism such as far-right extremism than with terrorism motivated by religious extremism, this is in relative terms only; it does not affect the overall assessment of the threat of domestic terrorist activity, which is very low. Consequently, the likelihood of funds being raised or sent into the jurisdiction in order to support domestic terrorist activity is also very low.

14. The jurisdiction's profile also means that there is not considered to be any significant prospect of funds being intentionally raised in or sent from the jurisdiction to support terrorist activity elsewhere. It is however possible that funds raised in or sent from the jurisdiction in good faith could be used to support terrorism elsewhere (e.g. through donations to internationally active NPOs or online fundraising platforms being diverted for terrorist purposes).

15. The Bailiwick's position as an international financial centre means that its cross-border business exposes it to the threat of being used in the movement or storage of funds linked to foreign terrorist activity. This is most likely to involve well-organised terrorist groups that are known to operate like businesses with sophisticated financial arrangements. The Bailiwick could be used as a transit jurisdiction for the movement of funds that have been raised in one country to finance terrorism in another country. There is also the possibility that administration or other trust and corporate services are provided to parties outside the jurisdiction that have links to terrorism or terrorist financing. This includes both the administration of assets and the creation or administration of structures that conceal the identity of beneficial owners with links to terrorism or terrorist financing. In addition, terrorist financing may arise as a secondary activity to money laundering i.e. where the proceeds of crime (especially funds raised by organised criminal groups from offences such as drug trafficking, corruption and kidnapping) are used to

fund terrorism. Consequently, some cases involving possible money laundering may also in fact involve terrorist financing, even though this is not immediately apparent.

16. However, there is an extremely low proportion of financial flows with countries that present active terrorism or terrorist financing threats, with countries that have strong geographical or other links to such countries, or with countries that present a secondary terrorist financing threat. While there are other links to such countries (e.g. via the provision of trust and corporate services) these links present a low proportion of business overall and where they exist, they generally involve business relationships that do not lend themselves to terrorist financing (e.g. wealth management for high net worth individuals or families).

*Proliferation financing*

17. The proliferation financing threat to the Bailiwick is similar to, but lower than, the threat of terrorist financing.

18. Its profile indicates that the likelihood of funds being raised domestically to finance proliferation is very low. The same risk profile attaches to the prospect of funds being internationally raised in or sent from the jurisdiction to support proliferation of financing or proliferation elsewhere. While it is theoretically possible that funds might be sent from the jurisdiction in good faith but used to support proliferation of financing elsewhere, this is thought to be more remote than for terrorist financing, as the typologies for financing of proliferation are different to those for financing of terrorism.

19. As an international financial centre, the Bailiwick is exposed to the threat of being used for the movement of funds linked to proliferation activity through its cross-border business. This could happen in two ways. The first is through the use of a product or service directly to facilitate movement of dual use goods (trade finance being the most common international typology) or the development of weapons more directly. The second is the storage or transit of funds as part of a chain of obfuscation. However, this threat is considered low, given the pattern of Bailiwick business in practice.

20. The Bailiwick does not do business with North Korea. There are no financial flows to or from this jurisdiction and the Bailiwick does not service customers and beneficial owners who reside there. It does have exposure through financial flows and business relationships connected to jurisdictions in Southeast Asia and the Middle East regions which have been or are actual or potential PF hubs in terms of shipments of goods, military cooperation and the financing of proliferation. However, the value and volume of financial flows both, to, and from, these PF hubs is under 2% of the total flows. Moreover, only 5.2% of business relationships have a relevant connection to a PF hub, meaning that the Bailiwick's exposure is small. This exposure is largely as a result of one major life insurance company in the jurisdiction which accounts for approximately a third of the life insurance policies written. These provide life insurance for non-residents such as expatriate workers in foreign countries, and this is considered to pose a low threat of proliferation financing.

### *1.1.2. Country's Risk Assessment & Scoping of Higher Risk Issues*

21. Guernsey initiated its first NRA in 2015 which was completed and published in 2020, using a modified IMF methodology. NRA2 was finalised in December 2023, and built upon NRA1, incorporating more data and analysis, particularly for sectors and areas like virtual assets (VAs), NPOs, private trust companies, retirement solutions, CISs, higher-risk jurisdictions, and proliferation financing. Both NRAs assess risks through threats, vulnerabilities, and

consequences, with sector-specific analysis and case studies. A more detailed and granular assessment of risks of legal persons and arrangements was published separately in April 2024.

22. The NRAs highlight that Guernsey's main risks stem from foreign jurisdictions, primarily western economies, with less than 1% of risks relating to higher-risk countries. The most likely ML methods include bribery, corruption, tax evasion, and organized crime (from foreign sources) and drug trafficking (domestically). Domestically, proceeds from small-scale fraud and drug trafficking are the key ML risks. The most vulnerable sectors are private banking and TCSPs handling cross-border businesses, which were assigned the highest inherent and residual risk ratings. For TF risks all sector are rated as being exposed to low risks, but many conclusions are based on limited data, with hypothetical scenarios rather than real-life cases. The risk of cash-based ML is low due to limited cash use on the island.

23. Guernsey's NRAs concludes that the Bailiwick's risk of being used for TF is low, and most exposed to being used as a transit jurisdiction for funds raised elsewhere. Financial flows to and from high-risk TF countries are minimal (0.04%). However, the basis for some conclusions is unclear, and more analysis is needed to fully grasp the transit risk. Sectoral analysis shows low exposure to TF Focus Countries across most sectors, except for insurance (3.32%), investment (2.39%), and TCSPs (1.89%). These risks are tied to specific products, such as ransom insurance and investments in conflict areas, though explanations for TCSPs' links to TF countries are lacking.

24. The April 2024 specific risk assessment on legal persons and arrangements found non-cellular companies and discretionary trusts to have the highest ML exposure, particularly through complex structures. There are some inherent risk aspects that need to be better analysed, together with a better analysis of the adequacy of controls in place. The NPO sector's risks were also analysed in terms of ML/TF, with NRA2 concluding that the overall residual ML risk for NPOs was lower, while TF risks were much lower for internationally active NPOs and very much lower for domestic ones. NRA2 used more comprehensive data, thanks to updated legislation and input from the GFSC, FIU, and registries, though the analysis remains a descriptive one owed to the lack of case experience or evidence of NPO misuse for TF.

25. Overall, the NRAs reflect Guernsey's commitment to improving its understanding of ML/TF risks, particularly in emerging areas like virtual assets and PF. However, more granular sector-specific analysis and better use of case data could further enhance ML/TF risk understanding.

26. In view of the Bailiwick's specific risks and context, the AT prioritised the following matters:

27. **Misuse of Legal Entities and Trusts:** The AT focused on the adequacy of measures to prevent the misuse of legal persons and trusts to conceal funds, focusing on ML risks, ownership transparency, and the ability of FIUs, LEAs, and judicial authorities to address ML cases involving legal entities.

28. **Private Banks and TCSPs:** Given significant cross-border ML risk exposure, material asset values held, and high-risk type of client serviced these sectors were a major focus. Attention was placed on the sectors' understanding of ML/TF risks and compliance with AML/CFT obligations, emphasizing BO obligations, client profiling, transaction monitoring and reporting of suspicions, and preventing misuse for ML through corruption, tax evasion, and high-risk predicates. The adequacy of market entry requirements were also examined.

29. **Investment Sector and Collective Investment Schemes**: Although involving fewer high-risk clients than the TCSP and private banking sectors, the substantial assets managed

warranted attention to licensing robustness, sectoral ML/TF awareness, and adequacy of AML/CFT measures.

30. **Tax Evasion:** As a high-risk predicate offense, authorities' understanding of ML risks from foreign tax evasion, and the capacity of LOC, EFCB, FIUs and Revenue Services to detect, investigate and pursue cases effectively were assessed.

31. **E-Casinos:** In Alderney, the sizable eGambling sector was reviewed for its fit-and-proper measures, particularly the ability to prevent criminal infiltration, customer verification, transaction monitoring, and suspicious activity reporting.

32. **International Cooperation:** Given Guernsey's exposure to foreign crime proceeds, the efficiency of international assistance and the authorities' use of cooperation channels to detect ML were emphasized.

33. **TF Risks**: Although the risk of TF was low, Guernsey's role as a transit country prompted analysis of its approach to monitoring outward transactions, as well as control over entities and trusts.

34. Conversely, Real Estate and VASPs required less focus, as real estate had limited foreign investment opportunity, and the VASP framework limited service provision to institutional clients, resulting in only one VASP being licensed to operate.

## 1.2. Materiality

35. The Bailiwick is an IFC, with its core financial services sectors being banking, insurance, investment, and the provision of trust and corporate services. There are 20 banks; 693 investment firms; 941 regulated collective investment schemes; 340 insurers (45 providing life insurance); 35 insurance intermediaries (17 intermediating in life insurance); 23 insurance managers; 151 primary fiduciaries and 35 personal fiduciaries. Total deposits at banks are £96.2 billion and the net asset value of domestic investment schemes is £289.9 billion. International insurance companies in 2023 wrote premia to the approximate value of £4.61 billion (10% of which related to life insurance). There is also a small number of businesses providing other financial services to local residents, primarily lending. The Bailiwick's finance sector has the highest sectoral Gross Value Added (GVA) of any sector and accounts for 36% of GVA. The sector employs about 20% of the total working population at circa 5,960 people. The Bailiwick of Guernsey has taken a long-term cautious approach to virtual assets and subsequently has only one licensed VASP operating. Supervised by the AGCC, the eCasino sector is reasonably prevalent in the Bailiwick, with 22 entities under supervision.

36. Due to strong constitutional, geographic, social, cultural and historical ties, the UK is the Bailiwick's largest trading partner. The vast majority of the financial flows, come from, or go to, developed Western economies, of which over half of the inflows and outflows are with the UK. The Bailiwick's second largest trading partner in terms of financial services is the USA which accounts for approximately 14% of the inflows and outflows. The bulk of the value of all financial flows through the Bailiwick are attributable to the collective investment scheme sector, in particular private equity schemes.

## 1.3. Structural elements

37. The bailiwick has all the key structural elements required for an effective AML/CFT system including robust political and institutional stability, strengthened by its strong ties to the

UK, a high-level commitment to address AML/CFT issues across various authorities, governmental accountability, the rule of law, and a well-resourced and independent judiciary.

## 1.4. Background and Other Contextual Factors

38. The financial landscape of the Bailiwick is significantly shaped by international banks and a number of other large international banks. Both the number of international banks, and the value of investment schemes are very high in proportion to other sectors in Bailiwick.

39. Most AML/CFT measures have been in place for many years and are well developed. The only notable exceptions are; the Economic and Financial Crime Bureau (EFCB), which was created in 2021 as a specialist body to detect and investigate economic and financial crime; and the Guernsey Registry which assumed the role of Administrator for accountants, real estate agents and foreign qualified legal professionals as of 2023, and started conducted on-site supervision on legal persons for compliance with BO information and registration obligations in 2023. Standards of transparency and integrity in all aspects of public life are very high. The use of cash is limited, and the shadow economy is negligible. External events such as Brexit and the invasion of Ukraine have not had any material effect on the Bailiwick's AML/CFT measures or the ability of the authorities to implement them.

### *1.4.1. AML/CFT strategy*

40. The three governments of the Bailiwick have issued a number of strategic documents which have been endorsed by the operational authorities. The overarching strategic document is a National Strategy for Combatting Money Laundering, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction ('the National Strategy'). The National Strategy is broad, including risk understanding, cooperation, transparency, and effectiveness, among others. AML/CFT/CFP policy development is coordinated through the Bailiwick's Strategic Coordination Forum, which sets the Bailiwick's strategic and legislative direction

41. The national strategy operates in a top-down fashion, supported by an AML/CFT Strategy, and a TF strategy. These are comprehensive and support a broad range of objectives. The strategies are further complemented by the Revenue Service Tax -Based AML/CFT/CFP Strategy and the Anti-Bribery & Corruption strategy. All strategies, where applicable, also cover the combating of the financing of proliferation.

### *1.4.2. Legal & institutional framework*

42. Across the three islands, responsibility for formulating the Bailiwick's AML/CFT/CFP policies rests with five government committees (the 5 Committees) from across the Bailiwick, namely Guernsey's Policy & Resources Committee, Committee for Home Affairs and Committee for Economic Development, Alderney's Policy & Finance Committee and Sark's Policy & Finance Committee.

43. The authorities responsible for the various areas of activity covered by AML/CFT/CFP policies are the following:

- Licensing and supervision of financial services businesses, DNFBPs and VASPs – **GFSC and AGCC**
- Administering fit and proper standards for lawyers, accountants and estate agents – **Guernsey Registry and HM Greffier**
- Receipt, analysis and dissemination within the Bailiwick and elsewhere of suspicious activity reports relating to ML, TF and proliferation financing and other information

relevant to economic and financial crime - **FIU**

- Detecting and investigating money laundering, terrorist financing, predicate offences and breaches of TFS, and for parallel financing investigations and asset tracing - **Bailiwick Law Enforcement and the EFCB**
- Prosecuting money laundering, terrorist financing, predicate offences and breaches of TFS, making court applications for the restraint and confiscation of assets and making, or responding to, mutual legal assistance and extradition requests - **Law Officers**
- Administration of cross-border cash controls and import and export restrictions - **Customs Service**
- Maintaining and administering registers of legal persons and beneficial ownership - **Guernsey Registry and Alderney Registry**
- Maintaining and administering NPO registers - **Guernsey Registry and Sark Registrar of NPOs**
- Implementation of TFS - **Policy & Resources Committee**
- Collection of income tax and compliance with international tax agreements - **the Revenue Service**.

44. There have been three significant changes to the institutional framework since the last MER:

i. The creation of the office of Registrar of Beneficial Ownership of Legal Persons in Guernsey and Alderney. This was done to centralise the holding of beneficial ownership in a single place, in line with developments in the UK.
ii. The establishment of the EFCB, which was done in order to create a specialist body focussing on the detection and investigation of offences in line with the jurisdiction's risks.
iii. The introduction of fit and proper standards for lawyers, accountants and estate agents, administered by the Guernsey Registry and HM Greffier.
iv. Commencement by the Guernsey Register of on-site supervision of legal persons for compliance with BO information and registration obligations in 2023.

### *1.4.3. Financial sector, DNFBPs and VASPs*

45. The Bailiwick is an international financial centre[8] with the core financial services sectors represented by banking, insurance, investment, and TCSPs. Banks, investment service providers and TCSPs are mainly involved in the provision of direct or ancillary services related to the management and investment of funds and assets of non-resident high-net worth individuals and families. The insurance sector is mainly focused on the provision of captive insurance in relation to general insurance. The life insurance sector constitutes a smaller part of the sector and broadly divides between companies that provide insurance to protect mobile employees of large international companies and those that provide insurance linked investments.

46. There is also a small number of businesses providing other financial services to local residents, primarily lending and money services. The Bailiwick of Guernsey has only one licensed VASP operating, which is a proof-of-concept project set up by a re-insurance company providing insurance-linked VA tokens.

47. Apart from TCSPs the DNFBP sector is mainly composed of eCasinos. The other DNFBPs in the Bailiwick (i.e. Law Firms, Accountants, Real Estate Agents and DPMSs) are of lesser materiality and risk. Other than dealers in bullion, DPMSs are not subject to any market entry scrutiny.

[8] 2023 NRA – Pg 15

**Table 1.1: Number of REs in the Bailiwick of Guernsey (2019-2023)**

| | Entity | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|---|
| **FIs** | Banks | 22 | 20 | 20 | 20 | 20 |
| | Investment Service Providers | 677 | 686 | 696 | 702 | 693 |
| | Collective Investment Schemes | 819 | 832 | 843 | 968 | 941 |
| | Insurers (Life) | 352 (51) | 340 (47) | 344 (45) | 353 (48) | 345 (45) |
| | Insurance Managers | 20 | 16 | 20 | 20 | 23 |
| | Insurance Intermediaries (Life) | 28 (21) | 29 (24) | 31(19) | 33 (20) | 34(17) |
| | Money Services Businesses and Exchange Office (having a bank license) | 24 (20) | 22 (17) | 23 (19) | 21 (16) | 21 (17) |
| | Non-regulated financial services business / LCF | 40 | 36 | 38 | 39 | 39 |
| **DNFBPs** | TCSPs[9] | 183 | 184 | 187 | 183 | 186 |
| | Personal Fiduciaries[10] | 41 | 42 | 43 | 35 | 35 |
| | Registered Directors | - | - | - | - | 50 |
| | Casinos | 20 | 25 | 20 | 25 | 22 |
| | Law Firms | 19 | 20 | 20 | 20 | 18 |
| | Accountants & auditors | 57 | 57 | 66 | 66 | 63 |
| | Real estate Agents | 21 | 21 | 22 | 23 | 22 |
| | Dealers in Bullion | 2 | 2 | 1 | 1 | 0 |
| **VASPs** | | 0 | 0 | 0 | 0 | 0 |

**Table 1.2: NRA 2023 – Sectoral Risk Categorisation**

| | Entity | Inherent ML Risks | Residual ML Risks | Residual TF Risks |
|---|---|---|---|---|
| FIs | Banks (Private Banking) | Much-Higher | Higher | Lower |
| | Banks (Retail Banking) | Higher | Medium-Higher | Lower |
| | Investment Firms | Higher | Medium-Higher | Lower |
| | Collective Investment Schemes | Medium-Higher | Medium | Lower |
| | Insurance (Life) | Medium | Medium-Lower | Lower |
| | Money Services Businesses and Exchange Office | Medium | Medium-Lower | Lower |
| | Non-regulated financial services business / LCF | Medium | Medium-Lower | Lower |
| DNFBPs | TCSPs | Much-Higher | Higher | Lower |
| | TCSPs (retirement / pension solutions) | Medium | Medium-Lower | Lower |
| | eCasinos | Medium-Higher | Medium | Lower |
| | Law Firms | Medium-Higher | Medium | Lower |

[9] This includes full fiduciary licensees as well as personal fiduciary licensees, provided in the next row.
[10] Individuals with personal fiduciary licences who can provide directorship, co-trusteeship (sole appointments not allowed), protectorship, executorship or acting as foundation official but not administration services.

| | | | | |
|---|---|---|---|---|
| | Accountants & Auditors | Medium | Medium-Lower | Lower |
| | Real estate Agents | Medium-Lower | Lower | Much Lower |
| | High value dealers | Medium-Lower | Lower | Lower |
| VASPs | | Higher | Medium-Lower | Lower |

*Weighting*

48. The materiality of each sector is ranked from most important to less important as follows:

49. The **most important sectors** in terms of materiality and risk are the banking sector and the TCSP sector. The 2023 NRA considers private banking together with the TCSP sector to represent the highest ML risks in the Bailiwick. All Guernsey banks are subsidiaries of international banking groups based in the UK, Switzerland, Bermuda, Canada, France, South Africa and the USA. These banks offer private and retail banking services. The majority provide private banking facilities to non-resident high-net worth individuals, sourced directly or through TCSPs. The banking sector is dominated by three banks which together process 75% of the total value of inflows and outflows, with two of these banks servicing the majority of CISs registered in Guernsey. Banks are one of the most important sectors for numerous reasons. They handle virtually all funds which flow through the Bailiwick and in 2023 held £96.2 BN in client deposits. Banks offering private banking services handle mainly non-resident customers (86% of customers are non-residents) and have a considerable volume of high-risk clients (15.59%) and foreign PEPs (3.45%). Another relevant factor is that the large proportion of customers using private banking services are introduced from the TCSP sector, where reliance on TCSPs for CDD measures is still considerable (i.e. reliance takes place in 12.36% of all business relationships)[11]. It is relevant to note that more than 90% of inflows and outflows is destined for or originating from Western economies, especially the UK (over 50 %).

50. The TCSP sector is the main introducer of foreign business and investment in the Bailiwick. The TCSP sector provides services relating to the formation, management and administration of legal persons and legal arrangements to an international customer base, usually very high net worth individuals and their families for wealth preservation purposes. In 2023 the TCSP sector held a significantly high value of assets under fiduciary capacity, which by far exceeds the value of deposits held by Banks and asset value held by Guernsey CISs. To a more limited extent TCSPs also provide retirement and pension solutions for corporate and personal customers (£12 BN of assets under management). TCSPs focused on formation, management & administration of legal persons and arrangements represent the highest ML risk in the Bailiwick. The TCSP sector contains the highest proportion of high-risk customers when compared to all other sectors (i.e. 22.91%) and foreign PEPs (4.91%), while 21.5% of customers hail from high-risk countries or non-equivalent jurisdictions. The TCSP sector in Guernsey has been subject to licensing and supervision (including for AML/CFT purposes) in a similar fashion to FIs for a number of years.[12]

51. Banks and TCSPs feature extensively in incoming MLA requests received by Guernsey authorities which is another indication of their significant materiality and risk.

52. Collective Investment Schemes, Investment Service Providers and eCasinos, are considered as **important sectors**. The materiality and risk of CISs is mainly driven by the net asset value held across the 941 CISs (i.e. approx. £289.9 billion in 2023), being significantly lower compared to assets held under fiduciary capacity by TCSPs, the fact that the majority of clients are non-residents (individuals or institutions) and the significant holding per account attributed

[11] Statistical data for Banks is sourced from the NRA 2023 – See pgs 25-26
[12] Statistical data for TCSPs is sourced from the NRA 2023 – See pgs 34-36

to the fact that the predominant type of clients are high-net worth individuals. Furthermore, while the majority of schemes invest in UK and US assets, this may involve investments in funds set up in such jurisdictions which would invest elsewhere, and hence the geographical risk exposure is unclear. CISs also have assets held by financial intermediaries on behalf of underlying investors, which the GFSC points out to be on the decline. Over 85% of Guernsey CISs are closed-ended (as opposed to open-ended ones) and are usually locked up for at least 5 to 7 years, which helps to reduce to a certain extent the vulnerability of the sector. The investment sector also comprises the administration, investment management and custody of CISs and the provision of discretionary, management and advisory services, execution only services and associated custody services. The NRA 2023 indicates that these services usually involve very large asset values pertaining to cross-border customers, with 20% of the client population hailing from high-risk or non-equivalent jurisdictions.[13]

53. eCasinos are the only gaming providers in the Bailiwick. They have a large non-resident client base, and high volume of cross-border business which is typical for remote gaming operators. The client base is mainly from the British Isles or Europe with negligible business from high-risk countries. The sector is nonetheless considered to be an important one considering the volume of transactions handled, although comparatively does not manifest the same level of materiality and risk as posed by the investment sector.

54. Of **moderate importance** are Life Insurance Service Providers and legal professionals. At the end of 2023 the value of insurance premia amounted to £4.61 BN. Only 10% of these premia related to life insurance products.

55. The legal sector is comprised of 18 law firms offering a variety of services to domestic and international clients across various fields of law, including commercial, trust, corporate, banking, insurance, estate planning, and real estate and conveyancing law. The sector is also a main contributor to introducing foreign business in Guernsey. Law firms do not provide TCSP services but provide legal advice in connection with the setting up of legal persons and arrangements. Law firms would typically handle client funds when acting as escrows in respect of real estate transactions which are considered of low ML/TF risk, and company mergers and acquisitions.

56. **Less important sectors** are: (i) DPMSs, (ii) VASPs, (iii) Real Estate Agents, (iv) Accountants and (ii) other FIs (namely non-bank lenders and money service businesses).

### *1.4.4. Preventive measures*

57. Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law is the main AML/CFT statutory instrument through which preventive measures are applied in line with the FATF Recommendations. Schedule 3 is applicable to all FIs and DNFBPs other eCasinos and traders in high value goods (including DPMSs).

58. eCasinos are subject to AML/CFT obligations set out in the Alderney eGambling Ordinance (Schedule 4). There are no licensed land-based casinos in the Bailiwick. Every operational eCasino must adhere to these preventive measures. Due to the business relationship between customer and eCasino being non face to face, there is no simplified due diligence permissible by eCasinos. Therefore, every registered customer of an eCasino must be the subject of standard or enhanced due diligence. The Alderney eGambling Regulations 2009 set out the

[13] Statistical data for CISs and Investment Firms is sourced from the NRA 2023 – See pgs 31-33

requirements for registration of customers and deposit and withdrawal of funds. The AML/CFT obligations in Schedule 4 were extended to counter proliferation financing in February 2024.

59. Since the adoption of the 4th round MER, the Bailiwick has made a series of amendments to its AML/CFT preventive measures, including the following:

- A licensing regime for VASPs was introduced under the Lending, Credit and Finance Law.
- Fit and proper requirements for lawyers, accountants and estate agents have been introduced through changes to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law.
- Individuals who act as a director of not more than six companies must now be registered under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law.
- The two sets of regulations which previously contained the AML/CFT preventive measures were replaced with Schedule 3 to the Criminal Justice (Proceeds of Crime) Law.
- The extension of AML/CFT obligations in Schedule 3 to counter proliferation financing in 2024.
- The legislation on wire transfers was replaced by the Transfer of Funds Ordinances, 2017.
- The reporting obligations in respect of suspicions of ML and TF has been extended to PF by an amendment to The Disclosure (Bailiwick of Guernsey) Law.
- The establishment of beneficial ownership registers for Guernsey and Alderney legal persons in 2017.

### *1.4.5. Legal persons and arrangements*

60. Legal persons can be established in the Bailiwick either in Guernsey or in Alderney. The kind of legal persons that can be established in Guernsey are the following:

61. (i) *Companies* - Under the Companies (Guernsey) Law non-cellular and cellular companies may be established. Non-cellular companies may be: (i) limited by shares; (ii) limited by guarantee; (iii) unlimited liability companies; and (iv) mixed liability companies. The predominant type is that limited by shares. The main difference between the four is the extent of the members' liability for the debts of the company. Cellular companies can be PCCs or ICCs. The difference is that cells of a PCC do not have a separate legal personality distinct from the company but are a means to ring-fence assets and liabilities from those of other cells. ICCs and PCCs can be used only for very specific purposes, mostly within the insurance and investment services sectors.

62. (ii) *Limited Partnerships* - Under the Limited Partnerships (Guernsey) Law it is possible to establish limited partnerships with general partners (having unlimited joint and severable liability for the debts of the partnership) and limited partners (whose liability is limited to the extent of their capital contributions). A limited partnership may have legal personality if the general partners so elect at the point of registration. This is an irrevocable decision.

63. (iii) *Limited Liability Partnerships* - Under the Limited Liability Partnerships (Guernsey) Law, it is possible to establish a limited liability partnership which is separate legal person from its members, who may be both legal and natural persons.

64. (iv) *General Partnerships* – Set up under the Partnership (Guernsey) Law and referred to as firms. The partners are all jointly and severally liable for debts incurred. Partners may carry out business under a firm name, which does not possess separate legal personality.

65. (v) *Foundations* - can be established under the Foundations (Guernsey) Law.

66. Limited partnerships (without legal personality) and general partnerships are considered by the Bailiwick to be legal arrangements. For the purposes of this evaluation the AT will consider limited partnerships (without legal personality) to be legal persons (as per the FATF Glossary

definition). This since they are similar to other limited partnerships (besides not having legal personality) and they are not "trust-type" arrangements. Moreover, limited partnerships without legal personality are used for the same purposes as other limited partnerships possessing legal personality i.e. they are used extensively as CISs, in particular for private equity schemes which attract significant institutional investment from UK, Europe and US. Limited partnerships without legal personality are created in the same way as limited partnerships with legal personality and are subject to the same oversight and enforcement powers.

67. On the other hand, general partnerships are used to pursue less material and risky activities. They are typically established as trading vehicles for local businesses that provide everyday services to the community (e.g. plumbers, dentists, or taxi drivers). General partnerships (as all other partnerships) are required to register with and provide information to the Revenue Service for tax purposes. In view of their lesser materiality, the AT will not analyse GPs under either R.24 nor R.25.

68. In Alderney only non-cellular companies under the Companies (Alderney) Law can be established. These may be private or public companies. A public company can have more than 20 members. The liability of the said members can be limited either by shares or by guarantee.

*Legal arrangements*

69. The main type of legal arrangement that may be set up under Guernsey Law are trusts. Trusts are used principally within the fiduciary sector for private wealth management purposes for high-net-worth individuals and for pensions, both domestically and for internationally mobile employees. It is not uncommon for a trust and a company limited by shares to be used within the same corporate structure and ten percent (10%) of companies limited by shares have shares held under trust, with the company and the trust being also administered by the same TCSP.

70. The Bailiwick also considers limited partnerships without legal personality and general partnerships to be legal arrangements. The AT does not consider these to be "trust-like arrangements", as set out in the standards, and as explained in the previous paragraphs the AT will be analyzing limited partnerships without legal personality as legal persons under R.24.

71. There is no registration requirement for trusts, Oversight is achieved through having a regulated TCSP sector and by the obligation to register with and provide information to the Revenue Service.

72. There is no legislation permitting the formation of legal arrangements in Alderney or Sark, although historically a very small number of individual trusts has been created by statute in Alderney and Sark for public purposes within the island in question (e.g. running a parish hall).

73. A subcategory of trusts in Guernsey are Private trust companies (PTCs). These act as a trustee to a specific trust or a group of connected trusts, often for one family. PTC structures offer the possibility for individuals to establish and be involved with the managing of a trust company for the trusts they created. PTCs may be exempted from licensing when they do not provide trustee services by way of business and must be administered by a licensed TCSP, who is responsible for the carrying out of CDD measures. Exemptions are granted following application and vetting by the GFSC (see IO3).

74. As with foreign legal persons, foreign legal arrangements may be administered in Guernsey by a TCSP, may have a business relationship with another financial services business, or both. However, the incidence of this is much lower than with foreign legal persons.

**Table 1.3: Numbers of legal persons and arrangements registered/administered in the Bailiwick (2018-2022)**

| Type of Legal persons/arrangements | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|---|
| **Guernsey Company** | 12,669 | 13,732 | 14,811 | 16,204 | 17,426 | 17,836 |
| **Alderney Company** | 323 | 309 | 320 | 313 | 304 | 291 |
| **Limited Liability Partnership** | 89 | 101 | 113 | 131 | 141 | 139 |
| **Limited Partnership (with legal personality)** | 452 | 484 | 512 | 560 | 587 | 566 |
| **Limited Partnership (without legal personality)** | 1043 | 1261 | 1465 | 1805 | 2085 | 2275 |
| **Foundation**[14] | 63 | 72 | 81 | 89 | 104 | 112 |
| **General Partnerships** | 239 | 250 | 250 | 200 | 175 | 155 |
| **Trusts** | 15,425 | 14,577 | 13,782 | 13,459 | 13,078 | 13,196 |

### *1.4.6. Supervisory arrangements*

75. The GFSC is responsible for the licensing or registration of all FIs, TCSPs and dealers in bullion. The AGCC is the authority tasked with the licensing of eCasinos. Market entry requirements for estate agents, foreign legal professionals, accountants and auditors are administered by the Guernsey Registry, while the Law Officers Chambers and the HM Greffier are tasked with professional accreditation of locally qualified lawyers.

76. AML/CFT/CFP supervision for all FIs and DNFBPs (except for eCasinos) is vested with the GFSC. The AGCC is the AML/CFT supervisor of eCasinos. The two AML/CFT supervisors have well established coordination mechanisms in place in relation to their operational and strategic functions, both in the course of their membership of the various AML/CFT committees referred to above and also bilaterally.

**Table 1.4: Supervisory arrangements**

| Type of FI/DNFBPs | AML/CFT Supervisor | Market Entry Checks |
|---|---|---|
| **Banks** | GFSC | GFSC |
| **Investment Service Providers** | GFSC | GFSC |
| **Insurance** | GFSC | GFSC |
| **MSBs and exchange offices** | GFSC | GFSC |
| **Other FIs licensed under the LCF Law**[15] | GFSC | GFSC |
| **VASP** | GFSC | GFSC |
| **TCSPs (inc. registered directors)** | GFSC | GFSC |
| **Dealers in Bullion** | GFSC | GFSC |
| **eCasinos** | AGCC | AGCC |
| **Real estate Agents** | GFSC | Guernsey Registry |

[14] The number of trusts and general partnerships may not be fully comprehensive, since there is no register of trusts or general partnerships. Estimates were made by the Bailiwick in relation to certain categories of trusts and for the number of general partnerships in existence between 2019 and 2021.

[15] Until July 2023 these FIs were regulated under the Registration of Non-Regulated Financial Services Businesses Law 2008. From 1 July 2023 onwards they are regulated under the Lending, Credit and Finance Law.

| | | |
|---|---|---|
| **Legal professionals** | GFSC | Guernsey Registry (for foreign professionals), LOC and HM Greffier |
| **Accountants & auditors** | GFSC | Guernsey Registry |

### *1.4.7. International cooperation*

77. As an international financial centre with a low domestic crime rate, the Bailiwick's greatest ML/TF risks come from its cross -border business. Money laundering is most likely to involve foreign predicate criminality, sometimes through a chain of transactions across several jurisdictions, with the Bailiwick at or towards the end of the chain. The underlying offences most likely to be involved are bribery and corruption, fraud and tax evasion, followed by drug trafficking, and the sectors most at risk of being used for these purposes are the private banking sector and the part of the TCSP sector dealing with legal persons and legal arrangements. Money laundering activity in relation to domestic predicate criminality (primarily drug trafficking, fraud and tax evasion) is generally small scale and primarily occurs within the jurisdiction via the retail banking sector, so is far less likely to involve cross-border activity.

78. Terrorist financing risks are much lower than money laundering risks. The risks of terrorist financing, such as they are, primarily come from funds to support foreign terrorism being passed through or administered from the Bailiwick, or from funds sent from the Bailiwick for legitimate reasons (e.g. humanitarian purposes) being diverted abroad to fund terrorism. There is no significant risk of funds coming into the Bailiwick to support domestic terrorism.

79. The Bailiwick's most significant partner by far with respect to ML/TF is the UK, followed (to a much smaller degree) by the USA, other parts of the British Isles and mainland Europe.

80. The Law Officers are the central authority for mutual legal assistance. All of the competent AML/CFT authorities are able to provide international cooperation. The most active authorities in this respect are the FIU, the GFSC, and the AGCC; while the Policy & Resource Committee regularly cooperates with other jurisdictions (primarily the UK) in relation to TFS, to date this has not involved TFS relating to TF (or PF).

# 2. NATIONAL AML/CFT POLICIES AND COORDINATION

## 2.1. Key Findings and Recommended Actions

***Key Findings***

***Immediate Outcome 1***

a) Guernsey completed its first formal and comprehensive NRA in 2020 (NRA1), followed by the second NRA adopted in 2023 (NRA2) which was supplemented by a separate legal persons and arrangements risk assessment in April 2024. Both NRAs, informed by a variety of sources, reached similar conclusions in terms of ML/TF risks and are of high quality. However, better substantiation of conclusions on the basis of concrete data (investigations, TF pre-investigations, prosecutions, SARs, MLAs, supervisory enforcement actions, etc.) analysed would be beneficial for both ML and TF risk understanding. Some sector-specific (i.e. legal and TCSPs sectors) aspects don't seem to be fully explored. Additionally, considerable work has been done to understand the TF risks emanating from countries with which Guernsey has financial flows, nevertheless, since the main TF risks lie within it being used as a transit jurisdiction, more analysis is needed to fully grasp the level of TF risk in that regard.

b) All competent authorities demonstrated a strong and well-developed understanding of the extent to which ML/TF risks can materialise and awareness of the main ML risks and methods identified in the NRAs, due to their close involvement and collaboration in both processes, which included the private sector, mainly through data and feedback provision. This notwithstanding, this understanding might be restricted by some limitations such as those resulting from the difficulty of detecting links between the assets and the underlying criminality, lack of in-depth analysis for ML/TF risks stemming from virtual assets (VA) and the lack of cases (i.e. investigations, case studies or relevant scenarios, etc.) related to TF.

c) Guernsey implemented a commendable range of measures targeted at the jurisdiction's risks. This implementation was monitored by the Strategic Coordination Forum and the Anti-Financial Crime Delivery Group (and the AFAC[16] pre-2022) and prioritised through an action tracker (from Q1 2023), but there was no formalized NRA1 action plan. In response to NRA2, Guernsey either adopted or updated several AML/CFT-related strategies[17], most notably the National Strategy for Combatting ML/TF/PF in October 2023. A formal Action Plan was adopted in March 2024, mirroring the structure of the National Strategy and containing actions and milestones, with different degrees of concreteness and measurability. A significant number of the actions of the NRA Action Plan were implemented towards the end of the review period and some high priority actions which might have an impact on the implementation of measures to manage and mitigate the risks (e.g. the increase staff complement of the EFCB and

[16] AML/CFT Advisory Committee.

[17] Including an updated AML/CFT Strategy, and updated Anti-Bribery and Corruption Strategy, Tax Strategy, Counter Terrorism Strategy, Statement on an Overarching Approach to Guernsey and Alderney NPOs and Statement of Support for International Cooperation.

LOC's ECU) are yet to be completed. A more standardised and interconnected monitoring of the NRA Action Plan items, the objectives of the multiple strategies and other relevant projects and workstreams, as well their implementation and adherence to the national risks, will have to be pursued and sustained over time.

d) The objectives and activities of competent authorities are consistent with the national AML/CFT policies and with the ML/TF risks identified, which were reflected in their respective risk-based policies and operational procedures, generally formalised after NRA1 and more recently updated after NRA2. Other measures such as staff increases and restructurings, enhancements of IT systems or tailored trainings have also been common across all authorities and in line with risks. However, this alignment is not fully demonstrated when taking into account the limited number referrals for potential criminal proceedings/civil forfeiture, ML investigations and prosecutions, confiscations, etc. throughout the whole period under review.

e) The competent authorities of Guernsey extensively cooperate and coordinate the development and implementation of policies and activities. Such cooperation and coordination are ensured by The Anti-Financial Crime Advisory Committee (AFCAC), which reports regularly to "The Five Committees[18]". The strategic direction and objectives for AML/CFT/CFP is set by The Strategic Coordination Forum and delivered by the Anti-Financial Crime Delivery Group. These and other relevant committees meet regularly, maintaining a strong level of coordination and cooperation.

f) The risk assessments findings were widely disseminated to the private sector through presentations, outreach events and online publications. The private sector demonstrated a high level of awareness of the risk assessments findings.

***Recommended Actions***

***Immediate Outcome 1***

a) Guernsey should deepen its analysis of ML/TF risks by: (i) establishing clearer links between the analysis of incoming MLAs, investigations, prosecutions, SARs and enforcement supervisory actions and conclusions drawn, (ii) conducting more in-depth assessments of risks emerging from virtual assets (VA) and (iii) considering to explore some sector-specific aspects in more detail (such as introduced business by multi-jurisdictional law firms or non-management services provided by TCSPs). Guernsey should also consider seeking a more direct and active the engagement of the private sector in future iterations of the NRA or other risk assessment works (e.g. through direct engagement in the working groups).

b) Concerning the assessment of the TF risks of Guernsey being used as transit jurisdiction, further consideration of available data (TF pre-investigations and SARs) should be made, as well as further analysis of the threat related to funds transiting through other jurisdictions, in order to enhance risk understanding across all relevant stakeholders.

c) Guernsey should pursue and sustain over time a more standardised and interconnected monitoring of the NRA Action Plan items, objectives of the national strategies, and other relevant projects and workstreams. Guernsey should also continue the implementation

[18] The Policy& Resources Committee, the Committee for Home Affairs, and the Committee for Economic Development of the States of Guernsey, the Policy & Finance Committee of the States of Alderney and the Policy & Finance Committee of the Chief Pleas of Sark.

of the action items in the NRA Action Plan to address identified ML/TF risks including by ensuring proper allocation of resources (especially for the EFCB and LOC's ECU). Additionally, a more direct and clearer interrelationship between the NRA, strategies and action plan items would be advisable in order to ensure alignment with the NRA findings.

d) Competent authorities (particularly LEAs) should demonstrate that their activities are more consistent with the ML/TF risk identified risks by increasing the detection, referral, investigation and prosecution of high-risk predicate offences and complex ML cases in line with the country's profile.

81. The relevant Immediate Outcome (IO) considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34, and elements of R.15.

## 2.2. Immediate Outcome 1 (Risk, Policy and Coordination)

### *2.2.1. Country's understanding of its ML/TF risks*

82. Guernsey has demonstrated a proactive and comprehensive approach to understanding its ML/TF risks over the years. The country has conducted several sector-specific and jurisdictional risk assessments. The risk understanding by the authorities is fully aligned with the results of the NRA, therefore throughout CI 1.1 the assessors make reference to the conclusions of the NRA, which in practice equals authorities understanding of risk.

83. As an international financial centre (IFC), Guernsey's core financial services sectors encompass banking, insurance, investment, and the provision of trust and corporate services, with a primary focus on non-resident clients from all over the world, and a relatively significant eGambling sector in Alderney.

84. Guernsey has a low domestic crime rate, consequently ML threats majorly arise from foreign criminality, such as bribery and corruption, fraud, tax evasion and drug trafficking. Proceeds of these types of foreign criminality are most likely to pass though the jurisdiction rather than to remain in it (with certain exceptions involving bank accounts and investment schemes), using the formal financial and TCSP sectors, as well as structures created or administered in Guernsey to hold or manage assets in the jurisdiction or elsewhere. Cross-border ML schemes that would typically affect Guernsey involve chains of ownership structures and transactions, with Guernsey being several steps removed from the underlying criminality and with other IFCs also being part of the chain.

85. Guernsey initiated a national risk assessment (NRA1) in 2015 which was completed and published in 2020, using the IMF's methodology with certain modifications introduced by Guernsey (extended ratings scale). The study was coordinated by the AML/CFT Advisory Committee (the predecessor of the Anti-Financial Crime Advisory Committee, or "AFCAC") at the request of the States of Guernsey Policy & Resources Committee (the "P&R Committee" or "P&R").

86. Risks are assessed through the lens of threat, vulnerability (which together indicate the likelihood of ML/TF occurring) and consequence[19] (how severely would affect the jurisdiction if a particular risk would manifest itself). The report is structured by providing, separately for ML and TF, initial overview sections, assessment of particular risks at a sectorial/product level and presentation of the most likely modalities that are going to affect Guernsey for each type of criminality, supplemented with real-life case studies presented as annexes. Sources of information for the NRA included financial flows, SARs, strategic analysis by the FIU, MLA requests, targeted risk work by regulatory authorities, international ML/TF typologies, etc. (from 2014 to 2018), as well as previous risk assessment work.

87. Private sectors' engagement with the NRA mainly consisted in the provision of requested input by the authorities via professional associations through surveys or ad-hoc requests. Authorities advised that a draft of NRA1 was also circulated by the GFSC in 2019 and that meetings were held with the private sector after receiving their feedback, however they were not able to provide dates, minutes or meeting notes for such meetings to the AT. Inputs received from the private sector were analysed and incorporated into the NRA1, especially on ML vulnerabilities and mitigating measures. Additionally, significantly after NRA1 (September 2023), "perception surveys" were sent to all reporting entities to gather views and perceptions of the findings of NRA1, and on the risks of PF, VAs, trade finance, legal persons and arrangements or other specific events, with a view to inform the soon-to-be adopted NRA2. Some entities (from high-risk sectors, namely banking and TCSPs) met onsite stated that they provided data for the NRA and/or received the perception survey but didn't receive any reports for comments beforehand. In this sense, more direct and active involvement by the private sector besides the provision of input in the areas and format established by the authorities (for instance, through the participation in working groups) would be desirable for upcoming risk assessment work.

88. Continuous improvements were made post-NRA1, with targeted risk assessments and updates culminating in the development of NRA2, finalized in December 2023, using data as of the final quarter of 2022. NRA2 also used the IMF methodology[20] and built upon NRA1's findings. NRA2 incorporated new data and insights in areas such as charities and other NPOs, virtual assets (VAs), retirement solutions, private trust companies, collective investment schemes, and higher-risk jurisdictions. In addition, introduced a whole new chapter on the financing of proliferation of weapons of mass destruction following the same structure as those for ML and TF (overview, sectorial risks and most likely modalities). The conclusions on the level of private sector engagement reached for NRA1 are similar to those for NRA2. Another aspect to be highlighted, although not being part of NRA2 itself, was the adoption of a more detailed and granular approach for the assessment of risks of legal persons and legal arrangements, which was published separately in April 2024 (and is analysed in more detail below and under IO.5). These iterative processes reflect Guernsey's commitment to maintaining a current and robust understanding of ML/TF risks.

89. Both reports present an overview of ML risks. This overview focuses, in the case of the underlying foreign criminality, on the assessment of the main jurisdictions which customer flows of funds come from or are destined to in terms of volume and value, highlighting that most of

[19] Consequences were assessed by using a different IMF scale, but no reduction was in fact made because the probable consequences to the Bailiwick of ML and TF were assessed as being severe in all cases. Therefore, the residual risk ratings detailed in the NRAs take into account threat, vulnerability and consequence.

[20] With certain modifications introduced by Guernsey (extended ratings scale).

those involve western economies (mainly the UK and USA). Only less than 1% involves jurisdictions considered as posing a higher ML threat (countries under increased monitoring/call for action by the FATF) at the time of the assessment (mostly UAE). In terms of domestic criminality, while having comparatively less weight, the main predicate offences from which proceeds come from (small-scale fraud and drug trafficking) are explored, as well as the usual schemes involved (i.e. "smurfing").

90. The NRAs further elaborate on the "most likely modalities" of ML in the jurisdiction, which rightfully puts the focus on bribery and corruption, tax evasion and organised crime, regarding foreign proceeds of crime, and drug trafficking on the domestic side. The modalities presented[21] are well-thought, relevant and tailored to the context of Guernsey. This notwithstanding, and despite being based on investigations and prosecutions, SARs and international MLAs and real-life cases contained as annexes, the patterns presented in this section could reference more specifically the data and cases it is based upon to draw the conclusions. It is also worth noting that the wording of this section on ML typologies and modalities has barely changed between the 2 iterations of the NRA, which suggests a limited use of the abovementioned sources.

91. The authorities, especially the supervisors, share the view that the most vulnerable sectors are Private Banking and the formation, management and administration of legal persons and arrangements services provided by TCSPs, established in connection with cross-border businesses. This understanding is enabled by long years of experience in supervision coupled with knowledge of all the sectors and access to SARs, AML/CFT and prudential information from regulatory returns. Such understanding mirrors the sectorial analysis of the NRAs. These sectors/products were given, in NRA2, the highest inherent risk ratings ("much higher") and residual risk rating ("higher").

92. Other sectors that are significant would be the discretionary management and advisory and execution of investment services and retail banking, both being assigned a "Higher" inherent risk rating, which decreases to "medium higher" after considering the mitigating measures and controls for the residual ML ratings. Analysis of ML, TF and PF risks at a sectorial/product level is the aspect that has been assessed in greater detail and that has seen a clear refresh between iterations of the NRA, providing updated data and conclusions. Relevant aspects for each of the sectors and products are considered such as the proportion of high-risk customers, foreign PEPs, reliance placed on introducers or high-risk jurisdictions. The indicators assessed and the conclusions reached are relevant for each of the sectors.

93. This notwithstanding, some more sector-specific aspects could have been explored in more detail, such as, for instance in the case of the legal sector, introduced business by (mostly UK-based) multi-jurisdictional law firms, with an aim to analyse any potential ML risks arising from the so-called "magic circle" or the types of services provided by TCSPs besides incorporation and administration of legal persons and arrangements and retirement solutions (for example, non-management services). Further consideration of information arising from SARs and investigations (besides the case studies involving relevant sectors presented as annexes), as well as from enforcement actions concerning the different sectors (for example, investigations and sanctions imposed by the GFSC) would also be more beneficial.

[21] For example, complex ownership structures with links to sensitive industries or holding assets resulting from illicit enrichment by PEPs in the case of bribery of corruption, the jurisdiction acting as either the repository for assets or as the administrator of a legal person of arrangement holding the assets elsewhere in the case of tax evasion, or domestic OCGs using the jurisdiction to move illicit proceeds to other jurisdiction or international OCGs using Guernsey to circumvent border controls or to commit the predicate offences

94. The residual ML of cash is assessed as Medium Lower in the NRAs. As mentioned in Chapter 1, the Bailiwick of Guernsey is not a cash-oriented economy, due to its very high level of financial inclusion. Thus, the use of cash is limited, and the shadow economy is negligible based on NRAs findings. Authorities share this view which is confirmed by on their routinely cash controls at borders by the Guernsey Border Agency (GBA), the limited number of cash declarations and of ATMs available on the island.

95. In terms of legal persons and legal arrangements risks, the dedicated assessment report of April 2024 identifies administered non-cellular Guernsey companies that act as asset holding/management vehicles, foreign legal persons, and discretionary trusts as having the highest exposure to ML risks. While conclusions reached are reasonable and the risk assessment exercise is much more detailed and specific than the one that is part of NRA1, it nonetheless has aspects that would benefit from a more detailed analysis (for both ML and TF), such as (i) a more detailed analysis of the risks associated with the misuse of complex and multi-layered structures, (ii) the impact of legal persons and arrangements not banked in the Bailiwick; and (iii) the adequacy of controls in place to mitigate the abuse of legal persons and arrangements. The TF risk analysis is based on determining connections of BOs and involved parties TF high risk countries, and an analysis of the nature and location of the activities of legal persons and arrangements (for more information, see IO.5).

96. The NRAs examine the TF threat from multiple perspectives and arrives at well-considered conclusions. For the Bailiwick, the main TF risks lie within it being used as a transit jurisdiction for funds raise in one country to finance terrorism elsewhere, especially in relation to organised terrorist groups operating like businesses, with authorities concluding that the likelihood of this risk materialising itself is low. Other aspects such as using the administration of assets and the creation or administration of structures to conceal the identity of BOs with links to terrorism or TF; TF arising as a secondary activity to ML; and an analysis of financial flows from/to "TF Focus countries"[22] (representing 0,04% of inflows and outflows as of 2022) are also considered.

97. Considerable work has been done to understand the TF risks emanating from countries with which Guernsey has financial flows. The authorities acknowledge that flows to or from another IFCs, may have underlying Focus Countries involvement or other TF related risks, which are not apparent from the available data. To overcome this, the authorities looked at other countries NRAs and MERs and carried out further internet research to identify the nature of their potential exposure to TF. The authorities also reached out to their international partners, especially the UK where the reliance on such intelligence is important given the context of Guernsey. No possible TF activity linked to Guernsey was identified in this context. Nevertheless, as the TF risks are Guernsey being used as a transit jurisdiction, more analysis is needed to fully grasp the actual level of TF risk in that regard, especially since the NRAs of the most relevant IFCs (in terms of volume of financial flows with Guernsey) that were looked at, did not fully consider the TF risks. This restricts the reliance that can be placed on those reports by the jurisdiction.

98. The TF analyses follow the same structure as the ones for ML, providing an initial overview, followed by a sectorial/product-based assessment and also the "most likely

[22] The Anti-Financial Crime Advisory Committee periodically determines a list of countries and territories considered to pose a higher threat of terrorist financing, based on multiple indicators such as the Global Terrorism Index, the FATF lists of high-risk territories and subject to call for action, the US Department of State's Country Reports on Terrorism or the Fragile States Index. The latest update of the list, on 6 December 2023, contained a total of 25 countries.

modalities". The sectorial part mostly bases its conclusions by assessing the degree of exposure of the different sectors to TF Focus countries through their business relationships, which in no case is significant (below 1% for all sectors, with the exception of insurance (3.32%), investment (2.39%) and TCSPs (1.89%)). The higher percentages for the investment and insurance sectors are explained by the nature of their products (ransom and kidnap insurance and investment schemes making charitable donations or investing in conflict areas). As for TCSPs, the AT did not find a justification in the NRA for the reasonably sizeable volume of business links between the sector and "TF Focus Countries". However, authorities advised that this was simply a result of well-established business links with certain parts of the Middle East. In terms of products, cash and trade finance are also analysed.

99. All the ratings assigned to the sectors and products range between "Lower" and "Very Much Lower", which is largely consistent with the jurisdiction's TF risk profile. However, while conclusions are reasonable, and taking into account their hypothetical nature due to no real TF cases have occurred in the jurisdiction, most of the conclusions present in this section, other than stating their low volume, materiality or likelihood to be abused for TF, do not seem to be immediately and directly sustained by concrete data. This includes relevant scenarios such as border detection/seizure of cash or use of cards in or near conflict zones.

100. The most likely modalities of TF include inadvertent fundraising or use of proceeds of crimes such as kidnapping, misuse of ransom insurance, hijacking, human trafficking, fraud, corruption or drug trafficking to fund terrorism, out of which only the latter 3 would be of significance in the jurisdiction, but whose motivations in the context of Guernsey (individual financial gain) would not correspond to those typically attributable to TF conducts (ideological). These conclusions, which are reasonable and relevant in Guernsey's context, are mostly hypothetical, due to the absence of real-life cases and scenarios, which is in line with the difficulties and limitations that IFCs tend to face when assessing TF risks. Similarly to the ML analysis, private sector was engaged in the provision of the input requested by the authorities through surveys, which informed the conclusions of the sectorial part, although without direct engagement in the working groups.

101. While no investigation on TF has been conducted domestically which may limit the conclusions of the different sections of the TF risk assessment, authorities advised that SARs, other reports to the FIU in relation to TF or terrorism, and pre-investigation cases have been used to inform the TF risk assessment. In addition, the reports and requests to the FIU were used for the FIU's strategic analysis on TF, which also fed into the TF risk assessment[23]. However, these features presented as examples to the AT and analysed by the competent authorities are not visible in the overall risk assessment, which raises questions as to what extent those sources were fully used to inform the NRA.

102. Regarding NPOs, the risks of the sector have been assessed in the context of the NRA1 and NRA2, as part of the sectorial analyses for both ML and TF. Aspects such as the activities of NPOs, their management, financial data or jurisdictions where funds are received and disbursed are considered. While the risk assessment sections included in the public report of NRA1 in relation to NPOs contains high-level conclusions, the AT has had access to the analysis of data that

[23] Authorities provided a more detailed list of statistical indicators, strategic analysis and other data used for the TF risk assessment, including: GFSC data on CFT controls and thematic reviews, incoming TF MLAs, sanctions notifications, requests for assistance or other information from other competent authorities, number of cash seizures, NPOs statistics, legal persons and arrangements statistics, statistics on clients/BOs of different sectors and location of assets of CIS, statistics on relationships with PEPs, other FIU strategic analyses, Revenue Service data and thematic reviews and other materials.

supported the conclusions present in NRA1 in relation to NPOs, which was significantly more detailed.

103. NRA2 concluded that the overall residual ML risk of the Bailiwick's NPO sector was Lower, and the overall residual TF risk was Much Lower and Very much Lower for internationally active NPOs and domestically focused NPOs respectively. For the purposes of NRA2 and following the change in the legislation in 2022, more information was gathered on internationally active NPOs by the registries, supplemented with the GFSC's risk assessment for TCSP's administered NPOs and FIU's analysis on the NPO sector, in collaboration with the P&R Committee and the Guernsey Registry. Therefore, the analysis of NRA2 is more detailed. While it is quite comprehensive in terms of data provided, the assessment is rather descriptive, which is a consequence of the fact that there is no case experience, or indicators of Guernsey NPOs being abused for TF purposes. Additionally, authorities, especially those more involved in the oversight of the sector (Registry, GFSC, and also the P&R Committee and the FIU) were able to demonstrate a very good understanding of the sector's risks.

104. As noted in R.15, ML/TF risks associated with the use of VAs were analysed in the NRA1, emphasizing that VA transactions and initial coin offerings were most vulnerable to ML and the risk of their use in Guernsey for TF purposes was considered very much lower. The analysis points out that at the time there were no known VA exchanges and there had been no applications for initial coin offerings and subsequent trading. NRA2 re-analysed the ML/TF risks associated with VAs and VASPs taking into account developments following the entry into force of the licensing regime for VASPs in July 2023 (assessed as Medium lower for ML and Very much lower for TF, with one licensed VASP to date the demand for such licenses is expected to be low). The analysis indicates also that the risk of misuse by VASPs in Guernsey is limited because they are restricted to servicing only institutional and wholesale clients. Moreover, authorities advised that surveys have been sent to REs to ascertain which REs managed, administered, transferred or held in custody VAs under their existing licences and other sources were taken into consideration (e.g. blockchain analysis, SARs data, strategic analysis of the FIU on emerging technology, including virtual assets). The analysis of ML/TF risks associated with VASPs and VAs, is commendable, however a more in-depth analysis of the risks emerging from the misuse of VA activities would be beneficial, given the indicative considerable value[24] of VA transactions.

105. Both NRAs came to similar conclusions in terms of ML/TF risks and are of high quality. All competent authorities (LEAs, FIU, supervisors, Revenue Service, the registries, etc.) demonstrated a strong and well-developed understanding of the extent to which ML/TF risks can materialise and awareness of the main ML risks and methods identified in the NRAs, due to their close involvement and collaboration in both processes. However, their understanding might be restricted by the limitations resulting from the difficulty of detecting the links between the assets and the underlying criminality (with Guernsey being several steps removed from the underlying criminality coupled with the fact that many business relationships come via other IFCs) and lack of in-depth analysis for ML/TF risks stemming from virtual assets (VA) and the lack of cases related to TF (i.e. investigations, etc.).

### *National policies to address identified ML/TF risks*

106. After the finalization of NRA1, the AML/CFT Advisory Committee (predecessor to the current AFCAC) engaged in extensive discussions, leading to several measures addressing its

[24] i.e. $0.45 billion equivalent to circa $5,300 per capita - when taking into account the population of residents – 64,421, and registered legal persons - 20,822

findings without a formal action plan. Key policies included a revised AML/CFT strategy issued in 2020, focusing on comprehensive risk assessment, effective legislation, coordinated activities, and accurate ownership information. Additionally, a revised Anti-Bribery & Corruption strategy aimed at a risk-based approach, proactive cooperation, and comprehensive measures against bribery and corruption.

107. In addition, external reviews of the effectiveness of the FIU and the criminal justice system in relation to ML were commissioned in 2018-2019. The effectiveness of this approach is demonstrated by the wide implementation scope and rapid execution of actions to address NRA1's findings. In the absence of a formal action plan following NRA1, its implementation was prioritised by using a phased approach on the basis of risk, and progress against this (and other AML/CFT initiatives) as of November 2021 was reviewed and recorded in a document titled AML/CFT Progress Review and Pathway to ensure that it was proceeding in line with risks. However, whereas the FIU's staff was reinforced and significant resources were allocated to enhance law enforcement capabilities, including the establishment of the EFCB, the AT has identified some areas where additional human resources are required, including the EFCB and the LOC (See IO7) which might have an impact on the implementation of measures to manage and mitigate the risks.

108. Monitoring of areas of high priority has been the focus of the Strategic Coordination Forum and the Anti-Financial Crime Delivery Group (and the AFAC before them for the period preceding 2022). These areas of high priority have included significant projects aimed at enhancing the resources and technological capabilities of the system (for example, the Guernsey Registry IT project, improvements to the THEMIS system, the criminal justice case management system, the EFCB e-forensic software, recruitments for the EFCB and LOC, measures to address underperformance of the EFCB or new premises for the criminal justice/civil forfeiture authorities), the workstreams of the authorities or wide-encompassing new or amended legislative frameworks.

109. This monitoring and prioritisation were channelled, starting from the 1st quarter of 2023, through the use of an "Action Tracker". The tracker is a living record which built on and reflected the findings in the "Progress Review and Pathway" document (referred to in the paragraph above) about AML/CFT/CFP workstreams as at and from November 2021. The tracker prioritises workstreams by assigning categories based on criticality, length and effectiveness of delivery. Monitoring of the areas of the action tracker considered the most critical are standard agenda items of the Forum and Delivery Group meetings, of which the AT has been provided with examples (mostly covering recruitment aspects within the EFCB and the LOC, delivery of the IT projects described in the paragraph above or operational and policy manuals, among others). Screenshots of the action tracker itself have also been provided, showcasing the status and monitoring of 2 high-priority areas (recruitment for EFCB and increase prosecution capacity within the LOC) which, at the time of the onsite, were still not completed.

110. By the summer of 2023, the findings of NRA2 were clear to the authorities, leading to the development of several AML/CFT/CFP strategic documents. In October 2023, these documents, including the National Strategy for Combatting Money Laundering, Financing of Terrorism, and Financing of Proliferation of Weapons of Mass Destruction, were either issued or updated. Additional strategies include an updated AML/CFT Strategy, an updated Anti-Bribery and Corruption Strategy, Tax Strategy, Counter Terrorism Strategy, Statement on an Overarching Approach to Guernsey and Alderney Non-Profit Organisations and Statement of Support for International Cooperation. These documents emphasize a risk-based approach, effective legislation, and proactive international cooperation.

111. In particular, the October 2023 AML/CFT strategy, which updates a prior 2020 strategy, is owned and issued by the governments of Guernsey, Alderney and Sark and the operational authorities, and establishes high-level principles and objectives for an effective AML/CFT framework, in areas such as risk assessment and understanding, legislative framework, capacities of the authorities and cooperation between, accessibility of accurate basic and BO information, ensuring reporting entities' compliance with AML/CFT obligations, financial intelligence flows, detection, investigation and prosecution of ML/TF and financial crime and seek confiscation or forfeiture of criminal assets or seeking and providing international assistance. This strategy is set to be reviewed at an unspecified periodicity and whenever sufficiently material regional or global events or threats identified through a risk assessment exercise are detected.

112. The National AML/CFT/CFP Strategy is a more detailed document jointly issued in October 2023 by the Five Committees[25] and endorsed by the operational authorities, which comprise the Anti-Financial Crime Advisory Committee (AFCAC)[26]. This National Strategy contains a vision (to prevent harm to society and stakeholders, support legitimate growth and prosperity and be a responsible and cooperative IFC), a risk assessment and risk appetite statement (no tolerance for sanctioned persons or entities or for aggressive/abusive tax avoidance); and, most importantly, the establishment and description of the Bailiwick's 10 strategic priorities (called pillars) aiming to address the risks identified in NRA2 and ensure a comprehensive and effective approach to AML/CFT/CFP.

113. These are summarised as follows: 1) enhance the understanding of risks, threats and vulnerabilities; 2) Establish CFP on an equal footing with AML and CFT ("Project Dragonfly" – see IO.11); 3) Enhance the legal framework, rules and guidance; 4) Develop the transparency framework of basic and BO information of legal persons and arrangements; 5) Enhance the operational capacity and capability of authorities (staff, premises, IT systems, etc.); 6) Enhance the understanding, policies, procedures and practices by the private sector; 7) Enhance the risk-based operational practices, policies, procedures, mechanisms, case prioritisation, statistics, training programmes and other tools of the authorities and the private sector; 8) Enhancing the coordination and collaboration between authorities, private sector and international partners; 9) Develop the international profile of the Bailiwick and 10) Regularly monitor effectiveness of the AML/CFT/CPF framework as a whole, individual authorities and the private sector.

114. These pillars are high-level principles or areas aimed at, on general terms, enhancing the effectiveness of the AML/CFT/CPF framework to prevent, detect, deter and disrupt financial crime and achieve the aforementioned vision. Therefore, their relationship with the risks identified in the NRA is not always straightforward. In this sense, a more direct and clearer interrelationship between the NRAs, strategies and action plans would be advisable. The strategy is scheduled to be reviewed in 2026 or earlier should any of the same triggers as described for the AML/CFT/CPF strategy occur.

115. In order to implement these strategic pillars, a formal Action Plan, which drafting started in February 2023, was adopted/updated in March 2024, at the latter end of the assessment

[25] Political committees that include the Policy & Resources Committee, the Committee for Home Affairs, the Committee for Economic Development of the States of Guernsey, the Policy & Finance Committee of the States of Alderney; and the Policy & Finance Committee of the Chief Pleas of Sark.

[26] the AGCC, the Alderney Registry, Bailiwick Law Enforcement (BLE), the Data Protection Authority, the EFCB, the Financial Crime Policy Office of the P&R Committee, the FIU, the GFSC, Guernsey Ports, the Guernsey Registry, HM Greffier, the Law Officers of the Crown, the Office of the Aircraft Registrar, the Office of the Director of Civil Aviation, the Revenue Service, and the Sark Registrar of NPOs.

period. Despite its drafting starting in February 2023 (in-between the 2 iterations of the NRA), it mirrors the structure of the National Strategy, approved in October 2023, and translates its strategic pillars intro concrete actions and milestones.

116. The action plan comprises a total of 105 actions, whose status of implementation and deadlines are outlined. Out of those, more than 67,5% are considered to be fully completed, approximately 9,5% are in the process of implementation or had some its phases completed while subsequent ones are pending, more than 18% of actions are considered ongoing efforts with no deadline of completion and close to 5% of actions have not yet been started due to the event that would put them into motion not having occurred yet (for example, the publication of this mutual evaluation report). The percentage of completed actions can be largely explained due to a significant number of actions predating NRA2. In this sense, a better alignment between the timings of the NRAs, strategies and action plans and their revision/updating would equally be advisable.

117. The action plan itself states that the actions focus on overcoming deficiencies identified at the last evaluation cycle and addressing the main risks identified in the NRAs. However, given the fact that the action plan is based on the national strategy, and not the NRAs themselves, and that the NRAs do not clearly establish recommended actions to address identified vulnerabilities, the relation with the identified ML/TF risks is not always direct or apparent. This notwithstanding, all the actions contained are relevant and either aimed at enhancing the authorities' and private sector capabilities, understanding of risks or reinforcing the AML/CFT/CPF framework in general or more clearly targeted to the riskiest areas identified in the NRA. This includes: enhancing the statistical information of legal persons and arrangements for a more granular geographical information; the FIU undertaking specific strategic analyses on fraud, tax evasion; identifying the links between banking and TCSPs sectors or cash; introduction of preventative offences in relation to corruption, ML or tax evasion; developing the Revenue Service framework for validation of data on legal arrangements; and the formal activation of the GIMLIT[27] by the FIU after receiving private banking sector feedback. All actions in the plan, besides the strategic pillar they belong to and their theme, are broken down into more detailed milestones, whose level of concreteness varies, some of which retain a high-level nature and more measurable milestones would be beneficial.

118. Additionally, the Action Plan contains no details about when the different actions were initiated or how they were prioritized, and there has not been clear evidence of formal monitoring or reporting mechanism regarding the implementation of the measures and achievement of the milestones set therein. This notwithstanding, authorities advised that the NRA Action Plan, from its inception to its formal adoption in March 2024, reflects the workstreams in the Action Tracker, which presents the Action Plan as more of a formalisation of workstreams, projects and strategic priorities already taking place in the jurisdiction, rather than a consequence of either of the NRAs. This reinforces the need of a better alignment and more interconnected monitoring between the outcomes of the NRA, the objectives of the multiple national strategies, the actions of the NRA Action Plan and the tracking of implementation of other individual projects and workstreams. In fact, the action plan itself (under strategic pillar 10), establishes, as upcoming actions, formal

[27] *Guernsey Integrated Money Laundering and Terrorist Financing Intelligence Task Force*, a public-private partnership (PPP) to foster co-operation and intelligence-sharing between the authorities and the private sector, with an initial pilot scheme with 4 private banks.

reviews of the Strategic Coordination Forum[28] of the adherence to the NRA Action Plan at least twice a year (not preventing assessing certain actions when relevant events would occur) and the Delivery Group[29] to monitor compliance with the NRA Action Plan periodically. Similar actions regarding adherence to the National and other strategies are equally set out. In order to ensure effective monitoring of these elements, an additional action (not yet started) establishes the need to develop a methodology for such purposes. The AT agrees with the needs for a more interconnected monitoring expressed in the National Strategy and the Action Plan.

119. Following the adoption of the NRAs, several key legislative amendments were enacted to enhance the AML/CFT framework. These included the consolidation and amendment of the GFSC's supervisory framework (2020) or the introduction of a revised NPO oversight framework (2022). One significant development between the 2 iterations of the NRA is the creation of the Economic and Financial Crime Bureau (EFCB) and the entry into force of the EFCB and FIU Law in 2022, which develops its competences. The aim of the EFCB was to establish a unit who would specifically investigate economic crimes, which are more relevant to the risk profile of the jurisdiction (see IO.7 for further details). Significant criminal justice measures were also implemented (2021-2023), including non-conviction-based forfeiture, new offences for failure to prevent ML, TF, bribery, and tax evasion, and a regime for deferred prosecution agreements. Additionally, commercial legislation was amended in 2022 to improve transparency and international cooperation, and further amendments in 2023 reinforced the legal framework for the supervision of VASPs and trust transparency. Delivery of outcomes in relation to these high-priority areas has been monitored, as explained, by the Strategic Coordination Forum and the Anti-Financial Crime Delivery group and through the use of the action tracker.

120. The vulnerabilities assessment undertaken in March 2024 is also a relevant exercise, put forward in compliance with one of the actions of the action plan under strategic pillar 1. It describes multiple relevant legislative amendments between 2017 and 2024 in areas such as wire transfers, sanctions, criminal justice or NPOs, new premises to accommodate the EFCB, the FIU and the LOC's Economic Crime Unit (ECU), significant IT developments in the EFCB forensic tools (still underway), the FIU THEMIS system, the case management system for the FIU, EFCB, Revenue Service and the LOC's ECU or the Guernsey Registry systems, increases in staff capacity of the FIU, the EFCB (while acknowledging further needs and retention issues), Guernsey Police, LOC or the Revenue Service, as well as other improvements in the areas of statistics or integrity. The trigger for this assessment, besides the action plan and the National Strategy has been an initial 2019 independent review highlighting concerns in the overall criminal justice system.

121. In general, the AT is of the view that the identified ML/TF risks are addressed to a large extent by the National Strategy and the Action Plan and other policy documents, however a significant number of the actions of the NRA Action Plan were implemented towards the end of the review period and some high priority actions (e.g. the increase staff complement of the EFCB and LOC's ECU) are yet to be completed. A more standardised and interconnected (with the multiple national strategies, policy documents, NRAs and other risk assessment works and tracking of other projects) monitoring of the actions, as well as their implementation and

[28] *The Strategic Coordination Forum comprises representatives from the "Five Committees" and the operational authorities. It acts on the advice of the Anti-Financial Crime Delivery Group and sets the strategic and legislative direction.*

[29] The Anti-Financial Crime Delivery group comprises senior civil servants and representatives from the operational authorities and is responsible for the delivery of strategic objectives. Its responsibilities include ensuring that operational authorities have the resources needed to discharge their functions and promoting collaborative working and monitoring.

adherence to the national risks will have to be pursued and sustained over time, as the NRA Action Plan itself and the National Strategy already acknowledge.

### *Exemptions, enhanced and simplified measures*

122. The Proceeds of Crime Law allows FIs and DNFBPs (except for e-casinos, where it is not allowed) to apply SDD measures where following a risk assessment, a relationship has been assessed as low-risk by the specified business or in accordance with the NRA. Moreover, these measures cannot be used if there is suspicion of ML or TF, or if the risk is not low. Chapter 9 of the GFSC Handbook provides guidance for the application of such measures. REs are required to apply SDD in line with ML/TF risks.

123. According to the same law, REs are required to apply enhanced measures in a number of specific scenarios considered high-risk by operation of the law, situations where EDD may be called for by the GFSC having regard to the NRA, and where the RE assess a business relationship or an occasional transaction to be high-risk.

124. Acting as a director or partner of specific types of entities (supervised entities in Guernsey or other IOSCO member country or companies listed on recognised stock exchanges) is exempt from licensing of the Fiduciaries Law, and hence from AML/CFT obligations, which is not in line with the requirements of R.22, R.23 or R.28 (although in the latter 2 cases, criminal probity checks exist), however the materiality of this technical deficiency is low (see R.1).

125. Natural persons providing directorship services to 6 or less companies are exempted from applying risk assessment requirements and internal controls and procedures. These exemptions do not appear to have been introduced in the legislation as a result of a prior formal risk assessment. Authorities stated that such exemptions were established more than 20 years ago, and they were reviewed by the GFSC, whose conclusion was that the profile of the persons typically providing these services was such that their activities did not pose any real risk to the reputation of the jurisdiction, a view that was endorsed at the government level. In the period under review, there was further discussion of the appropriateness of the six-directorship threshold between the authorities, with the same conclusions being reached. The AT agrees with these conclusions, as the services concerned correspond to situations either outside the scope of the FATF Standards or entail a justified low ML/TF risk.

126. The GFSC has the power to exempt the requirement to apply for a licence under the Fiduciaries Law certain private trust companies, on a case-by-case basis, provided that the trustee services are not provided by way of business, which makes them out of the scope of the AML/CFT obligations of R.22, R.23 and R.28.

127. For DNFBPs, no exemptions are envisaged for the eGambling sector, in line with the sector's risks. FIs, legal professionals, accountants and estate agents are however exempted from registration and from applying AML/CFT obligations if, according to Schedule I of the POCL, a certain quantitative criteria is met, which would make the provision of the activity subject to AML/CFT requirements residual or incidental. As acknowledged in R.1 and R.10, these exemptions are considered in line with the standard.

128. Authorities advised that the GFSC reviewed the available exemptions against NRA1 findings with input from other authorities, which confirmed the appropriateness of most exemptions and measures, except for certain fiduciary licensing. The findings and conclusions were discussed with the Financial Crime Policy Office in 2021 to advance development of a new supervisory framework requiring individuals to register if using the licensing exemption for holding six or fewer directorships. This new framework was introduced in 2023.

129. In particular, the GFSC's review of exemptions together with the rationale for SDD in 10.18 were provided to the AT. The Anti-Financial Crime Advisory Committee and the Strategic Coordination Forum considered and endorsed the documents at their meetings in April 2024. The contents of the documents were also the subject of detailed discussion with the Financial Crime Policy Office long before then and were taken into account by the authorities in NRA2 and the legal persons and legal arrangements risk assessment. The GFSC review indicates the type of person who can use an exemption and gives numbers of persons using it where available. The only persons using the Schedule I of the POCL exemptions are one surveyor and two small legal firms for real estate and legal services respectively. Additionally, as of 31 March 2024, there were 125 private trust companies and 978 general partners using the licensing exemption granted by the GFSC. These two latter categories account for 88% of the exemptions granted by the GFSC. The remainder have been granted to lawyers to undertake executorship services or to personal fiduciary licensees to enable the individual to provide fiduciary services to a pension scheme. The AT agrees with the conclusions reached by the authorities and considers their materiality to be low, as there are multiple mitigating factors associated (i.e. PTCs have to be administered by a regulated TCSP and not having to provide trustee services by way of business, and general partners have to be part of a CIS authorized or registered by the GFSC and obtain a license under the Protection of Investors Law).

130. For NPOs, revised frameworks post-NRA1 introduced additional obligations for Guernsey and Alderney NPOs (including reduced or enhanced obligations and exemptions based on risk). Enhanced governance requirements in Sark for internationally active NPOs were also introduced between March and April 2024, to bring them to the same level as the ones for Guernsey and Alderney NPOs (including the reduced and enhanced obligations and exemptions), while it is to be considered that there have not been any internationally active NPOs in Sark.

### *Objectives and activities of competent authorities*

131. All competent authorities participated in NRA1 and NRA2 and endorsed the national AML/CFT policies. Each authority has implemented risk-based policies and procedures aligned with these national strategies and tailored to their specific roles and responsibilities.

*FIU and LEAs*

132. The FIU, initially part of BLE, adopted a formal risk-based approach post-NRA1 by means of a written policy and procedure and an operational analysis handbook. Other actions undertaken to further converge with a risk-based approach include enhancements in the automated and manual risk scoring systems prioritize SAR analysis (with indicators in line with the identified ML/TF risks such as high risk industries, jurisdictions, criminality or links with PEPs or OCGs – for more detail, see IO6), increased staffing (including 2 embedded officers from the Revenue Service, which is consistent with the heightened risks associated with foreign tax evasion identified in the NRAs)and specialized training (focusing on aspects such as bribery and corruption) to enhance its capabilities. Overall, the FIU's strategic plans align with national AML/CFT policies.

133. BLE (Bailiwick Law Enforcement)'s Economic Crime Division (ECD) (main responsible for the investigation of ML and TF until 2021, when the EFCB was established and took over this role, while the ECD kept an investigative role in relation to terrorism and TF), follows a risk-based approach as well. The establishment of ICART[30], jointly with the Law Officers in 2017 (with the

[30] International Cooperation and Asset Recovery Team

aim to expand the use of non-conviction-based forfeiture to target the proceeds of foreign predicate crimes, in line with the jurisdiction's main threats and risks), and close links with UK counter-terrorism networks bolster its efforts. NRA findings inform BLE's TF procedures and overall strategy (mostly reflected in the main Bailiwick strategy for Countering Terrorism (CONTEST)).

134. The Guernsey Border Agency (GBA), particularly the Customs Service within it, applies a risk-based approach to cash movements and proliferation activities. This is mainly exemplified through the electronic manifest system (GEMS) that provides risk-based alerts (mostly in relation to PF risks, such as destination of the goods, high-risk jurisdictions and proliferation hubs) that are followed upon with screening, risk assessment, examination of goods or other actions (for more information, see IO.11). Enhanced profiling and training further support the assessment of risks and its monitoring and ensure alignment with national AML/CFT policies.

135. Pre-NRA1, the LOC adopted a risk-based approach in relation to their AML/CFT functions, including prosecutions, civil forfeiture, MLAs and extradition. Post-NRA1, formal policies and operational manuals, concerning ML/TF, approach of MLAs, prosecution, extradition, asset sharing and repatriation, were developed and later revised after NRA2. Prioritisation of cases is also risk-based following the risk ratings assigned as a result of the application of the aforementioned procedures. Trainings and staff increase have also been based on the risks faced by Guernsey, with a focus on economic crime, MLAs (due to the cross-border nature of threats) and civil forfeiture, including the creation of a specific Economic Crime Unit in 2022 bringing into a single specialised group the practitioners in these areas.

136. Formed after NRA1, the EFCB has been developing a risk-based approach, which has increasingly become more comprehensive throughout the assessed period since its inception. Internal governance, operational policies, and staff training are risk-based and, consequently, have most recently been revised after NRA2. With an aim to enhance the investigative skills and capacity to ensure the investigation of cases with the degree of complexity expected considering the jurisdiction's risks, the Bureau has undergone significant restructurings, including the recruitment of additional case specialists to fill new specialist investigatory roles or the introduction of new departments such as the Case Development Unit (CDU), which prioritises the cases to be investigated (or discarded) following a risk-based approach.

*Supervisors*

137. Since 2013, GFSC has used a risk-based approach for AML/CFT supervision through the PRISM system (Probability Risk and Impact System). Enhanced data collection and sector-specific risk assessments inform its supervision. The GFSC has a good understanding of the different sectorial ML/TF risks, has been heavily involved in the drafting of both NRAs and significant use of its supervisory data and information has been used for their drafting and to inform their conclusions, especially at a sectoral level. These aspects contribute positively to the alignment between identified ML/TF risks and supervisory actions. In turn, regular updates (including of the GFSC's AML/CFT/CPF Handbook and risk its assessment methodology) and thematic reviews ensure that this alignment with NRA findings and national policies is kept on a continuous basis. In this sense, it is worth mentioning that, since NRA1, the sectorial risk ratings of the NRAs are incorporated in the residual risk assessment methodology.

138. This notwithstanding, as indicated in IO.3, some misalignments at the individual entities' risk level have been identified by the AT, for which no TCSPs or investment firms are rated as high risk and a relatively low percentage are rated as medium-high risk, despite the "higher" and "medium-higher" residual risks these sectors have, respectively, in the NRAs. In terms of training

and staff increase, these have equally been risk-based, aiming at enhancing the expertise of the personnel and increasing the overall number of supervisory actions, with a focus on the sectors with higher perceived risks in the NRAs, such as the investment sector.

139. The AGCC has equally actively participated in both NRAs processes by providing data and information on the inherent risks of the remote gaming sector and the adequacy of its controls puts in place. In terms of supervision of the sector, it had been applying a risk-based approach for many years prior to NRA1, which was formalised on a risk-based approach supervision manual in 2020, which was later updated in 2021 and subsequently after NRA2. Results from NRAs inform updates to risk reviews by the AGCC and are required to be considered in the business risk assessments of the licensees.

*Revenue Service*

140. The Revenue Service's risk-based approach has been formalised in a policy document concerning the identification of possible ML, TF or PF from tax information, put in place in 2020 (after NRA1) and revised in 2024 (after NRA2). Additionally, the Revenue Service keeps a risk register of all banks (including retail banks) and TCSPs, which is in line with the "higher" risks associated to those sectors in the NRAs. The risk ratings of the entities are influenced by various factors, including the number or content of international requests received that may highlight a risk related to a particular entity, the quality and completeness of the entity's Common Reporting Standard ("CRS")/Foreign Account Tax Compliance Act ("FATCA") reporting, etc. All "medium-high" and "high" risk entities are discussed in a monthly risk assessment meeting to determine the most adequate response for each case.

141. If during the course of the Revenue Service activities (including the analysis of data received under the "Common Reporting Standard" or CRS), any of the cases is deemed to constitute serious fraud or tax evasion, these would be referred to the EFCB, thus placing significant weight to two of the main threats to which Guernsey is exposed according to the NRAs. Regular risk assessments, enhanced staffing, tailored training (on aspects such as ML, risk assessment, investigative practices or bribery and corruption) and coordination with other agencies (including, most notably, the two embedded officers in the FIU to carry out SAR triage work) ensure robust AML/CFT efforts in line with risks. In relation to legal persons and arrangements, corporate entities and partnerships are required to submit an annual declaration stating whether they are carrying out geographically mobile activities (which are susceptible to being used for base erosion and profit shifting purposes) and, if so, provide additional information to enable the Revenue Service to assess whether they have sufficient "economic substance" in Guernsey, according to the Income Tax Regulations. These aspects are reviewed and, in case of non-compliance subject to strike-off. This is in line with the conclusions of the NRAs highlighting certain types of companies as posing a "higher" risk. In the same sense, discretionary trusts are placed under the same risk category, with one Action Plan action being to enhance the collection of relevant statistical data from them.

*Registries*

142. As is the case for many other authorities, the Guernsey Registry also formalized its risk-based approach in 2021 (after NRA1) with the introduction of risk-based ML/TF procedure, which was updated after NRA2. It has also implemented AML/CFT screening and verification processes focusing on the analysis of BOs, nominee relationships, trust relationships and assets, etc. in line with the identified risks on legal persons and arrangements in the NRAs. Checks involving the UK's Register of Overseas Entities are also performed, reflecting the cross-border nature of threats that Guernsey is exposed to, and its significant ties with the UK in terms of

business relationships and complex structures. Enhanced annual validation processes, focusing on legal persons developing activities in higher risk sectors, and new and updated IT systems (with enhanced data verification on entities and BOs) support a comprehensive risk assessment of registered entities. The Registry's approach to NPOs and other roles[31] also aligns with national policies and risks identified. Staff has also been increased, with an aim of reinforcing sanctions and oversight of registered entities.

143. Similarly, the Alderney Registry adopted a formal risk-based approach in 2020 (after NRA1), which was later updated after NRA2. It also implemented an AML/CFT screening software in 2023 and conducts thorough verification checks of a similar nature to those applied by the Guernsey Registry. Annual validation processes for legal persons (reviewed after NRA1) and cross-checks with other registries ensures high-quality information. Regular training and updates keep practices aligned with national AML/CFT policies. In addition, it is worth remarking that, in 2021 and 2024, FIU collaboration was sought to conduct checks of entities, directors and BOs against its databases, for which no adverse findings or inaccuracies were found. A similar exercise was conducted with the AGCC in relation to companies holding eGambling licenses, with equal results.

*All authorities*

144. Objectives and activities of all competent authorities are consistent with the national AML/CFT policies and with the ML/TF risks identified, which were recently updated in their respective risk-based policies and operational procedures. Such alignment has been routinely monitored by the Bailiwick's Anti-Financial Crime Advisory Committee (AFCAC) and its predecessor since the publication of NRA1. However, this is not fully demonstrated by the limited number referrals for potential criminal proceedings/civil forfeiture, ML investigations and prosecutions, confiscations, including proceedings initiated against legal persons, etc. (see IO6, IO7 and IO8) throughout the whole period under review.

### *National coordination and cooperation*

145. The competent authorities of Guernsey cooperate and coordinate the development and implementation of policies and activities to a large extent. This is evidenced through the existence of multiple governance arrangements, sub-committees, working groups and other similar arrangements. There is also a clear political commitment and engagement in combatting ML, TF and PF, as observed by the political representation and the presence of senior civil servants with responsibility for setting strategic objectives in several of the governance arrangements established in the jurisdiction.

146. The Bailiwick's Anti-Financial Crime Advisory Committee (AFCAC) is the high-level ML/FT risk coordinating body, successor to the AML/CFT Advisory Committee present at the time of the previous evaluation. It is chaired by the Head of the Public Service of the States of Guernsey, composed of all the competent authorities and has the aim of ensuring effective coordination and cooperation. Its membership has progressively been expanded throughout the assessed period with the incorporation of the EFCB in 2021 and HM Greffier, Data Protection Authority, Guernsey Ports, the Aircraft Registrar and the Director of Civil Aviation in 2023. It provides advice to the Strategic Coordination Forum and reports regularly to "The Five Committees", namely The Policy & Resources Committee (P&R), the Committee for Home Affairs, and the Committee for Economic Development of the States of Guernsey, the Policy & Finance

[31] Responsibility for anti-criminality measures for accountants, estate agents and foreign-qualified lawyers.

Committee of the States of Alderney and the Policy & Finance Committee of the Chief Pleas of Sark. It has responsibilities in assessing risks, developing, reviewing and amening strategies, national policies and action plans and exchanging operational information.

147. The Strategic Coordination Forum, established in June 2022, is responsible for setting and coordinating the Bailiwick's strategic and legislative direction in support and delivery of the National Strategy for AML/CFT/CFP and meets at least quarterly (has met on 10 occasions since its establishment). It is chaired by a political representative and comprises senior representatives of operational authorities with an aim to achieve effective cooperation and collaboration at a political and operational level throughout the Bailiwick's three jurisdictions (Guernsey, Alderney and Sark). The Anti-Financial Crime Delivery Group, also established in December 2022, regularly reports against priorities, actions and issues to the Strategic Coordination Forum and is responsible for the delivery of the Bailiwick's strategic objectives and for identifying, developing and prioritising key outcomes to support the implementation of the National Strategy. It has met 13 times since its establishment. This notwithstanding, the monitoring work of the Strategic Coordination Forum and the Delivery Group will become more standardised and interconnected, following the development of a specific methodology for those purposes due to the need identified in the March 2024 NRA Action Plan, as explained under core issue 1.2.

148. The Anti-Financial Crime Technology Programme Board, a specialized governance forum, was established in 2022 to oversee and support critical IT projects aimed at enhancing the capabilities of various AML/CFT authorities (such Guernsey's Registry's digital transformation for advanced data analysis, e-Forensic Discovery enhancements at EFCB, and upgrades to the FIU's secure online Suspicious Activity Report (SAR) reporting portal THEMIS for better risk assessment). This body meets at least monthly to ensure that sufficient resources and strategic leadership are provided for these projects.

149. Other relevant sub-committees and arrangements would include the Anti-Bribery & Corruption Committee[32], tasked to oversee, coordinate and ensure compliance with the anti-bribery and corruption standards and assessing its risks, the Sanctions Committee (further explored under IO.10 and IO.11) and the NPO working group.

150. At the operational level, regular meetings of the aforementioned AML/CFT/CFP Committees and operational meetings between various authorities (e.g., EFCB, BLE, FIU, GFSC, etc.), ensure continuous monitoring, information exchange, and alignment of efforts. Another example of actions contributing positively towards effective inter-agency cooperation is the two Revenue Service officers embedded within the FIU. These structures, meetings and other arrangements enable Guernsey to maintain a cohesive and effective operational framework for AML/CFT/CFP efforts.

151. Additionally, several MoUs have been signed to ensure effective operational cooperation and coordination. These include MoUs between the FIU and various authorities, the GFSC with the AGCC and with the Guernsey Registry, the AGCC and Alderney Registry, the LOC and the EFCB, and between the FIU, EFCB and the Revenue Service. These agreements facilitate information sharing, joint efforts in policy development, and coordinated operational activities, but are not indispensable for cooperation purposes.

152. As for PF, it is included in the National Strategy and the AFCAC) has broadened its mandate to cover PF, coordinating high-level policies and actions among all competent

[32] Chaired by the Head of FIU and including representatives of the Policy & Resources Committee, the LOC, the EFCB, the GFSC, the Guernsey Registry and the Revenue Service.

authorities. Moreover, the Sanctions Committee is in charge of coordinating sanctions-related activities (includes PF-related TFS), ensuring that information is distributed publicly and to provide advice on sanctions and giving priority to matters concerning TF or PF. Regular operational meetings, such as those between the EFCB, BLE, and FIU, ensure timely and effective cooperation on PF issues as well.

#### *Private sector's awareness of risks*

153. The risk assessments findings were largely disseminated to the private sector through extensive outreach events, presentations and online publications. Guernsey's NRAs and other risk assessments are public documents, and the results are available to all FIs and DNFBPs, including on the websites of the government, the FIU, the GFSC and the AGCC.

154. Following the publication of the NRA1 in January 2020, various presentations and training sessions were conducted by government representatives, the GFSC, and the FIU, engaging nearly 600 private sector delegates. These sessions provided an overview of ML/TF risks and initial guidance on applying the findings to business practices. Subsequent outreach and training events continued to emphasize these risks, including a thematic review by the GFSC in 2022, which assessed 104 specified businesses to ensure they aligned with NRA1 findings. The results, along with anonymized recommendations, were shared publicly to further raise industry standards. NRA2, published in December 2023, followed a similar approach, with presentations attended by 550 delegates and updated guidance on TF risks. The GFSC and other authorities have consistently ensured that relevant materials, including power-point slides and guidance documents, are readily accessible on official websites by the private sector. As a result of these measures, REs met on-site demonstrated a high level of awareness of the risk assessments findings.

155. Moreover, private sector representatives were involved in the risk assessments since the early stages of the exercises, although without direct engagement of the private sector in the working groups. As stated in core issue 1.1, a more direct and active engagement of the private sector in future iterations of the NRA or other risk assessment works would be beneficial.

### *Overall conclusions on IO.1*

156. Guernsey adopted a muti-agency approach during the NRA1 and NRA2 processes, which were conducted in close collaboration and involvement of all relevant authorities and other stakeholders, supported by top-level political commitment. Guernsey has made significant efforts to enhance its understanding of the ML/FT risks it faces. The private sector also demonstrated a high level of awareness of the risk assessment findings. However, better substantiation of conclusions on the basis of concrete data analysed would be beneficial for both ML/TF risk understanding, and some areas would also benefit from more in-depth analysis (such as VAs, TF risks of Guernsey being used as a transit jurisdiction or other sectorial areas).

157. A commendable range of measures have been implemented to address the risks identified in the NRAs, however a significant number of the actions of the NRA Action Plan were implemented towards the end of the review period and some high priority actions (e.g. the increase of staff of key LEAs (namely, the EFCB and LOC's ECU), needed to address identified ML/TF risks more effectively) are yet to be completed. A more standardised and interconnected monitoring of the implementation and adherence of actions to the national risks will have to be pursued and sustained over time.

158. The objectives and activities of competent authorities are consistent with the national AML/CFT policies and the ML/TF risks identified, which are reflected in their operational policies

and procedures. However, the alignment is not fully demonstrated when considering the limited number of referrals for potential criminal proceedings/civil forfeiture, ML investigations and prosecutions or confiscations. The competent authorities of Guernsey extensively cooperate and coordinate the development and implementation of policies and activities, ensured by regular meetings of multiple relevant committees (most notably, the AFCAC, the SCF and the Delivery Group).

159. **Guernsey is rated as having a substantial level of effectiveness for IO.1**.

# 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

## 3.1. Key Findings and Recommended Actions

***Key Findings***

***Immediate Outcome 6***

a) Financial intelligence and relevant information are regularly accessed by the FIU and other competent authorities through a variety of databases and sources, facilitated by online tools and close international cooperation with the UK. The FIU is a key source of financial intelligence; yet some LEAs do not seem to seek its assistance to the full extent during their investigations.

b) Although all relevant authorities confirmed the close collaboration with the FIU and its ability to support their operational needs, FIU's intelligence reports and other products resulted in a limited number of referrals for possible criminal proceedings or civil forfeiture, which were used to initiate an even lower number of ML and predicate offences investigations; and none triggered TF investigations giving the lower risk.

c) The FIU receives approximately 2600 reports of SARs annually, predominantly from the e-gambling sector, but most of these reports are of limited monetary and intelligence value, which is not in line with the risk profile of Guernsey. Reports from other sectors, especially high-risk and material sectors, remain limited (with the exception of TCSPs) and slightly declining which may impact the provision of financial intelligence in relation to those sectors. The FIU has launched commendable measures to improve the quality of SARs through feedback at the submission stage and extensive outreach, with initial positive results, however their impact is yet to be expected, considering that the quality and relevance of SARs remained a concern throughout the review period (due to the effect cause by the abundance of SARs from the eGambling sector, the reactive nature and triggers for the identification of suspicions in other sectors; and the lower incidence of corruption-related SARs).

d) The prioritization of SARs appears to be risk-based and the FIU produces high-quality analytical products and intelligence reports for dissemination, however the length of its operational analysis and the timeliness of its disseminations raise some concerns, especially in complex ML cases and when there was reliance on information from international partners.

e) Guernsey has made significant improvements since the last evaluation regarding the FIU's operational independence and resources. Since 2022, the FIU operates as an independent and autonomous law enforcement style FIU under the umbrella of the EFCB. The FIU has also increased its resources in both operational and strategic areas, reinforced its technical resources (including IT and analytical tools) and has appropriate arrangements to protect the confidentiality of its information. There is also engagement with the Egmont Group, internal and external training providers.

f) The FIU's dedicated analysts have developed several strategic analysis reports, mostly in line with the findings of Bailiwick's NRAs findings and emerging trends, which have been widely disseminated to domestic and international partners. Positive feedback from competent authorities met during onsite indicate the usefulness of such products to support their operational needs. However, the FIU didn't develop any specific procedures or guidelines for producing and disseminating such analysis.

g) The Bailiwick consent regime has regularly been used by the FIU to prevent the dissipation of funds, some cases resulting in the return of large amounts to international partners, but with very limited outcomes domestically.

h) Guernsey has robust cooperation mechanisms among competent authorities, ensuring regular and secure information exchange, including through bilateral and multilateral initiatives and meetings, including via a recently formed Public Private Partnership (the GIMLIT) and membership to several AML/CFT committees, to foster cooperation, coordination and intelligence sharing. However, with limited impact on increasing the effectiveness of some AML/CFT key areas, such as investigation and prosecution of ML/TF and associated predicate offences.

***Immediate Outcome 7***

a) The legal framework of the Bailiwick provides all tools for the effective identification and investigation of ML. The main source to identify potential ML cases are financial intelligence referrals from the FIU or other authorities, and parallel financial investigations related to domestic predicate criminality.

b) The establishment of the EFCB as a dedicated and powerful LEA indicates a strategic shift towards pursuing ML activities more aligned with the jurisdiction's risks, but this objective has only to a limited extent been achieved mainly because of insufficient human resources. As a result, the number of ML investigations and prosecutions is generally low and declining.

c) The types of ML investigated and prosecuted in the assessment period, with the dominance of proceeds from domestic predicate offending and the under-representation of sectors with a higher level of risk, have only to some extent been in line with the risk profile of the Bailiwick, mainly due to the previous, less risk-based approach of the authorities.

d) There were very few ML prosecutions and convictions in the period under review and, with the exception of one case, they mostly concerned unsophisticated ML conducts related to low-level domestic predicates. Despite the low numbers, however, all types of ML have occurred in the cases prosecuted and tried including stand-alone ML cases. Despite the country risks, no legal persons have been investigated or prosecuted for ML.

e) Sentences meted out in ML cases are remarkably lenient. Criminal sanctions applied against natural persons are not dissuasive and only to some extent proportionate, while the potential use of concurrent sentencing appears to pose an obstacle to effective sanctioning in certain self-laundering cases.

f) Civil forfeiture mechanism is generally applied and sought by EFCB investigators with convincing results, as an alternative measure to criminal proceedings not only where the latter is not possible, but also if considered impractical which, however, may also be a discouraging factor to abandon ML criminal investigations in favour of civil confiscation.

***Immediate Outcome 8***

a) The Bailiwick has a comprehensive and robust regime of provisional measures and confiscation/forfeiture, providing the necessary legislation and powers for the identification, restraint, and confiscation/forfeiture of criminal proceeds and instrumentalities.

b) The confiscation of proceeds is pursued as a policy objective, as demonstrated by the commitment in allocating resources and providing guidance to the competent authorities albeit with limited results in obtaining sufficient human resources for the LEA.

c) Proceedings for conviction-based confiscation as well as civil forfeiture have been routinely launched as result of financial investigations pursued alongside investigations into ML and predicate crimes. The results of the application of the two regimes have however remained rather moderate throughout the assessment period considering the context of the jurisdiction.

d) The cross-border cash control regime is characterised by a robust legal framework and dedicated and well-resourced authorities. Undeclared cash is routinely detected and confiscated and violations are prosecuted, in which context the authorities' actions are aligned with the country's risk profile. As demonstrated by case studies, the authorities also demonstrated their capacity to detect and to restrain ML related cash and to successfully pursue ML in such cases.

e) The confiscation and forfeiture results so far achieved only partially reflect the assessment of ML/TF risks and the national AML/CFT policies and priorities in the Bailiwick, both in terms of the number and nature of the cases and the volume of assets involved, also with regard to the significant ratio between seized or frozen assets and those confiscated or forfeited.

f) Criminal confiscation is restricted to the property that is actually realisable which often results in undervalued or nominal value confiscation orders and necessitates subsequent revision and recalculation.

***Recommended Actions***

***Immediate Outcome 6***

a) The FIU should reduce the length of its operational analysis, and increase the number (in line with the identified risks of the jurisdiction as an IFC) and improve the timeliness of its referrals for possible criminal proceedings or civil forfeiture to the EFCB, especially in complex ML cases.

b) LEAs, especially the EFCB, should seek the FIU's assistance to a larger extent throughout the course of their investigations into ML, predicate offences and TF.

c) The authorities should make increased use of FIU's intelligence reports and other products to initiate ML and predicate offences investigations, in line with the risk and profile of Guernsey, including cases involving proceeds of foreign criminal activities.

d) The FIU and other competent authorities should intensify their feedback efforts to target underreporting from high-risk and material sectors. Such activities should focus also on improving SARs' quality and relevance and monitoring thereof, in accordance with the main identified risks.

e) The FIU should fully exploit the consent regime to improve its outcomes domestically (such as confiscations).

f) Guernsey should consider developing specific procedures and guidelines for producing strategic analysis in order to enhance consistency and efficiency in the process.

***Immediate Outcome 7***

a) The Bailiwick should increase their efforts to obtain the necessary resources particularly in terms of well-trained and skilled investigative specialists for the EFCB to the extent it is required for pursuing complex, transnational ML investigations and investigations against legal persons, in line with the jurisdiction's risk profile.

b) The authorities should continue to provide the necessary trainings for practitioners at the LEAs, the prosecutors, and the judiciary so as to maintain and develop sufficient knowledge of the country-specific ML risks and particularly how entities from high-risk sectors and complex corporate structures can be used as vehicles for laundering foreign criminal proceeds.

c) The EFCB should revisit the time required for case development, identify potential factors of delay and exploit the possibilities provided by the case management system applied so as to achieve a more timely pursuit of ML activities and the opening of more ML investigations in line with the country risks.

d) The EFCB and other LEAs should enhance their efforts to maximize the use of financial information stemming from inbound MLAs or foreign requests or referrals from foreign counterpart authorities so as to significantly improve the number of ML prosecutions for foreign predicates.

e) The Bailiwick should revisit the lenient sentencing practice currently applied in ML cases and give consideration to introducing appropriate sentencing guidelines to ensure the dissuasiveness of the sentences. For the same reason, the prosecutors are also encouraged to use their new appellation rights in ML cases to challenge unduly mild sanctions.

***Immediate Outcome 8***

a) The Bailiwick should increase their efforts to obtain the necessary human resources for the EFCB to the extent it is required for pursuing (parallel) financial investigations and eventually confiscation and forfeiture in ML investigations more aligned with the jurisdiction's risk profile.

b) Competent authorities should effectively implement and exploit the new powers for civil confiscation granted in the recently adopted legislation (FOAL) as well as the recently issued policies and mechanisms relating to the confiscation of criminal proceeds.

c) The equally recently introduced systematic mechanism for revisiting undervalued (particularly nominal value) confiscation orders by means of identifying subsequent increases in the defendants' property and wealth needs to be effectively implemented.

d) In light of the recent development in providing comprehensive guidance and introducing new policies and mechanisms, the Guernsey authorities should, particularly if the necessary human resources are obtained, provide for the training of the LEA personnel so that they acquire the knowledge necessary for the effective implementation of this framework in line with the country risk profile.

160. The relevant IOs considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R. 3, R.4 and R.29-32 and elements of R.2, 8, 9, 15, 30, 31, 34, 37, 38, 39 and 40.

## 3.2. Immediate Outcome 6 (Financial Intelligence ML/TF)

### *3.2.1. Use of financial intelligence and other relevant information*

161. The FIU regularly access and uses a wide range of law enforcement, administrative, financial and commercial databases held either by domestic or UK authorities or third-party providers, which are available to FIU staff via an online EXCEL spreadsheet including a search tool to assist in identifying those databases likely to be most useful for finding various types of data.

**Table 6.1: Main databases and registers available to the FIU**

| Database/Register | Type | Access mode |
|---|---|---|
| **Guernsey Police database (NICHE)** | Closed Source | Direct (online) |
| **National CT Database (UK CT network)** | Closed Source | Indirect (via Guernsey's Counter Terrorism Fixed Intelligence Management Unit -FIMU-) |
| **National Fraud Intelligence Bureau's information on fraud and financially motivated cyber-crime (London Police)** | Closed Source | Indirect (upon request to the Unit) |
| **Guernsey Registry for Legal Persons, Foundations and Charities/NPOs** | Open Source | Direct (online) |
| **Alderney Company Registry** | Open Source | Indirect (via the Registry) |
| **Cadastre Register of Property Ownership** | Open Source | Direct (online) |
| **Guernsey Beneficial Ownership Register** | Closed Source | Direct (Stand Alone Database) |
| **Domestic and international tax matters information** | Closed Source | Indirect (Via Revenue Services member embedded with FIU and/or HMRC Offshore Intelligence Unit) |
| **Commercial databases**[33] | Open/Closed Source | Direct (online) |
| **Joint Asset Recovery Database (forfeitures & confiscation information)** | Closed Source | Direct |
| **CARIN** | Closed Source | Indirect (via EFCB) |
| **Driver Vehicle Licensing Service** | Closed Source | Direct (online) |
| **GBA immigration database** | Closed Source | Indirect (Via GBA) |
| **Aircraft Register** | Closed Source | Indirect (via the Registry) |
| **Ships Register** | Closed Source | Indirect (via the Registrar) |
| **Guernsey Contributions (Social Security)** | Closed Source | Indirect (via The States of Guernsey department) |
| **Open Sanctions** | Open/Closed Source | Direct (online) |
| **Air / Sea passenger information** | Closed Source | Indirect (via BLE) |

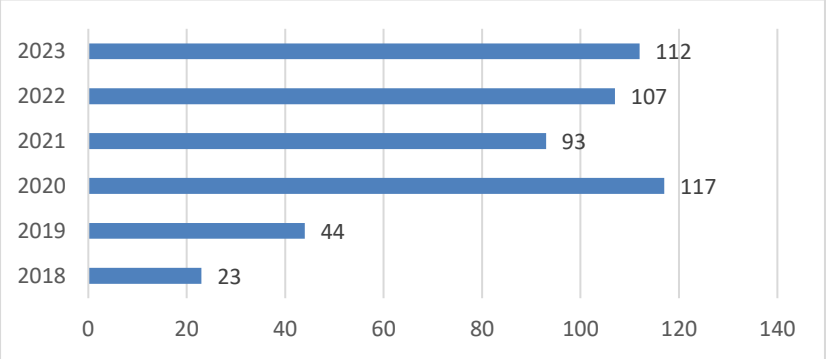
162. Overall, both LEAs and the FIU regularly utilize these databases among others, conducting appropriate checks on subjects involved in cases handled routinely. The FIU, as highlighted in the

[33] Equifax Equip, Experian Investigator Online, United Kingdom Land Registry, World Check One, Jersey Company Register, Isle of Man Company Register, etc.

table above, also has indirect access to travel movements of canalised and non-canalised traffic for both air and sea travel for passengers, aircraft, vehicles and vessels.

163. The FIU also uses other sources of information to produce financial intelligence, including submitted SARs, cross-border cash declaration forms (CDFs), requests for assistance (such as BO requests), MLA requests (see IO2), information from other AML/CFT/CFP authorities and financial information requested from REs. Between 2018 and 2023, the FIU sent 447 requests for additional information to REs (75 annually on average) and received an equal number of responses. Additional requests sent to REs are usually executed within 7 days, which are, in exceptional circumstances, extended to an extra 7 days (mostly for requests sent to TCSPs in complex requests) or reduced it to a lesser period in urgent cases. After the introduction, in 2019, of the FIU's power to request additional information without the requirement of a SAR[34], a fluctuating increase in the volume of requests was recorded. The majority of requests have been distributed to TCSPs, followed by retail banks and private banks, which is consistent with Guernsey's profile. The information received from REs was of added value to FIU's analysis and dissemination.

**Figure 6.1: Number of requests for information by the FIU to REs**




164. Moreover, the FIU actively uses international cooperation to generate financial intelligence (see IO.2). This aligns with the country's risk profile, as most ML cases involve the proceeds of foreign criminal activities.

165. The FIU has also access to MLA requests information passed by LOC to EFCB and shared with the FIU which analyses them to gather any useful intelligence and identify potential domestic interest. In such cases, the FIU provides feedback to the EFCB/LOC and engages with foreign FIUs and counterparts when needed, as demonstrated in examples provided.

166. Seconded officers at the FIU[35] from the Revenue Service (RS) have direct access to THEMIS to identify any tax-related cases and disseminate sanitized intelligence to the RS or relevant foreign FIUs or tax authorities when such cases are identified. GFSC's Intelligence Team has access to copies of all SARs and supporting documents emanating from entities it regulates for supervisory purposes, while the AGCC receives copies of all e-casinos SARs and uses the information for the similar reasons. In addition, the GBA has direct access to CDFs on THEMIS.

167. Besides access to different databases, the LEAs and other competent authorities also have access (upon request or spontaneously) to financial intelligence produced by the FIU. The LEAs can obtain financial information from REs directly (a specific order by the Court[36]) or via the FIU

[34] Under the provisions of Section 11A of the Regulations and disclosure law
[35] The Revenue Service has two Compliance Officers who also fulfil the duties of an FIU Embedded Officer and Deputy FIU Embedded Officer respectively. At least one of the officers works from within the FIU two days per week.
[36] See c.31.3

(using the coercive powers of the disclosure Law and supporting regulations). Based on statistics during the period under review, if the requested information is available at the FIU level, then such data is provided to domestic authorities within 14 days on average. Information is also exchanged via informal exchanges with LEAs in a lesser period. The AT could not confirm the latter as the FIU advised that statistics on informal exchanges were not maintained.

**Table 6.2:** Number of requests sent to the FIU by the LEAs and other domestic agencies:

| LEAs and other domestic authorities | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total | % |
|---|---|---|---|---|---|---|---|---|
| **Guernsey Police (all Departments)** | 19 | 4 | 3 | 2 | 12 | 11 | 51 | 46% |
| **Guernsey Border Agency (all Departments)** | 10 | 5 | 3 | 9 | 3 | 4 | 34 | 30% |
| **EFCB** | 5 | 5 | 1 | 3 | 3 | 0 | 17 | 15% |
| **Revenue Service** | 0 | 2 | 0 | 0 | 1 | 1 | 4 | 4% |
| **GFSC** | 0 | 0 | 0 | 0 | 1 | 1 | 2 | 2% |
| **Other** | 1 | 0 | 1 | 0 | 1 | 1 | 4 | 4% |
| **Total** | **35** | **16** | **8** | **14** | **21** | **18** | **112** | **100%** |

168. All LEAs and supervisors met on-site expressed their satisfaction with the information provided by the FIU upon request. Between 2018 and 2023, the BLE requested information from the FIU 85 times and has close collaboration ties with the FIU, mostly following arrests linked to drug importation and distribution. Similarly, the FIMU will be seeking financial intelligence from the FIU in a reactive scenario, where intelligence concerning terrorism or TF is already under evaluation in parallel. During the same period, there were 7 occurrences where the FIMU asked the FIU to help develop potential TF intelligence to allow for an assessment to be made. Meanwhile, even if the FIU's role is well understood and is considered as a main a source of financial intelligence, the EFCB and its predecessor have approached the FIU only 17 times during the whole reviewed period without a prior FIU referral. Such requests generally occur at the beginning of the investigation, and consist of requests to: i) liaise with foreign FIUs via Egmont (checks into transnational flows), ii) obtain more information from FIs on their behalf, or iii) help in better understanding the corporate structures and BO.

169. All such requests for financial intelligence will be part of an evidential or intelligence strategy to develop the ML or TF pictures, where in the cases of spontaneous disseminations or referrals, these are pro-active pre-investigations by the FIU (see below for more details on disseminations). Either way, all requests for FIU intelligence are formally requested and recorded on FIU's system THEMIS.

170. Data (Table 6.2) suggests that the EFCB is not frequently using the FIU for assistance (rather low figures fluctuating in recent years before dropping to zero in 2023).

171. Overall, the type of criminality suspected in formal requests doesn't fully correspond to the main risks identified in the 2020/2023 NRAs as they mostly (23%) involved drug trafficking cases, unspecified criminality (23%), ML (21%), Fraud, false accounting, or forgery (17%). Other threats, such as corruption remain absent from the intelligence flows.

172. The AT was advised that these figures don't reflect the real volume of exchanges between the FIU and the other competent authorities given that information is also being exchanged during frequent meetings and continuous engagement with the FIU via informal channels (e.g. via phone calls). A few good examples were provided to demonstrate this type of exchanges of

information during operational meetings with BLE, RS, EFCB, AGCC and GFSC, where information was sought from the FIU and the FIU's financial intelligence then used by these authorities in their respective queries and on-going investigations, but their extent could not be fully assessed in the absence of statistics.

173. The FIU produces and disseminates spontaneously a wide range of intelligence reports to several authorities, such as the EFCB[37], the BLE and the LOC (as key LEAs in Guernsey), the supervisors (GSFC and AGCC), the Revenue Service and other Guernsey agencies.

**Table 6.3: Intelligence reports disseminated to domestic agencies:**

| FIU's disseminations | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total |
|---|---|---|---|---|---|---|---|
| **Number of referrals for investigation of potential criminal proceedings** | 9 | 7 | 30 | 16 | 7 | 7 | 76 |
| **Number referrals for potential civil forfeiture** | 16 | 3 | 1 | 0 | 6 | 4 | 30 |
| **Number of intelligence reports (including referrals)** | 233 | 270 | 429 | 325 | 298 | 184 | 1739 |

174. Intelligence disseminated spontaneously by the FIU was primarily used (see also Table 6.10) by the Revenue Service and led to instigating cases of domestic and international tax evasion, improved tax compliance and significant financial settlements; and by the GFSC for supervision purposes based on reporting from the FIU of potential regulatory failings, unauthorized regulated activities, and other relevant information which resulted in remediation programs or enforcement actions. Intelligence shared with the BLE fed mainly into drug importation and distribution cases. Although the EFCB and its predecessor were one of the main recipients (21%) of these spontaneous disseminations, only 6% were referred by the FIU for possible criminal proceedings or civil forfeiture feeding into a limited number of ML cases adopted for investigations (20) and for potential civil forfeiture (10).

175. Guernsey has provided the AT with several good case studies in which financial intelligence was used.

**Case study 6.1: Use of financial intelligence in complex ML case with an international element**

In 2021, the FIU received a SAR from Bank A concerning two accounts held by Female A, who had recently moved to an island with her adult son, Male A, from Country A. The bank's suspicion arose due to the accounts receiving significantly more funds than expected through numerous third-party deposits. Despite Female A providing invoices suggesting the funds were from the sale of machinery by companies A, B, and C, the bank suspected money laundering. The FIU conducted analysis and credit checks, discovering multiple accounts held by Female A in Country A and Guernsey, and that Male A, who was involved in crypto-asset exchanges, had opened an account at Bank B. Additional accounts were found at Banks B and C, leading to further SARs.

The FIU circulated a notice on THEMIS seeking information from Reporting Entities (REs) about dealings with Female and Male A, resulting in three additional SARs from Bank D, Estate Agents A and B, and Law Firm A (related to the attempted property purchase in Guernsey). Banks A, B, and C requested Source of Funds information from Female A, who provided invoices and bills of sale for heavy machinery from Country A companies. Searches with the Companies

[37] As a dedicated LEA with competence to investigate ML and other economic and financial crime which took this role from the ECD in 2021

House and the Police database revealed that directors of these companies, Males B, C, and D, were involved in money laundering investigations in Country A involving crypto-currencies. Bank A's additional information indicated Female A received money from Males B, C, and D, who were VASPs.

Assistance was requested from the FIU of Country A, other authorities in Country A, and the Revenue Service regarding the income of Male and Female A. One purported owner of entities that had supplied funds to Female A was a resident of Country B, leading to an FIU request there. Country B's police found no links between the resident of country B and Female A or Males A, B, C, or D, indicating identity theft. Additional assistance from Country A's law enforcement identified Male A's involvement in crypto-asset exchanges with Male B, who acted as a VASP.

The FIU concluded Male A facilitated crypto exchanges and arranged for Female A to receive proceeds of crime through accounts opened in Guernsey using false documentation. This formed the basis for a referral to the Economic Crime Division (ECD, predecessor of EFCB) for potential criminal investigation, leading to Production Orders in April 2021 and a Restraint Order in May 2021, which prevented dissipation of funds of over £2.1 million in local bank accounts.

A search warrant was executed at Female A and Male A's home, resulting in their arrest on suspicion of money laundering. Evidence recovered included fraudulent documents and indications that Male A was trading cryptocurrency. Examination of electronic devices showed communications between Male A and an unregulated crypto trader in Country A, revealing that the payments made by the crypto trader into Female A's accounts represented proceeds of drug trafficking in exchange for crypto currency he received from Male A.

MLA requests were made to Countries A and B for evidence, with information shared between Guernsey and Country A authorities aiding linked investigations. Police in Country A identified and froze over £2.1 million in accounts linked to Female A. Female A was charged with multiple counts of money laundering and possession of criminal proceeds, while Male A faced charges of money laundering (converting or transferring the proceeds of criminal conduct), forgery, and failure to supply a passcode for his laptop.

The FIU disseminated IRs to several authorities in Country A and assisted with ongoing cases involving Males B, C and D and an OCG. A complex and wide-ranging money laundering investigation was conducted by the EFCB and the prosecuting team in cooperation with Country A's authorities, resulting in significant information sharing via MLA and assisted Guernsey authorities in developing their own case. The AT was informed that, by the end of the on-site, no evidence was offered by the prosecution and defendants were formally acquitted.

176. For the Bailiwick, the main TF risks lie within it being used as a transit country with the likelihood of this risk materialising itself being low. During the reviewed period the FIU received 121 TF STRs, out of which only 13 with potential TF links. The FIU informed the assessors that analysis had been carried out jointly with the FIMU and, in relevant cases, assistance was sought from the CT UK Network, which led to negating any TF suspicion. As a result, no referrals were submitted to the EFCB for investigation.

### *3.2.2. STRs received and requested by competent authorities*

177. The Guernsey FIU is the central national authority for the receipt of SARs. The total number of SARs submitted by REs and regulatory authorities[38] is provided in Table 6.4. All such reports were made using the online secure portal THEMIS where all REs are registered.

*STRs/SARs*

**Table 6.4: Number of SARs submitted by reporting entities and regulatory authorities**

| | 2018 | | 2019 | | 2020 | | 2021 | | 2022 | | | 2023 | | | Total | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | ML | TF | ML | TF | ML | TF | ML | TF | ML | TF | PF | ML | TF | PF | ML | TF | PF |
| **Retail Banks** | 160 | 0 | 140 | 0 | 194 | 0 | 169 | 0 | 131 | 0 | 0 | 226 | 0 | 0 | 1020 | 0 | 0 |
| **Private Banks** | 163 | 1 | 165 | 2 | 97 | 3 | 86 | 6 | 69 | 0 | 0 | 63 | 2 | 0 | 643 | 14 | 0 |
| **Investments & Securities** | 80 | 4 | 93 | 1 | 71 | 1 | 63 | 0 | 63 | 7 | 0 | 62 | 3 | 0 | 432 | 16 | 0 |
| **Non-Regulated FSB** | 18 | 2 | 18 | 0 | 25 | 0 | 10 | 0 | 12 | 0 | 0 | 15 | 0 | 0 | 98 | 2 | 0 |
| **Insurance** | 24 | 0 | 12 | 0 | 9 | 0 | 17 | 0 | 13 | 0 | 0 | 9 | 1 | 0 | 84 | 1 | 0 |
| **Currency Exchange** | 45 | 0 | 13 | 0 | 1 | 0 | 6 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 66 | 1 | 0 |
| **E-Gambling** | 1099 | 4 | 1511 | 6 | 2266 | 4 | 2818 | 14 | 2024 | 7 | 0 | 1297 | 6 | 0 | 11015 | 41 | 0 |
| **TCSPs** | 392 | 1 | 374 | 7 | 305 | 6 | 291 | 7 | 254 | 8 | 0 | 251 | 2 | 2 | 1867 | 31 | 2 |
| **Legal Professionals** | 49 | 1 | 28 | 2 | 38 | 0 | 40 | 0 | 25 | 1 | 0 | 38 | 2 | 1 | 218 | 6 | 1 |
| **Accountants** | 39 | 0 | 45 | 0 | 51 | 0 | 29 | 1 | 13 | 2 | 0 | 24 | 0 | 0 | 201 | 3 | 0 |
| **Estate Agents** | 4 | 0 | 5 | 0 | 3 | 0 | 8 | 0 | 2 | 0 | 0 | 3 | 0 | 0 | 25 | 0 | 0 |
| **High Value Dealers** | 3 | 0 | 3 | 0 | 1 | 0 | 3 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 11 | 0 | 0 |
| **Regulatory Authorities** | 15 | 0 | 13 | 0 | 9 | 1 | 23 | 1 | 19 | 2 | 0 | 16 | 1 | 0 | 95 | 5 | 0 |
| **Other** | 3 | 1 | 3 | 0 | 1 | 0 | 8 | 0 | 2 | 0 | 0 | 6 | 0 | 0 | 23 | 1 | 0 |
| **Total** | **2094** | **14** | **2423** | **18** | **3071** | **15** | **3571** | **29** | **2629** | **27** | **0** | **2010** | **18** | **3** | **15798** | **121** | **3** |
| **General Total** | **2108** | | **2441** | | **3086** | | **3600** | | **2656** | | | **2031** | | | **15922** | | |

178. SARs submitted to the FIU mainly come from the e-gambling sector, up to 69% of the total number during the period under review and only 31% from all the other sectors combined, headed by TCSPs (12%), Retail Banks (6%) and Private Banks (4%), which is partially in line with the Bailiwick's risk profile. The overall number of non-e-casino SARs remains relatively low, with figures stagnating or declining over the review period, which raises some concerns, especially for high-risk and material sectors (with the exception of TCSPs, whose numbers are encouraging compared to other similar jurisdictions (see IO.4)). As a result, there is limited provision of financial intelligence in relation to those sectors.

179. According to authorities, the number of SARs submitted by the e-gambling sector, is driven not by any inherent risk in the sector's business, but by a combination of the reporting culture in the UK[39] and by the sheer volume of customers. For example, one operator, based in the UK, is responsible for 90% of all e-gambling SARs and more than 62% of all SARs submitted to the FIU, typically triggered by screening processes identifying that a customer has been convicted for any crime. The quality of reported SARs by this sector is in general perceived as being rather low, with no significant intelligence value.

[38] Such GFSC, AGCC and the Registries.

[39] The AGCC Licensees operate outside Guernsey's jurisdiction. Subject to the licensee's own national obligations, such SARs will be dual reported, both to Guernsey and the third country.

180. The FIU has engaged with AGCC, and with the industry directly through meetings, by providing outreach and guidance but although a slight decline in reporting from the sector has been recorded, and better results are to be expected, the situation has not significantly evolved by the end of the review period.

181. Meanwhile, a streamlined procedure was adopted by the FIU for dealing with e-gambling SARs without expenditure of significant time and resource, in accordance with FIU's E-gambling Sector Strategy Paper. This approach is adopted unless there are particular factors identified at the stage of initial analysis by an Intelligence Support Officer (ISO) which merit further consideration, such as a potential terrorism or TF risk, proliferation or PF risk, potential involvement of OCGs, or a link to a high-risk jurisdiction. A good example demonstrating a case involving an OCG where further analysis by the FIU was carried out was provided, leading to a referral by the FIU to the EFCB for consideration of civil forfeiture proceedings (see Case study 6.2). However, some concerns still remain regarding this reporting situation by the e-gambling sector as it is not commensurate to the main risks in the Bailiwick and might still diverts valuable resources that could be used more efficiently.

**Case study 6.2: FIU analysis and dissemination of e-gambling SARs involving OCG**

In 2022 the Guernsey FIU received 230 SARs from a locally registered e-gambling company (EG A). EG A had developed a suspicion that several individual customer accounts had been opened and were being fraudulently operated by an Organised Crime Group (OCG). The basis of the suspicion was that identity documents and other documents appeared to be forged, that the forgeries were of good quality, that the relevant customer accounts had been accessed using similar IP addresses, and that the accounts had been identified as displaying similar staking activity on sports betting markets. The suspicion had been dual-reported to Country A's FIU.

Initial analysis suggested that EG A suspicions were well-grounded. The FIU linked all of the SARs and created an Operational Folder within THEMIS. A request for additional information was sent to EG A to obtain copies of relevant documents, including potentially fake passports and bank statements, and details of the IP addresses. Meanwhile EG A confirmed that no funds would be paid away and that, if it received a request for payment, it would submit a consent request to the FIU before taking any action. A sample of 14 copies of relevant passports, obtained from EG A, was sent by the FIU to a Country A's specialized fraud Unit to determine if they were forgeries, which was confirmed.

The FIU sent an additional request for information to a bank in Country A[40] (Bank A) to verify if of copy bank account documents, obtained from the EG A. Bank A confirmed that the documents were forgeries based on an invalid account number. The FIU determined that the common pattern illustrated by the contents of the linked SARs and by the further analysis of the documents confirmed the suspicion of the involvement of an OCG.

In June and July 2022, EG A submitted a further 45 SARs relating to further customer accounts believed to be linked to the same OCG. The FIU is aware, from previous interaction with EG A, of the whereabouts of its bank accounts within the Bailiwick in which the relevant funds were held. The FIU ascertained from EG A that 202 of the 275 accounts related to the SARs had funds remaining on the account, totalling about £111,000.

The FIU therefore referred the matter to the EFCB, in December 2023, for consideration of civil forfeiture proceedings in relation to those funds.

182. SARs from other sectors, such as TCSPs and private banks, given the nature of their services (asset holding) are mostly triggered by screening and adverse media findings (e.g. BOs

[40] Pursuant to data protection legislation enabling information to be released for the purposes of law enforcement.

in the structure under fraud or tax investigation) while SARs are more triggered based on suspicious flows/activity for retail banks (more domestically oriented). This notwithstanding, the bulk of SARs submitted across all sectors have been mostly of a reactive nature, as a result of adverse media information, retrospective reviews or requests from tax authorities.

183. In the absence of indications or solid suspicions on any predicate offence, a suspicion of ML was recorded for 69% of SARs filed to the FIU (a figure that it is starting to see a decreasing tendency towards the end of the review period, after a change in the reporting form in September 2023, requiring to identify the predicate offence). The remaining SARs mostly contain suspicions or indications of Fraud, False Accounting or Forgery (14%), Tax Evasion (9%), Illicit Trafficking in Narcotics and Psychotropic Substances (4%) and Bribery and Corruption (2%). Overall, SARs filed with the FIU appear to be partially in line with the risk profile of the Bailiwick, as a result of the effect caused by the eGambling SARs described above and the lower incidence of corruption-related SARs.

184. There is a possibility that some ML SARs may not have been reported to the FIU, especially from the TCSP sector, based on case studies provided and discussions with authorities, leading in some cases to criminal referrals to the ECD and/or to communications with the GFSC for failure to report. Some delays in reporting have also been recorded in case studies.

185. FIU and supervisors have taken commendable steps in recent years to enhance the efficiency of STR reporting by providing outreach and guidance to the private sector. An impressive outreach program has been put in place by the FIU (15 sessions annually on average) and several SAR quality guidance[41] were developed and updated, typologies were shared via THEMIS and through a recently formed PPP (March 2023), the GIMLIT[42], with 7 sessions held in 2023. These outreach and awareness-raising activities covered a wide range of relevant AML/CFT/CFP topics for the benefit of all categories of REs (especially HR and e-casino sectors) and their supervisors, charities, registries, EFCB, etc. with a particular focus on SARs quality. The FIU has also produced a number of e-learning modules on key topics including SAR quality, the consent regime, proliferation financing and more recently terrorist financing. The AT was advised that over 5823 users had accessed the e-learning modules as of April 2024. Moreover, since May 2023, the FIU launched small group sessions with industry sectors on SAR quality and the Consent Regime, starting with Private Banks and expanded to other sectors, including TCSPs (with 12 sessions held so far and plans for further sessions).

186. In addition, the FIU has recently introduced a systematic feedback mechanism on all filed non-e-gambling SARs, at the submission stage, which is an initial assessment that rates their quality according to whether 6 key criteria are met and such ratings are automatically sent to the submitting RE via THEMIS. For e-gambling SARs regular feedback is provided manually regarding themes arising from the quality of its SAR submissions, to avoid overloading the resources. Such efforts are commendable and are moving towards improving the quality of SARs, however given their recent implementation, the results are to be expected. For example, the FIU stated that it's too early to identify entities who are underperforming based on the new feedback project but first results are encouraging (majority are above 80-90% ranks for non-e-gambling). The AT is of the view that such efforts in relation to feedback should be sustained, results monitored and

[41] "Why Care About SARs?"; "Guidance on the Consent Regime"; "Guidance on Requests for Additional Information"; "Guidance on Attempted Transactions"; "Guidance to improve suspicious activity reports (SARs) (2019 and revised in 2021), etc. available online and shared via THEMIS to all REs.

[42] It the four main retail banks and was expanded to private banking sector following the introduction of the Criminal Justice (Terrorism and Disclosure) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023

supplemented by further feedback and follow-up on the quality and relevance of the types of suspicions reported at later stages (e.g. in-depth analysis/dissemination phases).

**Table 6.5: Number of STRs/SARs triggering dissemination to the LEAs and other domestic authorities**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total |
|---|---|---|---|---|---|---|---|
| **Number of STRs/SARs received by the FIU** | 2108 | 2441 | 3086 | 3600 | 2656 | 2031 | 15922 |
| **Number of STRs/SARs in intelligence reports disseminated to domestic agencies** | 210 | 252 | 416 | 306 | 279 | 168 | 1631 |

187. Between 2018 and 2023, the FIU has received 15,922 SARs from REs (and other competent authorities) and it has disseminated 1613 domestically. The number of SARs disseminated by the FIU compared to the overall number of SARs received appears to be rather limited (10%) but can be explained by the low intelligence value of most e-gambling SARs (which account for 69% of all SARs).

188. The FIU also disseminates, to a lesser extent, information from other reports such as requests for assistance and spontaneous disclosures received.

*Cross-border declarations*

189. The Bailiwick of Guernsey is not a cash-oriented economy, due to its very high level of financial inclusion. Thus, the use of cash is limited, and the shadow economy is negligible[43]. Guernsey does not require threshold reporting of cash transactions, wire transfer and or any additional types of activity apart from the cross-border cash declarations. For the later, cash declaration forms (CDFs) have been introduced outlining the information that must be provided to the authorities. The FIU receives all CDF: CDFs can be filed electronically; in which case a copy is automatically sent to the FIU and the Guernsey Border Agency (GBA). If completed in hard copy, the GBA forwards the CDF to the FIU.

**Table 6.6: Declarations on cash and BNIs**

| Year | Number of declarations or disclosures | | | | Total |
|---|---|---|---|---|---|
| | Incoming | | Outgoing | | |
| | Currency | BNI | Currency | BNI | |
| **2023** | 4 | 0 | 7 | 0 | **11** |
| **2022** | 2 | 0 | 0 | 0 | **2** |
| **2021** | 2 | 0 | 4 | 0 | **6** |
| **2020** | 2 | 0 | 2 | 0 | **4** |
| **2019** | 1 | 0 | 12 | 0 | **13** |
| **2018** | 1 | 0 | 12 | 0 | **13** |

190. Given the risk and context of Guernsey, low numbers of cash declarations were recorded during the period under review, and none involved BNIs. Even if these figures are low, controls carried out routinely by the GBA to identify illegal cross-border cash movements (approximately 13,000 full stop and search procedures on travelling passengers per year) and profiling of targets of such controls is mainly based on NRA findings, prior checks, and past experience. In one case,

[43] NRAs findings

during the assessment period, cash controls have led to ML charges, in which a confiscation order of £154,000 was made (see IO8) and in two other cases, prosecutions for failing to make a proper declaration under the Cash Controls occurred.

191. The FIU integrates CDFs into THEMIS for analysis to identify links to other SARs or reports and to determine if further investigation is needed. During the assessment period, one CDF led to a suspicion of money laundering, prompting further analysis. The FIU then disseminated the intelligence to the foreign FIU where the offense was committed.

192. Data is extracted from the CDF and used to populate an Excel spreadsheet, which is used as the basis of statistical information relating to cash movements to inform strategic analysis.

### *3.2.3. Operational needs supported by FIU analysis and dissemination*

*Resources and IT tools*

193. The Bailiwick has made significant improvements since the last evaluation regarding the FIU's operational independence and resources.

194. The Bailiwick of Guernsey Financial Intelligence Unit (FIU) is an independent and autonomous law enforcement type FIU established under the provisions of the EFCB and FIU Law, enacted in 2022. Formerly, the FIU operated as the Financial Intelligence Service (FIS), within the Guernsey Border Agency (GBA) a specialist division within the Guernsey Border Agency with some limitations in "operational functioning" identified in the previous evaluation (See Rec. 29).

195. The FIU is funded by the States of Guernsey, with its budget annually agreed upon between the Head of the FIU and the Director of the EFCB. The budget is divided into a pay budget for salaries and a non-pay budget for travel, accommodation, IT, training, etc. The budget is deemed adequate for the FIU's core functions, with flexibility for additional funding should the FIU request it. An extra budget was granted for an IT project outside the annual allocation to the FIU. Moreover, the FIU has recently moved to new secure, controlled and restricted premises.

196. During the period under review, the FIU doubled its human resources (from 12 to 24), to adequately meet its operational needs. The FIU currently has an operational analysis team led by the Operations Manager, including 3 Intelligence Supervisors, each overseeing 8 Financial Intelligence Officers (FIOs) which conduct detailed analysis and produce Intelligence Reports and 4 Intelligence Support Officers (ISOs) which conduct initial analysis and prioritization. Additionally, a Revenue Service compliance officer works part-time with the team (with support of another Revenue Service compliance officer acting in a "deputy" role), reporting directly to the Head of FIU. This is supplemented by a dedicated strategic analysis team composed by 2 Strategic Analysts, an Outcome Researcher and software administrator led by a Senior Strategic Analyst. Supervisors authorize and allocate SARs and other reports and manage consent requests.

197. Between 2018 and 2023, all FIU staff undergo extensive AML/CFT/CFP training which meets their current needs, including courses from the UK's National Crime Agency, the Egmont Group e-learning platform (ECOFEL), ICA and CPD certifications in relevant areas, and participated in several webinars and sessions organized by internal and external training providers, equipping them with the skills and knowledge needed to perform operational, tactical and strategic analysis and other tasks handled at the FIU.

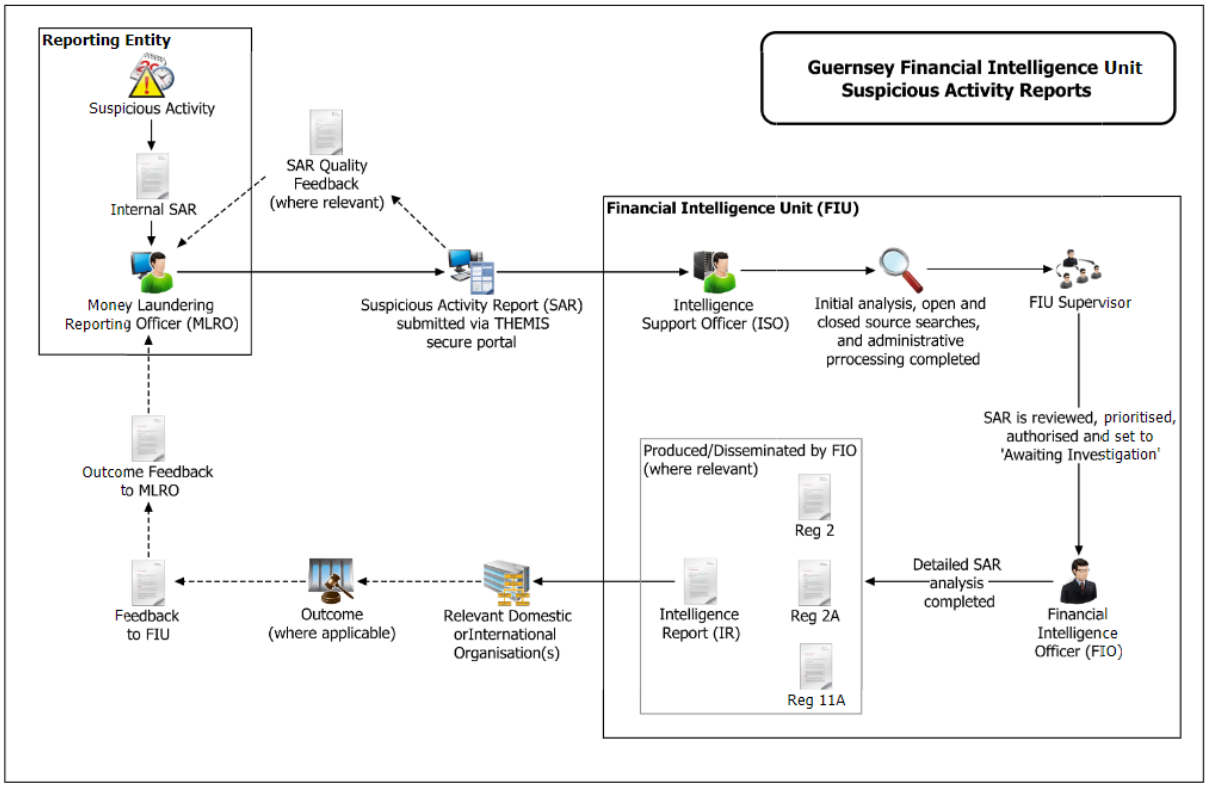
198. The FIU makes use of a comprehensive set of IT tools and software, at its core THEMIS, a central automated platform used, since the last evaluation with regular enhancements, for receiving and managing SARs and other related information, enabling data collation and cross-referencing for in-depth analysis. THEMIS is also used to distribute or send information to REs

including (but not limited to) guidance documents, new legislation, e-learning products, information on outreach events and new sanctions measures (see IO10 and 11). To supplement this, the FIU uses other tools including *Microsoft Power BI*, the *Altia Financial Investigation Toolkit*, IBM i2 Analyst's Notebook and *Easy Generator*, an e-learning platform to support training which was used by the FIU to provide e-learning on SAR quality, the Consent Regime, enhancements to THEMIS, a tailored course on PF and more recently a course on TF.

*Operational analysis*

199. The FIU employs an RBA to efficiently allocate resources and ensure appropriate analysis, with detailed procedures and guidelines provided in the Operational Analysis Handbook to maintain consistency and thoroughness in operations. For a wider overview of the FIU's various functions, including the policies underlying the procedures set out in this Handbook, staff are referred to the FIU Manual. The procedure for operational analysis is summarized in the Flow Chart below.

**Figure 6.2 Flow chart**




200. Incoming SARs undergo initial analysis and prioritization by ISOs using risk-based parameters set by THEMIS system based on 12 risk indicators[44] (9 system set and 3 manual), including high-risk sectors, countries, criminality, and involvement of PEPs or terrorism/proliferation links.

201. The initial analysis, usually completed within a day in practice, includes checks for any missing/incorrect information to be sought from MLROs as soon as identified, searches on available databases (Worldcheck, police database, BO register, open source etc.) and within THEMIS to identify any existing links or intelligence picture. The ISO may determine at the initial

[44] Some of the nine system-set indicators are derived from the assessment of risk in the NRA. Others relate to the potential seriousness of consequences such Terrorism, Proliferation and their financing.

analysis stage if a SAR doesn't require further analysis taking into consideration several factors (e.g. absence ML/TF/PF links) which concerned in practice 59% of SARs received between 2021 and 2023. Closed SARs primarily involved e-gambling SARs without a Consent request, dual reported SARs to another FIU/Jurisdiction and SARs that do not contain any information, on the initial analysis, that would further FIU investigation development, which seems to be reasonable.

202. Supervisors review and authorize the prioritization, allocating cases to FIOs for in-depth analysis. Based on the priority score, FIOs review information in assigned reports and any attached structure charts or timelines, creating these if absent, and use tools like IBM i2 Analyst's Notebook for visualizing complex data. Financial records are analyzed using the Altia Financial Investigation Toolkit. If additional information or clarifications need to be sought, the FIO speaks to MLROs or sends them a formal request; and/or liaise with other domestic authorities/foreign FIUs if needed. All requests for additional information must be authorized by a Supervisor, the Operations Manager or the Head of the FIU after determining that such requests are considered to be justified, rational, and proportionate. Information and documents received outside THEMIS (mostly in PDF format), are entered into the database using IT tools to convert them into structured data that is loaded automatically into THEMIS. After analysing all received and available information, the FIO then concludes whether to archive the SAR until further information comes to the attention of the FIU, request the Supervisor's review on the conclusion, due to the complexity of the matter or its risk rating, which then decides whether to escalate the matter to the Operations Manager. Supervisors or the Operations Manager can overrule the conclusion and direct further actions. In practice, 17% of SARs received between 2021 and 2023, were closed by a Supervisor for absence of intelligence harvest opportunities (i.e. disseminations) or further action required by the FIU to develop the SAR.

203. Once an Intelligence Report is completed by an FIO, it is submitted via THEMIS to a Supervisor for authorisation prior to dissemination, which is done in accordance with the FIU's Dissemination of Information Policy. If there are reasons to believe that the analysis would be useful for foreign FIUs or other international partners, spontaneous information is sent, which has been done actively, in practice, over the assessment period giving the risk and context of Guernsey (See IO2).

204. Other incoming reports, such requests for assistance or spontaneous disseminations from domestic or international partners, are processed in a similar fashion. But unlike SARs, they are manually risk assessed.

205. For TF and PF related SARs, the procedures are respectively set out and explained in detail in the Terrorism/TF Standard Operating Procedure and the Proliferation/PF Standard Operating Procedure, and such cases shall be handled as the highest priority. In practice, TF SARs received were all processed urgently and assessed jointly with the FIMU, in accordance with the relevant mentioned procedure, all resulting in negation of any TF links at the pre-investigation stage after consultation with UK security intelligence agencies. The number of PF SARs is even lower and in line with the country's profile.

206. FIU's supervisors and analysts are expected to monitor the progress of their work and ensure that high-priority cases are properly addressed and the need for timely action is emphasized in the Handbook. However, there is no deadlines or time limits for each step of the analysis and dissemination procedures, except for specific situations that require immediate attention or action. Such circumstances include: TF/PF suspicions and potential domestic designations; the Consent Procedure which needs to be dealt with "as soon as possible" and "in any event within the target time of 14 days", given the potential legal and operational implications of delays; Beneficial ownership requests (BORs) made under the terms of the Exchange of Notes

with the UK must be responded to within 24 hours, or within one hour if urgent; situations where intelligence held by the FIU is likely to support an application of restrain, charge or freeze assets should be considered as a matter of urgency to avoid dissipation of assets and immediately brough to the attention of the Operation Manager.

207. The average length of the in-depth analysis phase in practice could not be specified, however, some significant delays occurred (sometimes in years), especially in complex ML cases or when there's reliance on information from international partners to advance in case development. Based on on-site discussions, case studies and statistics provided on status of SARs where 37 SARs from 2021, 47 from 2022 and 158 from 2023 are still under analysis. This raises some concerns about the timeliness of FIU's disseminations. The increase in the number of FIOs and their respective training will ultimately play a role in minimising such delays in the future, however results are yet to be expected and other efforts should be in place to ensure the timeliness of FIU's in-depth analysis and disseminations phases (e.g. inclusion of timeliness aspects for these phases in the operational procedures, monitoring, etc.).

208. To enrich the outcome of operational analysis, the FIU seeks additional information from REs that submitted a SAR (Regulation 2 letters), from any identified third party identified within a SAR (Regulation 2A letters) and since 2019, from any relevant parties without a filed SAR (Regulation 2 11A letters). Table 6.8 below shows statistics on such requests and demonstrate that, despite all the data directly available, the FIU still request additional information from REs to enrich its operational analysis. However, the volume of these requests remains somewhat limited given the number reports processed by the FIU and Guernsey's risk profile. Authorities advised that REs sometimes provide additional information on a voluntary basis without a need of a formal request.

**Table 6.7: Number of requests sent to REs by the FIU (in the course of operational analysis)**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total |
|---|---|---|---|---|---|---|---|
| **Regulation 2 letters** | 9 | 19 | 66 | 49 | 63 | 57 | 263 |
| **Regulation 2A letters** | 14 | 13 | 17 | 14 | 20 | 22 | 100 |
| **Regulation 2 11A letters** | - | 12 | 34 | 30 | 24 | 33 | 133 |
| **Total** | **23** | **44** | **117** | **93** | **107** | **112** | **496** |

209. The FIU also regularly sends requests for information to its foreign counterparts, mainly the UK and the US to add value to its operational analysis (See IO2).

210. Based on examples provided and competent authorities' positive feedback, FIU has demonstrated its capacity to produce high-quality analytical products and intelligence reports.

**Case study 6.3**

In March 2019, the FIU received a SAR from TCSP A, which acted as the trustee of Trust A and administered its underlying company, Company A. The settlor and BO of Trust A's assets was Person A, a resident of Country A. The SAR indicated suspicion of tax evasion after an attempt to pay TCSP A's professional fees from Company B, also owned by Person A, without providing source of funds information.

In November 2019, TCSP A filed another SAR, suspecting the source of funds used to settle Trust A in 2016. TCSP A's high-risk client review revealed inadequate explanations for Person A's wealth, estimated at over USD 200 million. Consequently, TCSP A intended to end its relationship with Person A and resign as trustee of Trust A.

Company A was a limited partner in Limited Partnership (LP A), managed by Guernsey TCSP B. LP A appeared to invest in an infrastructure project in Eastern Europe. In 2016, Person A made a payment of EUR 1.3 million to LP A on behalf of Company A as a limited partner.

The FIU analysed the situation, checking the Guernsey Registry for entities connected to LP A. In June 2020, the FIU requested information from TCSP B about the structure it administered, including CDD documents, details of assets, and BO. TCSP B complied and submitted a defensive SAR. Open-source searches by the FIU revealed allegations of corruption involving PEPs in the infrastructure project. FIU created a structure chart to show the links between companies in Guernsey and Countries B. C, D, E and F.

In August 2020, the FIU received a SAR from TCSP C, which had dealings with individuals and entities involved in the infrastructure project and provided additional relevant information based on adverse media findings (corruption allegations). The FIU compiled this information into an Operational Folder (OPF) to develop intelligence on related individuals, entities, and structures, and disseminated IRs to the FIUs in Countries C and D, the GFSC, and the Revenue Service. The FIU continued to develop intelligence in relation to the OPF, which currently has over 100 linked subjects, and continues to liaise with counterparts in countries where further links have been identified (countries B, D and F).

The FIU found that TCSP A had conducted inadequate CDD on Person A, allowing it to engage in transactions that may constitute ML. The timing and limited nature of the SARs suggested possible failure to disclose suspicions. In April 2021, the FIU requested additional details from TCSP A regarding bank accounts of Trust A, Company A and Person A, the EUR 1.3 million payment, and source of funds documentation of the investment through LP A.

After analysing all the information, the FIU referred the case to the EFCB in 2021 for potential investigation into TCSP A for possible ML and failure to disclose suspicions. The case is presented by the EFCB's Case Evaluation Board. Additionally, an IR sent to the GFSC in 2020 initiated a regulatory investigation into TCSP A, resulting in ongoing enforcement action.

*Strategic analysis*

211. Besides operational analysis, the FIU's strategic dedicated analysts have developed several strategic analysis and thematic reports since 2018, mostly in line with the findings of Bailiwick's NRAs findings and emerging trends, demonstrating good quality products (based on examples provided) and a high level of adaptability and prompt reaction to emerging risks. This includes:

- Several reports and updates on the exposure of the Bailiwick of Guernsey to bribery & corruption & ML, TF & PF from corruption with some reports focusing on specific geographic areas;
- Reports on the exposure of the Bailiwick of Guernsey to ML, TF & PF from specific sectors (e-gaming & e-casinos, NPOs/charities, TCSPs and Private Banking Sector risk analysis;
- Analysis of legal persons/legal arrangements within SARs and review of beneficial ownership requests;
- Exposure to proliferation & proliferation financing as seen by the FIU.
- Exposure to TF as seen by the FIU against TF and Emerging Risk and Threat assessments disseminated by UK secret intelligence agencies.

212. The FIU's strategic analysis is also focused on specific characteristics of the SARs received (e.g. increase in certain geographic areas involved), new emerging risks such as the exposure of the Bailiwick of Guernsey to emerging technology including virtual assets for ML, TF and PF and

potential risks and impact of the data released in different leaks (Panama Papers, Pandora papers, Suisse Secrets Leak and FinCEN ICIJ data breach).

213. The FIU advised that its strategic analysis team undertakes its work in accordance with the principles laid down in the ECOFEL's strategic analysis course, and in accordance with training provided by experienced analysts in the UK. When the FIU identifies an inherent risk or threat the strategic analysis team will produce a report or a product which includes a methodology, findings and recommendations, which inform the AML/CFT/CPF authorities. However, the FIU has not developed any specific internal procedures or guidelines for strategic analysis.

214. The FIU's strategic and thematic products have been variously disseminated to domestic and international partners to support their operational needs and to inform the NRAs. Moreover, an Annual Report and Quarterly Statistical reviews are published on the FIU website and typologies are shared with REs via the secure encrypted system THEMIS.

215. Positive feedback from competent authorities met during onsite indicate the usefulness of such products to support their operational needs.

*Dissemination*

216. Between 2018 and 2023, the FIU disseminated 1739 reports (see table 6.10) to relevant authorities (RS, GFSC, EFCB, BLE, P&R Committee, LOC, AGCC, etc.), predominately from SAR information (94%). During the 6 past years, there has been an increase in such disseminations over the first period followed by a decrease in the second half, partly explained by the direct access of the embedded officer of the RS at the FIU and GFSC direct access to non e-gambling SARs.

**Table 6.8: Intelligence reports disseminated to domestic agencies**

| LEAs and other domestic authorities | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total | % |
|---|---|---|---|---|---|---|---|---|
| **Revenue Service** | 31 | 45 | 157 | 150 | 113 | 82 | **578** | **33%** |
| **GFSC** | 88 | 117 | 162 | 80 | 69 | 11 | **527** | **30%** |
| **EFCB**[45] | 69 | 79 | 83 | 64 | 35 | 30 | **360** | **21%** |
| **Guernsey Police** | 25 | 6 | 7 | 18 | 31 | 32 | **119** | **7%** |
| **Policy & Resources Committee** | 2 | 5 | 7 | 0 | 32 | 21 | **67** | **4%** |
| **Guernsey Border Agency** | 8 | 5 | 4 | 5 | 14 | 5 | **41** | **2%** |
| **Guernsey Social Security Department** | 6 | 6 | 7 | 0 | 4 | 1 | **24** | **1%** |
| **Law Officers - St James' Chambers** | 1 | 1 | 0 | 6 | 0 | 1 | **9** | **<1%** |
| **AGCC** | 0 | 2 | 1 | 0 | 0 | 0 | **3** | **<1%** |
| **Guernsey Registry** | 1 | 0 | 1 | 0 | 0 | 0 | **2** | **<1%** |
| **Other Guernsey agencies** | 2 | 4 | 0 | 2 | 0 | 1 | **9** | **<1%** |
| **Total** | **233** | **270** | **429** | **325** | **298** | **184** | **1739** | **100%** |

[45] These figures include referrals to the EFCB.

217. Table 6.10 shows that 33% of disseminations were sent to the Revenue Service in tax related matters and 30% to the GFSC in relation to intelligence potentially of value in the exercise of its supervisory function.

218. As a dedicated LEA with competence to investigate ML and other economic and financial crime, the EFCB received 21% of the FIU's disseminations but only 6% were referred by the FIU for possible criminal proceedings or civil forfeiture, which is limited (with decreasing figures over the last 3 years) and inconsistent with the risk and context of the country. Fraud was the most common underlying criminality on criminal referrals followed by bribery and corruption and then tax evasion, and in civil referrals it was bribery and corruption, and fraud, followed by tax evasion. This mostly aligns with the higher risks identified within Guernsey's NRAs.

**Table 6.9: Criminal Cases Referred to EFCB and Outcomes**

| Referrals and adoptions | | | | | | Outcomes of adopted cases | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **Year** | **Disseminated SARs** | **Referred by FIU** | **Referred for ML** | **Adopted** | **Under consideration** | **Conviction** | **Prosecution** | **Ongoing investigation** | **NFA by EFCB** | **NFA by LOC** |
| 2018 | 22 | 9 | 3 | 7 | 0 | 0 | 0 | 0 | 4 | 3 |
| 2019 | 28 | 7 | 4 | 4 | 0 | 1 | 0 | 1 | 2 | 0 |
| 2020 | 45 | 30 | 25 | 5 | 0 | 1 | 0 | 0 | 4 | 0 |
| 2021 | 32 | 16 | 11 | 3 | 0 | 0 | 1 | 1 | 1 | 0 |
| 2022 | 19 | 7 | 7 | 1 | 1 | 0 | 0 | 1 | 0 | 0 |
| 2023 | 47 | 7 | 7 | 0 | 4 | 0 | 0 | 0 | 0 | 0 |
| **Total** | **193** | **76**[46] | **57** | **20** | **5** | **2** | **1** | **3** | **11** | **3** |

**Table 6.10: Civil Cases Referred to EFCB and Outcomes**

| Referrals and adoptions | | | | Outcomes of adopted cases | | | | |
|---|---|---|---|---|---|---|---|---|
| **Year** | **Referred by the FIU** | **Adopted** | **Under consideration** | **Forfeiture Order** | **Forfeiture Application** | **Ongoing investigation** | **NFA by EFCB** | **NFA by LOC** |
| 2018 | 16 | 5 | 0 | 2 | 1 | 0 | 2 | 0 |
| 2019 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2020 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2021 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2022 | 6 | 4 | 0 | 0 | 0 | 3 | 1 | 0 |
| 2023 | 4 | 1 | 2 | 0 | 0 | 1 | 0 | 0 |
| **Total** | **30** | **10** | **2** | **2** | **1** | **4** | **3** | **0** |

219. Tables above suggest that FIU's referrals to EFCB led to a limited number of ML cases adopted for investigations (20) and for potential civil forfeiture (10) and even lower number of prosecutions for ML (1).

[46] 26 referrals (3 in 2019, 17 in 2020 and 6 in 2021) related to one RE and were adopted as one case by EFCB.

220. Moreover, 55% of criminal case referrals adopted by the EFCB related to suspicion of a predicate offence committed in Guernsey, which is not in line with the main risks identified in the NRAs.

221. On a positive note, all competent authorities acknowledged the quality of FIU's disseminations and referrals which was demonstrated by sanitized examples provided to AT. Disseminations include a wide range of analysed information on accounts, assets, analysis of flows, and corporate structures, FIU's hypothesis and conclusions, etc. And they are usually supplemented by supporting documents.

*Postponement of transactions*

222. Reporting entities seek consent from the FIU in respect of an act that may constitute an ML and/or TF offence and the FIU maintains responsibility for addressing these requests as a result of a SAR being submitted. The Bailiwick consent regime has regularly been used by the FIU to prevent the dissipation of funds. The refusal of consent thus operates as an informal freeze on the relevant funds which, after 12 months, and in the case of funds at a bank, can be the subject of a summary forfeiture procedure.

**Table 6.11: Consent response types**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total |
|---|---|---|---|---|---|---|---|
| **Consent granted** | 1157 | 1178 | 1071 | 992 | 1297 | 1606 | 7301 |
| **Not applicable and/or insufficient information** | 281 | 339 | 322 | 263 | 309 | 232 | 1746 |
| **Consent refused** | 36 | 31 | 29 | 50 | 34 | 102 | 282 |
| **Total** | **1474** | **1548** | **1422** | **1305** | **1640** | **1940** | **9329** |

223. Most refused consent concerned TCSPs (39%) and private banks (30%) and most consents granted were related to the e-gambling sector which seems to be in line with the risks.

224. In practice, these measures resulted in the repatriation of large sums of money (in excess of USD120 million according to examples provided) to international partners (see case study below) but led very limited outcomes registered domestically (less than 10 restrain orders and one confiscation), during the assessment period.

225. Discussions with authorities met on-site advised the AT that there was no time limit for such "informal freezing" measures and revealed that situations of refused consent by the FIU leading to account holders suing the bank or TCSP holding the assets in approximately 5 instances and are increasing.

**Case study 6.4:**

In 2017, the FIU received a SAR from a private Bank A. Bank A held funds in three accounts on behalf of Guernsey TCSP A, acting as trustee of a Guernsey trust, and its underlying company, managed by TCSP A. Person A was the sole beneficiary of the trust. Bank A discovered that Person A had been indicted in Country A for conspiracy to pay and receive healthcare bribes and kickbacks. Bank A suspected that the trust funds might be linked to this criminal activity.

The FIU requested documents from TCSP A to clarify the relationship between Person A and the trust, including account details, current assets, values of the trust and company, details on any other linked companies and trusts, and file notes, notes from meetings and conversations, emails and manager's notes. FIU analysis confirmed Person A as the sole beneficiary of the

trust, whose settlor was a foreign company owned by person A, with funds purportedly sourced from his earnings as a plastic surgeon and intended as a retirement fund. The FIU refused consent to release any funds.

In February 2017, the FIU shared its findings with Country A's FIU, leading to extensive cooperation and information exchange. In December 2017, the FIU disseminated an IR to Country A's tax authority. Person A was later charged with tax evasion in August 2018. The FIU also referred the case to Guernsey's civil asset recovery team, ICART, but civil forfeiture was overtaken by the eventual repatriation of the funds to Country A.

In December 2017, the LOC received an MLA request from Country A's Department of Justice for evidence related to Person A, the trust structure, and bank accounts. The LOC obtained production orders for Bank A and TCSP A and provided the requested material, which helped Country A prosecutors link the funds at Bank A to Person A's bribery scheme.

In August 2018, Person A pleaded guilty in Country A to charges including conspiracy to pay and receive healthcare bribes, offering or receiving illegal remuneration, and violating Country A Travel Act. He had received approximately USD 4.5 million in kickbacks. The result were custodial sentences ranging from 1 to 12 years for co-defendants. As part of a plea bargain, Person A agreed to transfer the entirety of the funds held in Guernsey (USD 2.7 million) to Country A authorities for victim compensation. A second MLA request from Country A's Department of Justice facilitated the transfer, and the FIU consented to Bank A making the transfer.

### *3.2.4. Cooperation and exchange of information/financial intelligence*

226. Guernsey has well established mechanisms of cooperation between all relevant competent authorities for many years, which were extensively used during the period under review, although with limited impact on increasing the effectiveness of some AML/CFT key areas, such as investigation and prosecution of ML/TF and associated predicate offences.

227. There are no legislative or other obstacles to cooperation and information-sharing between the competent authorities (FIU, LEAs, Revenue Service and regulatory authorities). Information upon request is generally exchanged in a reasonable time. The assessment team is not aware of any cases of refusal or significant delays in responses of requests of information among competent authorities.

228. Although the volume of formal requests sent from the FIU to domestic authorities during the assessment period was not specified, cooperation at the operational level is proactive and frequent, involving regular and ad hoc meetings, real-time information sharing, and coordinated actions among various agencies. This cooperation includes, in addition to FIU's disseminations, bi-weekly meetings between the FIU's Operations Manager and the EFCB's deputy Head of Operations and monthly meetings between the Head of the FIU and the EFCB's Head of Operations, primarily focused on discussing ongoing investigations, sharing updates, and coordinating efforts. The FIU also attends weekly coordination meetings with the BLE to discuss ongoing cases and share intelligence. This collaboration supports joint investigations related mainly to drug trafficking and importation.

229. The embedded Revenue Service officers at the FIU reviews SARs for indications of tax evasion and creates referrals for further investigation, demonstrating the practical benefits of close inter-agency cooperation.

230. As for supervisors, the FIU holds quarterly operational and effectiveness review meetings with the GFSC to discuss enforcement cases and review the effectiveness of joint efforts and biannual formal meetings with the AGCC to discuss trends, risks, and vulnerabilities in the e-

gambling sector. Informal communication via telephone and email also plays a significant role in maintaining continuous and responsive cooperation with these supervisory bodies. These interactions aim to enhance the sharing of intelligence, streamline SAR processing, and ensure coordinated regulatory enforcement actions.

231. Moreover, the FIU collaborates closely and exchanges intelligence with the Guernsey and Alderney registries in several areas such as the BO Register and NPOs. They also maintain regular formal and informal communications for timely updates and feedback. Such cooperation and information sharing led to disseminations to foreign FIUs and disqualification of a company director.

232. All competent authorities in Guernsey treat financial intelligence and disseminations with a high degree of security. The FIU employs several secure channels and platforms to facilitate cooperation and information sharing with other competent authorities. These include the States of Guernsey IT Network for storing and exchanging financial information, secure encrypted email systems, and the SAR reporting system THEMIS. The FIU operates from secure premises with strict access controls and uses a highly secure IT infrastructure. Similarly, the GFSC, AGCC, Revenue Service, the Registries have robust security measures in place, including restricted access, multifactor authentication, and secure storage systems.

233. The EFCB provides feedback to the FIU on progress and outcomes of all cases emanating from its disseminations. Each referral made to the EFCB contains a specific section to fill for feedback at the EFCB and LOC levels, and any further case outcomes. This feedback helps the FIU assess the effectiveness of its disseminations and identify areas for improvement. As a result, the FIU updated the referral template in 2023 to align more closely with the EFCB's operational needs. The embedded Revenue Service officer within the FIU exemplifies how direct feedback and collaboration can significantly enhance the quality and usefulness of disseminated intelligence. The FIU also receives regular feedback from supervisors, including detailed comments via the Teams spreadsheet shared with GFSC's intelligence services referencing non-e-gambling SARs with information that might assist the GFSC in carrying out its functions, which the FIU then uses to update its records on THEMIS. Feedback is also received from the AGCC on intelligence reports during meetings and informal exchanges, highlighting areas where further action is warranted.

234. Cooperation and liaison between the FIU and other competent authorities also takes place by engaging in regular meetings through their joint membership of AML/CFT/CFP Committees including the States of Guernsey Anti-Financial Crime Advisory Committee, the Anti-Bribery and Corruption Committee and the Sanctions Committee. The meetings of Committees and the other formal and informal meetings are also essential to enable the competent authorities to exchange financial information and intelligence. facilitating the exchange of information, strategic planning, and review of ongoing cases.

235. In addition, cooperation is achieved through periodic activity and thematic reports, and the various publications on the competent authorities' websites.

*Overall conclusions on IO.6*

236. The FIU and other competent authorities have access to a wide range financial intelligence and other information. The FIU, which improved its structure and resources, plays an important role in the AML/CFT system and produces high-quality analytical products and intelligence reports, however they are used to a limited extent to initiate ML and predicate offences investigations and some LEAs (especially the EFCB) seek FIU's assistance to a limited extent.

237. Most SARs come from the e-gambling sector with generally limited monetary and intelligence values and, for the other sectors, the overall reporting numbers are slightly

decreasing and remain limited, included from some high-risk and material sectors (with the exception of TCSPs, whose numbers are encouraging compared to other similar jurisdictions), which may impact the provision of financial intelligence in relation to those sectors. The FIU and other competent authorities provided a large number of outreach activities and guidance to the REs. Moreover, the FIU has recently launched a feedback mechanism at the submission stage. These measures focusing on improving SAR quality show initial positive results, however their impact is yet to be expected, given that the quality and relevance of SARs remained a concern throughout the review period (due to the effect caused by the abundance of SARs from the eGambling sector with limited monetary and intelligence value and not in line with the jurisdiction's risks, the reactive nature and triggers for the identification of suspicions in other sectors; and the lower incidence of corruption-related SARs) .

238. The FIU also regularly produces strategic analysis in line with the main identified risks in the Bailiwick and relevant emerging trends; however, the FIU should consider developing specific procedures or guidelines for producing and disseminating such analysis in order to enhance consistency and efficiency in the process. The competent authorities cooperate extensively in the context of the various mechanisms set up to share financial intelligence but with limited impact on increasing the effectiveness of some AML/CFT key areas, such as investigation and prosecution of ML/TF and associated predicate offences.

239. **Guernsey is rated as having a moderate level of effectiveness for IO.6**.

## 3.3. Immediate Outcome 7 (ML investigation and prosecution)

### *3.3.1. ML identification and investigation*

240. Until the middle of the year 2021, that is, during the first half of the period under review, the identification and investigation of ML offences as well as other economic and financial crimes fell under the responsibility of the Economic Crime Division (ECD) which was a division within BLE and resourced by both Police and Customs staff. As result of a major governmental reform to restructure and reinforce the law enforcement response to ML/TF in line with the risk profile of the country, these responsibilities were transferred to the newly established Economic and Financial Crime Bureau (EFCB) in June 2021.

241. The establishment of the EFCB was accompanied by the adoption of a new, comprehensive legal framework (with a new EFCB/FIU Law enacted in October 2022) providing for the autonomous and independent functioning of this LEA with a broad range of investigatory powers, as well as human and material resources, which included the co-location of the principal criminal justice authorities engaged in the fight against financial crime (the FIU, the EFCB, and the Law Officer's Economic Crime Unit [ECU]) in a new, modern building.

242. Regardless of this restructuration, the overall number of staff deployed on the investigation of ML and financial crimes by either the BLE ECD or the successor EFCB has remained similar throughout the whole assessed period albeit with a large turnover of personnel. While the BLE ECD was staffed predominantly by police and customs officers, the EFCB was intended to build a more diverse workforce beyond seconded BLE staff and therefore it now comprises economic and financial crime investigators, specialists in complex and transnational cases, and investigative lawyers also. The EFCB operational workforce consists of around 19 full-time staff supported by further personnel in the field of administrative governance and operative support. The operational staff have regularly received trainings in the field of ML/TF investigations, asset recovery, and others.

243. As with any other LEAs in the Bailiwick, the EFCB performs its duties in identifying and investigating criminal offences within its competence in an autonomous and independent manner where the making of decisions whether and how to initiate, conduct or complete a criminal investigation is not subject to any judicial or prosecutorial supervision or control.

244. Whatever the source of the investigation is, the relevant legal framework gives the EFCB a wide range of legal powers and investigative methods that are necessary to combat ML and financial crime, including the use of SIMs such as surveillance, covert investigations, and the investigation of electronic data protected by encryption. Not only there are BLE officers seconded to the EFCB but an arrangement between the two authorities ensures that the specialist resources of the Police (BLE Criminal Intelligence Unit) can also be drawn upon to meet operative investigative requirements e.g. in terms of SIMs or undercover operations, and similar arrangements are in place with the GFSC and GRS to draw upon technical advice whenever needed. In terms of investigative and other powers, the EFCB thus appears to have all necessary legal and operational tools in place.

245. As discussed more in detail under IO6, the EFCB has access to a wide range of financial information and intelligence in their investigations. Apart from sources directly accessible to EFCB investigators, the close business relationship between the EFCB and the FIU allows for accessing and obtaining financial data from the FIU in a timely manner while other relevant domestic authorities share their respective financial information and intelligence with the EFCB on the basis of legal gateways underpinned by MoUs. A case management system has recently been installed covering the EFCB, the LOC, the FIU, and the GRS also providing for a more efficient transfer of case related data.

246. Decisions whether to open an investigation are made on the basis of a preliminary, multi-level, risk-based assessment procedure. The EFCB Case Development Unit (CDU) receives and analyses all incoming criminal referrals or other relevant financial information from all sources which are then assessed and prioritised in accordance with the EFCB policies and SOPs. At the end, the CDU makes a detailed report to the EFCB Case Evaluation Board (CEB) chaired by the Deputy Director - Head of Operations; attendees include a representative from the LOC ECU, and the FIU.

247. The CEB examines the report considering a range of factual and legal factors, prioritises potential cases and, if deemed appropriate, makes recommendations to the Director for consideration of the opening an investigation. The Director assesses these recommendations and considers factors such as the overall value of the criminal conduct, the potential to prevent the dissipation of proceeds, public interest factors and case prioritisation, and will decide whether or not to open an investigation into ML or other financial predicate crime, or to support a predicate offence case initiated by the BLE by opening a parallel financial investigation aimed at the ML aspects.

248. The greatest part of financial information and intelligence used by the EFCB to identify ML investigations is received from the FIU in the form of financial intelligence referrals originating from information gathered from SARs and further analysed by the FIU. In the period of six years from 2018 until the end of 2023, as it is discussed more in detail under IO6, the FIU

submitted 51 criminal referrals[47] for potential criminal prosecution to the EFCB (or its predecessor) out of which a total of 33 were referred specifically for ML while the rest for other offences, typically fraud. Of these 51 referrals in six years, the EFCB (or its predecessor) adopted a total of 20 for criminal investigation (including investigations for offences other than ML where a parallel ML investigation is routinely carried out). Another 5 referrals were still under review for adoption at the time of the on-site visit, while no further action was taken in the remaining 26 referrals.

249. As regards the 20 adopted cases, the EFCB (or its predecessor) subsequently decided to take no further action in 10. Of the remaining 10 cases, the investigation was completed, and the case forwarded to the LOC for prosecution in a total of 6 cases, while the other 4 cases were still being investigated at the time of the on-site visit. Of the 6 cases submitted for prosecution, the LOC decided to take no further action in 3 (in which cases the matter was referred to the GFSC for a regulatory enforcement action) while in 2 cases a conviction for fraud was obtained hence there was only one case which led to an actual ML prosecution – but even in that case, the prosecution was discontinued after indictment (which technically means that no evidence was offered by the prosecution and the defendants were formally acquitted) just a couple of weeks prior to the on-site visit (see in Core issue 7.5). In other words, the financial intelligence referrals the FIU had submitted to the EFCB (or its predecessor) throughout the assessed period have resulted in zero successful prosecution for ML.

250. There have been a total of 23 ML investigations in the Bailiwick conducted by the EFCB or its predecessor BLE ECD during the assessment period out of which 10 were thus based on FIU referrals as discussed above, while the remaining 13 were emanating from other sources.

251. As regards other sources of information and intelligence to identify potential ML activity, the majority of non-FIU based ML investigations in the assessed period (7 cases) were sourced from parallel financial investigations opened alongside criminal investigations conducted by the BLE into proceeds-generating predicate criminality (which in all cases was domestic drug trafficking). According to the procedure to be followed in such cases, the BLE would submit a referral to the EFCB, which may then launch a financial investigation with the objective of recovering criminal assets but also a parallel ML investigation to ensure the ML aspects of the BLE's predicate crime cases are considered and the full range of suspected offending is addressed. Such referrals are to be assessed on a case-by-case basis and in circumstances where a parallel ML investigation may be warranted the matter will be passed to the CDU for case development.

**Table 7.1: ML investigations emanated from Parallel Investigations:**

| Year | Underlying Predicate Offence | Outcome |
|---|---|---|
| 2018 | Drug Trafficking | Insufficient Evidence to proceed with ML referral to LOC |
| 2018 | Drug Trafficking | Insufficient Evidence to proceed with ML referral to LOC |
| 2019 | Drug Trafficking | One defendant charged with 4 ML offences:<br>- sentence of 7 months imprisonment<br>- £14,650 forfeited |
| 2020 | Drug Trafficking | Insufficient Evidence to proceed with ML referral to LOC |

[47] In some statistics provided, individual referrals relating to the potential prosecution of the same entity for multiple instances of ML are considered separately which results in different figures. For the sake of clarity, such sequences of referrals are counted as one here.

| | | |
|---|---|---|
| | | - but: cash from arrest seized |
| 2020 | Drug Trafficking | Insufficient Evidence to proceed with ML referral to LOC<br>- but: individual charged and convicted with drug trafficking offence<br>- restraint and confiscation order at a value of £65,093.65 granted and satisfied |
| 2020 | Drug Trafficking | One defendant charged with ML offence:<br>- sentence of 3-month imprisonment for ML + 3-year for drug trafficking offence<br>- restraint and confiscation order at a value of £15,000 granted and satisfied |
| 2021 | Drug Trafficking | Insufficient Evidence to proceed with ML referral to LOC |

252. As shown above, there were only 2 cases where charges and conviction for ML offence could finally be achieved, while the remaining 5 cases were discontinued for ML due to lack of insufficient evidence. Furthermore, and regardless of the mechanism described above, all these cases were launched in 2021 the latest, that is, right before the EFCB was established in mid-2021 and therefore the LEA involved in these investigations was the BLE ECD. In the last 2 years of the assessment period, that is, since the EFCB became functional, there has been no new ML cases emanating from parallel financial investigations.

253. The rest of the ML investigations were based on other sources, primarily referrals from BLE (unrelated to parallel financial investigations) and other authorities. Apart from the cases in the table below, the AT was made aware of another one based on a cash control referral by the BLE in 2017 in which a conviction for ML was achieved in 2019 (see Case Study 8.4 under IO8).

**Table 7.2: ML investigations based on other referrals**

| Year | Source of Referral | Underlying Predicate | Outcome |
|---|---|---|---|
| 2018 | BLE | Theft | Insufficient Evidence to proceed with ML referral to LOC |
| 2018 | BLE | Fraud | Charged with fraud and false accounting:<br>- 9 months imprisonment and £2,000.00 compensation order |
| 2018 | BLE | Theft | Charged with fraud:<br>- 18 months' imprisonment<br>- confiscation order granted for £64,339 and assets realised to that value |
| **2018** | BLE | Theft | **Charged with, and convicted of ML offence:**<br>- **£800 fine and £1,000.00 compensation order** |
| 2019 | Other (sensitive) | Bribery and Corruption | Insufficient Evidence to proceed with ML referral to LOC |
| 2022 | GFSC | Fraud | Insufficient Evidence to proceed with ML referral to LOC |

254. As it can be seen above, half of these cases (3) were discontinued for ML offence due to lack of evidence. ML charges and conviction could be achieved in one case only, while the remaining 2 cases ended with charges and conviction for crimes other than ML. The underlying criminality in these cases was mostly domestic crimes against property (theft, fraud) and corruption. Similarly to the cases listed in the previous table, these cases were also launched and investigated before the establishment of the EFCB (with one single exception in 2022).

255. As illustrated by the tables above, the laundering of domestic predicate criminality was represented in almost all ML cases investigated during the assessment period and therefore all

ML convictions achieved (and almost every ML indictment submitted) in the period subject to review were related to such ML activities. The establishment of the EFCB has apparently put an end to this practice and, according to the EFCB operational policies, most of such cases would now generally be afforded a lower priority as they do not fall within the NRA risk matrix.

256. Incoming MLA requests are routinely forwarded to the EFCB by the LOC as the recipient authority for the purposes of de-conflicting (see under IO.2) and assessment to identify potential domestic ML activities. EFCB representatives referred to this source onsite as one of the main avenues to obtain financial information for possible investigations but, as it was confirmed by the Guernsey authorities, no ML investigations were sourced from incoming MLA requests during the assessment period.

257. Whilst the restructure, creating operative autonomy and new procedural powers introduced since mid-2021 have been implemented, the output of the EFCB in terms of successfully completed ML investigations leading to ML prosecutions remained surprisingly poor. The analysis of the available statistics shows that the number of ML investigations had already been moderate before 2021 given Guernsey's position as an IFC and the size of its financial sector, but it has further decreased since the establishment of the EFCB.

258. The statistics on FIU referrals in Table 6.9 under IO6 demonstrate that whereas the number of FIU criminal referrals has practically remained in the same range throughout the entire period without any particular trends, the number of adopted cases dropped to 1 in 2022 and then to 0 in 2023. A similarly declining trend can be seen in the statistics on ML investigations initiated upon other sources. (see in the tables above).

259. The Guernsey authorities have acknowledged that the results achieved by the EFCB to date have not yet delivered the desired outcomes. The main explanation the AT were given (either onsite or otherwise) to this undeniable underperformance was that the decline in the number of ML investigations since the establishment of the new LEA is the consequence of a deliberate, risk-based change in its strategic goals. It means that the EFCB now focuses on identifying ML activities being more in line with the jurisdiction's ML risks which necessarily results in fewer, but more complex ML investigations involving sophisticated schemes or transnational implications with a significantly longer investigative lifecycle -- as opposed to ML cases related to domestic predicate crimes which dominated the caseload of the BLE ECD until 2021. Because of this, the authorities expect the number of ML investigations to increase going forward (see more in detail in Core issue 7.2).

260. This explanation, however, does not seem to answer all the problems. The shift in strategy commenced in mid-2021 and the almost 3 years of functioning must have given time for the EFCB to deliver more significant results particularly if considering the significant resources invested in, and the robust powers granted to this new body. The occurrence of further deficiencies appears to be confirmed by certain personnel changes in the senior staff shortly before the on-site visit.

261. While the EFCB was generally referred to as being well resourced in all aspects, there appear to be several vacant positions the EFCB is struggling to fill. Despite the provision of funding to increase the EFCB operational workforce, it has remained at no more than 19. The authorities explained they had challenges faced in recruiting skilled and experienced individuals and a large turnover of personnel in all positions, mainly to the private sector, as a consequence of the previous, less favourable remuneration conditions. While these issues have since been addressed, the EFCB still has difficulties in identifying and attracting specialists to relocate to the island and has had to resort to measures such as establishing a small cadre of financial specialists

working on a satellite basis from the UK. As noted by the prosecutors, the staff shortage often leads to situations where complex, data-heavy, transnational ML or financial crime investigations that should normally be dealt with by an investigating team of 3-4 staff including financial analysts or forensic accountants are handled by one single EFCB officer.

262. The time requirement of the case development procedure is another potential reason for the low performance of the EFCB. This multi-level assessment process appears not to be bound by any statutory or other deadline and as reported on-site, may in more complex cases last for several months which is a major delaying effect in itself, particularly in cases where the initial criminal referral had already been subject of a lengthy analysis by the FIU. The criminal investigations themselves are not restricted by any time limit either and may also last for years, particularly in case of translational implications, before any charges are pressed.

263. Apparently, the shift in strategy towards the more complex and labour-intensive ML cases could not be accompanied by the provision (or at least retention) of the necessary, well trained, and skilled personnel which has resulted in a clear underperformance in terms of ML identification and investigation as outlined above. Obviously, the AT cannot determine what the appropriate figures would be for the Bailiwick based on any direct or indirect comparison with IFCs of similar size, but the numbers above are objectively low and also follow an undeniably declining trend. Based on the interviews onsite, the quality and (sooner or later) the quantity of ML investigations more aligned with the risk profile of the Bailiwick is expected to move in an encouraging direction but, as discussed in Core issue 7.2 below, this claim was not sufficiently demonstrated by concrete case examples (see below).

### *3.3.2. Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies*

264. Considering that the Bailiwick is an IFC with a low domestic crime rate, the NRA determines that its greatest ML risks come from the laundering of the proceeds of foreign criminality, in which respect corruption, fraud, and tax evasion were identified as the most prevalent underlying predicate offences followed by drug trafficking. The laundering of foreign proceeds is likely to involve a chain of transactions across several other IFCs (or other jurisdictions) with the Bailiwick being at or towards the end of the chain, which presents challenges for the Guernsey authorities in identifying links between assets and the underlying criminality. The sectors most at risk of being used for these purposes (and hence categorized as representing "Higher" risk in the NRA) are the private banking sector and TCSPs dealing with legal persons and legal arrangements established in connection with cross-border business.

265. ML risks coming from domestic criminality are considered much lower in the NRA. These primarily arise from drug trafficking, fraud and tax evasion, and the laundering of the proceeds of these crimes is most likely to involve the retail banking sector and the use of cash.

266. The vast majority of the 23 ML investigations in the assessment period (2018 to 2023) that is 19 cases (82%) were predicated on domestic offending while 4 cases (18%) related to foreign criminality. Similarly, the majority of the 6 ML prosecutions from 2018 to the end of 2023, that is, 4 cases (66%) involved domestic predicate criminality, while the remaining 2 cases (33%) reflected foreign predicate offending (although one of these indictments was finally discontinued).

267. The predicate offences involved in the ML prosecutions that related to domestic predicate criminality were mostly low-level drugs crimes (3 out of 4 cases) while the 2 indictments involving foreign predicate offending related to the manufacturing and distributing of unlicensed medical products and drug trafficking, both committed in the UK. While the types of predicate offences are thus largely in line with the jurisdiction's ML risks, the same cannot be said for the overall number of prosecutions or the proportion involving foreign predicate criminality.

268. Similarly, the ML investigations that involve domestic predicate criminality mainly concern low-level drugs offences while those related to foreign predicates were reported to concern fraud as well as bribery and corruption, which appears to be more in line with the risk profile of the Bailiwick. The total number of ML investigations and the dominance of domestic predicate offending are, however, not in line with the jurisdiction's ML risks.

269. As discussed more in detail under Core issue 7.1 above, the predominance of ML investigations related to domestic predicates and thus not (or only partially) in line with the ML risks of the country was one of the main reasons why the EFCB as a new, dedicated LEA with broad competences, robust procedural powers, and an increased focus on the Bailiwick's risk profile was established in 2021.

270. The EFCB was reported to have since been focusing on more complex ML activities with transnational implications, sophisticated schemes, and/or the involvement of professional domestic enablers (legal persons or TCSPs). This major strategic shift has so far resulted in a lower number of ML investigations, but which are more aligned in the jurisdiction's risks (although there may have been further reasons for the apparent underperformance of the EFCB as discussed above).

271. Apart from statements in this line, however, the Guernsey authorities only provided one case example to illustrate the new approach of the EFCB. This investigation, which was still ongoing at the time of the onsite visit, does indeed involve entities from the higher risk sectors (TCSPs) and funds of a significant value (more than 1 million GBP) and therefore it is able to illustrate the current strategy of the EFCB. Other case studies on live investigations the AT was given access to, including one dating back to SARs submitted in 2018 (before the establishment of the EFCB) and relating to tax evasion rather than ML, or another one which was opened against a local professional as a potential enabler of laundering foreign proceeds in the Bailiwick but has already been concluded without any further criminal or civil proceedings being recommended by the EFCB, did not appear to demonstrate an actual and effective shift in approach.

272. Apart from these, however, the authorities appeared somewhat reluctant to share more, even sanitized case studies regarding ongoing (live) investigations because of the high-level sensitivity of such information (some details of another, high-level ML investigation were only mentioned entirely off-records). As a summary, whilst the AT has no reason to doubt whatever was in general terms stated about ongoing EFCB investigations it can neither be considered as fully demonstrated, and therefore the prospects of the future outcome of the ongoing cases is promising but to some extent it was to be taken at face value.

273. It could not be ascertained what proportion of the ML investigations opened by the EFCB since 2021 are related to entities or sectors representing a higher level of risk. For example, when asked about TCSPs investigated the EFCB claimed they had several live cases related to TCSPs (there were 5 such cases at the time of the onsite visit but apparently, and with the exception of

the closed case mentioned above, not as enablers of ML but for offences such as fraud, tax evasion and bribery and corruption).

274. On the other hand, while the increased focus on potential ML cases being more in line with the risk profile of the Bailiwick is a commendable approach, the AT harbours some concern that the laundering activities associated with domestic criminality such as drugs crimes or domestic fraud, which traditionally dominated the ML statistics before the establishment of the EFCB, are now more "below the radar" i.e. do not meet the public interest test mentioned below and are thus more or less disregarded by the authorities. Although the AT was assured by the LOC that they would stand ready to prosecute such cases once referred, this is not likely to happen as long as there are hardly any new ML investigations related to domestic proceeds. As an exception, however, the AT was made aware of a recent ML investigation (opened 2 months before the onsite visit) related to a medium-scale fraud committed against a domestic enterprise by use of fraudulent invoices.

### *3.3.3. Types of ML cases pursued*

275. As already noted above, the number of ML investigations in the assessment period was considerably low in relation to the risk profile of the Bailiwick and its context as an IFC. As an inevitable consequence of this, the figures for ML prosecutions and convictions were equally low throughout the assessed period. The number of ML indictments submitted in the same period was equal to the number of ML convictions achieved, which totalled 5 in both categories (considering that in the sixth ML indictment awaiting trial, the prosecution was discontinued a couple of weeks before the onsite visit).

276. The correspondence between the number of indictments and the number of convictions indicates that ML cases were not pending for long periods of time, either at the prosecution or trial stage, and therefore once an indictment for ML was submitted to the court it was in most cases tried and the verdict brought in a considerably short time. Cases were thus proceeding in a timely manner from the point they entered the prosecution phase, which necessarily draws attention to the potential delays in the case development and investigative phases mentioned in Core issue 7.1.

277. The same correlation also seems to demonstrate that all ML indictments have been well grounded and thus resulted in a conviction for ML, which in turn, indicates that the LOC have performed a strong filtering role so as to prevent weaker cases from going to trial.

278. ML prosecutions are taken forward by the LOC Economic Crime Unit (ECU) which is a well-resourced body consisting of 3 economic crime prosecutors (including the head of the unit) supported by paralegal and 2 executive legal assistants and, if necessary, by fellow prosecutors and supporting staff from the LOC General Prosecutions Unit.

279. Cases are referred by the EFCB to the ECU for prosecution after the EFCB has completed its investigations and concluded that the material is ready for charge. A charging file is then sent to the ECU where the decision to prosecute is based on the results of a two-part test, that is, whether there is sufficient evidence to provide a realistic prospect of conviction and secondly, whether a prosecution is in the public interest, including that there are no public interest factors

which outweigh the public interest in prosecution (further guidance on this test is provided in the ML Manual[48]).

280. Considering the ECU's indirect involvement in the investigative process by means of regular consultation with the EFCB and the provision of charging advice, this test is in most cases met at the time the charging files are submitted and the interlocutors the AT met onsite could not recall any instance where the ECU turned down such a case or referred it back to the EFCB or its predecessor (apart from 3 cases in 2018 related to failure to disclose ML which, as noted under Core issue 7.1 were referred to the GFSC for further action).

281. Of the two parts of the test mentioned above, it is the public interest test that requires further discussion. Pursuing ML prosecutions, where appropriate, is generally considered to be of public interest and particularly if one or more of the public interest factors set out in the ML Manual are met. These include (i) cases involving risks, which are deemed to be highest in the NRA (ii) any case related to terrorism, TF, or PF (regardless of the actual risk rating) (iii) a value assessment made on both the value of the offending and the potential for asset recovery and (iv) any matters of wider public interest (e.g. cases involving persons that hold high profile positions or a case which is a high priority to a foreign country etc.) or reputational issues (i.e. to the Bailiwick or to the entire financial sector etc.)

282. In any other instances, the decision whether a ML charge is the right one to proceed with is based on the opportunity principle[49] and the decision is made depending on the specific facts and evidence available in the respective case. For example, in cases of self-laundering, where the predicate crime will also be charged, the prosecutor needs to make a strategic decision as to whether pursuing the associated ML offence will add anything to the criminal sanctions as there is a possibility defendant will be given a concurrent sentence i.e. will serve out both sentences at the same time (see more under Core issue 7.4). Furthermore, confiscation proceedings can follow conviction for any serious proceeds-generating predicate offence regardless of whether ML is included in the indictment. As a consequence, ML charges are often not proceeded with in self-laundering cases.

283. Notwithstanding the low number of prosecutions and convictions in the assessment period, the examination of the respective cases demonstrates that practically all types of ML have been prosecuted and resulted in convictions.

284. There were 2 convictions for stand-alone (autonomous) ML where the predicate criminality could not, but also did not have to be ascertained. In these cases, the necessity to prove that the case involves "criminal property" (as required by the ML offences in the POCL and DTL) could only be met by relying on circumstantial evidence that the respective property could only have been derived from some sort of crime (in which respect the Guernsey courts follow the UK case law established in the Anwoir case[50]). In this respect, reference is made to Case study 8.4 under IO8, whilst the other case is described below:

[48] Manual on the Prosecution of Money Laundering Offences

[49] General principles in this field are set out in the Code of Guidance – Decision to Prosecute.

[50] R v Anwoir (2008) EWCA Crim 1354

**Case study 7.1**

D was convicted in 2020 of four counts of money laundering (concealing or transferring criminal property), in contravention of section 38 (2) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999 (as amended).

In 2019, during an investigation into the importation of controlled drugs and associated money laundering, D, was identified travelling to Guernsey and was seen to meet with a male subject to the ongoing investigation. D took possession of what was believed to be approximately £15,000 in cash, she then attended at a local post office and sent £1,500 cash to an associate in London concealed in a children's religious stories book.

The following day D visited a bank on a further three occasions and made cash deposits totalling £5,420. Person D was arrested and found to be in possession of further sums of cash, hidden in books within a suitcase; the packages were designed to deter cash detector dogs.

D entered guilty pleas to four charges of money laundering and was sentenced to seven months imprisonment. The prosecution was not able to say precisely what crime the money related to but relied on the UK case of Anwoir. In this case, the fact that D had no obvious connection to Guernsey, evidence obtained during observations of D when she was on island, and the amounts of cash discovered during the investigation, led to an irresistible inference that the monies must have originated from criminal activity. £14,650 in cash was forfeited under the Police Property and Forfeiture Law.

285. There was one conviction for third party ML which is demonstrated in Case study 7.3 below, which also involved foreign predicate offending.

286. To some extent, Case study 8.4 under IO8 referred above as a stand-alone ML case can also be considered here, as the defendant was sentenced also on the basis that he was most likely acting as a cash courier for someone else. A third prosecution for a similar sort of ML offence also resulted in an indictment (see Case Study 6.4 under IO6) which was, however, the one discontinued by the prosecution before trial (see above) and thus will not be assessed here.

287. The remaining two convictions were for self-laundering committed in relation to low level, domestic drug trafficking offences such as the one in the following case study. Considering that self-laundering cases are unlikely to pass the public interest test in most cases (see above) there are probably many more such conducts that will never be subject of prosecution and conviction (but serve as a basis for civil forfeiture proceedings, for example).

**Case study 7.2**

P was convicted in 2022 of one count of money laundering, in contravention of section 57(1)(b) of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000. P was also convicted, along with two other defendants, of the supply of cannabis, which is a controlled drug of Class B. The offence is contrary to section 3(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974.

In July 2020, the Law Officers successfully applied for a restraint order in relation to P's assets in Guernsey and elsewhere to protect her assets from dissipation pending the outcome of the drugs offence proceedings, so that assets would be available for any future confiscation order. The restraint order prohibited P from disposing of or from dealing with her assets, including two bank

accounts, which were specifically named in the Order. However, P moved some £2,200 in funds from one of her bank accounts to the account of her partner (who was a co-defendant in the drug's conviction) shortly after the restraint order had been served on her, with the intention of being able to continue to use the funds. However, she emailed the authorities already the next morning to admit she had done that, which was taken into account when meting out the sentence.

P was sentenced to 3 years imprisonment for the drugs offences, but also received an additional sentence of three months' imprisonment for the money laundering offence, which ran consecutively.

Confiscation proceedings were undertaken against P. Her criminal benefit was assessed at £24,809 and a Confiscation Order was made in the sum of £15,000, the sum of her realisable assets (funds held in the restrained bank accounts).

288. While the diversity of ML cases demonstrates that the judicial system is capable of prosecuting and convicting for any sort of ML activities, it is to be considered together with the very moderate number of the underlying ML cases and convictions, which do not or only to a limited extent allow for demonstrating trends and drawing more profound conclusions. Furthermore, the range of ML cases does not include prosecutions or convictions against legal persons, as there were no such cases in the assessed period.

### *3.3.4. Effectiveness, proportionality and dissuasiveness of sanctions*

289. As discussed more in detail in the TCA (see c.3.9 and c.3.19) the law of the Bailiwick provides for proportionate and dissuasive criminal sanctions for ML offences.

290. The judicial system of the Bailiwick consists of the judicatures of Guernsey, Alderney, and Sark, respectively. The courts of Alderney and Sark only have limited jurisdiction in criminal matters (as more serious criminal cases are tried in the Royal Court of Guernsey) and neither of them has ever tried ML cases. Because of that, the analysis will focus on the judicature and court practice of the island of Guernsey.

291. The judicature of Guernsey is divided into three parts, that is, the Magistrate's Court (MC) with a limited jurisdiction, the Royal Court (RC) with unlimited jurisdiction, and the Court of Appeal. (In addition, there is a further appeal with leave to the Judicial Committee of the Privy Council.) All cases whether triable either on indictment or summarily (known as either way offences such as the ML offence), indictment only offences (which must be dealt with substantively in RC), or summary offences always start at the MC. In either way offences, the prosecutor or the defendant can elect to have the case tried on indictment by the RC, or the MC can decline jurisdiction and refer the case for trial on indictment by the RC whenever it is warranted by the gravity of the case or the need for sufficient sentencing powers. Of the 5 ML cases ended with a conviction, 3 were tried by the RC while the 2 more simple cases were adjudicated by the MC.

292. The number of judges at both courts is rather limited but commensurate to the current workload. The MC has 2 full time judges (both with a prosecutorial background) and the RC has 3 including one specialised in economic corporate matters. All judges try all sorts of cases (criminal, civil, or family) which duties they share with a number of lieutenant bailiffs.

293. Questions of fact in criminal or civil cases are determined by jurats elected from people of proven ability in differing fields to ensure a broad range of skills and experience (the pool of

available jurats was reported to include, among others, retired police officers or lawyers, doctors, teachers and people with financial or corporate background).

294. As with most of the cases tried by the courts of Guernsey, the ML cases that came to trial were usually completed quickly. As it was explained by representatives of the judiciary, in 4 out of 5 ML convictions, only a few days of trial (1 to 6 days) were needed to reach a judgment while the 5th case took 1 year to complete only because of the tactics applied by the defence.

295. No sentencing guidelines for ML offences have been developed in the Bailiwick, although such guidelines exist for other sorts of crimes (e.g. misuse of trust or drug cases). The respective UK guidelines for ML cases with a starting point sentence, as developed by the UK Sentencing Council, are known to the practitioners but have no binding effect in the Bailiwick. When interviewed onsite, the representatives of the LOC considered the lack of such guidelines as a practical deficiency in ML cases which, in their opinion, has directly contributed to significantly lighter sentences in the Bailiwick than in the region, although this opinion was contested by the judiciary based on the size of the sample and the nature of the limited cases brought to trial.

296. The statistics for ML convictions and the sentences imposed in the period under assessment are set out in the table below. In most of these cases, the criminal convictions were followed by confiscation orders too, but that aspect will be taken into consideration under IO8.

**Table 7.3: ML Convictions**

| Year | Sentence (imprisonment or other) (without confiscation orders) | Remark |
|---|---|---|
| 2018 | 945€ fine or (?) 40 days | |
| 2019 | for ML: 180 hours community service<br>+ for other crimes: 15 months susp. for 2 years | Case study IO7(1) |
| | for ML: 9 months suspended for 2 years | |
| 2019 | for ML: 2 years<br>+ for other crimes: 2 months | Case study IO7(3) |
| 2020 | 7 months | Case study IO7(2) |
| 2022 | for ML: 3 months<br>+ for other crimes: 3 years | Case study IO7(4) |

297. As noted above, the number of the ML convictions and the natural persons convicted for ML are both very low while legal persons have never been convicted of ML in the Bailiwick (neither have they been investigated or prosecuted for ML). On the face of it, the severity of the sentences appears equally low, particularly if considering the range of punishment available for ML. The highest sentence imposed for a ML offence was 2 years of imprisonment (as compared to the maximum penalty of 14 years) and the rest includes suspended and even non-custodial sentences too.

298. Two of the convictions (those from 2018 and 2020) were brought by the MC in summary proceedings where the maximum penalty is 12 months, but the other three were tried by the RC without such limitations, yet the sentences imposed in these cases are equally mild if compared to the range of available punishment. In this respect, however, the representatives of the judiciary explained that most of these 5 cases (and particularly those tried by the MC) involved low-scale and rather simple ML activities with mostly confessing defendants and that the relatively low sentences were in some of the cases also determined by requirements of proportionality.

299. While most of the mitigating circumstances occurring in these cases are justifiable, the sentences for ML are nonetheless extraordinarily lenient. This is particularly relevant for the only case (2019) with a third-party ML offence being in line with the ML risks of the Bailiwick involving a complex transnational scheme with a network of companies across multiple jurisdictions and a significant volume of proceeds derived from foreign predicate criminality. However, the sentences the RC finally imposed on the 2 defendants were remarkably low, including suspended imprisonment and community service.

**Case study 7.3**

D and M were convicted in Guernsey of acquiring, possessing and using the proceeds of criminal conduct; contrary to Section 40(1) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, as amended in 2019.

D and M were concerned in an arrangement with another man, 'N', who was convicted in the UK for the sale, supply and manufacture of an unlicenced pharmaceutical product. Unsupported claims were made that this product could cure cancer and AIDS. The company operated in several countries from a head office based in Guernsey.

As a result of regulatory interventions in 2016 by Healthcare Regulators in Guernsey and other jurisdictions, N's business operations in the Bailiwick were closed down. N was subsequently convicted in the UK of manufacturing and distributing an unlicensed medicinal product, together with money laundering over a four-year period, and was sentenced to 15 months imprisonment (12 months for the predicate crime and 3 months for ML). N's assets in Guernsey are subject to a UK restraint order, and proceedings led by the UK authorities are ongoing in respect of enforcement of that order.

D was the financial controller for the Guernsey-based company involved in the sale and marketing of the unlicenced medicine, whilst M had been the office manager.

This was a complex investigation into the activities of a network of companies across multiple jurisdictions. It also required the use of surveillance to prove the degree of complicity and involvement of the two defendants in the criminal activity.

The Guernsey investigation focused on D and M who were involved in the criminal enterprise, acting as office manager and financial controller in Guernsey. D and M had allowed their names to be used as officers of companies in Guernsey and overseas to conceal the identity of the ultimate beneficiary and core business. M had replaced N as director of two Guernsey companies and was also associated with companies in two other European jurisdictions. These companies and their bank accounts were used to co-mingle funds from the distribution and sale of unlicensed medicinal products; in one year approximately €2.6 million was credited to the accounts.

D and M were arrested in 2017 and subsequently charged and convicted in 2019 of being concerned in an arrangement with N to launder the proceeds of his companies' illegal enterprise. D was also convicted of two counts of possession of criminal proceeds in relation to two transfers to his personal accounts to the value of £15,212.00. The sentencing judge noted aggravating factors, including the significant roles of D and M, the international nature of the offences, the sustained nature of the activity and the integral part that money laundering played in the supply of unlicensed medicinal products.

M was sentenced to nine months in prison, suspended for two years. D was sentenced to 180 hours' community service for the money laundering, and 15 months in prison, suspended for two years, for other matters. In both cases, sentencing reflected the absence of previous convictions and that neither had been the ringleader in the scheme.

300. As it was explained by the judiciary, the sentences in the case example above were deliberately kept at a low level so as to maintain proportionality with the sentence imposed on the perpetrator of the predicate offence in the UK. As the latter individual was sentenced only for 12 months for the underlying crime (as part of the total sentence of 15 months) the RC considered that the penalties to be meted out for the associated ML offence must be commensurate to, that is, commensurately lower than the punishment imposed for the predicate offence. The AT needs to note that this sentencing principle appears to contradict the generally recognized *sui generis* concept of ML by considering it as some sort of ancillary offence to the predicate crime, which may in itself be an inhibiting factor to meting out sufficiently dissuasive criminal sanctions in ML cases.

301. As already mentioned above, the prosecutors the AT met onsite expressed frustration over the generally low sentences for recent ML cases and also that the prosecution had until recently been unable to appeal a sentence imposed by the Royal Court, including the sentence from 2019 as discussed above. Until 2022, the right to appeal a sentence was only provided to the defendant while the prosecutor was powerless in this respect. The prosecutors considered this as a weakness, especially in cases where common law heavily relies on jurisprudence and sentencing guidelines (see above).

302. The situation has finally changed in 2022 by the amendment of the Court of Appeal Law, which made it possible for the prosecution to appeal against RC sentences (challenging the length and/or type of the respective sanction) that they find unduly lenient. This new rule had already been tested before the court by the time of the on-site visit (although not in a ML case, as there have been no ML cases tried since 2022). There is also a right of appeal from an acquittal by the Royal Court, although it is limited to matters of law alone. Prosecutors can also appeal an acquittal in the Magistrate's Court if it certifies a question of law or law and mixed fact "which it would be desirable to have decided by the Royal Court."

303. In addition, the AT learnt that in self-laundering cases, where the indictment includes charges for both the predicate crime and the associated ML offence, the defendant, if convicted for offences arising from the same incident or facts, would likely be given a concurrent sentence, which means he/she will serve out both sentences at the same time instead of serving each sentence one after another. In such cases, the longest period of time is controlling and therefore, for example, 3 years received for the predicate crime and 3 months for the associated ML offence would result in only 3 years to be served in imprisonment (although, as pointed out by the judiciary, the other offending would be taken into account as an aggravating feature when meting out punishment for the lead offence). To the AT's understanding, no concurrent sentencing of this kind occurred in ML cases tried in the assessment period (although a concurrent sentence was given in Case study 8.4 under IO8) however, in the AT's view, the possibility of such a sentencing policy appears to be one of the reasons why self-laundering ML charges are likely not to meet the public interest test and only rarely reach the trial phase.

304. As a summary, the criminal sanctions so far applied by the Guernsey courts for ML offence are generally far from being dissuasive and, as discussed above, there were problems in some cases with the proportionality of penalties too (which should be proportionate to the seriousness of the ML offence rather than to the punishment meted out for the predicate crime).

### *3.3.5. Use of alternative measures*

305. There is one criminal justice measure in the Bailiwick that can be taken into account as an alternative to a ML prosecution in line with Core issue 7.5 which is the civil (non-conviction based) forfeiture regime. Where it is not possible or practical to pursue a ML investigation or where a ML prosecution has failed but property believed to be criminal proceeds or instrumentalities have been identified, civil confiscation proceedings can be instigated.

306. The decision as to whether to open a criminal or a civil forfeiture investigation is made by the EFCB at the initial stage of the proceedings. EFCB's civil forfeiture policy[51] sets out the circumstances to be considered in this respect, which include situations where (i) there is no sufficient evidence to meet the criminal burden of proof and/or the public interest test for prosecution is not met (ii) the ML prosecution is unrealistic (iii) the defendant has been acquitted but there are assets available for civil recovery and (iv) property held in the financial system is likely to have been generated from unlawful conduct abroad but the securing of evidence for criminal prosecution within the Bailiwick is unlikely or impossible.

307. Some of these factors appear not to be entirely in line with Core issue 7.5, which refers to cases, where securing a ML conviction (or even a ML indictment) was rendered *impossible* by justifiable reasons. That is, the public interest test also covers cases where it is *impractical* or not necessarily certain that a ML indictment will lead to a conviction (and this is why ML charges will not be proceeded with) and not only cases where an indictment and/or conviction is not possible. Certainly, there may be situations where such a reference is self-evident (e.g. in the case of a foreign national already prosecuted or convicted elsewhere) but some other factors to be considered in this context may inevitably be stemming from the lenient sentencing practice (mild criminal sanctions, occurrence of concurrent sentences for self-laundering, no right to prosecutorial appeal until 2022) as a discouraging factor to pursue criminal proceedings for (additional) ML charges.

308. Consequently, whilst civil forfeiture is generally an effective and highly exploitable instrument to recover criminal proceeds otherwise not accessible by means of conviction-based confiscation mechanisms, this possibility may also tempt the EFCB investigators to give up proceeding with ML charges in criminal investigations in more challenging cases in order to opt for a civil forfeiture investigation instead. As mentioned above, such a choice must be made in the investigative stage by the EFCB investigators, who usually seek the prosecutors' opinion in this and the prosecutors will give advice on possible reasonable lines of inquiry, evidential requirements, pre-charge procedures, disclosure management and the overall investigation strategy, but they cannot direct the investigators.

309. The AT also examined whether the possibility of opting for civil forfeiture, as an alternative measure to criminal prosecution, can be considered by the prosecutor in later stages e.g., when deciding on abandoning ML indictments in cases where there could have been a chance to achieve a ML conviction, but the available evidence provides a better perspective for a civil forfeiture. In this respect, the AT was assured that no such practice had ever occurred in any concrete case, particularly as it would have been contrary to the principles set out in the LOC Code of Guidance – Decision to Prosecute. Specifically, the AT also learnt that in the ML case in Case study 6.4 in IO6, the discontinuation of the prosecution took place for other, legitimate reasons

[51] Civil Forfeiture Investigations Non-Conviction Based Asset Recovery

being in line with the said principles and not in order to give way to civil forfeiture proceedings, the feasibility of which is yet to be considered by the EFCB.

*Overall conclusions on IO.7*

310. Whereas the legal framework provides for the effective identification and investigation of ML and the establishment of the EFCB as a dedicated and powerful new LEA in 2021 indicates a strategic shift towards pursuing ML activities in line with the country risks, this objective has only to a limited extent been achieved mainly because of lack of human resources. As a result, the number of ML investigations and prosecutions is generally low and declining.

311. The main source to identify ML cases are financial intelligence referrals from the FIU or other authorities, and parallel financial investigations. The types of ML investigated and prosecuted can be characterized by the dominance of proceeds from domestic predicates and the under-representation of sectors with a higher level of risk and hence they are only to some extent in line with the risk profile of the jurisdiction, mainly due to the previous, less risk-based approach of the LEA involved.

312. The very few ML prosecutions and convictions in the assessment period mostly concerned unsophisticated ML conducts related to low-level domestic predicates, even though all types of ML have occurred in the few cases prosecuted and tried including stand-alone ML. No legal persons have been investigated or prosecuted for ML. The results of the remarkably lenient sentencing practice in the small sample of ML convictions is that criminal sanctions against natural persons are not dissuasive and only to some extent proportionate.

**Guernsey is rated as having a low level of effectiveness for IO.7.**

## 3.4. Immediate Outcome 8 (Confiscation)

### *3.4.1. Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

313. As recognised in the previous MER, the Bailiwick had identified confiscation as a strategic imperative already at that time, and successive policy documents have since reiterated their commitment in this area. Already in 2014, the External Relations Committee within the Guernsey government issued an Asset Recovery Policy, the objectives of which included the pursuit of confiscation of criminal assets (including instrumentalities and property of corresponding value) and, where that was not possible, non-conviction-based forfeiture.

314. In 2020, the Bailiwick issued its updated AML/CFT Strategy to reflect the findings of the first NRA. One of its objectives was, in line with the 2014 Policy above, to seek confiscation of criminal assets etc. wherever possible and proactively to seek civil forfeiture where confiscation was not possible. This objective has been reiterated in the Bailiwick's 2023 AML/CFT Strategy, which was issued to reflect the findings of the updated NRA.

315. This commitment is demonstrated by the comprehensive policy, legislative and justice framework in place. Apart from the legislative basis outlined under R.4 in the TCA, the LOC has recently issued and contributed to various guidance documents to assist practitioners in maximizing the possibilities offered by the criminal and civil confiscation mechanisms. Reference is made here to a set of documents issued some months before the onsite visit, such as the Law Officers Manual on the Forfeiture of Assets in Civil Proceedings (October 2023) the Asset Management & Disposal Policy (October 2023) the Asset Sharing Policy and the LOC, FIU and EFCB Process or Civil Forfeiture Applications (November 2023). Prior to their issuance, previous

guidelines already existed mainly in the field of civil forfeiture proceedings, such as a policy document on civil seizure and detention of cash and a more detailed guidance document titled 'Civil Forfeiture Policy' within the BLE (ECD) as well as a Rules of Court issued for the implementation of the Civil Forfeiture Law to determine the processes followed for the seizure and detention of cash, the freezing of accounts, and the forfeiture of both commodities.

316. In line with the objectives set out in the documents above, Guernsey has continuously introduced and implemented legislative changes where needed to maintain a comprehensive and effectively responding legal framework (as set out in detail below). Notwithstanding that, however, most of the current guidance and policy documents were issued, and some of the relevant legislative changes (particularly as regards the civil forfeiture regime) took place, too close to the end of the period subject to review (some of the new provisions of the respective law entered into force on the last day of the onsite visit) to have a decisive if any impact on the results achieved.

317. As part of the policies above, the legislative framework is supported by the provision of proportionate resource within all operational agencies. Major expansion in this field began in 2017 when the LOC and the BLE founded the International Cooperation and Asset Recovery Team (ICART) as a specialist cross-agency team with a specific remit to use civil forfeiture powers to target the proceeds of foreign predicate crimes held in Guernsey, in line with the ML risk profile of the jurisdiction as an offshore centre. The ICART concluded in 2021 with the creation of the EFCB, which took over its role and resources as it did with the BLE ECB (see the analysis on EFCB resourcing under IO7.)

318. As discussed more in detail under IO7, the EFCB has responsibility for conducting parallel financial investigations alongside criminal investigations into proceeds generating predicates, and is the competent authority with responsibility for tracing, freezing and restraining criminal property and property of corresponding value. The EFCB's operational activity is supported by the specialist legal resource in the Economic Crime Unit of the Law Officers Chambers, which deals with prosecutions (including confiscation), civil forfeiture, and MLA.

319. As part of the policy-based approach, the relevant LEAs are financially incentivised to maximise criminal asset recovery through the targeted allocation of monies from the Seized Assets Fund as discussed below more in detail.

320. The three types of legal measures to target proceeds and instrumentalities of crime are the traditional (conviction-based) confiscation, the civil (in rem) forfeiture, and the deprivation order applicable to lower value instrumentalities.

Confiscation

321. The system of the criminal (conviction-based) confiscation and provisional measures, including the forfeiture of instrumentalities, has not gone through any substantial changes since the adoption of the previous MER and remains to serve as a powerful mechanism to target criminal proceeds and instrumentalities. The POCL and DTL criminal confiscation regimes are intentionally highly punitive in assessing what amount the defendant must pay. The prosecution may ask the court to move to confiscation proceedings in relation to any defendant convicted on indictment of any offence from which he or she has acquired criminal property.

322. If the court proceeds to consider confiscation, three presumptions are triggered: all assets held at time of conviction or received within a 6-year period preceding when the proceedings

were instituted, and any expenditure within the same period are equally assumed to have been made from the proceeds of criminal conduct. Once established, the obligation falls on the defendant to rebut these presumptions by showing a legitimate source for the property.

323. The effect of this procedure is that the assessed criminal benefit amount is far higher than the actual net gain or profit. In the next step, the value of the defendant's "realisable property" is also calculated meaning any property held, by any means (e.g., by use of a trust or a body corporate) by the defendant or a person to whom the defendant has directly or indirectly made a gift to avoid confiscation. Once the realisable asset figure is set out by the prosecution, again the burden falls on the defendant to prove it is less.

324. The confiscation order figure actually payable by the defendant will be the sum of the criminal benefit, or the total available assets figure if that figure is lower. Failure to pay a confiscation order on time attracts interest accumulating on the sum and can also result in an additional custodial sentence (e.g. an amount exceeding 1 million GBP unpaid can result in a maximum custodial sentence of 10 years imprisonment).

325. Case examples show that in lack of demonstrable realisable property, the calculation discussed above may well result in confiscation orders with a nominal low value (such as £1) which is considered necessary to enable the order to be revisited at a later date should further assets be identified and it is determined appropriate to undertake the revisit, to realise those assets. If the defendant has come into significant additional wealth for example, the prosecution can apply to have that new wealth included in a re-assessed realisable assets figure and therefore also be payable towards the confiscation order if the criminal benefit figure is higher.

326. As in the case example above, the EFCB has identified cases where minimal realisable assets were found at the time of the original confiscation order, and subsequent use of financial intelligence indicated the appropriateness of revisiting the confiscation order. EFCB has reportedly started to prioritise conducting further financial investigation in those cases with the most significant disparity between the realisable asset figure and the defendant's criminal benefit.

327. The basis of this systemic approach is a quite recent policy document titled "Conviction Based Asset Recovery (restraint and confiscation)" (Appendix 16 within the EFCB Manual of October 2023) that details the basis on which the EFCB undertakes revisits of confiscation orders. The orders which are to be reviewed/revisited are where the benefit is more than £10,000, where a nominal order (£1) was made, and in cases where there is a large discrepancy between the value of the criminal benefit and that of the confiscation order, as in the following case example.

**Case study 8.1: Example on revision of the confiscation order**

In 2011, K was convicted for drug trafficking and received a custodial sentence of 4 years. The following year, K's benefit from drug trafficking was assessed by the Royal Court as £89,925 and his realisable property was assessed as £34,197, which represented the value of his realisable assets at the time. A confiscation order was made in that amount.

In late 2019, financial intelligence was received that suggested that K had received an inheritance in excess of £400,000. The amount had been paid into a Guernsey bank account held jointly by K and his wife. It was believed that K intended to purchase a property with the money. At this point, K's outstanding benefit from drug trafficking was £60,017.

Using the provisions of Section 16 of The Drug Trafficking (Bailiwick of Guernsey) Law 2000, which allows the Court to revisit the confiscation order, when the amount ordered to pay is less than the assessed benefit, a restraint order, pursuant to section 26 of the law, was granted to prevent K from using or dealing with property to the value of the outstanding criminal benefit. A confiscation order was subsequently made for £60,017 and was satisfied in full.

328. Before the recent issuance of this policy document (that is, throughout the assessed period) revisits and recalculations were undertaken in an ad-hoc manner, triggered by the receipt of intelligence on the identification of additional assets. In line with the new policy, re-visits are now undertaken two years after any order is granted, or (as previously) when intelligence suggests assets may be available to realize.

329. Between 2018 and 2023, 16 confiscation orders were granted for a nominal value of £1. Six of the sixteen confiscation orders pre-date the policy introduction, but the Guernsey authorities claimed that those will also be revisited as part of the programme going forward (as will those where there is a large discrepancy as described above). In undertaking such an investigation, the EFCB works closely with the FIU and the CIU (BLE), and other domestic and international partner agencies (including the CARIN network). Having said that, the AT welcomes any systemic approach in this field, but the results are yet to be seen.

Civil Forfeiture

330. The civil forfeiture regime was introduced in 2007 and was thus already in place at the time of the previous assessment. Since then, however, the forfeiture mechanism has undergone a systematic development with the aim to expand its scope and to maximize its potential disruptive impact on proceeds generating criminality.

331. In this regime, the Guernsey authorities need only to prove on the balance of probabilities that the money subject to the forfeiture application is the proceeds of or intended for use in an "unlawful conduct" even if no person has been charged or convicted with a criminal offence in relation to that conduct, including cases where a charge cannot realistically be brought or is abandoned, or even where a person has previously acquitted of a criminal charge. According to the legislation being force during the assessment period, a civil forfeiture claim may be made in relation to any cash or BNIs (money, postal orders, cheques, etc.) above the value of £1,000 which represents the proceeds of or was intended for use in unlawful conduct.

332. The robustness of the civil forfeiture regime was significantly increased by the adoption of the Civil Forfeiture (Amendment) Ordinance[52]. As a result of these amendments, the civil forfeiture has been operating on the principle of reversal of the burden of proof since January 2023. Where there are reasonable grounds to believe that the property subject to application constitutes proceeds of unlawful conduct, the respondent to the application must show cause why the property should not be forfeited. Another new feature relates to the SARS regime where a summary forfeiture can be ordered if a request to consent for a particular transaction following a SAR has been refused for 12 months.

333. While these new features have reportedly been applied by authorities with success, the same cannot yet be said about the more recent legislative changes that further expanded the civil

[52] Forfeiture of Money etc. in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Ordinance 2022

forfeiture regime. The Forfeiture of Assets Law of 2023 ("FOAL") extended the scope of civil forfeiture to include all types of property, including real property, but this new legislation only entered in force on the last day of the onsite visit (26 April 2024) so it could not have had any impact on effectiveness.

334. Civil forfeiture mechanisms clearly present advantages in confiscating criminal proceeds, both in domestic and overseas cases. Its use is undoubtedly commendable where prosecuting the defendant is impossible (in cases when he/she has died or absconded, or where evidence required to prove a criminal offence is unobtainable). It can also be used in some circumstances where ownership of money is unclear, e.g. in cash seizure cases where all persons being in apparent control of suspect cash deny ownership of the money) and also for monies captured by the SARS regime (see below). What appears more problematic is the use of civil confiscation proceedings in cases where there would have been a realistic avenue to prosecute and to convict for ML (and to use conviction-based confiscation afterwards).

335. As it was explained by the authorities, criminal prosecution is preferred but, where prosecution is not possible or practicable (emphasis added) the civil forfeiture is an alternative remedy for achieving a disruptive effect against the criminal enterprise and prosecutors are expected to target the proceeds of crime using whichever of these most appropriately fits the specific situation. While this is an overall expedient approach, the AT harbours concerns that in such cases, too great a role might be given to considerations of practicability as discussed more in detail under IO7.

Forfeiture of Instrumentalities

336. The forfeiture of instrumentalities pursuant to the Police Property and Forfeiture Law, as mentioned in the TCA (c.4.1[b]), is available as part of sentencing in every case where the court has a power to deprive the defendant of any property if satisfied that it has been used in (or intended for) the commission of any offence. The property must have been lawfully seized from the defendant, or in his possession or control at the time he was apprehended. This power has reportedly been used against a range of articles connected with criminal offending across all crime types (e.g. to forfeit a private yacht used for illegal migrant smuggling, or computers in cases involving child pornography). The AT learnt that these forfeiture powers have not been required in any of the ML cases, as all have either resulted in a confiscation order which covered all the defendant's realisable property, or else there was no property to forfeit in the case.

337. The forfeiture provisions in the Misuse of Drugs Law, which not only allow for the forfeiture but also for the destruction of drugs and related items, are a widely used power in drug-related cases where virtually every sentencing is accompanied by a forfeiture of instrumentalities. Guernsey Border Agency also has wide and regularly applied forfeiture powers under the Customs and Excise Law.

Investigatory Powers

338. Both the criminal and civil regimes are underpinned by extensive investigatory powers. In the criminal regime, these are available to determine whether any person has engaged in or benefited from criminal conduct, or into the extent and whereabouts of criminal proceeds and include search and seizure warrants as well as production orders (to produce material), customer information orders (used on financial services business to obtain information about their customers and accounts) and account monitoring orders (for a specified period). The civil

forfeiture regime has largely identical investigatory powers which also include disclosure orders (to compel a person, even the one who committed the unlawful conduct, to answer questions or provide material). Finally, preservation orders are available under PPACE to ensure relevant evidential data is protected from loss (these are reported to have already been used in relation to data held by an internet service provider in a ML investigation).

### *3.4.2. Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad*

339. Guernsey is both committed and highly capable in supporting overseas investigations into money laundering, fraud and corruption where the proceeds have been laundered through Guernsey-based structures. However, as is detailed in IO7, Guernsey has not yet translated this capability into significant numbers of domestic conviction-based confiscation proceedings relating directly to money laundering offences. Where convictions have been achieved, however, confiscation orders have been successfully obtained which suggests a positive trajectory, once prosecution numbers relating to cases better aligned with the country-specific risks of the Bailiwick increase.

**Case study 8.2: Example of extensive identification and confiscation of domestic proceeds**

In 2020 and 2021 Guernsey Border Agency commenced criminal investigations into persons B and W for suspected drug trafficking offences. Customs documentation had linked B to the importation of a motor vehicle which contained a sophisticated concealment of a significant quantity of a controlled drug. Following surveillance and a controlled delivery, B was arrested and premises were searched with significant quantities of cash being seized. Separately, through the interrogation of mobile phone data, W was linked to importations of controlled substances via postal packages. Subsequent investigations and analysis of mobile phone data linked W to B and the drug importation using the motor vehicle.

The GBA referred the case to the EFCB for parallel financial and confiscation investigations. The priority was to undertake financial enquiries, including local land registry and credit searches, with a view to identifying assets that could be made subject to restraint. The financial investigation identified significant assets within the jurisdiction controlled by B and W, including residential properties, vehicles and funds in bank accounts. Early and effective collaboration with the LOC led to successful applications for restraint orders (covering all property owned by both individuals) at a sufficiently early stage in the case, preventing dissipation and preserving the assets for any future confiscation proceedings. The financial investigation and close collaboration with the Law Officers resulted in Confiscation Orders being granted for more than £325,000.

340. The case above illustrates the ability of the EFCB and the LOC to act quickly to progress investigations and to overcome various difficulties arising from the complexity of the case. These included the complexity of the bank accounts involved that required an extensive analysis, and once this analysis resulted in the identification of significant additional criminal benefits captured under the statutory assumptions, the defendants provided a considerable number of witness statements and other evidence seeking to rebut these assumptions, which in turn required further complex investigatory work to respond to these claims.

341. Similarly, although the civil forfeiture regime has historically been used for either low-level domestic cases of acquisitive crime, or to progress cases linked to MLA requests, the recent

changes in the legislation have given the opportunity to significantly extend the applicability of these forfeiture powers.

Confiscation in Domestic Predicate Cases

342. Conviction based confiscation is routinely pursued following successful prosecutions for proceeds-generating crimes so there is correlation between the number of cases referred for prosecution and the number of confiscation orders made, which is indicative of the conviction-based confiscation regime functioning with the necessary regularity.

343. In the period of 2018 to 2023 (whole years) 63 confiscation orders were granted the vast majority of which (56 orders i.e. 89%) related to drug trafficking, while 5 orders (8%) related to ML and 2 orders (3%) to fraud which is not entirely in line with the risk profile of the jurisdiction.

344. Domestic restraint and freezing figures demonstrate that in recent years Guernsey has taken more proactive action against domestic ML and economic crime, but these have not yet reached the stages of confiscation or forfeiture stage.

345. New types of methodology such as crypto currencies have not yet manifested in criminal cases investigated and prosecuted Guernsey. Nevertheless, the BLE High Tec Crime unit has been tasked with seeking a short to medium term solution for the securing of virtual assets if required and this work was still on-going at the time of the onsite visit with a multi-agency group including the LOC and the courts.

Confiscation and Forfeiture

346. The value of assets confiscated or forfeited shows some fluctuation year-on-year, which can be attributed partly to the various characteristics and complexity of the underlying cases, but the figures are generally comparable and cannot be considered significant. In fact, the assets confiscated and forfeited domestically in the assessment period equally represent a rather low level, with total annual amounts ranging from several ten thousands to several hundred thousands GBP let alone the number of the underlying cases by which these figures should be divided so as to have the average amounts per case (such as the criminal confiscation figures for 2022 where a total of 119.019 GBP confiscated in 20 cases means less than 6000 GBP on average in each case).

347. Whilst these results might be considered as being consistent with the low domestic crime rate, assets of this size are not at all in line with the jurisdiction's risk profile of and the volume of funds held in the Bailiwick. To some extent, the same goes for the confiscation and forfeiture orders made in relation to foreign proceeds as these occurred rather sporadically (3 times in 6 years) despite the relatively higher amounts involved. By illustration, the AT examined the underlying criminal offences the proceeds or instrumentalities of which were confiscated upon conviction and found that these were drug trafficking with significantly fewer instances of ML and other offences (such as fraud).

**Table 8.1: Confiscation and forfeiture**

| YEAR | | **CRIMINAL** confiscation | | | | **CIVIL** forfeiture | | | TOTALS |
|---|---|---|---|---|---|---|---|---|---|
| | No of Cases | Domestic | No of Cases | Foreign | No of Cases | Domestic | No of Cases | Foreign | £ |
| 2018 | 8 | **£90,470** | 0 | **0** | 9 | **£169,697** | 0 | **0** | **260,167** |
| 2019 | 6 | **£270,494** | 0 | **0** | 13 | **£472,079** | 0 | **0** | **742,573** |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 2020 | 12 | **£353,803** | 1 | **£1,576,065** | 9 | **£65,517** | 1 | **£6,400,000** | **8,395,385** |
| 2021 | 8 | **£71,582** | 0 | **0** | 6 | **£27,227** | 0 | **0** | **98,809** |
| 2022 | 20 | **£119,019** | 0 | **0** | 11 | **£37,701** | 0 | **0** | **156,720** |
| 2023 | 9 | **£116,271** | 2 | **£11,061,944** | 5 | **£109,852** | 0 | **0** | **11,288,067** |
| 2024* | 3 | **£370,476** | 0 | **0** | 0 | **0** | 0 | **0** | **370,476** |
| total | | **£1,392,115** | | **£12,638,009** | | **£882,073** | | **£6,400,000** | **£21,312,197** |

348. In a few cases, revision of the confiscation orders has occurred when the estimated value of the realisable property has not been able to be achieved, for example a property was sold for less than the predicated re-sale value. Three such revisions have taken place during the evaluation period, two in 2020 totalling £15,962 and a third one in 2018, all of which are reflected in the table above.

349. As regards the ratio between amounts of criminal benefit (as determined by the court in the respective cases) and that of realisable property (also as determined by the court) to see what extent the criminal proceeds could effectively be captured and recovered, the Guernsey authorities indicated an average 16% as the proportion of realisable property against the determined criminal benefit, in respect of orders granted between 2018 and 2023. While this percentage appears quite low, the authorities explained that it reflects the way that criminal "benefit" is calculated, being all property passing through the defendant's hands rather than their actual profit or what proceeds they retained.

350. As regards the confiscation of instrumentalities, the following statistics were provided to the AT which appear to demonstrate the capability of the relevant authorities to deprive the criminals of their means used or intended for committing crime.

**Table 8.2: Use of Deprivation Orders pursuant to DTL (drugs / instrumentalities)**

| Year | Number of defendants convicted | Drugs/paraphernalia forfeiture | Other property |
|---|---|---|---|
| 2018 | 22 | 21 | 8 |
| 2019 | 20 | 20 | 9 |
| 2020 | 40 | 39 | 27 |
| 2021 | 33 | 31 | 22 |
| 2022 | 36 | 36 | 25 |

**Table 8.3: Use of Customs Seizure Powers (not including items destroyed after seizure)**

| Asset | Date sold | Amount realised |
|---|---|---|
| 4.7m Avon RIB | 15/01/2021 | £1,256 |
| 6m Marsea Vessel | 15/01/2021 | £1,285 |
| 6.3m RIB & Trailer | 15/01/2021 | £4,500 |
| Saab 9-3 Turbo EDTN (Vehicle) | 15/01/2021 | £151 |
| Mercedes ML350 Auto (Vehicle) | 15/01/2021 | £216 |
| 26ft Cygnus Cyclone Vessel | 26/08/2022 | £18,289 |
| Peugeot 205XE (Vehicle) | 11/11/2022 | £400 |
| BMW 120i M Sport (Vehicle) | 13/07/2023 | £301 |
| Lexus IS 300H (Vehicle) | 12/01/2024 | £2,500 |

Criminal Assets Seized/Frozen

351. During the assessment period (2018 to 2023) the estimated total value of restraint orders obtained in relation to domestic criminal investigation cases exceeded 4.96 million GBP and on behalf of foreign jurisdictions the value orders obtained in this period was in excess of 20 million GBP (see also under IO2).

352. The authorities reported of one ongoing investigation that has involved continuous attempts to vary or lift the restraint, taking up around 5 days of court hearings. The authorities' ability to resist such applications has been significantly increased by the introduction in 2023 of section 53ZA of the POCL, which specifies that the powers of the court must be exercised with a view to (among other things), maintaining the value of restrained assets in order to satisfy a confiscation order.

353. In the same period, the estimated total value of asset freezing orders obtained in relation to domestic civil forfeiture investigations exceeded 24.9 million GBP although this outstanding figure can largely be attributed to two very high value cases which were still ongoing at time of the onsite visit. Foreign freezing orders in the same period covered a further 6.8 million GBP as indicated below.

**Table 8.4: restraint and freeze values (by year obtained) in GBP**

| **Restraint and freeze values (by year obtained) in gbp** | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **Year** | **Criminal** | | | | **NCB (Civil)** | | | | **TOTALS** |
| | Domestic | | Foreign | | Domestic | | Foreign | | |
| | case | value | case | value | case | value | case | value | |
| 2018 | 1 | 86,450 | 0 | 0.00 | 13 | 265,246 | 0 | 0.00 | 351,696 |
| 2019 | 2 | 189,008 | 2 | 3,966,270 | 14 | 432,913 | 0 | 0.00 | 4,588,191 |
| 2020 | 3 | 139,105 | 0 | 0.00 | 6 | 608,462 | 1 | 6,400,000 | 7,147,567 |
| 2021 | 2 | 2,246,194 | 2 | 16,525,499 | 11 | 21,574,153 | 0 | 0.00 | 40,345,846 |
| 2022 | 3 | 743,188 | 0 | 0.00 | 7 | 23,518 | 0 | 0.00 | 766,706 |
| 2023 | 2 | 1,563,306 | 0 | 0.00 | 4 | 11,267,935 | 1 | 360,999 | 13,192,240 |
| | | **4,967,251** | | **20,49,769** | | **34,12,227** | | **6,760,999** | **66,392,246** |

354. The ratio between seized or frozen assets and those confiscated or forfeited seems significant. The increase in the volume of assets temporarily secured in both mechanisms in the last few years seems to coincide with, and is likely to be the result of the establishment of the EFCB in 2021 and the shift in their approach towards more complex transnational cases involving considerable proceeds (as discussed more in detail under IO7) albeit with a significant drop in 2022 in terms of the value of the restrained/frozen assets.

355. Notwithstanding that, the positive results of the provisional measures regime has not yet been translated into similar increases in the volume of confiscated or forfeited assets, which means that the end results of any risk-based approach in the performance of the LEAs are yet to

be seen. In this respect, the authorities reported of 2 cases with substantial claim values to be listed for forfeiture hearings in 2024 and another high value claim being actively investigated at the time of the onsite visit.

Civil forfeiture and the SARS Regime

356. The civil confiscation regime has recently been extended for use to assets captured by the SARS regime (see under IO6). This regime had since its introduction been capable of preventing transactions for an unlimited time and thus effectively freezing funds almost indefinitely, which has had an unquestionably disruptive effect on the proceeds of crime, but unless action was taken to obtain a confiscation order in the home jurisdiction (and a MLA request to enforce that order in Guernsey) funds would often remain on hold, with no realistic prospect of Guernsey to deal with the property.

357. The amendments to the Civil Forfeiture Law in January 2023, which allow the burden of proof to be reversed so the owner of the frozen property has to prove the legitimacy of the funds (see under Core issue 8.1) have resolved this situation as it is now clearly applicable to funds frozen in the SARS regime, as proven by a recent test case where it was used successfully relating to a cash seizure. The priceless advantage of this provision is that it can be used *in absentia* if proper notice of proceedings is given to property owners and holders. Encouraged by the success, the EFCB has prioritised re-examining longstanding cases and developing them towards a civil forfeiture application which is expected to increase the volume of forfeited assets and to deter criminal enterprises.

Preservation and Management of the Value of Seized Assets

358. As discussed in the TCA (c.4.4) both the criminal and civil regimes have provisions to manage the value of seized and confiscated assets, in which context a specific guidance ["Asset Management and Disposal Policy"] was issued for the relevant authorities in October 2023 although, as demonstrated by the case example below, the authorities had successfully managed and disposed of unusual assets even before the introduction of this policy.

359. In criminal proceedings where a restraint order is in place against the defendant's assets, H.M. Sheriff can be appointed by the Court to act as "Receiver" with due powers to take possession of and manage the property to maintain the value pending the outcome of proceedings. These powers may include seeking assistance from suitably qualified third parties if the complexities of the business require professional oversight to maintain the value of the assets in question.

360. Under the civil forfeiture law, frozen funds and cash are held in a dedicated, interest-bearing bank account to mitigate the impact of inflation against the value and maintain safekeeping. In the new civil forfeiture regime, where a wider range of assets may be subject to freezing, H.M. Sheriff can be appointed as "Receiver" in similar terms as in criminal restraint cases.

361. As far as confiscation and civil forfeiture orders are concerned, it is not always necessary for authorities to intervene for the recovery and management of the assets. In the criminal confiscation regime, the defendant is pressured to satisfy the confiscation order on time or face an additional custodial sentence. For civil forfeiture orders under the current regime, money to be forfeited is held in a bank account and can simply be transferred to the Seized Assets Fund (see below). However, in those cases where it is necessary for authorities to intervene, H.M. Sheriff

can be or, under the new civil forfeiture regime extending to a wider range of assets, will automatically be appointed as Receiver to take possession of, act to maintain the value of and ultimately sell the assets.

**Case study 8.3: Example of asset management**

Two defendants, resident in Sark were convicted in Guernsey of third-party money laundering offences (the conviction occurred in 2015 i.e. before the start of the assessment period). A restraint order was granted over their assets at the time of charge and remained in place for three years until their conviction. They were subsequently made subject to a POCL confiscation order. Whilst the assets were still subject to the restraint order, in December 2017, H.M. Sheriff was appointed as Receiver. The Receivership Order included the power to take possession of, and sell, the defendants' assets. One of the more unusual pieces of property the Receiver dealt with was a "Steinway" grand piano. The Receiver obtained a valuation from the manufacturers Steinway and Sons, to clarify the market value of this singular item. The piano had been left in situ at the defendants' property in Sark, and its condition maintained. H.M. Sheriff arranged for it to be returned to the Island of Guernsey ready for sale. The Receiver advertised the item widely to achieve best market price, even using a local media campaign. The piano was sold via a sealed bids process and achieved a sale price of £21,659 to a purchaser based in London.

362. Relevant authorities are financially incentivised to maximise criminal asset recovery, which is achieved through the allocation of monies from the Seized Assets Fund ('SAF') where confiscated and forfeited criminal proceeds, which are not repatriated or returned to victims, are deposited at the conclusion of proceedings.

363. The three priorities the Guernsey Government has set for use of SAF funds are (i) the recuperation of asset recovery costs, (ii) the victim compensation, and (iii) fulfilling asset-sharing agreements or obligations with other jurisdictions. ("Victim compensation" in this context primarily concerns fulfilling the Bailiwick's international obligations such as those arising under Articles 14 and 25 of the United Nations Convention against Transnational Organized Crime ("UNTOC") to return assets to victim countries, most commonly in cases of foreign corruption. In contrast, criminal proceeds to be returned to identifiable individual victims of crimes are not deposited with the SAF.)

364. Once these priorities are met, remaining funds are allocated in a mechanism where 80% of the funds is given for use in criminal justice initiatives, for purposes related to improving the performance of the criminal justice system (particularly asset recovery) and the effective implementation of standards and initiatives in related areas (including AML/CFT), reducing the crime rate, and repairing the damage caused by crime (including restorative justice measures) while the remaining 20% is used for community purposes.

### *3.4.3. Confiscation of falsely or undeclared cross-border transaction of currency/BNI*

365. As discussed in the TCA (R.32) the legal requirements in place oblige any persons arriving to the Bailiwick to declare the cross-border transportation of cash or BNIs (hereinafter: cash) in excess of £10,000 to the Customs divisions within the Guernsey Border Agency (GBA) that is responsible for policing cross-border cash movements. Cash declarations are made by completing a form to be submitted before arrival or departure at the approved ports (Guernsey airport and harbour) and at Customs offices, with signs and posters informing the passengers of this

requirement. Failure to make a cash declaration is a criminal offence and whenever a passenger is suspected of deliberately evading cash controls, making a false declaration or where there may be a link to unlawful conduct, the cash may be seized, and coercive action taken against the person.

366. At the time of the previous assessment, the processes for identifying cash crossing the Bailiwick borders involved targeted risk assessments with an occasional involvement of cash detector dogs from the UK. This process has been revised since this time and the identification of cash transport has become a business priority of the customs officers who now routinely stop and question passengers travelling through canalised routes as part of the enforcement screening. The GBA acquired a full-time cash detector dog in 2017 that is regularly utilised to assist in scanning all passengers on selected commercial services. As a result of that, GBA officers conduct approximately 13,000 full stop and search procedures at the ports every year out of which screening using cash dogs resulted in 2200 positive hits (albeit most related to innocuous cash detections).

367. The risk-based and intelligence-led cash profiling and the targeting of canalised traffic forms an integral part of enforcement targeting to detect all forms of criminality. Periodic risk-based operations on non-canalised routes are also conducted by the GBA in collaboration with the Guernsey Police Counter Terrorist & Border Policing team (CTBP).

368. As an example, in 2023 GBA officers, utilising a GBA cash detector dog, and CTBP officers conducted a six day targeted risk assessment to identify illicit cash movements at the border and to establish any links to TF or organised criminality as a response to information that a large amount of Channel Island currency is collated in North West regions of the UK. The GBA and CTBP officers engaged with approximately 800 passengers and searched just under 200 cars over the six days targeting Manchester and Birmingham flights and also car ferries from major UK seaports. Numerous indications from cash dog resulted in finds of small amounts of cash and even if no finds were assessed as having any link to CT or TF, the case demonstrated the capabilities and preparedness of the authorities.

369. The majority of cash declarations are made by travellers using Guernsey's two canalised traffic routes, through its seaport and airport. The overall number of cash declarations was broadly consistent every year, with significantly more declarations made at exportation but without any noticeable trends or tendencies. There were no declarations of BNIs during the assessment period.

**Table 8.5: Number and Value of Cash Declarations**

| | Import | | Export | |
|---|---|---|---|---|
| | declarations | total in GBP | declarations | total in GBP |
| **2018** | 1 | 10.000 | 12 | 159.554 |
| **2019** | 1 | 13.943 | 12 | 173.657 |
| **2020** | 2 | 23.375 | 2 | 20.000 |
| **2021** | 2 | 81.000 | 4 | 98.695 |
| **2022** | 2 | 33.500 | 0 | - |
| **2023** | 4 | 56.531 | 7 | 100.219 |

370. The annual value of seizures and the number of interventions related to cash detected in canalized traffic has gradually reduced since 2020. The Guernsey authorities however explained that this reducing trend has also been noted by the UK Border Force and was attributed to the travel restrictions during the pandemic, coupled with a general move away from passengers carrying large amounts of cash and relying upon electronic methods of asset storage and payment.

371. The volume of all cash seizures for 2018 – 2023 is 46 and wherever any underlying criminality could be identified it was in most cases domestic drug trafficking, underscoring Guernsey's risk profile for this crime type. Of these 46 cases, the table below shows only cash interventions that occurred at the border:

**Table 8.6: Statistics for cross border seizures and forfeiture**

| Year | Amount | Cash found in | Outcome | Other border interventions below £10k |
|---|---|---|---|---|
| 2018 | £20,040 | vehicle / outbound | confiscation | 16 interventions × £44.251 |
| 2019 | £6,000 | baggage / outbound | civil forfeiture | 21 border interventions × £126.190 |
| | £5,000 | postal packet / outbound | forfeiture PPFL | |
| | £1,000 | postal packet / outbound | forfeiture PPFL | |
| | £4,600 | on person / outbound | restored | |
| 2020 | ---- | ---- | ---- | 6 interventions × £25.700 |
| 2021 | £2,000 | on person / inbound | confiscation | 8 interventions × £42.950 |
| | £50,000 | vehicle / inbound | restored | |
| 2022 | ---- | ---- | | 10 interventions × £35.100 |
| 2023 Aug | £9,300 | on person and baggage via private aircraft / inbound | civil forfeiture | 9 interventions × £19.800 |

372. As illustrated above in the far-right column, a total of 70 further physical currency detections with a combined value amounting to £294,000 were made from canalised traffic in the assessed period where the origin of the cash was verified by questioning and no further action was taken. These cash transports were all below the £10k threshold and therefore no declaration was required. The small amounts of cash in such cases related primarily to the purchase of vehicles and the exportation of cash from legitimate earnings, which figures appear consistent with the limited use of cash in the economy of the Bailiwick.

373. The GBA not only seizes cash from passengers that they failed to declare, but also where the amount is below the reporting threshold but exceeds £1,000 and there is a suspicion that it either represents the proceeds of an unlawful conduct or is intended for use in unlawful conduct. In such cases, the GBA liaises with the EFCB for consideration of a civil forfeiture investigation. The EFCB takes a robust approach and in the vast majority of referrals a civil forfeiture investigation is opened, and cash forfeiture pursued by the LOC.

374. The authorities have taken enforcement and prosecutorial action in some flagrant cases of failure to declare cash which resulted in 3 prosecutions during the assessment period, one of which ended with a ML conviction. In the first case, an individual previously associated with

criminal conduct was stopped and searched by the GBA and £12,000 undeclared cash was found in his clothing. The person was arrested for failing to declare the cash which he said said to have been withdrawn from accounts in Serbia. This provenance was later verified but the individual was nevertheless prosecuted for failing to make a proper declaration under the Cash Controls Law and was fined £4,500 by the Magistrates Court. In the second case, the person concerned has been convicted of the same offence and a forfeiture order of £16,500 has also been made.

375. The third case described below is particularly significant because the successful operation of the cash control mechanism resulted in a conviction for a stand-alone ML offence.

**Case study 8.4: Cash control mechanism**

In August 2017, B (a UK resident) attempted to take £153,200.00 out of the Bailiwick through the ferry port, bound for the UK. He did not declare the cash at the border which was found by the cash detection dog at the port. The bundle of money comprised of both UK and Guernsey currency, wrapped in various plastic bundles (more than half of the banknotes i.e. £83,980 was Guernsey currency, whilst the remainder was UK sterling). B initially claimed that he had brought the money to Guernsey having attended a car show, but subsequently changed this story claiming he had won it in a card game.

Analysis of phone data extracted from devices seized upon arrest and obtained through communication applications, pursuant to the Regulation of Investigatory Power (Bailiwick of Guernsey) Law, 2003, and through liaison with the UK's National Crime Agency, identified that B had used another person's mobile phone whilst in Guernsey as well as a repeated phone contact with a mobile phone number associated with an individual known to law enforcement. A MLA request was sent to the UK to obtain banking information in relation to accounts held by B, which showed no significant deposits in the year leading up to his arrest.

B gave varying accounts at trial as to the origin and intended purpose of the cash but could not demonstrate a legitimate source for the funds or explain satisfactorily why he has transported the funds out of the jurisdiction in cash. The court found that he was most likely acting as a cash courier for someone else and so he was convicted in March 2019 of one count of money laundering contrary to section 40(1) POCL together with a count of breaching the cash controls legislation (Section 1(1) of the Cash Controls (Bailiwick of Guernsey) Law, 2007. Considering his age (65 years) and the lack of criminal records, B received a two-year prison sentence for the ML offence, with two months to run concurrently for the breach of cash controls. A confiscation order was made in the sum of £154,000, being the sum held by the authorities.

376. There has been one instance where cash laundering has been identified in the context of smurfing by use of Guernsey's postal system resulting in a successful ML prosecution and conviction as described in Case study 7.1 under IO7. Another case example below involved possible money laundering:

**Case study 8.5: Example of cash control mechanism**

In 2023, four passengers from East Asia arrived in Guernsey on a private aircraft from the UK. No General Aviation Report was filed and the GBA detained the flight and obtained the passenger details from the handling agent. Prior enquires revealed an international intelligence log recorded against one passenger relating to theft and money laundering suspicions. The passengers declared a total of £9,300 and stated the monies represented monies from a bank account and

casino wins. The passengers were unable to evidence their claim and the cash was seized pending receipt of evidence of provenance. The travellers subsequently left the jurisdiction without providing any evidence to substantiate their claims. The matter was referred to the EFCB and an application for forfeiture of the monies was made. The full amount was forfeited by the Court, in November 2023, and paid into the SAF.

### *3.4.4. Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities*

377. The Guernsey authorities demonstrated that confiscation results have been achieved under all aspects of the confiscation regime, including the proceeds of foreign criminality, which is the principal money laundering risk to the Bailiwick. However, the number and value of these confiscations are far from reflecting the extent of this risk mainly due to the fact that the recent risk-based shift in the EFCB's approach towards transnational ML activities involving complex structures and significant volume of proceeds has not yet resulted in confiscations or forfeitures related to that sort of criminality.

378. The vast majority of criminal confiscation orders in the assessment period concerned low-scale drug trafficking, with the under-representation of ML and other economic crimes, which is only partially in line with the risk profile of the jurisdiction. That is, these results together with the volume of confiscated and forfeited assets are, on the one hand, consistent with the low domestic crime rate but, on the other, are not in line with the jurisdiction's risk profile of and the volume of funds held in the Bailiwick.

379. As discussed, however, the AT learnt that provisional measures have already been in place under the civil forfeiture regime in some high value cases involving foreign criminality that are more aligned with the country-specific risks but still need to be translated into confiscations and forfeitures.

380. The confiscation of instrumentalities reflect the low domestic crime rate and the fact that most domestic predicate criminality involves drug trafficking.

381. Finally, the confiscation results in relation to the physical cross-border transportation of cash, as analysed under Core issue 8.3 reflect the fact that the economy of the Bailiwick is not cash-based to any significant degree and are in line with the level of risk presented by cash in the NRA.

## *Overall conclusions on IO.8*

382. The Bailiwick comprehensive and robust regime of confiscation and provisional measures provides the necessary powers for the identification, restraint, and confiscation of criminal proceeds and instrumentalities. While it is indeed pursued as a policy objective and proceedings for conviction-based and civil forfeiture have routinely been conducted, the results of the application of the two regimes have remained rather moderate in light of the context of the jurisdiction.

383. The confiscation and forfeiture results so far achieved, both in terms of the number and nature of the cases and the volume of assets involved, only to a certain extent reflects the assessment of ML/TF risks and the national AML/CFT policies and priorities. Criminal confiscation is restricted to the property that is actually realisable which often results in

undervalued or nominal value confiscation orders and necessitates subsequent revision and recalculation.

384. The cross-border cash control is carried out in a robust mechanism implemented by dedicated and well-resourced authorities, which demonstrated their capacity to detect and to restrain also ML related cash and to successfully pursue ML in such cases.

385. **Guernsey is rated as having a moderate level of effectiveness for IO.8.**

# 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

## 4.1. Key Findings and Recommended Actions

***Key Findings***

***Immediate Outcome 9***

a) The authorities acknowledge that, as an international financial centre, the Bailiwick has exposure to being used in the movement, storage or administration of funds linked to foreign terrorist activity through its formal financial system. In addition, TF may arise as a secondary activity to money laundering, i.e. where the proceeds of foreign criminality are laundered in the jurisdiction and then used to fund terrorism abroad. The overall TF risk level is considered by Guernsey to be low (external risk)/very low (domestic risk). A more granular analysis of the TF risk is needed in certain areas (e.g. funds transiting through other jurisdictions) and sources of information (cooperation requests, SARs, TF pre-investigations) do not appear to have been used to their full extent, as described in the analysis below and in IO1.

b) Over the five year-period, there have been a total of 121 TF SARs filed, from the most material RE, which is largely in line with the country risks. Out of the total number of SARs, the vast majority were determined not to have terrorism or TF links. Only 13 were determined to have potential links with TF, all of which were fully analysed and found not to involve TF.

c) All forms of TF activity are criminalised under the Bailiwick's legal framework. To date, there have been no TF investigations, prosecutions or convictions. Following discussions with the authorities, including the presentation of the (sanitised) cases, the AT takes comfort in that the financial aspect of the files has been thoroughly considered and that the authorities have the skills and the knowledge to successfully detect and prosecute TF cases, should they arise.

d) The TF policy is set out in the *The Bailiwick of Guernsey's Strategy for Countering Terrorism: Bailiwick Contest* (CONTEST) which includes a specific strategy for combatting TF (the TF Strategy). This expressly deals with the identification, investigation and prosecution of TF.

e) The absence of TF prosecutions does not allow the AT to make a conclusion on the proportionality and dissuasiveness of sanctions applied. Nevertheless, sanctions available under the legislative framework are proportionate and dissuasive in the event of a conviction. Although the legal framework provides, alternative measures have never been used.

***Immediate Outcome 10***

a) Guernsey automatically applies relevant UK sanctions regimes implementing TF and PF-related UNSCRs through the Sanctions Implementation Regulations. The P&R Committee is the body responsible for making autonomous designations, making and receiving asset-freezing requests, making listing and de-listing proposals to the UN (through a MoU with the UK FCDO), granting licenses to access frozen assets and handling unfreezing requests. The Sanctions Committee, with representation of all the relevant AML/CFT competent authorities, is tasked with coordinating and ensuring effective compliance with international TFS. New designations, changes in designations and de-listings related to TF and PF TFS are notified to the private sector through

"sanctions notices" that are circulated (typically on the same day, according to authorities) by the FIU through the THEMIS system and published in the GFSC website.

b) Guernsey has had measures in place for the oversight and monitoring of NPOs throughout the assessed period (albeit in a less detailed, risk-based and formal manner until 2022). In 2022 (quite recent in the period under assessment), the Charities Ordinance and the Charities Regulations were enacted (preceded by a guidance paper from 2018), which introduced multiple new governance and risk mitigation obligations for internationally active NPOs and brought TCSP-administered NPOs under registration. Monitoring and oversight by the Guernsey Registry (on the basis of the risk ratings it assigns to NPOs) has been frequent and detailed (specially in relation to offsite monitoring), but there is room for a full use of relatively recent established onsite oversight and sanctioning powers. In the case of TCSP-administered NPOs, there is additional supervision by the GFSC, which, however, have not been driven by NPO risk and have only led to one enforcement case involving an NPO customer.

c) Authorities, most notably the Registry, have been particularly active throughout the assessed period in terms of trainings and outreach events aimed at the NPO sector and there is abundant guidance in this regard in the Registry website, which has led to NPOs exhibiting a good level of awareness of their obligations and potential TF risks and having anti-financial crime and CFT-specific policies and procedures in place.

d) To date there have been no instances where it has been necessary to apply measures to deprive terrorists, terrorist organisations and terrorist financers of assets and instrumentalities related to TF, which is in line with the jurisdiction's TF risks (although the assessment of TF risks may have been limited due to the lack of TF investigations and limited use of incoming cooperation requests, SARs and TF pre-investigations (see IO.9)). Measures in place, focusing on international aspects (implementation of international TFS, focus on NPOs that are internationally active), are largely in line with the TF risks of a transit jurisdiction with an "IFC" status.

***Immediate Outcome 11***

a) Guernsey has been given weight to countering the proliferation of WMDs and PF throughout the assessed period, most notably since the implementation of "Project Dragonfly" in 2021, an initiative that resulted in several measures, such strategic analysis reports, guidance, determining list of jurisdictions deemed as "PF hubs" or legislative amendments (in February 2024) to broaden the scope of the AML/CFT obligations applicable to FIs, DNFBPs and VASPs to also incorporate CPF.

b) Guernsey has established systems that could identify assets belonging to designated persons under PF sanctions regimes, should the case occur, mostly concerning information from the private sector and the Customs Service import and export licensing regime (using an electronic manifesting system (GEMS) to detect factors relevant to proliferation), with additional revision and checks by the FIU. The AT was presented with some cases of dual-use goods that could have proliferation implications, but, after liaising with domestic and international authorities, these were discarded.

c) Both the competent authorities and the private sector have had ample experience with asset freezing and associated procedures under other, not TF or PF-related, international sanctions regimes. The private sector demonstrated an overall very good understanding and application of TFS obligations, although some challenges were

detected in the investment sector (see IO.4). Authorities provided abundant and remarkable outreach and guidance in relation to TFS compliance, including training and outreach events, public guidance and engagement with individual firms.

d) The GFSC and AGCC have monitored compliance of REs with TFS obligations throughout the assessed period. The risk scoring methodology of the GFSC takes into account several TFS-relevant factors, but the system does not allow to immediately have a view of the sanctions risks of particular entities or sectors, nor sanctions risks (exclusively) drive supervision. A remarkable effort has been the sanctions thematic review of 2021, which showed an overall good level of compliance by the involved REs (mostly banks) and whose results were disseminated to the public. GFSC's supervision has considered both the effectiveness of the firms' screening systems and wider aspects of TFS compliance (understanding of PF and TFS risks, CDD, ongoing and transaction monitoring, etc.), but the results in terms of breaches detected, remedial and enforcement actions and sanctions imposed have remained low (specially concerning findings not related to screening systems). Results of the AGCC inspections have been less significant, but eCasinos' exposure to sanctions and PF risks is lower than in other, more material, sectors. There have also been significant cases of prompt action (short-notice inspections, imposition of license conditions, etc.) in relation to entities with exposure to a non-PF (or TF)-related sanctions regime.

***Recommended Actions***

***Immediate Outcome 9***

a) Guernsey should further analyse the TF related SARs by FIs, DNFBPs and VASPs and take any necessary measures (such as additional guidance and training) to improve their quality.

b) The authorities should revisit the TF risk assessment to: i) make fuller use of the incoming cooperation requests, the SARs and the TF pre-investigations; ii) further analyse the threat related to funds transiting other jurisdictions (non-focus ones) iii) further look into TF risks related to legal persons and arrangements.

c) Guernsey should formalise the competences in the TF investigations between EFCB and BLE.

***Immediate Outcomes 10 and 11***

a) Guernsey authorities (P&R Committee, FIU, GFSC) should consider taking steps to introduce more automated aspects to the communication mechanism of sanctions notices, and consider revising the format of the notice so as to allow the private sector to automatically screen the names contained in them.

b) The Registry and the GFSC should further refine their oversight and monitoring actions (in the case of the Registry, especially make full use of its relatively recent established onsite oversight framework) in relation to NPOs (or TCSPs administering them) with an aim at detecting more significant cases of non-compliance and making greater use of the enforcement powers available to them.

c) The GFSC and the AGCC should further implement their supervisory guidelines in relation to wider aspects of TFS compliance (such as the identification and measures undertaken in relation to persons connected or associated with designated persons or the capacity to detect sanctions circumvention schemes) in future thematic or targeted

exercises, focusing on entities with higher sanctions risks, in order to improve the results in terms of breaches detected, remedial and enforcement actions and sanctions imposed in those areas.

386. The relevant IOs considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5–8, 30, 31 and 39, and elements of R.2, 14, 15, 16, 32, 37, 38 and 40.

## 4.2. Immediate Outcome 9 (TF investigation and prosecution)

387. Guernsey has appropriate mechanisms and processes in place for the identification, investigation, and prosecution of TF. Several intelligence sources are considered when analyzing the potential TF related cases. Financial intelligence is developed in all potentially terrorism-related cases, both when initiated from the FIU or from LEAs. Authorities demonstrated effective internal and international cooperation in the field: FIU-EFCB-BLE.

388. This assessment is based on information, statistics, case studies, and interviews with relevant authorities.

### *4.2.1. Prosecution/conviction of types of TF activity consistent with the country's risk-profile*

389. The Bailiwick is within the Common Travel Area, i.e. an open borders area comprising the UK, Ireland, the Channel Islands and the Isle of Man. In line with the Bailiwick's size and its constitutional relationship with the UK, it receives classified information relevant to national security (including possible terrorist or TF activity) via the UK's Security & Intelligence Services, rather than having its own equivalent organisations. The Bailiwick authorities have a close relationship with the counter-terrorism authorities in the UK and are tied into the UK's Counter Terrorism Network.

390. There is a Fixed Intelligence Management Unit (FIMU) which is also known as the Counter Terrorism Intelligence Management Unit, or CTIMU, within BLE. The FIMU works within the UK's network of other FIMUs, who work together to assess terrorist or TF threats using secure communication channels and will escalate matters as necessary through the relevant UK Counter Terrorism regions (or directly to the International Operations unit at UK Counter-Terrorism command for onward dissemination to other countries if appropriate).

391. The Law Officers are responsible for all prosecutions, including TF. In practice this would be carried out by the Criminal Directorate within the Law Officers' Chambers.

392. The Law Officers' *Policy and Procedure for a Risk Based Approach to Prosecuting Money Laundering, Terrorist Financing and Proliferation Financing* specifies that the allocation of terrorism and TF prosecutions within the Criminal Directorate would be agreed between the Director of Criminal Law and the Head of the Economic Crime Unit. This is confirmed in the *Prosecutor's Manual on the Prosecution of Money Laundering Offences*, an operational manual which covers the investigatory processes and prosecution of all forms of economic crime which would ordinarily include TF. Prosecutions would be heard in the Royal Court, having commenced in Magistrate's Court. The Royal Court has a procedure in place to deal with TF cases known as the TF protocol.

393. Based on the information received through this process, a Senior National Coordinator supports or develops action plans to address identified threats. In cases of particular urgency, the Senior National Coordinator may organise the raising of an Operational Intelligence Management Unit or an Executive Liaison Group as a Senior Strategic Command structure to deal with a terrorist event, enabling the UK government to support the Chief of Police (who maintains overall responsibility for Counter Terrorist activities within the Bailiwick) in managing any counter terrorism or CFT response at the highest possible level.

*Country's TF risk profile*

394. The authorities acknowledge that, as an international financial centre, the Bailiwick has exposure to being used in the movement, storage or administration of funds linked to foreign terrorist activity through its formal financial system. In addition, TF may arise as a secondary activity to money laundering, i.e. where the proceeds of foreign criminality are laundered in the jurisdiction and then used to fund terrorism abroad. The overall TF risk level is considered by Guernsey to be low (external risk)/very low (domestic risk). Moderate improvements in the risk understanding are needed when it comes to typologies identified in TF related SARs, TF pre-investigations, risks related to indirect (through other IFC) incoming and out-going flows, and risks related to legal persons and arrangements (see also IO1 and IO5).

395. In 2018, representatives of the Bailiwick contributed to the development of the so-called "Monaco guidance", on how to assess the TF risks faced by international financial centres. The "Monaco guidance" was used by the Bailiwick authorities to inform their ongoing work for NRA1, and later to inform NRA2.

396. Both NRA1 and NRA2 involved a consideration of intelligence from international partners, primarily the UK and business links with focus countries, i.e. countries that present particular risks of terrorism or terrorist financing according to a set of criteria (countries that present active terrorism or terrorist financing threats, countries that have strong geographical or other links to countries that have an active terrorism or terrorist financing threat; countries with a secondary terrorism or terrorist financing threat).

397. The work done for NRA1 and NRA2 confirmed that the Bailiwick has very limited business links with focus countries. According to the authorities, 0.12% of all outward flows in 2020, 0.06% in 2021 and 0.04% in 2022 were generated from these focus countries and represented 0.31% of all inward flows in 2020, 0.14% in 2021 and 0.04% in 2022. The authorities acknowledge that flows to or from another international financial centres, may be underlying focus countries involvement or other TF related risks, which are not apparent from the available data. To overcome this lack of information, the authorities have turned to the UK colleagues who confirmed the absence of intelligence in this sense. In addition, Internet sources have been used, including MERs and NRAs of other countries. Nevertheless, more analysis is needed to fully grasp the actual level of TF risk in that regard.

398. Other risk indicators considered for the purposes of NRA1 and NRA2 include international requests for assistance in TF cases, and reports of suspicion of terrorism or TF received by the FIU. No requests for mutual legal assistance involving TF have been received. From 2018 to the middle of 2023, the FIU received 112 international requests for assistance involving possible TF. Although he AT doesn't not dispute that all of these requests and reports were properly investigated using the process described under Core Issue 9.2, the AT has concerns regarding the extent to which those were actually used to inform the risk assessment and understanding as they do not appear to bring any additional information apart the "focus countries" and the transit nature of the jurisdiction. As described under IO5, the TF risk

understanding related to legal persons and arrangements is less developed and certain aspects need to be further enhanced.

**Table 9.1: SARs referencing Terrorist Financing**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Av % |
|---|---|---|---|---|---|---|---|
| SARs referencing Domestic Terrorist Financing | 0 | 0 | 0 | 0 | 0 | 0 | 0% |
| SARs referencing International Terrorist Financing | 14 | 18 | 15 | 29 | 27 | 18 | 100% |
| % SARs referencing Terrorist Financing | 0.7% | 0.7% | 0.5% | 0.8% | 1.% | 0.9% | 0.8% |

399. In the review period there were no TF investigations. There have been a small number of TF potentially related cases with BLE, but these did not result in further proceedings as no evidence of TF was found (see CI 9.2). This is largely in line with the country risk profile.

### *4.2.2. TF identification and investigation*

400. As described under Recommendation 5, all forms of TF activity are criminalised under the Bailiwick's legal framework. To date, there have been no TF investigations, prosecutions or convictions. There have been 10 cases where law enforcement intelligence suggested possible TF links but those were all closed at the pre-investigative stage as no evidence of TF was identified.

401. Over the five year-period, there have been a total of 121 TF SARs filed (see also Table xxx under IO4). The majority of these were received from e-Gambling (32), TCSPs (25), Securities intermediaries (15) and banks (11), which is largely in line with the country risks and materiality (see Chapter 1). All incoming SARs are checked by FIU officers.

402. The FIU reported that out of the total number of SARs, the vast majority were determined not to have terrorism or TF links. Typically, the RE filed the SAR due to links with focus countries, and the analysis concluded that there was no actual suggestion of TF. Other cases included the misidentification of individuals as designated persons under the TFS regime (false positives), subjects to trading links to a multinational company which had TF links, with no suggestion of involvement in such activities and cases linked to OCG where the link to TF was not confirmed in the course of the FIU analysis.

403. Out of 121 SARs reported as TF related by the private sector, only 13 were determined to be relevant. 10 were SARs from eCasinos and referred to subjects with terrorism links, with no suggestions of TF. Of the remaining 3 SARs, one related to international trans-shipment of fertiliser from Russia to India via Norway and the Netherlands. The nature of the cargo and the routing gave rise to a TF suspicion. However, analysis suggested no terrorism or TF involvement and that this was simply a case of sourcing cheap product. Another SAR was received from GFCS in relation to a matter where the FIU was already engaged in a pre-investigation. The third SAR was received from the FIU and the checks against the Police National Computer (PNC) revealed that the subject had been arrested for terrorist offences. As a result, the SAR intelligence summary was immediately emailed to the FIMU who confirmed the information with the investigators. They reported that they were aware of much of the data, except for the mobile phone number. An intelligence report was requested by the FIMU. The FIU completed an intelligence report and forwarded it to the FIMU.

404. From the description of the cases presented, the AT concluded that the analysis undertaken by the Guernsey FIU was complex, looking at various aspects of the matter, including following expenditures made abroad using credit cards and bank transactions operated in Guernsey. The financial analysis was complemented by operative intelligence obtained from LEA and from abroad.

405. Turning to the strategic analysis[53] the authorities looked at the relevant (terrorism related) SARs and classified them into four categories. Nevertheless, as in the case of the international requests for assistance, the assessors have concerns as to which extent the SARs were furthered looked at (beyond the four categories above) from the TF risk assessment perspective as the features of those SARs are not to be found amongst the risk indicators or typologies. The irrelevant TF SARs were not exploited from a risk perspective, nor have they been used to inform the outreach to the private sector to improve their red flags indicators, although they constitute an important part of the reports.

406. At LEA level, the Bailiwick has a dedicated system in place for the identification and investigation of TF which involves a special intelligence management unit (FIMU) within Bailiwick Law Enforcement (BLE) responsible with the investigative work. While the Bailiwick retains responsibility for the identification and investigation of TF within its criminal jurisdiction, it has the benefit of being able to draw on the UK's resources in this area to assist it in discharging these responsibilities.

407. The overall system for identifying and investigating TF is set out in the TF Strategy and is underpinned by a Terrorist Financing Intelligence Handling and Investigations Procedures document (the TF Procedure), which in turn is underpinned by Standard Operating Procedures.

408. A TF case can be initiated based on the following sources of information: Reports of suspicion to the FIU from obliged entities (analysed above); Reports of suspicion to Bailiwick Law Enforcement, the EFCB or the FIU from members of the public in the Bailiwick; Intelligence reports from specialist counter-terrorism officers at the entry points to the jurisdiction; Intelligence reports from other domestic or international terrorism investigations or intelligence development; information from the UK's Action Counter Terrorism reporting mechanism; Intelligence reports from other domestic law enforcement agencies or other competent authorities and Intelligence reports from international law enforcement agencies or other competent authorities.

409. Under this system, intelligence is to be analysed and investigated jointly by specialist officers in the FIU and the specialist intelligence management unit located within BLE, and when needed shared with the UK authorities. Decisions on the need for any further investigatory action are the responsibility of the Chief Officer of Police. This process shall be followed on every occasion where intelligence suggests possible terrorism or TF.

410. Any further investigative action that might be necessary within the Bailiwick would be carried out by the EFCB or BLE using the investigative powers. There is no written procedure to set the competences between the two and since no such stage has been reached during the period under review, and seeing the recent changes in the EFCB structure, it remains unclear which authority would actually carry out a TF investigation in practice. The authorities explained that responsibility for taking a TF investigation forward would be agreed between the Director of the EFCB and the Head of BLE depending on the particular facts of the case, with a general presumption that the investigation of TF linked to a terrorism investigation would be taken

[53] "Strategic analysis of the exposure of the Bailiwick of Guernsey to terrorism and terrorism financing"

forward with BLE as the lead Bailiwick authority, whereas a standalone TF investigation would be taken forward with the EFCB as the lead Bailiwick authority.

411. According to the procedures, EFCB will afford TF investigations the highest priority and this will override all other investigatory priorities unless specifically authorised by the Director of the EFCB. A fast-track procedure is in place to facilitate the urgent opening of a TF investigation when needed. Senior investigation managers superintend investigations and assure compliance with EFCB procedures and the Bailiwick's legal framework. The EFCB's has at its disposal the policy document: *Money Laundering, Terrorist and Proliferation Financing Investigations*.

**Case study 9.1: TF Pre-investigation triggered by a SAR**

The FIU received a report of suspicion from an e-Gambling operator licensed in Alderney. The report related to a subject who was ordinarily resident in the UK, and to the patterns of his use of the eGambling account, including the amounts being spent. On receipt of the SAR, the FIU immediately disseminated it to the FIMU. The subject was checked and identified as a person who had recently been arrested by the Counter Terrorism police in the UK as he was about to travel from the UK as a Foreign Terrorist Fighter. The Bailiwick authorities analysed the available information for signs of TF, but there was no indication of this, and it appeared that the subject had simply sought to boost his chance of winning some funds through increased gambling activity, prior to travelling to war zones in the Middle East. The information obtained by the Bailiwick was shared with the relevant investigators in the UK. This enhanced their existing knowledge, including by the provision of details of a mobile telephone. The subject was subsequently convicted of a terrorism related offence in the UK.

412. As mentioned above, at LEA level, there has been 10 TF pre-investigation cases in Guernsey out of which only one emanated from a SAR. One other case was the subject of a SAR during the course of the pre-investigation. Other cases emerged following police reports, Customs work or international co-operation requests. All cases were handled by the specialised unit within the BLE.

413. In a TF context, a pre-investigation ion that includes financial aspects, constitutes a form of joint intelligence let operational activity conducted to negate any suspicion of TF in the first instance, and if confirmed, that would lead to a criminal investigations on suspicion of terrorist financing.

414. Following discussions with the authorities, including the presentation of the (sanitised) cases, the AT takes comfort in that the financial aspect of the files has been thoroughly considered and that the authorities have the skills and the knowledge to successfully detect and prosecute TF cases, should they arise.

**Case study 9.2: TF Pre-investigation triggered by Police sources**

In April 2023 Police Officers were dealing with a minor matter at a home address of Person T, during which they identified the presence of four crossbows and 100+ arrows as well as other bladed or blunt weapons. Subsequently, in early May 2023, the Customs authority identified that Person T had imported a replica World War II grenade as well as other lawful material. Following the discovery of this material the Police commenced a Counter Terrorism (CT) investigation into Person T as a potential Single-Issue Terrorist. Specialist BLE and FIU officers commenced a TF pre-investigation with a view to identify whether person T was engaging in terrorist financing for the purpose of the acquisition of weapons for himself and/or others.

Although none were illegal, the concern was that they could be used against members of the community due to the mindset of the subject. The TF pre-investigation and financial analysis

contributed key information, including that in the previous 12 months the subject had spent over 25% of his income on such lawful weapons and accessories.

The FIU confirmed previous online purchase of weapons and accessories from a single supplier in the UK, resulting in UK Competent Authorities carrying out a joint TF pre-investigation with the supplier. The intelligence from the UK was exchanged with the FIU, which effectively enabled the identification 'in live time' of online purchases.

The FIU disseminated the intelligence to the Customs Authority, who were able to intercept the weapons and accessories on their arrival at the Guernsey Post Office parcel sorting office. The pre-investigation confirmed the number of weapons the subject was in possession of, and their intention to acquire further weapons. The financial investigation by the FIU could not identify any TF link.

The investigation into Person T's actions resulted in their arrest and the seizure of a number of weapons following a search of their property. The subsequent criminal investigation concluded that this was a mental health matter not linked to terrorism. Person T pled guilty to offences of possession of an offensive weapon (linked to the original attendance by the Police Officers), assault and obstruction of Police Officers. He was given concurrent sentences of 8-month's imprisonment suspended for 2 years, and placed on mental health monitoring programme by the authorities.

#### *4.2.3. TF investigation integrated with –and supportive of - national strategies*

415. The Bailiwick has a national counterterrorism strategy which is set out in *The Bailiwick of Guernsey's Strategy for Countering Terrorism: Bailiwick Contest* (CONTEST) which includes a specific strategy for combatting TF (the TF Strategy). This expressly deals with the identification, investigation and prosecution of TF. Both CONTEST and the TF Strategy within it take into account the jurisdiction's risk profile.

416. CONTEST has 9 strategic objectives and refer to combating of both terrorism and TF the approach being that these two crimes are linked. This approach is not necessarily relevant for a IFC with a low risk of terrorism, but with threats emanating from the sheer amount of money transiting the jurisdiction, which might be linked to terrorism acts or terrorist organisations located elsewhere.

417. The TF Strategy includes dedicated sections on TF investigation and the use of financial intelligence in counter terrorism activity in various ways, including: i) to identify relationships and the extent of participation in terrorist networks, ii) to identify suspicious behaviour that may be in support of a terrorist group or indicate an intent to commit a terrorist act, iii) to construct the sequence of events leading to a terrorist attack based on a suspect's financial activities, and iv) to support non-financial aspects of a terrorism investigation. The use of TF investigations to support counter terrorism activity is also specified by the TF Procedure.

418. The TF Strategy provides for the internal co-ordination in the course of a TF investigation between the BLE and the FIU. This would be done in accordance with an MoU on Information Exchange, Shared Systems and Operational Co-operation between the EFCB, BLE and the FIU. This MoU sets out the detail of how these three authorities would co-operate and co-ordinate their respective functions.

419. An important policy element is the possibility to use specialised UK resources in TF investigations as necessary. This could arise in one of two ways. First, depending on the scale and context of the investigation, the Chief of Police could invite the UK's Senior National Coordinator to assume responsibility for the coordination of the Bailiwick investigation and the direction of

enquires into terrorism or TF related activity on his behalf. Second, in cases of higher threat or cases with a significant UK footprint, the UK's Senior National Coordinator may agree with the Chief of Police and the Director of the EFCB to provide specialist support to their organisations in their conduct of a TF investigation. The form of support provided would depend on the particular facts of the investigation.

420. Training for prosecutors has included relevant staff attending training delivered to the local finance industry by these experts, and training internally tailored to the needs of the prosecutors/ support staff.

421. TF resources deployed to the FIU are all trained in UK. The FIU supervisors and one officer are trained at a national level by the NTFIU and the FIU Operations Manager has received both NTFIU training and also FIMU training in the assessment of Threat/Risk/Harm as a FIMU Manager and in the Initial Management of Counter Terrorism Investigations. Through this function, the FIU Operations Manager receives spontaneous terrorism threat assessments, which are either directly shared with FIU staff or by way of a briefing to FIU and EFCB personnel as appropriate and relevant. All FIU staff attended presentations given by a leading expert in August 2023, as well as similar events in December 2023 and January 2024.

#### *4.2.4. Effectiveness, proportionality and dissuasiveness of sanctions*

422. As there have been no TF convictions to date, no sanctions or other measures have been applied against any natural or legal persons for TF offences. However, effective, proportionate and dissuasive sanctions are available (see Recommendation 5), complemented by a robust confiscation regime (see Recommendation 4).

#### *4.2.5. Alternative measures used where TF conviction is not possible (e.g. disruption)*

423. Since no TF investigations have been taken place in Guernsey, no alternative measures have been used where the TF conviction was not possible.

424. Nevertheless, the use of measures to disrupt TF activities in addition to TF convictions is expressly envisaged in CONTEST, the TF Strategy and the TF Procedure. The objectives of the TF Strategy specifically include using other proportionate and dissuasive sanctions against offenders as an alternative to prosecution for TF.

425. Another objective of the TF Strategy is deterring and disrupting the storage or movement of terrorist funds. As explained under Recommendation 4, there are very wide powers available to the authorities to enable this, although it has not been necessary to use them to date.

426. In addition to the measures outlined above, there are deportation powers under immigration legislation that could be used if necessary to disrupt TF activities. These powers enable the Lieutenant Governor (who represents the king in the Bailiwick) to order the deportation of any person who is not a British citizen if the Lieutenant Governor deems that person's deportation to be conducive to the public good. Furthermore, in the event of a criminal conviction the court would make a deportation recommendation to the Lieutenant Governor. There has never been a need to date to invoke this power in relation to terrorism or TF. However, bearing in mind the threat that such activities would present to national security, it is highly likely that the deportation of a person suspected to be involved in them would be viewed as conducive to the public good.

***Overall conclusions on IO.9***

427. Largely in line with the jurisdiction's risk profile, to date there have been no TF investigations, prosecutions or convictions. There have been 10 cases where intelligence suggested possible TF links but those were all closed at the pre-investigative stage as no evidence of TF was identified. The competent authorities are generally aware of the TF threat and risks, with moderate improvements needed in certain areas.

428. All TF activities are criminalised under the Bailiwick's legal framework. Guernsey has a dedicated system in place for the identification and investigation of TF which involves a special intelligence management unit within BLE responsible with the investigative work. More focus should be put on the verifying the adequacy of TF SAR reporting. The division of responsibilities between BLE and EFCB when it comes to TF potential investigations remains informal.

429. As there have been no TF convictions to date, no sanctions or other measures have been applied against any natural or legal persons for TF offences. However, effective, proportionate and dissuasive sanctions are available, complemented by a robust confiscation regime.

430. **Guernsey is rated as having a substantial level of effectiveness for IO.9.**

## 4.3. Immediate Outcome 10 (TF preventive measures and financial sanctions)

### *4.3.1. Implementation of targeted financial sanctions for TF without delay*

*Institutional framework*

431. Following Brexit, and the introduction by the UK of its own sanctions regulations (the Sanctions and Anti-Money Laundering Act 2018, hereinafter "SAMLA"), Guernsey introduced its own dedicated sanctions legislation, the Sanctions (Bailiwick of Guernsey) Law, 2018 ("the Sanctions Law"), and, in 2020, the Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020 ("the Sanctions Implementation Regulations"), which enable the Bailiwick to give effect to UK sanctions regulations enacted under the SAMLA. This means that UNSCRs are not directly applicable in Guernsey, but the UK sanctions regimes that implement them are immediately enacted in the Bailiwick. These include the ISIL (Da'esh) and Al-Qaida (United Nations) (Sanctions) (EU Exit) Regulations 2019 ("the UK ISIL regulations") (which implement the 1267/1989 (Al Qaida) sanctions regime), the Afghanistan (Sanctions) (EU Exit) Regulations 2020 ("the UK Afghanistan regulations") (which implement the 1988 sanctions regime).

432. Additionally, the Sanctions Implementation Regulations give effect to the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 and The Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 ("the UK International Terrorism regulations" and "the UK Terrorism regulations"), which both implement UNSCR 1373, meaning that the UK designations made under the aforementioned regulations have immediate effect in Guernsey, as well as the obligation to apply restrictive measures to the designated persons. The Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011 ("the TAFL") allows, at a national level, to make designations (at its own initiative or at the request of other jurisdictions) in line with the criteria of UNSCR 1373 (reasonable suspicion of a person's involvement with terrorist activity, or of being owned, controlled or acting on behalf of such person) and to apply prohibitions (freezing of funds and economic resources) to designated persons (as well as making asset-freezing requests to other jurisdictions). Both the Sanctions Law and the TAFL have been most recently amended in March 2024 in order to establish on an explicit statutory footing under domestic law several of

the requirements of Recommendation 6 that were previously implemented by relying on the UK legislation in this area.

433. Responsibility for issues such as making autonomous designations under the TAFL (whether interim or final), making and receiving asset-freezing requests under the TAFL, making proposals for listing and de-listing to the UN via the UK, granting licenses to access frozen assets or handling unfreezing requests rests with the Policy & Resources Committee ("the P&R Committee").

434. The P&R Committee is a Senior Committee of the States of Guernsey with effect form 1 May 2016. It is composed by a President and four members, who shall be members of the States. Either the President or one of its members shall be the Stats' lead member for external relations[54]. Among its many duties and powers aimed at developing and promoting the States of Guernsey policy objectives, it includes being the competent authority for financial sanctions. Decisions (including in relation to enact regulations related to sanctions, making designations, making listing proposals or granting access to frozen funds) are taken by the political members (the PMs) of the Committee. The Financial Crime Policy Office assists the Committee in undertaking these functions, in particular the senior "responsible officer" (the Director of Financial Crime Policy) and the senior "secondary officer" (the Director of External Relations and Constitutional Affairs), who are supported by 3 officers exclusively dedicated to sanctions matters and 3 other officers dealing with sanctions matters as part of their wider functions.

435. At an operational level, the Sanctions Committee is the body tasked with coordinating and ensuring effective compliance with international financial sanctions (whether implemented by the UK, UN or any other relevant supranational bodies) by monitoring international development on the matter, exchanging relevant information and ensuring, at each authority level, that persons required to comply with TFS obligations are made aware of them and their level of compliance is monitored. It reports to the P&R Committee and comprises representatives from authorities with responsibilities in sanctions implementation[55]. The Committee meets at least twice a year and discusses sanctions-related aspects such as NRA updates, lists of "TF focus" and "PF hubs" countries and their usage by the authorities, legislation updates, sanctions-related supervisory activities by the GFSC and AGCC or other oversight activity by P&R, and P&R updates on the different sanctions regimes applicable in Guernsey, among others. The topics and depth of the discussions proved to be relevant and of good quality, in line with the jurisdiction's sanctions risks and in line with the expertise of each of the represented authorities.

436. The P&R Committee has put in place a "sanctions manual", which is periodically updated, at least every two years, and most recently in April 2024, that sets out the processes to be followed by the Committee when discharging its functions in relation to international sanctions. In particular, it details the process to be followed in relation to making interim and final designations, issuing and receiving freezing requests to/from other jurisdictions, making listing proposals and submitting de-listing requests to the UN, handling unfreezing requests, granting licenses to allow for certain transactions in relation to frozen assets, managing communications received from the private sector and other authorities about potential sanctions links or the issuance of guidance and other outreach. It also includes forms for terrorism designations

[54] Policy & Resources - States of Guernsey (gov.gg)

[55] In particular, P&R, the Committee for Home Affairs, the LOC, the GFSC, the AGCC, the Guernsey and Alderney Registries, the Guernsey Police, Guernsey Customs, the FIU, the EFCB, the Revenue Service, the Guernsey Harbour Master, the Aircraft Registry and the Director of Civil Aviation.

(making, changing or revoking interim and final designations) and listing proposals (to the UK to make a designation under a UK sanctions regime or for it to make a designation proposal to a UNSC), with the expected information about the proposed person and supporting evidence to be provided in each case.

437. The manual states that cases involving sanctions regimes relating to terrorist financing and proliferation financing should be prioritised.

438. In the cases of making designation proposals or de-listing requests to the relevant UN Committee, these have to be made by the UK Mission to the UN on Guernsey's behalf, given the fact that the Bailiwick does not have a direct relationship with the UN for constitutional reasons. This is addressed in an MoU between the P&R Committee and the UK's Foreign, Commonwealth and Development Office ("FCDO"), most recently updated in August 2023.

439. Responsibility of the processes put in place in the sanctions manual greatly relies on the responsible officer (mentions to the responsible officer however include not only the Director of Financial Crime Policy, but also the Director of External Relations and Constitutional Affairs, and their delegates), who initiates them and leads all the steps until their conclusion. The steps, in most of the cases, concern the responsible officer reviewing relevant information available to the P&R and/or Sanctions Committees, liaising with the LOC and seeking specialist legal advice if needed, obtaining additional information, liaising with domestic and international authorities and preparing and submitting papers to the decision makers (the political members of the Committee).

440. Given its nature as a manual of procedures, the description of steps and guidance provided in the Sanctions Manual is at a high level. For example, instances where steps can be shortened or omitted due to exceptional urgency are not exemplified (although these circumstances will most often concern risk of asset flight), or timeframes are not always explicitly mentioned, and when they are, in most of the occasions are either indicative or dependant on the time each authority to whom information has been requested takes to respond. Authorities indicated that this approach is deliberate to accommodate the needs of individual cases.

441. Authorities also provided evidence of actions undertaken by the Financial Crime Policy Office (i.e. granting of licenses to access frozen funds under other, non-TF or PF-related, sanctions regime) being recorded in writing (with background details of the case and justification for the recommendation to the P&R political members to either issue or not the license), as well as the P&R meetings and agreements reached on sanctions-related issues. These actions mitigate the general terms in which the sanctions manual sometimes expresses itself, since they provide guidance to the responsible officer on how to address the different steps of the processes in practice (besides the procedural aspects already covered in the sanctions manual), as they constitute a reference on how to deal with similar cases in the future.

*Implementation of TFS 'without delay'*

442. To date no information from any source has been identified which would suggest the need to make a designation proposal or de-listing proposal to the UK or the UN or to make a designation on the P&R Committee own motion (although there was a case in 2020 where an FI made an application for a licence and a notification that might have suggested the need for a designation under the TAFL which, after consideration by the LOC and P&R Committee, it was concluded that there was no need for designation, as the application concerned a different sanctions regime not under the TAFL), no request to make a designation has been received from another jurisdiction, no assets have been frozen under UNSCR 1267, its successor resolutions or UNSCR 1373, no

issues of de-listing or unfreezing have arisen, and no applications have been made for access to frozen funds under these regimes. This is in line with the jurisdiction's TF risks.

443. This notwithstanding, some of the procedures established in the P&R Committee sanctions manual have been tested in application of other sanctions regimes enacted in Guernsey. Procedures tested included identification of links to designated persons, use of information gathering powers, licensing process, cooperation with the private sector, domestic authorities and international counterparts or liaison with the UN through the UK. Some examples of cases where procedures were triggered in application of other sanctions regimes are provided in the box below:

**Case study 10.1 – Cases where the P&R sanctions manual procedures have been applied in practice for other sanctions regimes.**

**Identification of links to a designated person, information gathering powers, licensing process and cooperation with international counterparts**

In 2022, Person A was designated by the UK as an asset freeze target under a UK sanctions regime (applicable in Guernsey). 2 TCSPs notified the P&R Committee that they held assets linked to Person A and were treating the assets as frozen. The assets were administered by one of the TCSPs through a chain of trust and company structures in Guernsey, the UK and the BVI. Further notifications were from a bank and an investment manager, both of whom had identified that Person A was the ultimate beneficial owner of a company in whose name they held assets, and from an accountancy firm which had provided auditing services to one of those companies. All of the notifications were made within 24 hours of the person being designated.

P&R Committee used its information gathering powers to obtain further details about the assets, which included residential properties in the UK and Europe, investments, antiques, and funds in bank accounts.

The P&R received a number of applications from the TCSP for licences to make payments from the frozen funds to meet basic needs and to maintain the assets. The P&R Committee required the applicant to provide supporting evidence and obtained advice from the LOC about whether the application met the applicable licensing criteria.

The P&R Committee also received an application from the TCSP to enable the removal of Person A's interest from an investment structure, since its involvement, due to the reluctancy of any FIs to take on any business with exposure to the sanctions regime, was preventing the structure from obtaining the funding it needed. In addition to obtaining further evidence from the TCSP and checking with the LOC that the application met the licensing criteria, P&R met with the TCSP to discuss the application and liaised with the UK authorities to verify the information received. In light of the high value and profile of the assets, and the complexities of the ownership structure, the P&R Committee eventually issued the license licence, but subject to reporting conditions about any changes in the ownership structure.

A request about the license was subsequently received from the sanctions licensing authority in the BVI, as it had received a similar licence application due to the involvement of a BVI company within the overall structure. P&R provided the information to the BVI authorities, who then also issued a license.

**Liaison with the UN through the UK in a licensing process**

In 2019 the P&R Committee received an application from an investment manager for a licence to enable the redemption of shares in a Guernsey collective investment fund held on behalf of Entity J, an entity designated under an EU and UN sanctions regime.

After taking advice from the LOC, the P&R Committee was satisfied that a licence could be issued, but it was a requirement of the UN regime that, before any licence could be issued,

notification had to be given to the relevant UNSC. The P&R Committee therefore liaised with the UK authorities about the process for this and prepared all necessary documentation to enable the notification to be transmitted to the UN. However, for commercial reasons the applicant decided not to proceed with the transaction.

444. As also explained under IO.11, there have been abundant cases where asset freezing has been required under other international sanctions regimes and such freezes, along with the notification to the P&R Committee have generally been timely (4 days on average, with 85% of the cases taking 24 hours of a designation) and the AT considers that it would be indicative of what would happen should any cases related to TF TFS occur. For a more detailed analysis, see Core Issue 11.1.

*Communication of designations*

445. As explained, designations under the relevant UNSCRs are immediately applicable in Guernsey through the enactment of the corresponding UK sanctions regimes. In addition to that, in order to raise awareness, sanctions notices containing details of any new designations or changes to existing designations under UNSCR 1267 & successor resolutions, a link to the relevant UN sanctions list and a reminder of the need to comply with the asset freezing provisions are issued by the Policy & Resources Committee and are transmitted electronically by the FIU to the FIs and DNFBPs that are registered in THEMIS. The same process applies to any new designations or changes to existing designations that are made by the UK under its measures to implement UNSCR 1373 and would also apply to any designations made by the P&R Committee under the TAFL. To enable this to be done, the responsible officers within the Policy & Resources Committee's Financial Crime Policy Office subscribe to the relevant UN mailing list and receive updates from the UK's FCDO and its Office of Financial Sanctions Implementation.

446. The P&R Committee sanctions manual establishes that all sanctions notices are sent to the FIU within no more than a few hours of the new designation or change to an existing designation being made, and the issuing of sanctions notices relating to terrorist financing must be prioritised. Similarly, once the FIU has received a "sanctions notice" from the P&R Committee, it also "prioritises" the transmission to the private sector. Sanctions notices are received by individuals and entities registered in THEMIS (which, besides the private sector and internationally active risk group A and B NPOs, can also include competent authorities and members of the general public). Despite no legal obligation to register, authorities indicated that all REs and internationally active risk group A and B NPOs are registered in THEMIS.

447. In practice, this means that sanctions notices are generally received by the private sector on the same business day as that on which a new designation or change to an existing designation is made. However, the way in which the process is designed (P&R having to become aware of the designation or the change, manually sending it to the FIU, FIU having to prepare a sanctions notice for further dissemination to private sector, which it has to prioritise in favour of its other tasks, etc.) allows for delays in the notification to happen. Authorities indicated that no delays have occurred in practice and that, typically, it would only be in cases where a new designation or a change to an existing one is made by the UN during a non-business day when a communication may be delayed until the next business day. In any case, and while being a minor issue, the AT considers that introducing more automated aspects in the communication process would be desirable.

448. In this sense, most of the entities met onsite were aware and confirmed the receipt of sanctions notices through THEMIS, and indicated that, upon their receipt, that would usually trigger a re-screening of their customer base against the new designations and/or changes on top of their already establishing, mostly overnight, screening processes.

449. Sanctions notices are also published the same day as they are disseminated to the private sector through THEMIS on the GFSC website[56], and there is a link to the relevant part of the GFSC website on the websites of the AGCC and the FIU. Authorities indicated that this may be subject to potential delays of a few hours in publication. In addition to these mechanisms, businesses are encouraged by the authorities to sign up to UN and UK government mailing lists, and some of the entities met onsite confirmed that this is a practice that they indeed apply, arguing that they were receiving the same inputs from different sources (THEMIS notices, mailing lists and their own automated screening systems), providing an additional layer of certainty.

450. Regarding the understanding of REs of their TFS obligations (essentially not making funds available to designated persons or for their benefit and notifying the P&R Committee about any links to sanctioned persons and actions undertaken in compliance with a sanctions measure, including any assets frozen) and actual level of compliance with them, entities met onsite demonstrated an overall very good level. This is thanks in part due to having practical experience in identifying designated persons within BO chains, asset freezing and complying with the notification to P&R Committee obligations under other sanctions regimes. While REs screening systems have become more robust over the assessed period throughout most sectors, there are some issues in relation to misapplication of SDD, BO identification in cases of control through means other than ownership and the identification of underlying investors in relationships where financial intermediaries are involved concerning the investment sector, which may also have an impact in the screening process. For a more detailed analysis, see IO.11 and IO.4.

451. In terms of sanctions implementation guidance and outreach, there are multiple resources available in the States of Guernsey website, in particular the "Sanctions"[57] and "Current sanctions regimes"[58] sections. These include, among others, guidance and forms to be used by REs concerning their TFS reporting obligations, a sanctions FAQ, guidance for other jurisdictions to make asset freezing requests to Guernsey, form for making designation proposals, guidance on licences and temple for making license requests, unfreezing guidance (false positives and revoked designations), guidance on applications for revoking or changing a P&R designation, form for making request to review a designation or guidance on applications for assistance with challenging UN/UK designations. Relevant contact details to subscribe to the UN and UK listings and to submit de-listing requests to the P&R Committee, the UN, the UK and the EU are also provided.

452. The efforts undertaken by the authorities to ensure public availability of detailed guidance and other resources in the area of TFS are remarkable. These resources contribute positively to the general understanding and awareness of TFS obligations and best practices/recommendations (such as encouraging any person, to be vigilant, and report, any potential targets for designation, especially when concerning REs and NPOs with international ties, even if it is not a legal requirement).

### *4.3.2. Targeted approach, outreach and oversight of at-risk non-profit organisations*

*Contextual factors*

[56] Sanctions — GFSC

[57] Sanctions - States of Guernsey (gov.gg)

[58] Current sanction regimes - States of Guernsey (gov.gg)

453. The legal framework governing NPOs in Guernsey comprises a regime for Guernsey and Alderney NPOs administered by the Guernsey Registry ("the Registry"), and a separate registration regime for Sark NPOs administered by the Sark Registrar of NPOs.

454. The regime for Sark NPOs differs from that for Guernsey and Alderney NPOs based on their purely domestic focus and the reduced size of the community. This is based on the assessment of NRA1 that concludes that only "internationally active" NPOs present any TF risks, while NRA2 explicitly considers the profile of Sark NPOs. While this approach does not seem to account for any potential abuse of Sark NPOs due to a lower level of oversight, authorities advised that the mandatory registration requirements and the submission of annual returns, which are routinely reviewed, would enable the Sark Registrar to detect any potential changes in the risk profile of Sark NPOs (such as a change from a domestic to an international focus). Consistently with the exposed situation, the Sark Registrar has not had to apply any TF- related oversight measures throughout the assessed period. This notwithstanding, regulation was enacted between March and April 2024 to bring the Sark NPO regime closer to that of Guernsey and Alderney NPOs, to cover any future potential internationally active Sark NPOs. Given the proximity of these measures to the onsite visit and the fact that would not have been applicable even if enacted earlier (due to not being any internationally active NPOs throughout the assessed period up until the time of the onsite), their effectiveness will not be assessed.

455. References to NPOs throughout the report include both charities (the majority) and NPOs, as defined in Guernsey legislation[59]. NPOs in Guernsey may be TCSP-administered or self-administered. Most self-administered NPOs are unincorporated associations. TCSP-administered NPOs were not required to register until 2022, with the enactment of the new Ordinance and Regulations establishing the requirements for NPOs that will be assessed below in more detail. Up until that point, most of the responsibility for the control and oversight measures was placed on the TCSP, therefore the introduction of a separate obligation for TCSP-administered NPOs to register (and the obligations that come with it) is a welcomed change, given their risk profile and volume of assets held.

456. Considering both TCSP and self-administered NPOs, there are 667 NPOs registered in Guernsey as of May 2024, out of which 543 have exclusively a domestic focus and 124 are considered as "internationally active" (raising and/or disbursing funds outside Guernsey), all of them, therefore, meeting the FATF definition of an NPO. Financial flows corresponding to Guernsey registered NPOs have amounted to a total of 4,863,454 GBP of raised funds and 39,390,225 GBP of funds disbursed outside the Bailiwick in 2023. The main jurisdictions concerning both the funding and the disbursements are Germany and the UK (approximately 25% and 17% of the funds raised; and 36% (each) of funds disbursed), as well as the Isle of Man only in terms of fundraising (29,82% of raised funds). Therefore, the exposure of NPOs to "TF High Risk Focus Countries", as identified in Guernsey, is considered as very low.

*Risk-based monitoring and oversight*

*Registry*

[59] Charities are organisations whose purposes are charitable or are purely ancillary or incidental to any of its charitable purposes and that provide or intend to provide benefit for the public or a section to the public in Guernsey, Alderney or elsewhere (Charities Ordinance, section 9(2)-(3)). NPOs are other types of organisations that are established solely or principally for the non-financial benefit of their members or the society, which includes, without limitation any social, fraternal, educational, cultural or religious purposes, or any other types of good works.

457. Monitoring and oversight of NPOs has been in place throughout the assessed period. The framework prior to 2022 (present at the time of the previous round assessment) contained some risk elements, such as the requirement for NPOs to file annual financial statements to the Registry (provided that they exceed £20,000 in turnover or £100,000 of assets), collection of NPO data on registration (purpose of the NPO, use of assets, funds and income, geographical location and purpose of assets, sources of funding, jurisdictional flows of finances and details of the managing officials of the NPOs), screening of NPO managing officials at registration and upon change, annual confirmation of the NPO being active or cross-checking of information against the Companies Register for those NPOs structured as legal persons. The risk classification of NPOs during the earlier part of the assessed period placed the same level of risk to all NPOs with international purposes (with the exception of the British Isles), which is not considered sufficiently risk-based.

458. The legislative framework for NPOs has experienced a significant enhancement since 2022, with the enactment of the Charities etc. (Guernsey and Alderney) Ordinance, 2021 ("the Charities Ordinance") and the Charities etc. (Guernsey and Alderney) (Amendments, exemptions etc.) Regulations, 2022 ("the Charities Regulations"), after a period of consultations with the sector that initiated in 2020. The new legislative framework puts a clear focus in internationally active NPOs (those raising and/or disbursing funds outside the Bailiwick, especially those who do so outside the British Isles), deemed as presenting a TF risk. Obligation to register applies only to them and to large domestic NPOs (gross assets and funds of 100,000 GBP or more or gross annual income of 20,000 GBP or more), with some registration exemptions (entities not raising funds from the general public and public-owned entities) established in the Regulations. Other NPOs can voluntarily register if they choose so. Upon registration, information on the aim/purpose of the NPO, details on the geographical location/focus of the assets and the NPO managing officials, among others, is collected.

459. The range of obligations set out in the legislation applies only to registered NPOs (with some exemptions established by the Regulations). These include, in particular, (i) an annual validation of the NPO information and the obligation to notify of any change within 21 days of taking place, (ii) reporting of any payment above 100,000 GBP outside the Bailiwick (except incidental or in relation to a British parent entity); (iii) constitutional documentation and governance requirements (including the Treasures having to be unconnected to board members and two unconnected persons being necessary for the release of payments; and the provision of proof of absence of criminal records for the managing officials); (iv) record-keeping (of names of board members, board meetings, annual financial statements and other relevant documentation for 6 years); (v) filing annual financial statements (except voluntarily registered NPOs, who are only obliged to maintain them), (vi) identification of significant (donations/payments above 15,000 GBP) donors and beneficiaries (or, in the case of branches of British NPOs, their parent company); and (vii) establishing an anti-financial crime policy and additional mitigation controls regarding financial crime risks and international partners. In addition, Group A and B NPOs are also required to register to THEMIS and to file SARs to the FIU, of which there have been no cases (although NPOs have been featured in 20 SARs submitted by REs during the assessed period).

460. These requirements came into force between the latter half of 2022 and, in some instances, in the first trimester of 2023 (namely reporting of payments, unconnected treasurers, minimum managing officials, submission of anti-financial crime policies and THEMIS registration), therefore they are quite recent when considering the whole period under review. However, these were preceded by a guidance paper by the P&R Committee from 2018 that already addressed, as best practices, the constitutional, risk mitigation and financial probity and transparency requirements and foresaw that this governance framework would form part of the, at the time, upcoming legislation. The focus on internationally active NPOs (and the definition of

what those include) is reasonable and in line with NRA1 and NRA2 conclusions, although neither the thresholds established for certain obligations, nor the exemptions present in the Regulations appear to stem from these assessments. This notwithstanding, the requirements (including their exemptions) were subject, as explained, to consultation with the NPO and TCSP sectors.

461. Monitoring and oversight of internationally active NPOs against the aforementioned obligations is conducted by the Registry on the basis of risk. As with the obligations themselves, these functions have majorly developed only recently (2022). These include onsite inspections, compliance meetings, information requests, offsite monitoring and thematic reviews. While authorities advised that those functions were in some capacity performed by the Registry before 2022, these were comparatively less detailed, less based on risk and not formally recorded.

462. For the purposes of monitoring and oversight, a more granular risk-scoring methodology was introduced in 2023 (preceded by a less granular risk matrix from 2020), upon which NPOs are rated, based on information obtained on registration, in the annual validation and notification of changes and from other sources. The risk score is to drive the frequency and intensity of oversight measures, as described in the table below:

**Table 10.1. Internationally active NPOs per risk group and associated obligations and oversight**

| Risk group | Criteria | Oversight | Frequency of onsite inspections | Number of NPOs[60] | |
|---|---|---|---|---|---|
| | | | | Self-admin | TCSP admin |
| **A** | Exposure to TF High Focus/sanctioned countries, including war zones, and support of displaced communities | Risk rating revision following changes, annual financial statements, review of anti-financial crime policy, registration on THEMIS, compulsory onsite visits, monitoring of attendance of managing officials to AML/CFT/CPF trainings, review of updated governing documents, enhanced managing official appointment approval, submission of new donor and beneficiary identification records, submission of enhanced financial information to supplement financial statements, submission of international activities and screening of affiliates by the Registry. | Annual | 11 | 9 |
| **B** | Donor or beneficiary relationships with countries other than the British Isles | Risk rating revision following changes, annual financial statements, review of anti-financial crime policy, registration on THEMIS, compulsory onsite visits, monitoring of attendance of managing officials to AML/CFT/CPF trainings, submission of international activities and screening of affiliates by the Registry. | Every 3 years | 14 | 22 |
| **C** | Donor or beneficiary relationships only within the British Isles | Risk rating revision following changes, annual financial statements, review of British charity. | 5% per year | 52 | 16 |
| **TOTAL** | | | | 77 | 47 |
| | | | | 124 | |

463. The Registry employs a range of oversight measures to ensure effective management and compliance of NPOs with the regulations. In particular, offsite oversight by the Registry basically consists of desk-based reviews of information available to it in order to detect instances of non-compliance with the obligations or risks in relation to an NPO that would trigger a subsequent action. Information reviewed includes the governance documents, anti-financial crime policies and mitigating measures implemented by NPOs in their application (including visits of managing officials to beneficiaries/partner NPOs for verification of charitable activities), identification records of significant funders, beneficiaries and partners/affiliates, transactional volumes

[60] It includes both Charities (the majority of the organisations) and NPOs.

available through the annual financial statements and the annual validation or reported payments above the threshold.

464. Financial statements are reviewed by checking that the information provided is consistent with registration details, purpose, type, risk profile (in particular, the international activities), onsite reports and annual validation data of the NPO. The main aim of the review is to detect potential mismanagement, non-compliance with the Regulations or risk of TF abuse, as well as to ascertain coherence between the submitted information and the NPO financial position. For Group A NPOs copies of the donor and beneficiary registers the NPO has to maintain are required to support the income and beneficiary payments. Identification of donors and beneficiaries is also requested by the Registry when an NPO informs a change to international activity. Another offsite control applied by the Registry consists in the screening against adverse media and sanctions lists of managing officials (who are required to have personal registrations) upon registration and change and, since 2023 (coinciding with a change in the Registry screening system), also overnight and encompassing international partners of NPOs as well. Matches are analysed by the Registry and, in case they cannot be discarded, further information is requested to the managing officials/TCSP, compliance and oversight meetings are held or even filing a SAR to FIU would be considered, of which there have been no cases.

465. Offsite measures have resulted in engagement with NPOs to request revisions/updates of internal policies, to reconcile minor differences in the annual validation financial statements, to report non-notified managing officials holding key roles or to address issues regarding the reporting of payments due to misunderstandings. None of these cases have been considered as severe enough (that is, involving situations of poor governance or that would merit changes in the NPOs risk profile) so as to initiate enforcement actions.

466. Besides offsite monitoring, the Registry also started undertaking more formal onsite activities in 2022. Onsite inspections are to be conducted in the frequency established in the table above, and based on the risk group categorisation of the NPO. The Registry decides the volume and frequency of inspections annually. Inspections are aimed at checking compliance of NPOs with their obligations, enhance their management and risk mitigation and promote their transparency. Inspections can be either full-scope or have a limited/targeted scope, determined on a case-by-case basis.

467. The targeted frequency of onsite inspections shown in Table 10.1 has not yet been achieved in practice. There have been 9 onsite inspections to NPOs in 2022 (corresponding to the previous framework and previous cycle of inspections), with higher representation of Group B and Group C risk ratings (5 and 2, respectively) than Group A (2), according to the current risk rating categorisations. These inspections were followed-up by 28 engagement actions ("compliance and oversight meetings", phone calls, etc.) in 2023, which eventually led to 2 NPOs being removed from the Registry and 3 in ongoing monitoring. In 2024, 8 of the 36 scheduled on-site inspections were already completed, all of them concerning Group A NPOs (2 of which were follow-ups to the 2022 inspections), thus showing steps to further converge with a risk-based approach. All inspections have been of the full-scope type, showing room for a more targeted approach according to each organisation's risks. Taking into account the report provided as an example to the AT, inspections seem to be presented as discussions, where a list of documents to ascertain compliance with the 2022 Ordinance and Regulations obligations is checked, and findings and areas of concern are presented as action points to be resolved by the NPO, subject to subsequent reminders and engagement actions.

468. In terms of penalties, the historical tendency has been to strike-off non-compliant NPOs, with no financial penalties being imposed under the 2022 Ordinance and Regulations (only

penalty warnings), but having been imposed under the company and foundation laws to NPOs adopting these legal forms for late submission of the annual validation. So far, the approach undertaken by the Registry in relation to non-compliance by NPOs seems to have been more on the educational side, considering the abundance of meetings and outreach actions, findings detected through oversight mainly being treated through reminders/remediation and the types of penalties used (strike-offs and warnings). While the AT does not disagree with this approach to promote compliance, it also considers that there is room for the Registry to make further use of its onsite oversight (for example, increasing inspection numbers to align with the aimed frequency of inspections, further use of the different types of inspections available (limited/targeted) or better coverage of higher risk NPOs) and sanctioning powers (when deemed necessary).

*GFSC*

469. For TCSP-administered NPOs, besides the actions of the Registry (as the sole statutory NPO supervisor) assessed above, the GFSC has also been conducting its own supervisory and outreach actions in relation to those TCSPs throughout the evaluation period.

470. TCSP-administered NPOs usually adopt the form of trusts or other legal arrangements with a single or a limited number of non-resident wealthy donors (mostly from the UK or jurisdictions with equivalent standards, with one exception of a donor from a TF High Focus Country, as identified in Guernsey), who use the legal structure as a vehicle to channel part of their wealth to charitable purposes. Therefore, they do not usually raise funds from the general public or disburse funds to beneficiaries directly (they normally fund overseas NPOs who conduct charitable activities in the Asia-Pacific and African regions). Most of the value of the NPO-related assets corresponds to TCSP-administered NPOs and present significant volumes, even if these have been experiencing a downwards trends in the most recent years. TCSP-administered NPOs are presented in more detail in a table below.

471. The GFSC obtains information on NPOs through the financial returns received from TCSPs administering them. Analysis of this information led to the elaboration of a NPO risk assessment in 2023, where aspects such as the type of assets held, location of the assets, charitable objectives, location of donors and donations or the services provided by the TCSP have been analysed, which resulted in a risk-rating heat map of NPOs based on the jurisdiction of the donors and the donees. Authorities indicated that this is due to the fact that donors maintain a wider client relationship with the TCSP, therefore there is more available information at an individual level. While it is not to be expected to have the same granularity of information of beneficiaries at the same individual level as donors, the AT still considers that a future iteration of this kind of risk assessment exercise would benefit from further consideration of beneficiaries at an aggregated level, especially considering that this information should be available to TCSPs through their oversight of NPO payments destinations. As a result of this risk assessment, the majority of TCSP-administered NPOs are considered as low risk, with the exception of 4 NPOs in particular being assessed as having a higher TF vulnerability, due to their exposure (through donations and/or payments) to "TF Focus Countries".

472. The GFSC also conducts supervision of TCSPs administering NPOs. While the selection of TCSPs to inspect is not (exclusively) driven by the risk of the NPOs administered by them, or the scope of the inspection does not vary from that of inspections made to other TCSPs, customer files of NPO can be (and have been) part of the sample of files to review in the inspection. In the table below, detailed information about the inspections made in relation to TCSP-administered NPOs is provided:

**Table 10.2. Onsite inspections to TCSPs administering NPOs and value of assets held by NPOs.**

| Year | TCSP administering NPOs | TCSPs administering NPOs subject to onsite inspections | TCSP-administered NPOs | Value of assets held by TCSP-administered NPOs[61] | TCSP-administered NPOs covered in onsite inspections | TCSPs subject to RMPs as a result of the inspection |
|---|---|---|---|---|---|---|
| 2018 | 37 | 5 | 95 | 2,936,525,336 | 11 | 4 |
| 2019 | 38 | 6 | 92 | 3,965,273,564 | 7 | 3 |
| 2020 | 31 | 2 | 86 | 2,986,782,096 | 8 | 1 |
| 2021 | 36 | 7 | 84 | 3,088,801,394 | 11 | 6 |
| 2022 | 38 | 12 | 83 | 2,253,745,163 | 33 | 6 |
| 2023 | 31 | 5 | 72 | 859,760,867 | 9 | 5 |

473. As observed, review of NPO files, when compared to the overall population of TCSP-administered NPOs, has been moderate during the assessed period, with the exception of 2022. It is unclear whether the risks of NPOs themselves (in particular, the 4 NPOs posing higher risks according to the analysis of the GFSC) have influenced the decision of the TCSPs selected for inspection in favour of others, or whether these higher risk NPOs have been part of the NPOs reviewed as shown in the table above. This notwithstanding, higher-risk customers (including NPOs) are prioritised when selecting the sample of files.

474. The outcomes of these inspections led, on some occasions, to remediation programs (risk mitigation programs, "RMPs"), however those have usually concerned the overall improvement of policies, procedures and controls and risk assessment, in general terms, not specifically related to their NPO customers, with the exception of 4 RMPs concerning deficiencies about rationale for certain payments, incomplete CDD for specific beneficiaries or incorrect PEP classification (encompassing both NPO customers and wider samples of client files reviewed). Consequently, enforcement actions for non-compliance with AML/CFT obligations in relation to NPO customers have been on the low end, with one case, in 2019, referred to the Enforcement Division of the GFSC, where a TCSP had systemic AML/CFT issues, including not exercising sufficient oversight of the payments of one NPO customer (their destination, their alleged charitable nature and undue influence exercised by the principal over distributions). A financial penalty was eventually imposed concerning this case. No deficiencies identified by GFSC's supervision involved NPOs classified by the supervisor as high-risk or led to TF risk concerns.

*Outreach and awareness by NPOs*

475. Authorities, most notably the Registry, have been particularly active throughout the period 2021-2024 in terms of trainings and outreach events aimed at the NPO sector (including, among others, 16 presentations with attendance of up to 150 NPOs, workshops with attendance of up to 189 NPOs, 11 trainings with attendance of up to 38 NPOs, more targeted "in-person" events (including meetings, drop-in sessions and others) with attendance of up to 75 NPOs, and other types of engagement (social media posts, consultations, e-mails, phone calls or publication of guidance). The topics of these events included the new legislative framework of 2022, presentations of new guidance, PF/TF workshops, CFT/CPF controls and risk assessment, monthly "drop-in" sessions (on the annual validation process and other relevant aspects), etc. Additionally, the Registry website contains abundant FAQ documents and guidance aimed at the sector[62], on aspects such as managing officials, risk awareness, legislative changes, oversight and enforcement, governing documents, fundraising or how to use the Registry portal to file the

[61] Approximate equivalent amount in EUR.

[62] Charity/NPO Guidance & Information - Guernsey Registry

requested documentation. The Registry has also promoted an "open-door" policy for NPO managing officials and volunteers, including a walk-in reception open from Monday to Friday, a dedicated mailbox to prioritise enquiries and a publicly available whistle blower email address. As a consequence of those actions, NPOs met onsite demonstrated a good level of awareness of their obligations under the Ordinance and the Regulations and about the potential TF risks they may be exposed to and had in place anti-financial crime and CTF-specific policies and procedures, as legally required. In particular, the entities were implementing controls such as not disbursing funds without certification of the charitable projects being completed, dual-authorisation for payments, using regulated financial channels (wire transfers), record-keeping of transactions and informing the Registry about payments above the legal threshold or conducting due diligence on their international partners, including onsite visits.

### *4.3.3. Deprivation of TF assets and instrumentalities*

476. Guernsey legal framework enables the confiscation or forfeiture of assets and instrumentalities linked to TF activities and the application of provisional measures through criminal and civil proceedings, supported by investigatory powers and special investigative techniques. The competent authorities for these purposes are the FIU, the Police, the EFCB and the LOC, and they receive training on TF-related issues, including asset recovery.

477. Strategic Objective 7 of the Bailiwick's Strategy for Countering Terrorism ("CONTEST"), states that the authorities must seek to ensure that terrorists, terrorist organisations and terrorist financiers are deprived of assets and instrumentalities related to terrorism and TF activities, by deterring and disrupting the storage or movement of terrorist funds for use outside the jurisdiction and maintaining statistics on the number and value of restraint, confiscation freezing, and forfeiture orders made in TF cases. The Strategy is underpinned by the Terrorist Financing Intelligence Handling and Investigations Procedures and the Standard Operating Procedures for handling intelligence relating to TF or national security documents (see IO.9), which contains procedures for the seizure of terrorist cash and the freezing of terrorist property and state that the freezing, restraint, and forfeiture of terrorist property would be considered as high priority and must be considered both at an early stage of an investigation and kept under ongoing review.

478. To date there have been no other instances where it has been necessary to apply measures to deprive terrorists, terrorist organisations and terrorist financers of assets and instrumentalities related to TF, which is in line with the jurisdiction's TF risks. Furthermore, while no assets have been frozen under TFS regimes in relation to terrorism, substantial assets have been frozen under other international sanctions regimes.

### *4.3.4. Consistency of measures with overall TF risk profile*

479. As stated in IO.1, the NRA assessment TF risks concludes that the main risks lie within Guernsey being used as a transit jurisdiction, with the likelihood of the risk materialising itself being low. The assessment of TF for different sectors and products varies to some degree depending on the characteristics of the sector or product involved, the highest rating for TF is Lower, and in most cases, it is Much Lower or Very Much Lower. However, no domestic investigations on TF and limited use of incoming cooperation requests, SARs and TF pre-investigations (see IO.9), may have limited the conclusions of the TF risk assessment.

480. The lack of a need for any grounds to be able to apply asset recovery measures in relation to TF, and the forfeiture or destruction of instrumentalities is consistent with the assessment of low TF risk in relation to foreign terrorism and very low in relation to domestic terrorism.

481. The measures described under IO.10 focus on international aspects (implementation of international sanctions regimes for terrorist asset-freezing purposes and monitoring the raising and disbursement of funds abroad, including through internationally active NPOs), which is in line with the risks associated to being a transit jurisdiction and Guernsey status as an IFC.

*Overall conclusions on IO.10*

482. Guernsey automatically applies relevant UK sanctions regimes implementing UNSCRs establishing TF-related TFS. The P&R Committee is the competent authority for designations, asset freezing, listing/de-listing proposals, granting access to frozen funds and unfreezing, while the Sanctions Committee (with representation of all the relevant AML/CFT competent authorities) is tasked with coordinating and ensuring compliance with TFS. The functions of the P&R Committee have been developed in a sanctions manual. Guernsey has also put in place mechanisms to inform about designations and de-listings, although the way they are designed allow for potential notification delays (which have not occurred in practice) and could benefit from further automation. There have not been cases of implementation of TFS under TF-related sanctions regimes, but have been abundant cases under other international sanctions regimes, whose application has been, on average, timely.

483. Monitoring and oversight of NPOs has been in place throughout the assessed period, albeit in a less detailed, risk-based and formal manner until 2022. Since 2022 (and for some obligations, since 2023), the framework has been significantly enhanced, including the establishment of a new risk scoring system, the introduction of new obligations for internationally active NPOs and the formalisation and enhancement of the Registry offsite and onsite oversight and monitoring activities. The new framework, preceded by a 2018 guidance paper, is assessed as robust, but since it was established relatively recently in the assessed period, there is room for further practical development and use of the Registry oversight (specially in relation to onsite activities) and sanctioning powers. The GFSC has also conducted risk assessment and supervision of the sector through the TCSPs that administer NPOs, although the review of NPO customer files and enforcement actions derived from them have been, so far, on the low end (except for 2022).

484. NPOs demonstrated a good level of awareness of their obligations and TF risks, as a consequence of significantly abundant outreach and awareness actions from the authorities, most notably the Registry.

485. To date there have been no other instances where it has been necessary to apply measures to deprive terrorists, terrorist organisations and terrorist financers of assets and instrumentalities related to TF, which is in line with the jurisdiction's TF risks (although the assessment of TF risks may have been limited due to the lack of TF investigations and limited use of incoming cooperation requests, SARs and TF pre-investigations (see IO.9)) . Measures put in place, focusing on international aspects, are largely in line with the TF risks of a transit jurisdiction with the status of an IFC.

486. **Guernsey is rated as having a high level of effectiveness for IO.10.**

## 4.4. Immediate Outcome 11 (PF financial sanctions)[63]

*Contextual factors*

[63] On 18 October 2023, the TFS elements of UNSCR 2231 expired. Therefore, assessors did not assess the implementation of UNSCR 2231.

487. Given its status as international financial centre ("IFC"), the main risks that Guernsey faces is being used for the movement of funds linked to proliferation activity through its cross-border business. These could include the misuse of products or services directly to facilitate the movement of dual use goods (trade finance) or the storage or transit of funds as part of the chain of obfuscation.

488. Guernsey does not do business with DPRK, meaning that there are no financial flows to or from this jurisdiction and that no services are being provided to customers or BOs who reside there. Guernsey (in particular the Advisory Committee or AFCAC (see IO.1) has identified, since 2019 and most recently updated in December 2023, primary, secondary and potential "PF hubs", understood as jurisdictions that are hubs in terms of shipments of goods and military cooperation to jurisdictions that are engaged in proliferation of WMDs. The value and volume of financial flows to and from these hubs is under 2% of the total financial flows and 5,2% of the business relationships in Guernsey and are majorly attributed to a single RE (life insurance company that provides life insurance products, deemed as of low PF risk by the authorities, to non-resident customers like expatriate workers).

489. PF risks were also analysed in the context of NRA2, both at a national and at a sectorial level. On a sectorial level, the proportion of flows and business relationships with exposure to PF hubs is assessed, which, as stated, is quite low with the exception of the insurance sector. All sectors were placed within the range of "lower" to "very much lower" risk.

### *4.4.1. Implementation of targeted financial sanctions related to proliferation financing without delay*

490. The legal framework for the implementation of PF TFS is the same as described under IO.10 for TF TFS. In this sense, the Sanctions Implementation Regulations allow the enactment in Guernsey of the relevant UK SAMLA Regulations, which, for the purposes of PF, include[64] the Democratic People's Republic of Korea (Sanctions) (EU Exit) Regulations 2019 ("the UK North Korea regulations"), which gives effect to UNSCR 1718 and subsequent resolutions. The framework allows for the automatic and immediate implementation of PF TFS. The communication mechanisms in relation to the private sector and other authorities (sanctions notices through THEMIS, publication in the GFSC website) described in IO.10 apply in the same capacity.

491. Responsibility for PF-related TFS, including the legislative framework, rests, in the same manner as for TF-related TFS, with the P&R Committee. Its operational functions in relation to TFS are carried out by its Financial Crime Policy Office. This means that the procedures put in place for aspects such as asset-freezing, de-listing, un-freezing, granting access to frozen assets and liaising with international authorities for such purposes (most notably the UK authorities to act on behalf of Guernsey in relation to the UN) explained in IO.10 are equally applicable.

492. To date, no assets have been frozen under UNSCRs relating to the combating of PF. Consequently, no situations have arisen that concerned the application of exemptions, issuance of licenses or granting access to frozen assets, de-listing or unfreezing. This is in line with the jurisdiction's PF risks. However, there have been multiple cases of asset-freezing in relation to other international sanctions regimes, as explained in further detail in subsequent core issues. As also explained under IO.10, authorities indicated that these cases of asset freezes under other

[64] It also enacts the Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019 ("the UK Iran Regulations"), but, as stated, will not be part of the analysis due to the expiration of UNSCR 2231 in October 2023.

sanctions regimes have been abundant and that such freezes, along with the notification to the P&R Committee have generally taken, on average, 4 days since the designation, with the vast majority of cases (approximately 85%) taking 24 hours of a designation. While the AT had encountered a case where the notification to P&R took significantly longer than average, authorities explained that in that case the asset freezing and notification was done as soon as the links between the funds and the designated persons could be established, considering the nature of the business relationship (interbank deposits), and, therefore, the case was an outlier. The AT concludes that the implementation of sanctions measures has been, on average, timely, and would be indicative of what would happen should any cases related to TF or PF TFS occur. It has also been observed, in the cases concerning other sanctions regimes, that follow-up actions by the P&R Committee have been abundant after the initial notification, including requesting further information to REs, liaising with competent authorities both domestically and abroad (mainly UK authorities), or deliberating the issuance of licences to give access to frozen funds or permit payments in justified circumstances, imposing any conditions deemed necessary.

493. Both CPF and the countering of proliferation of WMDs have also been given weight in Guernsey throughout the assessed period, most notably since the introduction of the so-called "Project Dragonfly" in 2021, a project with an aim to develop the legal and operational frameworks of Guernsey in terms of CPF. This initiative has resulted in several measures in the areas to legislation, policies and procedures, training or guidance. Some of these include: (i) a strategic analysis report by the FIU based on the analysis of SAR data with potential links to PF (14 records in detail out of a total 13,219 records) (December 2021); (ii) dedicated outreach and training, such as the publication, in December 2022, of "guidance on combatting proliferation and proliferation financing"[65] or an e-learning product on proliferation and PF by the FIU and P&R (completed by 2,167 users as of April 2024), or, (iii) in the legislative side, introducing amendments in February 2024 to Schedule 3 of the POCL and Schedule 4 of the eGambling Ordinance, as well as in the associated AML/CFT/CPF Handbook (GFSC) and AGCC guidance, for the AML/CFT obligations contained therein to also encompass CPF.

494. At an institutional level, the Sanctions Committee, in its biannual meetings, discusses aspects that are relevant for CPF and PF-related TFS purposes, such as updates to "Project Dragonfly", updates and usage of the list of PF hubs or updates from the different authorities that are members of the Committee on their activities, including the Guernsey Border Agency (GBA) on export and import control offences in relation to potentially-related proliferation goods or dual-use goods, supervisory and training/outreach activities by the GFSC and AGCC or sanctions-related MLA requests by the LOC. Similarly, the P&R Committee presents updates in relation to designation and asset-freezing notifications, issuance of licenses and other aspects under other international, non-PF related, sanctions regimes, which are also discussed among the members of the Sanctions Committee.

### *4.4.2. Identification of assets and funds held by designated persons/entities and prohibitions*

495. As indicated above, to date no assets have been frozen under UNSCRs relating to the combating of PF. However, Guernsey has established systems to identify assets that belong to designated persons.

[65] https://www.gov.gg/CHttpHandler.ashx?id=169339&p=0

496. One of these systems concern information received from the private sector by the FIU. Since the end of 2022, the Disclosure (Bailiwick of Guernsey) Law, 2007 ("the Disclosure Law"), which sets the SAR reporting obligations, also applies to PF suspicions. Since then, 3 SARs referencing PF were reported in 2023 (which represented 0,15% of the SARs reported). After being assessed by the FIU, no threats of domestic proliferation or any local residents suspected to be financing proliferation locally or abroad were identified. Even if not reported as being related to PF, other SARs can show PF links during the analysis of the FIU. One of such cases was referred to the FIMU (and the P&R Committee was also informed), which is still under investigation.

497. Before that, between 2016 and 2022, there had also been SARs where, even if not flagged as PF-related due to not being part of the reporting requirements yet, the FIU suspected potential links to PF outside the jurisdiction (in particular, due to involving ties with DPRK or Iran). One of such cases is provided in the case study below:

**Case study 11.1: investigation of potential PF links from an FIU report.**

In 2021, a report sent by a TCSP to the FIU identified adverse media linked to a settlor of a trust that it had administered. The settlor owned a BVI company which was subject to media allegations of DPRK sanctions breaches arising from the tracking of vessels importing oil into DPRK in 2020. The P&R Committee was informed, but the alleged activities occurred long after the TCSP relationship was terminated and there was no indication that any assets held in the trust were linked to PF or TF.

498. Possible links to proliferation and PF are looked for by the Customs Service within the GBA in the discharge of its functions under the import and export licensing regime. The majority of Bailiwick trade is with the UK and there is very limited manufacturing activity within the jurisdiction. Nevertheless, the Customs Service has internal policies and systems in place to identify movement of goods that could be related to proliferation. These include cooperating with domestic (such as the FIU and the EFCB, and others, depending on the nature of the case) and international authorities (most notably the UK's Export Control Joint Unit (ECJU). The FIU also reviews all export license applications, conducting its own checks and liaising with other competent authorities if necessary.

499. The Customs Service uses an electronic manifesting system, Guernsey Electronic Manifest System (GEMS), which provides risk-based alerts about factors relevant to proliferation such as the ultimate destination of the goods (where it is checked whether countries subject to PF sanctions or deemed as PF hubs are involved), as declared by the carrier. Alerts from GEMS are followed up with further screening, risk assessment or the examination of goods as necessary.

500. A few cases of interest from a potential PF perspective have been identified throughout the assessed period. After liaising with domestic and international authorities, proliferation or PF issues were eventually discarded. One of these cases is provided in detail in the box below:

**Case study 11.2: investigation of possible TF/PF links to exportation of goods, cooperation with domestic and international authorities and enforcement action**

In December 2022, a Swedish passport holder residing in Spain (Person H) contacted a local freight agent to store goods arriving in Guernsey from France, described as flotation panels. In January 2023, Person H travelled to Guernsey, inspected the goods and arranged for six boxes to be sent to a Sark residential address occupied by his partner and where Person H sometimes also resided. Later, Person H requested shipment of the goods to Macau, China, which was paid by a global logistics company.

In February, once the goods were prepared for export, the freight agency alerted Customs about potential misdescription of the goods. Upon inspection, Customs found 12 boxes of ballistic shields and body armour labelled "bulletproof shield," identified as military goods requiring an export license under the Export Control (Military, Security, and Related Matters) (Bailiwick of Guernsey) Order, 2010. The UK's Export Control Joint Unit (ECJU) confirmed these goods were military equipment that required a license and were subject to a UK arms embargo to Macau. As Person H lacked a license, which constitutes an offence, an investigation ensued.

Authorities including Customs, FIU, Law Officers Chambers, P&R Committee, counter-terrorism border police (CTBP), FIMU and CIU prioritized the case due to potential links to proliferation, terrorism, TF or PF. FIU found no financial footprint in the Bailiwick, but a Ukrainian credit card was used. Intelligence was shared with Spain and Ukraine by the FIU, while CTBP liaised with UK authorities, and the CIU with Interpol. Open-source searches revealed Person H's connections to Russian social media and that the Macau recipient's address was a gun shop. All this intelligence was shared by the FIU with Customs and CTBP.

Person H was contacted for further documentation on the import and export of the goods and claimed the recipient in Macau was a supplier to the Macau police. Upon Person H's travel to Guernsey, he was arrested for attempting to export military goods without a license and making a false declaration on import. He was prosecuted by the LOC, convicted and received a custodial sentence in the Royal Court, with the goods, a computer, and a mobile phone forfeited.

Customs worked closely with the FIMU, which made regular assessments throughout the investigation. The investigation, although not revealing any TF or PF activity, highlighted the collaborative capability of the authorities in detecting and handling such cases.

501. Overall, given the case studies provided to the AT, the mechanisms put in place by the Guernsey authorities are robust and would enhance the likelihood of identifying assets belonging to designated persons, should the case arise.

### *4.4.3. FIs, DNFBPs and VASPs' understanding of and compliance with obligations*

502. REs generally have a very good understanding of their TFS obligations, with some particularities per sector as described below.

503. The majority of the firms across all sectors utilise automated screening systems (including smaller-sized FIs) that incorporate various commercial databases feeding from several international sanctions lists (UN, EU, UK, etc.) and subject their customers, BOs and other relevant parties to (mostly) overnight screening. No significant distinctions, if at all, have been observed between the approach taken in relation to PF and TF TFS, other international sanctions regimes or the screening for other purposes (i.e. adverse media). Material banking and TCSP sectors have significant expertise in identifying designated persons under other sanctions regimes, within BO chains. This notwithstanding, there are some concerns in relation to investment firms misapplication of SDD in certain circumstances and not always correctly identifying controllers exercising control through means other than ownership having the potential to limit the effectiveness of the screening process (for more information, see below and the IO.4 part corresponding to targeted financial sanctions).

504. Generally, all sectors are also aware of the sanctions notices received from the FIU through THEMIS and confirmed that it would be common practice to screen the customer base and associated parties against the new or changed designations contained in the notice, in addition to overnight screening. This, in many instances, requires REs to input the names manually into their systems, as the format of the notices does not allow automatic screening.

Further automatization of the sanctions notices communication system through THEMIS would be beneficial. It is also common practice among FIs to subscribe to the UK and UN mailing lists. REs therefore confirmed to be receiving the same inputs from different sources (FIU, mailing lists, databases of their own systems, etc.) at slightly different intervals.

505. The banking sector is the most relevant in terms of materiality and transactional volume. Besides the general considerations of overnight screening systems described above, banks have clear procedures (including timeframes) and resources to manage potential matches and discard false positive hits. In cases where information of underlying BOs of a business relationship is not immediately apparent or available to the bank, the usual procedure would be to contact the relevant party (usually the TCSP administering the structure) in order to obtain further information to discard the potential match.

506. The majority of the hits provided by the banks screening systems are false positives. This notwithstanding, in case of positive matches, the sector is aware of the obligation to immediately freeze the account. Subsequently further investigation would be done with the customer and a notification to the P&R would be prepared. Some entities met onsite indicated that they would also contact the FIU. In one instance that became known to the AT an underlying asset (a vessel) that was owned by a potential designated individual was identified by a bank through an investigation of several transactions, demonstrating the capacity of identification besides designated persons. These asset freezing, investigation and notification actions have been applied in practice by several banks in application of other international sanctions regimes not related to PF.

507. Investment businesses also had experience with positive hits and freezing accounts under other sanctions regimes, thus confirming awareness of TFS obligations. Members of the sector have confirmed that, in the cases of financial intermediaries, full reliance is placed on them concerning sanctions screening of the underlying investors, as their identity details are not known to the Guernsey-based firms. As stated in IO.4, considering some cases noted concerning misapplication of SDD on financial intermediaries, and issues with appreciation of BO via control through other means, the AT could not conclude that the application of TFS is robust and uniform throughout the entire investment sector, but this is partly mitigated by the sole involvement of intermediaries from Appendix C jurisdictions and some cases of notifications of underlying investors being designated expressed by some REs. Similar reliance was expressed by the insurance sector in relation to corporate customers, although it should be noted that in many instances those would be large regulated financial services companies listed on stock exchanges.

508. Similar conclusions to those for the banking sector can be applied to TCSPs in terms of experience in discarding or confirming matches, account freezing and notification to the P&R Committee. One of the reported cases involved a sanctioned protector of a trust that the TCSP considered that could gain control over the trust and proceeded to immediately freezing and report the account, which shows that all relevant parties to a structure are being scanned.

509. The accounting and auditing sectors have also had some experience in detecting and reporting sanctioned individuals and connected parties to the P&R Committee (and the FIU if, in addition, suspicion of ML, TF or PF was detected) and would even turn down business if detecting ties, through nationality, to an international sanctions regime.

510. For other sectors not mentioned explicitly (real estate agents, DPMS, VASPs, non-bank MSBs, eCasinos) entities met onsite did not have sufficient relevant experience of hits under TFS

regimes as to form conclusions, other than managing false positives cases flagged by their internal systems, but their exposure to sanctions risk is more reduced when compared to the more material sectors described above.

*Outreach*

511. Outreach initiatives undertaken by the competent authorities contribute to raise awareness of TFS obligations across the sectors and enhance their level of compliance. The Policy & Resources Committee in conjunction with the Sanctions Committee have organised an abundant and remarkable number of sessions for the private sector on various PF-related topics since 2018, and more intensely between 2023 and 2024. Some of the most relevant ones for this period are show in the table below:

**Table 11.1 – List of training and outreach conducted by the P&R on PF-TFS matters**

| Date | Event | Organiser/speaker | Participants |
|---|---|---|---|
| March'23 | Controls and Practices to Counter the Financing of Proliferation of Weapons of Mass Destruction | International expert, P&R, LOC, FIU | 449 (in 3 sessions) |
| May'23 | UK Sanctions (including PF) | International expert, P&R, FIU | 415 (in 3 sessions) |
| Aug'23 | Countering the Financing of Proliferation of Weapons of Mass Destruction | International expert, P&R, LOC, FIU | 363 (in 3 sessions) |
| Dec'23 | Proliferation and Proliferation Financing Workshop | eLearning tool | 2,167 (as of 26.04.24) |
| March'24 | Online Presentation on Countering the Financing of the Proliferation of Weapons of Mass Destruction (live stream webinar) | LOC, international experts | 328 logins |
| March'24 | Online Presentation on Countering the Financing of the Proliferation of Weapons of Mass Destruction | LOC, international experts, P&R | 445 logins |
| March'24 | Targeted Financial Sanctions: Terrorist Financing and Proliferation Financing | Letters/questionnaires issues by P&R, GFSC and AGCC | 1,042 (GFSC) and 37 (AGCC) licensees |
| April'24 | Proliferation Financing – All You Need To Know | International expert, P&R | 259 (in 3 sessions) |
| April'24 | Countering Proliferation Financing | International expert | 144 (in 3 sessions) |

512. Besides the P&R Committee, the FIU, the GFSC and the AGCC have also provided training and outreach to REs on PF and TFS-related matters, in the case of the supervisors specially with a view of the extension of the AML/CFT obligations in Schedule 3 of the POCL and Schedule 4 of the eGambling regulations to also encompass the countering of proliferation financing (and the associated AML/CFT/CPF Handbook and AGCC guidance), that took place in February 2024.

513. There is also guidance on the Sanctions pages of the States of Guernsey website about issues common to all TFS regimes as well as information concerning specific sanctions regimes applicable in the Bailiwick[66]. In addition, in December 2022 the P&R Committee and the Committee for Home Affairs jointly issued detailed guidance on proliferation and PF prepared by the Financial Crime Policy Office, with the input of the Sanctions Committee. It was circulated to

[66] Current sanction regimes - States of Guernsey (gov.gg)

FIs and DNFBPs by the FIU via THEMIS, circulated by the Guernsey International Business Association, and published on the States of Guernsey website[67]. The page also provides links to the slides from some of the presentations referred to above, as well as other resources.

514. The P&R Committee has also had engagement with individual FIs and DNFBPs on specific issues concerning the implementation of (non-PF-related) international sanctions regimes enacted by the UK and given effect in Guernsey. During the course of this engagement, which has also involved, in particular, liaison with the Law Officers chambers, the GFSC, the FIU and the UK authorities, the Policy & Resources Committee has provided verbal and written feedback and other information on the importance of screening and other key concepts such as ownership and control, transaction monitoring and directly or indirectly making funds available.

### *4.4.4. Competent authorities ensuring and monitoring compliance*

515. The P&R Committee, in conjunction with the LOC, reviews all notifications and license applications it receives and cross-checks them against information from other sources, to ensure that the asset freezes have been timely, whether all parties linked to a particular business relationship have identified links to the designated persons and made a notification, and whether there is any indication of sanctions breaches. Where there are any inconsistencies in the information received, or any other circumstance requires it, the P&R would liaise with the private sector entities and/or with other competent authorities to obtain further information. Should any indication of a sanctions breach be detected, P&R would refer the matter for enforcement purposes to the appropriate authority (FIU/FIMU for PF/TF-related sanctions regimes, EFCB for other sanctions regimes, the Customs Service for breaches of trade sanctions or the GFSC/AGCC for regulatory breaches). This process is set out in the Sanctions manual, and the authorities provided a few examples of its operation in practice (under a non-PF or TF-related sanctions regime), which included liaison with domestic authorities, as well as with UK authorities. None of the cases led to referrals for enforcement.

516. This notwithstanding, the GFSC and the AGCC are the designated authorities with supervisory and enforcement powers to monitor compliance of the businesses they supervise with PF -related TFS (since there are no distinctions in the supervisory approach, the conclusions under this section will also be applicable in relation to TF-TFS).

*GFSC*

517. TFS supervision is part of the broader supervisory mandate of the GFSC. Compliance against TFS obligations and consideration of PF risks are taken into account in terms of market entry controls (inspection of sanctions connections at the application stage through ownership or control of the applicant, business model, target customer base or products or services potentially vulnerable to PF) and offsite and onsite supervision (thematic reviews and full-scope examinations).

518. The GFSC receives, from the entities they supervise, 30 information returns, submitted at different intervals depending on the type of return (annually, semi-annually or quarterly), and those range from all-compassing (the financial crime risk return) to more sector-based. The information received through some of the periodical returns is factored in the risk scoring system (to obtain the residual risk of firms) and drives the intensity and frequency of the supervisory actions.

[67] https://www.gov.gg/CHttpHandler.ashx?id=169339&p=0

519. There are multiple indicators, part of these returns, that are relevant in terms of TF, PF and TFS. These include, among others, aspects such as the number of business relationships referred to the P&R Committee as a result of a connection to a sanctioned person, number of SARs made to the FIU (including TF and PF-related ones), business relationships, deposits, flows, turnover and net asset value (in case of investment funds) from TF/PF high risk jurisdictions or number of NPO customers. Most of the indicators are not only relevant for TF/PF/TFS purposes (e.g. number of high-risk customers, PEP relationships, pooled accounts, reliance on introducers, etc.), and the ones that are mostly concern jurisdictional risks. The current scoring system does not allow the supervisor to have an immediate view of the sanctions risks that a sector or an entity in particular has, therefore neither the risk scoring, nor the supervisory planning is driven by PF or sanctions-related risks. This notwithstanding, the aforementioned indicators contribute to the inherent risk of firms and the information is taken into account when conducting a supervisory action.

520. The supervision of the GFSC in relation to TFS has put a significant focus in testing the screening systems to detect sanctioned individuals of REs, as evidenced by the theme of the sanctions thematic exercise described below or the majority of the questions of the sanctions section of the pre-onsite inspection questionnaire. These efforts included ensuring the availability of automated screening systems and necessary investment by the firms, tuning of the systems to enhance their effectiveness, and monitoring firms' exposure to countries subject to sanctions regimes, including screening. As a result of the supervisory engagement of the GFSC and a high volume of designations under other, non TF or PF-related, sanctions regimes, there has been an increase, over the last 3 years, in the number of businesses with automated screening systems across all sectors and an overall high percentage of firms using them in all sectors (with the exception of DNFBPs with low transactional volume such as lawyers, accountants and estate agents), most notably among investment businesses (up to 98% of the firms as of 2023).

521. A significant supervisory action undertaken by the GFSC in this area is the sanctions thematic review of 2021. In this particular exercise, questionnaires were sent to 175 firms across the banking, TCSPs, investment and insurance sectors, out of which 21 (most notably banks) were selected for subsequent onsite inspections and effectiveness testing of their screening systems (in conjunction with an external third party), which is a reduced number considering the initial scope of the questionnaires and the overall RE population. The testing consisted in screening 10,100 names of individuals and entities listed by the UN, OFAC, EU and OFSI against the customer and transaction screening systems of the selected firms, including algorithmically manipulated names in order to test the systems "fuzzy logic" matching capability. Other aspects, such as the frequency and parties subject to screening, scanning of third-party payments and underlying assets (for TCSPs and investment firms) or outsourced functions and group processes were equally assessed.

522. Results of the exercise showed an overall good level of compliance amongst the firms inspected, but also areas for improvement in relation to a modest percentage of TCSPs and investment firms scanning underlying assets, instance of low understanding on how customers and services were exposed to sanctions, screening policies and procedures lacking in detail, lack of understanding of the interaction between customer data and sanctions screening or cases of heavy reliance on group procedures or external vendors. The aggregated results of the review were disseminated through publication of a report in May 2022 and presentations throughout June 2022 with 350 attendants across multiple sectors.

523. Feedback letters were provided to all firms whose systems were assessed, regardless of whether any breaches had been detected or not, asking the firms to reflect the results of the

review into their internal policies and procedures. The GFSC concluded that very few of the entities that were part of the review were in need of significant improvements in their systems, and only 4 risk mitigation programs ("RMPs") were initiated in this regard. The AT has had access to one of these cases, which consisted in a firm's screening system having materially poor results and its replacement with another IT tool to enhance effectiveness, the steps of which implementation would have to be regularly reported to the GFSC. In this sense, the remediation program did not impose any additional actions, but rather requested periodical updates on a measure that was already decided by the firm before the review.

524. Sanctions screening, as well as other aspects relevant to both TFS compliance and the overall AML/CFT/CPF compliance (such as risk understanding and understanding the purpose of the business relationship, identification of the BO, customer due diligence, ongoing and transaction monitoring, etc.) are equally part of the scope of the GFSC non-thematic supervisory actions (most notably full-scope examinations).

525. In this sense, the "monitoring of TFS" section in GFSC's financial crime inspections guidance details the supervisory checks to perform when assessing this aspect. The guidance in respect of TFS examination and questions to be asked was updated in 2022 (following liaison by P&R), which explains (together with the 2021 sanctions thematic) the increase in numbers in RMPs and enforcement referrals in the latter part of the assessed period (2022-2023). The guidance, besides detailed checks in relation to electronic screening systems, also details checks to be undertaken in relation to the understanding of TFS obligations and TF/PF risks by the firms; the appropriateness of controls to identify customers/BOs/other parties as designated persons and report them to P&R; the adequacy of measures to detect and block transactions; or the identification/verification of customers/BOs and their SoF/SoW; and performance of ongoing transaction monitoring to detect unusual patterns or payments with no economic or lawful purpose. The pre-onsite inspection questionnaire also contains a sanctions section with questions in relation to the firm's vulnerabilities to TF/PF risks; and sanctions screening (identification of designated persons, systems to detect and block transactions, existence of positive matches and their treatment and reporting, and further details of the screening systems (scope and frequency, internal reviews, detection of issues, etc.)).

526. During the determination of the scope of the on-site inspection (on the basis of the pre-onsite questionnaire answers, PRISM information on the firm, pre-inspection meeting, etc.) it is decided whether it will include the assessment of the entity's sanctions framework. The table below details the number of financial crime onsite inspections where the sanctions framework was assessed and subsequent actions (RMPs and enforcement referrals) taken by the GFSC.

**Table 11.2. Financial crime inspections with sanctions framework[68] assessment and subsequent actions (GFSC)**

| Year | Financial crime onsite inspections | Inspections where sanctions framework was tested | Inspections which resulted in RMPs concerning sanctions framework | Inspections which resulted in a referral to the Enforcement Division due to sanctions framework |
|---|---|---|---|---|
| **2018** | 59 | 34 | 1 | - |
| **2019** | 61 | 35 | 1 | - |
| **2020** | 72 | 22 | 4 | - |

[68] The figures include inspections where sanctions screening; TFS policies, procedures and controls; and wider aspects of AML/CFT compliance (risk understanding, CDD, monitoring, etc.) that are also relevant for TFS compliance are assessed.

| | | | | |
|---|---|---|---|---|
| **2021** | 85 | 85[69] | 8 | - |
| **2022** | 84 | 52 | 13 | 1 |
| **2023** | 84 | 42 | 12 | 3 |

527. As observed above, the covering of sanctions framework in onsite inspections is quite significant (approximately 59,38% of the inspections between 2018 and 2023, on average), most notably the sectors that are also attracting more supervisory attention overall (investment, insurance and banking sectors), with the exception of TCSPs, who present slightly lower numbers in comparison. Breaches (RMPs) in relation to sanctions framework remain low (14,5% of the inspections where sanctions framework was tested, on average), mostly concerning the investment and TCSPs sectors and, to a lesser extent, banking, insurance and real estate.

528. The AT has been provided with cases of full-scope examination reports that had sanctions screening-related breaches and resulted in RMPs. Both cases correspond to entities that had previously been part of the sanctions screening thematic of 2021, in relation to which RMPs had already been set out. These concern failures by the firms in question to undertake sufficient action to address the aspects highlighted in the previous RMP, and include cases of identification failures in overnight processes (although in relation to adverse media, and not sanctions), not conducting testing to ensure that all relevant parties (customers, BOs, principal persons and other connected parties) and their associated records are scanned or not conducting testing on the fuzzy logic settings of the system. However, the breadth of the wider TFS checks present in the GFSC guidance is not transparent in the 2 reports provided, where, as stated, sanctions findings concerned the efficiency and scope of screening systems (for sanctions and adverse media), but the findings in other areas (such as initial and periodic relationship risk assessment, application of enhanced measures or governance)) do not appear to have a direct and clear relevance for TF/PF risks or TFS compliance. Additionally, taking into account that these are full-scope inspections (of which the assessment of the sanctions framework is part of), concerns expressed under IO.3 in relation to their extent are also of relevance here.

529. As observed in Table 11.2, referrals to enforcement have also remained on the low side (an average of 5% of the RMPs, or 2% of the inspections). Enforcement referrals made in 2023 and 2024 are still under investigation, as wider AML/CFT deficiencies were also identified. Referrals in 2022 and 2023 mostly concerned failures in screening systems as a result of the 2021 sanctions thematic or follow-up inspections, or in the capacity to manage financial crime risks (including sanctions risks), with the exception of one case.

530. Consistently with these low numbers, the GFSC has not imposed any penalties concerning non-compliance with TFS, with the exception of a public statement of 2019 (in relation to an inspection of 2016, outside of the assessed period) where one of the failures related to the justification of SoF in relation to a sanctioned entity. This questions whether a higher number of sanctions would be required to ensure TFS compliance in those instances where it has been detected that it is deficient and that the failures are significant (which would include the cases where previous RMPs had failed) (see IO.3 for the concerns expressed therein in relation of serious and systemic breaches and the limited use of pecuniary sanctions).

531. On a positive note, significant actions have been undertaken in relation to other sanctions regimes not related to TF or PF, including an application to the Royal Court for an Administration Management Order to appoint an administrator to manage companies within a structure exposed to that sanctions regime, or imposing license conditions.

[69] It incorporates the inspections corresponding to the sanction thematic review.

532. The efforts undertaken by the GFSC regarding TFS supervision are very commendable, and the scope and depth of revision of screening systems appears detailed. Having said that, and in light of the numbers achieved, the AT is of the opinion that there is room for further application of the GFSC supervisory guidelines and procedures in relation to the wider aspects of TFS compliance, such as the identification and measures undertaken in relation to persons connected or associated with designated persons or the capacity to detect sanctions circumvention schemes, targeting the entities with higher sanctions risk exposure. One example could be the full consideration of the TFS checks in the GFSC guidelines in upcoming thematic and/or targeted exercises.

533. This notwithstanding, and as a significantly positive examples of effectiveness, authorities provided case studies highlighting the capacity of the GFSC to act promptly (by conducting an short-notice onsite inspection (2-hours)) when sanctions concerns arise in relation to a supervised firm, to monitor the correct application of the freezing of a non-financial asset, and to impose license conditions to a licensee to ensure TFS obligations compliance (such as requiring express consent by the GFSC before making any distributions, transactions, transfers or payments related to frozen assets). These cases, however, seem to concern entities for which there were intelligence alerts or other concerns about their degree of exposure to a particular, non-PF or TF-related, sanctions regime, through their customer base or themselves being ultimately owned by sanctioned organisations, rather than having arisen through GFSC regular (or thematic) supervision.

*AGCC*

534. Only 5 eCasinos, operating within the pari-mutuel wagering sector[70], have corporate customers (which, as of 26 April 2024 represent the 0.0015% of the customer base of the whole sector, a figure which has been consistent throughout the evaluation period). The AGCC considers that the risk of a corporate customer being used for PF is negligible, a perception that coincides with the "very much lower" PF risk attributed to the eCasino sector as a whole in NRA2. In relation to the jurisdictions identified as "primary PF Hubs" by the AFCAC, only one eCasino. which is jointly regulated in the UK, has a very small number of customers from the BVI and Seychelles, with the UK being the majority of the customer base for almost half of all eCasinos.

535. Significant focus is placed on the sanctions screening systems of eCasinos. In this regard, percentage of firms with automated systems ranged from 85% to 70% between 2021 and 2023 (explained by new eCasinos starting their operations in 2023 and therefore still having a low number of customers), which eventually raised to 100%, as of 26 April, 2024.

536. Regarding the results of onsite inspections, there are low numbers of remedial measures (ReMes) applied in relation to TFS to eCasinos (16 ReMes corresponding to 13 licensees, meaning that, on average, 12,36% of the inspections between 2018-2023 have had a TFS-related ReMes, which represents, on average, 1,46% of all the ReMes for the sector throughout the same period). The AGCC indicated that the sanctions-related ReMes in 2022 and 2023 majorly corresponded to formal aspects of internal control systems (ICS) of eCasinos not accurately reflecting the frequency of sanctions screening and not updating the ICS with the sanctions screening procedure. The inspection report provided to the AT confirmed that the finding in relation to sanctions controls was of that nature (lack of update of the ICS to reflect that frequency of screening was daily instead of monthly). AGCC considers that the exposure to sanctions risks of

[70] A betting system in which all bets of a particular type are placed together in a pool, with the payout determined by sharing the pool among all winning bets, minus a management fee. This system is commonly used in sports and other events betting.

the sector is low and that the level of compliance of the eGambling sector with TFS obligations is strong, as a result of their supervision and transaction monitoring actions. As an example of awareness of TFS and subsequent reporting obligations, AGCC provided a case of an eCasino identifying a customer as a sanctioned individual (under a non-TF or PF-related sanctions regime) and duly reporting it.

537. Even taking into account the circumstances mentioned above, and the overall low PF risk attributed to the sector, the AT would have expected more significant results both in terms of numbers and types of findings. This relates to the conclusion expressed in IO.3, for which the there is room for strengthening the supervisory model, especially when in relation to the scrutiny of transactions. In line with the low number of breaches detected and their formal nature, no penalties have been imposed by the AGCC to any licensee in terms of compliance with TFS obligations.

*Overall conclusions on IO.11*

538. Guernsey has put in place a framework for the automatic application of PF TFS, including procedures for designation, asset-freezing, de-listing, un-freezing, granting access to frozen assets and liaising with domestic and international authorities for such purposes. To date, no assets have been frozen under UNSCRs relating to PF, however, there have been abundant cases of asset-freezing in relation to other international sanctions regimes, whose implementation has been, on average, timely, and have triggered multiple follow-up actions from the body responsible for their implementation (the "P&R Committee"). The mechanisms to communicate designations to other competent authorities, private sector and the general public could, however, benefit from further automation (as also stated in IO.10). Authorities (most notably, the FIU and the Customs Service) have also demonstrated the capacity to identify assets/goods that could potentially have had PF links.

539. REs generally have a very good understanding of their TFS obligations, due to the significant outreach undertaken by competent authorities and due to practical experience in applying other international sanctions regimes, and the vast majority of firms utilise automated screening systems and subject their customers, BOs and other relevant parties to (mostly) overnight screening. However, there are concerns about investment firms not always applying TFS in a robust and uniform manner throughout the sector, especially when financial intermediaries are involved.

540. Supervision of compliance with TFS obligations by the GFSC has been commendable and focused on the effectiveness of the firms screening systems (including conducting a sanctions thematic exercise on this aspect), as well broader aspects of TFS obligations (understanding of PF and TFS risks, CDD, ongoing and transaction monitoring, etc.). Significant cases of prompt action (short-notice inspections, imposition of license conditions, etc.) have occurred in relation to entities with exposure to a non-PF (or TF)-related sanctions regime. There is room, however, for deeper consideration of the wider aspects of TFS compliance (specially in relation to the detection of connected individuals to designated persons or sanctions circumvention) in future thematic or targeted exercises, with a view of improving the results of breaches detected, remedial and enforcement actions initiated, and sanctions imposed in relation to these aspects. Remedial and enforcement actions, as well as sanctions imposed have been on the lower end for both the GFSC, and specially, the AGCC.

541. **Guernsey is rated as having a high level of effectiveness for IO.11.**

# 5. PREVENTIVE MEASURES

## 5.1. Key Findings and Recommended Actions

***Key Findings***

***Immediate Outcome 4***

a) Majority of material sectors (i.e. banks, TCSPs and eCasinos) demonstrated a good understanding of their specific ML risks and systemically undertake and update business and customer risk assessments. The understanding of specific ML risks and typologies within the investment sector requires some improvement. TF risk understanding is generally less nuanced and concentrated mostly on high-risk countries and identification of designated persons. AML/CFT obligations are generally well understood across all sectors, however, concerns with the interpretation of AML/CFT obligations for financial intermediaries were noted in the case of investment firms.

b) Application of AML/CFT measures is overall commensurate to risks across all sectors. Risk appetite is stable and even decreasing across various sectors, including Banks and TCSPs. Overall REs have effective measures to prevent their services from being misused for the type of ML to which the country is exposed. All REs mentioned that they seek to understand the rationale of complex corporate structures and apply sufficient mitigating measures. Some concerns with the appreciation and mitigation of risks associated with complex structures were noted within the TCSP and investment sectors. All relevant REs apply tax-evasion targeted countermeasures, however the AT is unconvinced that these are applied effectively.

c) All REs demonstrated good knowledge and implementation of risk based CDD and record keeping requirements. CDD information is kept up to date and there are periodic risk-based reviews of customers risk profiles, CDD information and transactions/activities. The proper appreciation of the concept of control through other means and application of SDD within the investment sector is an area for improvement.

d) Overall, the specific measures applied to PEPs, new technologies, wire transfers, TF TFS and higher-risk countries, are robust. The concerns with the proper application of BO measures within the investment sector may impact the application of robust TFS measures. No entity is providing corresponding banking services. PEPs, their family members or close associates are identified and subject to appropriate risk-based EDD measures across all sectors.

e) The type of SARs are to some extent aligned with the Bailiwick's risk profile, and largely aligned when taking into account material non-gaming sectors. Concerns remain on the overall number and quality of SARs, with a decline in number across most material sectors (i.e. banks, TCSPs and investment firms). The majority of SARs originated from a single eCasino, however the number of SARs submitted by TCSPs are notable compared to other countries. SARs are mostly triggered due to adverse information, reluctance by clients to provide CDD information, retrospective activity reviews, or requests for information by authorities. This puts the quality of SARs into question. Recent FIU guidance is positively impacting REs' reporting procedures, however further efforts are needed to improve SARs linked to tax evasion and corruption and improve the detection of attempted suspicious transactions/activities. The prohibition of tipping-off is well-understood and communicated to staff via various forms of training.

f) REs have robust internal controls and procedures in place, commensurate to their size, complexity and risk profile. FIs and larger DNFBPs typically apply three lines of defence approach. Most REs belonging to international groups are also subjected to audit at a group level and group policies enhance their procedures. AML/CFT compliance functions are properly structured and resourced and adequate training tailored to specific roles is provided.

***Recommended Actions***

***Immediate Outcome 4***

a) The GFSC and the FIU should continue and enhance their actions aimed at addressing underreporting and quality of SARs in terms of content and type of cases in the most material sectors by: (i) conducting further guidance and awareness raising initiatives focusing on the prevention and detection of tax and corruption-related ML and reporting of attempted transactions, (ii) providing clear guidance around the suspicion threshold required for the submission of tax-related SARs, and (iii) complementing guidance and outreach efforts with AML/CFT supervisory and enforcement initiatives.

b) The GFSC should make further efforts to monitor and ensure that in the case of investment firms there is: (i) proper application of SDD on financial intermediaries, (ii) a consistent appreciation of risks related to complex structures and consequential application of countermeasures, and (iii) an improved understanding of the concept of beneficial ownership via other means of control.

c) The GFSC should make further efforts to monitor and ensure that in the case of TCSPs there is a consistent appreciation of risks related to complex structures and consequential application of countermeasures.

d) The GFSC and the FIU should continue with their efforts aimed at strengthening the awareness of ML risks and typologies with an added focus on the investment sector, to ensure that business specific risks are well-understood and addressed.

e) The GFSC should increase efforts at strengthening the awareness of TF risks across banks and investment firms.

542. The relevant IO considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23, and elements of R.1, 6, 15 and 29.

## 5.2. Immediate Outcome 4 (Preventive Measures)

543. The sectors have been classified based on their relative materiality and ML/TF risks (see sec. 1.4.3), and thus the effectiveness of preventive measures in Guernsey is weighted based on this classification:

**Most Important:** (i) Banks and TCSPs

**Important:** (i) Collective Investment Schemes, (ii) Investment Firms, and (iii) eCasinos[71]

**Moderately Important:** (i) Life Insurance Service Providers, and (ii) Law Firms

**Less Important:** (i) DPMSs, (ii) VASPs, (iii) Real Estate Agents, (iv) Accountants (v) other FIs (namely non-bank lenders and money service businesses).

544. IO.4 conclusions are based on the interviews held with private sector representatives, supervisory data and other information provided by the authorities and the private sector on their businesses and AML/CFT procedures, risks and SARs.

[71] eCasinos are the only gambling providers in the Bailiwick see sec. 1.4.3.

### *5.2.1. Understanding of ML/TF risks and AML/CFT obligations*

545. REs across all sectors were familiar with both NRAs' findings on the country-wide risks and those relevant to their sectors. REs conducted and regularly updated business risk assessments (BRAs) that identify their specific ML/TF risks. The perception of ML/TF risks across the sectors was in line with the NRA, with most REs consistently highlighting their exposure to ML risks emanating from corruption, tax evasion and fraud. REs were involved in the 2023 NRA through the compilation of surveys, with participation being more active in Banks (90%), TCSPs (75%) and Investment Firms (75%). Outreach sessions on the NRA findings were also conducted in 2020 and 2024 by Government representatives, the GFSC and FIU.

546. The BRAs form the foundation for the REs' risk-based approach determining the level of overall risk, the RE's risk appetite and the appropriate level and type of mitigation measures. The BRAs are reviewed and updated at least annually or upon trigger events (e.g. the publication of the new NRA in December 2023). The specific BRA identified risks and the general and sectoral ML risk understanding was good. Out of the most important sectors, risk-understanding was more nuanced in the banking, TCSP and eCasino sectors, with entities being generally more cognisant of specific ML typologies pertinent to their products and services.

547. This good understanding is also attributable to the supervisory authorities (GFSC and AGCC), that placed significant focus on increasing the adequacy of BRAs. The GFSC's BRA Thematic Exercise conducted in 2022 confirms this good level of risk understanding and highlights how only 3 out of the 104 examined institutions had deficient BRAs.

548. TF risk understanding across most sectors was less nuanced and confined to an understanding of exposure to clients from high-risk countries and persons designated for TF TFS. TCSPs showcased a well-developed TF risk understanding.

549. All REs risk classify customers. The complexity of risk scoring varied among the sectors but was commensurate with their specificities. Risk factors considered by the majority of REs include PEPs, complexity of legal structures, jurisdictional risk, SoF/SoW, industry risk, delivery channels and negative media. All REs met on-site were using systems and automated algorithms to derive a final risk score. Customer risk profiles are reviewed regularly (e.g. high risk customers' risk profiles are generally reviewed on annual basis) or in case of a trigger event.

*Understanding of ML/TF risks*

*Banks*

550. There is a good level of understanding of ML risks in the banking sector. The majority of banks were able to describe sectoral ML risks as well as ML risks identified through the BRAs in detail. They also showed good awareness of typologies and trends relevant to their business. Main threats identified through BRAs include tax evasion and layering of foreign proceeds of crime such as corruption, and drug trafficking. Some banks could also elaborate on specific ML typologies (e.g. foreign PEPs hiding behind legal entities to avoid detection, misuse of fictitious consultancy services or loans, and irrationally complex corporate structures).

551. Banks had a conservative risk appetite and refuse or exercise caution before dealing with high-risk customers or scenarios. Reliance on third parties for conducting CDD was decreasing. Any deviation from the risk appetite must be examined and approved by senior management and is generally subjected to additional mitigating measures like enhanced monitoring.

552. TF risk understanding is not as equally developed. It is concentrated mostly on identifying links to high-risk countries and persons designated for TF TFS. Gaps in TF risk understanding are

also evidenced by the fact that some banks classified NPOs as high-risk customers, irrespective of their activities or their jurisdictional connections.

*Investment Firms*

553. Investment firms had a good understanding of the ML/TF country-wide threats, particularly their exposure to ML derived from corruption and tax evasion. All have BRA and CRA processes, which were reviewed regularly.

554. In some cases investment firms were unable to describe in detail risks and typologies specific to their businesses beyond generic country-wide risks identified in the NRAs. This shows less robust ML risk understanding compared to other FIs indicating that there is scope for improving the quality of their BRAs.

555. It was also concerning that in some cases financial intermediaries are treated as low-risk clients merely on the basis that they are licensed in Appendix C countries. This shows some gaps in the appreciation of risks pertaining to such relationships, considering that another segment of the sector highlighted the heightened risks of these relationships.

*Other FIs*

556. The life insurance sector is comprised of life insurers, and insurance intermediaries undertaking life business (see sec. 1.4.3). Insurance managers act as general representatives to ensure compliance with the Bailiwick's requirements and manage the daily operations of licensed insurers. Insurance managers are also responsible for conducting BRAs for insurers and mentioned that they would assist the insurer in compiling its BRA.

557. With minor exceptions, the sector had a good understanding of ML risks, and some were able to discuss ML typologies relevant to the insurance sector (e.g. early redemption of policies).

558. MSBs and lenders conduct and maintain updated BRAs/CRAs and had a good understanding of ML risks, and especially robust in the case of MSBs. They were able to describe specific ML risks and typologies to which their respective services were exposed (e.g. fictious or over valuation of properties or projects for which loans are requested). MSBs were also cognisant of their TF risks and mentioned that they monitor the destination of outward transfers and believe that their TF risks are reduced considering that they do not service one-off customers and but mainly commercial entities (which use their services to pay salaries or conduct other business transactions) whose commercial activities are well known through CDD engagement.

*TCSPs*

559. The DNFBP sector is comprised of TCSPs, eCasinos, accountants, law firms, real estate agents and DPMSs. TCSPs are the most important and the main ML/TF risk driver, followed by eCasinos considered to also be of material importance.

560. TCSPs having a primary fiduciary license and constituting the majority of operators in the sector, tend to provide the full suite of trust and corporate services (i.e. formation of companies, trustee, directorship, bank signatory and other administration services) and only exceptionally would they undertake isolated services such as registered office or directorship. The various specific services tend to be provided through secondary licensees (e.g. acting as a trustee or director), which are in-house companies controlled by the primary licensee and which exist solely for the primary licensee to provide its range of fiduciary services. They share common boards of directors and have common MLCOs and MLROs. The provision of full suite of services allows TCSPs to have visibility over the transactions and activities undertaken by the corporate clients

and trusts, and evolving risks. Personal fiduciaries are authorised to only provide directorship/partner/trustee services which likewise gives them the same type of oversight.

561. TCSPs (both primary and personal fiduciaries) demonstrated a good ML risk understanding, and awareness of the risks of ML derived from tax evasion, bribery and corruption. They were generally able to provide more detail on the perceived ML risks making reference to risks of structures being used to conceal ownership, risks arising out of the nature of activities undertaken by corporate clients, and geographical remoteness of clients and their activities. TCSPs conduct and regularly update BRAs and CRAs.

562. Some TCSPs showed a notably well-developed TF risk understanding. They were cognisant of TF exposure in view of geographical connections of their corporate or trust clients (e.g. companies whose activities are located in high-risk jurisdictions, or charities that operate in or have connections with high-risk countries).

*eCasinos*

563. eCasinos systematically carry out and keep updated BRAs and CRAs. Interviewed eCasinos displayed a robust ML risk understanding including typologies. They were able to elaborate on their ML risks connected with payment methods, types of games (e.g. games allowing peer-to-peer interaction such as poker), and also specific ML techniques.

*Other DNFBPs*

564. Law firms and accountants demonstrated a better understanding, compared to real estate agents and DPMSs. The latter were however well aware of the specific risks and in the case of real estate agents were able to elaborate on why such risks were limited. Understanding of TF risks was limited, nonetheless in the case of DPMSs and real estate agents this gap is far less material considering their limited exposure to TF risks.

*VASPs*

565. The VASP sector in Guernsey is very limited, with only one entity licensed at the time of the on-site. The VASP provided insurance-linked VA tokens, which could be taken-up by limited customers (only selected employees of a parent entity) and with investment limits per customer (i.e. £26,500). This is a proof-of-concept initiative, and a license was granted for a limited amount of time with periodic reporting obligation to the GFSC. Despite the very limited risks involved, the ML risk understanding was very good. Given the very specific nature of this single VASP and no other VASPs in the Bailiwick, the materiality of the VASP sector is very limited and the AT will dedicate less attention thereto.

*Understanding of AML/CFT obligations*

566. FIs, DNFBPs and VASPs demonstrated good understanding of their AML/CFT obligations and were able to elaborate on their internal AML/CFT policies and procedures. REs that belong to international groups also benefit from group policies that set obligations at highest level based on regulatory requirements of any jurisdiction belonging to the group.

567. Concerns were identified in regard to the interpretation and consequent application of (i) SDD on financial intermediaries by investment firms, and (ii) identity verification measures within the gaming sector. In some cases financial intermediaries licensed in Appendix C countries are considered to be low risk, interpreting this to be sufficient to apply SDD and on-boarding their underlying investors without the need to further conduct due diligence on the intermediary and its AML/CFT control measures beforehand.

568. Another area for concern within the gaming sector is the interpretation that "verification" entails verifying that the details of a player truly pertain to a natural person, but not necessarily verifying that that person is truly who he says he is. This gap is however not a material one considering the adequate on-going monitoring controls and other counter measures put in place by eCasinos to counter potential impersonation risks.

### *5.2.2. Application of risk mitigating measures*

569. All interviewed REs implemented AML/CFT preventive measures to mitigate ML/TF risks facing their institutions. The range of these measures and the extent to which they are applied effectively, varies across the sectors and between REs but is overall commensurate to risks.

570. Most REs, including the most material ones (i.e. Banks and TCSPs) have long standing obligations to apply a risk based approach. Most of the REs include risk appetite statements into their BRA. They also often set limits on activities of REs (e.g. percentage of high-risk customers that they can service).

571. All REs apply AML/CFT measures on a risk-sensitive basis, adapting the extent and regularity of CDD measures on the client risk categorisation. This would involve conducting more regular CDD reviews in case of higher risks (in most cases on a yearly basis).

572. Majority of REs have a rather low risk appetite and do not engage in business with VASPs or clients linked to high-risk jurisdictions designated by the FATF or other international bodies. Onboarding customers outside of REs' risk appetite generally requires the approval of senior management.

573. The AT also put effort in trying to understand the effectiveness of mitigating measures in respect of ML from tax evasion (amongst other high-risk predicate offences). The most exposed sectors (i.e. Banks, TCSPs and Investment Firms) were cognisant of this risk and consistently made reference to the application of adequate counter-measures (e.g. obtainment of tax advice, tax declarations, adequate scrutiny of corporate structures, measures to understand the purpose and rationale of business relationships and adherence to CRS reporting obligations). The AT however remains concerned about the effective application of these measures. This since when looking at the volume and quality of SARs and discussions held on-site, the large majority derived from sectors other than retail banks tend to be reactive and mainly triggered by adverse media findings (e.g. BOs under fraud or tax investigations), requests for information by the FIU, or else reluctance to provide CDD information.

574. TF risk mitigating measures are focused on identifying customers from high-risk countries (including countries deemed as high risk due to terrorism related concerns) and identification of customers and BOs designated by the TFS through screening systems, understanding the purpose and rationale of business relationships and monitoring of transactions.

*FIs*

575. Banks, especially those providing private banking services, incorporate the most sophisticated AML/CFT systems and controls involving a broad range of measures to address ML/TF risks. The banks categorize customers into several risk categories, establish customer risk profiles that are reviewed regularly or in case of a trigger event and apply risk-based EDD measures to high-risk customers. Typical EDD measures include:

- obtaining the tax advice (either from customer or conducted by bank or its tax advisors),
- corroborating SoF/SoW,

- very thorough analysis of complex structures and understanding their rationale,
- commissioning of in-depth due diligence reports from external service providers,
- more sensitive transaction monitoring,
- more frequent reviews of customer profile (usually at least annually),
- senior management approvals to commence or continue business relationships.

576. In some cases all NPOs were automatically classified as high-risk customers which puts the proportionate application of the CDD measures into question. The AT notes that this resulted from cascading group policies which the Guernsey subsidiary is required to abide by.

577. Non-banking FIs apply similar AML/CFT systems and controls, although generally less robust. MSBs had AML/CFT systems and controls that were more robust, and similar to those observed in the private banking sector.

578. As explained in the introductory paragraph to this section the AT team sought to examine the adequacy of countermeasures put in place by the most material sectors to counter the ML risks arising from high-risk foreign predicates namely bribery and corruption, fraud and tax evasion committed abroad, as well as ML through the misuse of legal persons and arrangements.

579. Business relationships or occasional transactions involving legal persons and arrangements with complex structures, or manifesting potential BO concealment indicators are considered high risk. In such cases the FIs seek to analyse the rationale and purpose of the structure to ensure legitimacy. This may involve obtaining legal or tax advice from third parties connected to the structure and corroboration of information about the customer's background and business, within some of the FIs. Private banking services have expert analysts focusing on complex structures or seek for in-depth due diligence reports from external service providers.

580. The interpretation of what constitutes a complex structure and hence the respective mitigating measures varied across entities. Within the investment sector multi-layered structures are at times not considered to be high-risk factors. This impacts the application of appropriate CDD and EDD measures.

581. The implementation of BO obligations was good across all FIs (bar in some cases within the investment sector) and goes beyond identifying BOs via ownership of shares or voting rights to also scrutinise situations of control through other means which may be indicative of BO concealment concerns.

582. When it comes to obtaining and corroborating SoW/SoF, most FIs mentioned that they would obtain such information from all customers which leads to more comprehensive customer risk profiles, and then seek to corroborate it depending on the client risk categorisation. Additional corroborating documents (e.g. tax returns, bank account statements, various specific contracts) used for verification of SoF/SoW are required in case of high-risk customers.

583. The risk exposure of FIs to foreign PEPs is quite significant for banks, especially private banking (3.5%) and to a lesser extent for CISs (1.87%). The exposure of CISs, investment firms and life insurance entities to customers from or connected to non-equivalent or higher risk countries was significant (approx. 20% and 32% respectively). PEPs and high-risk countries connections were considered as high-risk factors by all interviewed FIs and are often outright classified as high-risk customers. Onboarding of PEPs requires senior management approval.

584. While generally all FIs were taking measures aimed to prevent their services from being misused to launder the proceeds of foreign tax evasion, the AT still has some concerns related to the effectiveness of the countermeasures undertaken. See introductory paragraph to this section.

*DNFBPs*

585. TCSPs (with exception of personal fiduciaries providing smaller scale services) establish AML/CFT systems and controls to mitigate risks that are very similar to FIs. TCSPs also tend to offer the full suite of trust and corporate services allowing them to better oversee the corporate structures they administer. In most cases the TCSPs are dealing with structures that they set up and administer, which should give them good insight into the activities of the structures as well as control over the management and distribution of assets.

586. The majority of customers serviced by TCSPs are high-net worth individuals and families with whom the TCSPs have long-term relationships. It is also a common practice among the TCSP sector to conduct regular engagements with clients and BOs either physically or via video calls. This enables them to build a better understanding of the relationship, its purpose, as well as corroborate information on origin of wealth and legitimacy of activities undertaken by their corporate clients. All these are effective risk mitigating factors.

587. The AT was concerned that TCSPs sometimes considered multi-layered complex structures (5 layers and less) not to be indicative of high risks, without a substantive analysis to confirm it.

588. The concerns related to the application of tax-evasion counter measures (see introductory paragraph to this section) likewise apply to TCSPs.

589. The AML/CFT systems and controls of eCasinos are also robust and tailored to address the risks and trends faced by operators. All make use of technological tools to monitor transactions, onboard clients and screen clients. Ongoing monitoring tools are adjusted to include triggers based on deposit and withdrawal thresholds as well as behavioural triggers mirroring some of the typologies identified. eCasinos have also put a lot of consideration into payment methods used to credit or withdraw funds to/from their customers' accounts. They generally require any funds to be withdrawn by the same method used to credit the account. Where in exceptional cases a different withdrawal account is allowed, they undertake measures to ensure that it pertains to the customer. eCasinos also referred to measures put in place to address risks of impersonation and account fraud, using tools to track anomalies in IP address locations (e.g. different locations for same client or use of similar IP addresses by different customers).

590. Other DNFBPs apply AML/CFT systems and controls commensurate to their size and are overall considered to be good. Law firms and accountants tend to have more robust frameworks in comparison to other DNFBPs (i.e. DPMSs and Real Estate Agents). The latter nonetheless exhibited awareness and ability to put in place adequate risk-based AML/CFT measures (e.g. obtaining and corroborating SOW/SOF information and non-acceptance of cash payments).

### *5.2.3. Application of CDD and record-keeping requirements*

591. All REs demonstrated good knowledge and implementation of CDD and record keeping requirements. Undertaken CDD measures are risk based and customer risk profiles determine the extent of information and documentation to be obtained.

592. Commercial databases and publicly available sources are widely used to identify adverse information about customers during onboarding and for ongoing monitoring purposes. CDD information is overall kept up to date and customer risk profiles are periodically reviewed (mostly annually for high-risk customers of FIs and TCSPs) and CDD information. REs have put in place tools or processes to monitor transactions/activities. In most cases these were tailored to identify outliers or off-pattern transactions/activities for further scrutiny based on various triggers. There were some limited examples in the banking sector where the transaction

monitoring process did not enable systemic real time detection of anomalies, with monitoring of transactions being mainly retrospective.

593. Reliance on third parties and/or provision of services through financial intermediaries is used mostly in the Banking and Investment Sectors, but on the decline. In the Banking sector the placing of reliance on TCSPs was overall decreasing, and Banks undertook effective measures to mitigate this risk. The AT was however not convinced that all investment firms conduct appropriate due diligence on promoters that intermediate for underlying investors and properly understand intermediary's customer base to assess the risk.

594. The onboarding process completion is conditioned by the provision of all the requested CDD information and documents. REs explained that they consistently desist from doing business unless CDD is completed. Where customers refuse to provide such information and documents under suspicious circumstances, the submission of a SAR is generally considered. Some investment firms mentioned that they may not always submit SARs in the case of suspicious attempted activities, but would rather opt not to do business.

*Application of customer due diligence*

*FIs*

595. Banks, especially private banking sector, incorporate the most sophisticated CDD policies and procedures. Onboarding of customers by private banks is mostly face-to-face as there is an element of personal relationship with a customer (private or institutional). Some of these face-to-face meetings are also carried out by representatives of group entities. When face-to-face onboarding is not possible (usually due to the location of the customer outside the Bailiwick), mitigating measures are undertaken - e.g. use of video conference tools with remote verification of identity and obtainment and certification of copies of identification documents.

596. A significant proportion of customers using private banking services are introduced from the TCSP sector. Banks that place reliance[72] on TCSPs, have put in place measures to counteract potential risks, in line with the reliance provisions (see R.17 – TC Annex). When placing reliance, banks are scrutinising the TCSPs before deciding whether to onboard introduced clients, limiting the placing of reliance only on local TCSPs. When the underlying clients are PEPs or high-risk clients the Banks tend to do CDD afresh and not place reliance.

597. All FIs use automated screening systems for customers including BOs, to screen (using commercial databases) for adverse information, matches on sanction lists and/or PEP information. Some FIs were also supplementing these checks with screening against publicly available sources (e.g. Google searches). The screening occurs during onboarding and also on ongoing basis (usually overnight).

598. BO requirements are well understood within the banking sector and other FIs (with exceptions in the investment sector), which investigate control networks to ensure that ultimate BOs are identified and verified. Some FIs were applying BO determination thresholds based on ownership interests of legal persons below 25 % (i.e. 10 - 25 % range). For Trusts the identity of the settlor, the trustee, the protector (if relevant), the beneficiaries or class of beneficiaries is ascertained. Banks and other FIs have a clear understanding of the different tiers of beneficial ownership and were able to give concrete examples of control of corporate clients through other means that they were able to detect.

[72] 12.36% NRA 2023 – pg. 26

599. The proper appreciation of the concept of "control through other means" is an area for concern in the investment sector. Some interviewed firms were unable to give concrete examples of how entities may be controlled through means other than formal shareholding or voting rights.

600. The extent of information and documentation obtained to understand the rationale of complex structures may vary among FIs and is impacted by different perceptions of what constitutes a complex structure. SOW/SOF checks are consistently undertaken by all FIs. FIs vary the extent of these measures on a risk sensitive basis. The general trend is that SOW/SOF information is obtained from all customers, while additional corroborating documents (e.g. financial statements, tax declarations or wills among others) would be required in case of high-risk customers. Some FIs explained that in low-risk cases they may opt not to collect such information, while others explained that they corroborate obtained information through open-source searches for all customers.

601. Transaction monitoring procedures designed to identify suspicious and unusual patterns of transactions are in place for all interviewed FIs. The type of system or process and their level of sophistication varied. Most FIs, such as Banks, which have a high volume of transactions were making use of automated transaction monitoring tools, with some however still in the process of introducing automated real time transaction monitoring to detect suspicious transactions/activity.

602. Systems used usually contain both ex-ante (e.g. thresholds, transfers to/from high-risk jurisdictions) and ex-post (e.g. thresholds, transactions not in line with customer risk profile/behaviour) transaction monitoring rules. Some of these systems implemented also elements of behavioural models and some FIs are experimenting with machine learning including large language models and other AI related methods. Any positive hits are further investigated by the compliance officers. However, considering the general low-quality SARs being submitted and the limited number of attempted transactions reported the AT is not convinced about the overall robustness of these systems and their ability to detect unusual and suspicious transactions.

603. Other FIs such as investment firms and insurance service providers with more limited and manageable volume of transactions (considering the nature of the service) took the approach of scrutinising in real time all transactions (e.g. initial investment and pay outs). Others had in place tools to carry out post transaction monitoring based on certain behavioural patterns (e.g. redemption of investment in a short period of time).

604. The AT has concerns on the proper application of SDD by some investment firms in the case of business relationships established with intermediaries. The Handbook explains that where a firm considers the ML/TF risk of a relationship with an intermediary to be low, it may treat the intermediary as its customer for CDD purposes, instead of identifying and verifying the identity of the intermediary's customer(s) (i.e. underlying investors). The Handbook goes on to explain what CDD measures need to be applied to the intermediary. These include also the obtainment of information on the purpose and intended nature of the intermediary relationship, and adequate assurances that the intermediary has effective AML/CFT procedures.

605. Some investment firms were however not appropriately applying SDD in such cases, opting to service underlying investors through intermediaries as long as the latter were licensed in an Appendix C jurisdiction, and this without obtaining appropriate information to be able to properly understand the intermediary's customer base to analyse and understand the risks. It was noted in some cases that the obtainment of a declaration from the intermediary attesting that CDD was being effectively conducted sufficed. This misapplication undermines the effectiveness

of CDD undertaken in this sector with firms running the risk of providing their services to underlying investors that may have not been scrutinised appropriately.

*DNFBPs*

606. The DNFBPs met on site demonstrated good knowledge of CDD procedures. CDD policies and procedures incorporated by DNFBPs are generally comparable to the ones implemented by FIs. This due to the fact that the DNFBP sector is mainly composed by TCSPs which have been regulated for many years in a similar fashion to FIs, being the sector receiving the main supervisory focus by the GFSC.

607. TCSPs implement effective identification and verification measures including for BOs. Concrete examples of how control through other means is detected (e.g. where PoAs are used and cases of persons not formally associated with the corporate client giving instructions on its management) were provided to the AT.

608. TCSPs take appropriate measures to understand the purpose, intended nature and rationale of business relationships. This involves seeking to understand the purpose and rationale of corporate structures and obtaining tax advice from the client, external third parties or in some cases having dedicated experts to review the relationship from a tax-legitimacy point of view. TCSPs however adopt different interpretations of what constitutes a complex structure, with some considering structures of more than five layers as not complex or indicative of heightened ML/TF risks, limiting the potential application of EDD.

609. All TCSPs also obtain and corroborate SOW/SOF information on a risk-sensitive basis. This involves a variety of measures including screening customers through commercial databases for any adverse media indications, using open sources to corroborate SOW information, asking for additional documentation (e.g. financial statements, reference from lawyers or other service providers or use of specialized external third parties to verify additional CDD information in the case of more complex type of scenarios). TCSPs are aware of the importance of following up with questions and requests for corroboration to identify the ultimate SOW/SOF (e.g. for a real estate property held in trust it is important not only to identify where the acquisition payment originated from but also the activity that generated that income).

610. Some TCSPs conduct pre-transaction monitoring of all transactions after onboarding a client until they are satisfied of knowing the on-going activities. Others scrutinise every transaction before undertaking it (since they are also bank signatories). Post-transaction systems are based on a mix of value-based thresholds and behaviour patterns.

611. The eCasinos' approach to CDD deviates from that of other REs. Their business is based only on non-face-to-face onboarding, through on-line portals. The majority of eCasinos obtain identification data at onboarding stage. eCasinos would verify that the identity details pertain to a real person but would only verify that that person is who he says he is if the electronic ID verification (through use of commercial databases) conducted by the third party fails or on a risk-sensitive basis for higher risk customers. Some of these online casinos make use of third-party service providers to confirm that the identity details provided correspond to a natural person. These eCasinos explained that it is impractical, considering the nature of the business, to verify the identity of all customers irrespective of risk. The AT acknowledges that they have however put in place adequate mitigating measures (e.g. tracking and matching the IP address location, detecting cases of multiple users with the same IP address) to reduce risks of impersonation and therefore this gap is not material. Some of the eCasinos were outsourcing their CDD obligations, but in such cases were well aware of the details and the modalities of the process.

612. eCasinos make use of sophisticated transaction monitoring tools that are able to detect anomalous transactions based on value thresholds (one off and linked transactions) and behavioural trends (e.g. high frequency or high velocity deposits, chip-dumping). SoF/SoW corroborating documents are sought generally for higher risk customers.

613. Other DNFBPs (law firms, accountants, real estate agents and DPMSs) were likewise undertaking appropriate CDD measures. Law firms have their own compliance teams, and customer screening tools that allow them to perform CDD obligations appropriately. Most of their legal advisory business are occasional transactions/activities, however they still undertake measures to understand the purpose and rationale of the transaction and obtain SOW/SOF information in higher risk cases. They also mentioned that given that most of their clients are non-residents and on-boarded remotely, EDD is conducted to verify the identity.

*Record Keeping Requirements*

614. All interviewed REs were using electronic document management systems for ensuring records specified under R.11 are maintained and accessible. The majority of records are stored electronically and some of them also retained in original paper form. The records are commonly kept for longer than the minimum five-year retention period specified under R.11. No significant instances regarding record-keeping and delayed provision of information to supervisors or other competent authorities were identified by the AT.

### *5.2.4. Application of EDD measures*

*PEPs*

615. The number of foreign PEPs is significant in the case of TCSPs (4.91%), Banks - private banking (3.5%) and to a lesser extent in accountants (2.39%) and the investment sector (1.87%).

616. All REs met on-site were using commercial systems for screening customers including BOs to identify PEPs, their immediate family members and close associates. Most REs were aware that these systems are not infallible, particularly to identify close associates or family members of PEPs, and therefore supplement these checks with open-source screening (e.g. Google searches). These checks are conducted during onboarding and also on ongoing basis with various frequencies (often overnight). Additionally, many REs seek to obtain a self-declaration from customers about their PEP status and PEP connections.

617. Being a PEP or having a PEP connection is considered to be a high-risk factor and subject to EDD. Some REs (Banks, Investment Firms, MSBs, Accountants and Law Firms) mentioned that the extent and type of EDD would be determined based on a risk assessment of the PEP relationship (e.g. jurisdiction, position/role), indicative of the maturity in dealing with PEP-related risks. REs consider PEPs or customers connected to PEPs to present higher risk of corruption and bribery and usually require additional corroborating documents compared to non-PEP high risk customers. Generally, onboarding of PEPs requires approval from senior management. Many REs also implement thresholds for payouts to PEPs or customers connected to PEPs which require further approval. Furthermore, PEPs or customers connected to PEPs have their customer profile reviewed with higher frequency and scrutiny.

618. eCasinos adopt a different approach when it comes to the application of EDD measures for PEPs. Some eCasinos explained that where a customer is a PEP, they would proceed to verify his identity, while SOW/SOF checks would be conducted if there are any alerts resulting from transactions monitoring. Others indicated that SOW checks are automatically carried out for all

identified PEPs. Considering the robustness of on-going transaction monitoring deployed by eCasinos this approach is considered to be reasonable.

*Correspondent banking*

619. No RE was providing corresponding banking services.

*New Technologies*

620. The use of new technologies is limited and mostly consists of screening/monitoring systems and remote customer onboarding methods (i.e. video conference tools with identity verification tools). Electronic ID verification of customers is widely used within online casinos. Screening/monitoring systems are often commercial rule-based systems that sometimes implement elements of behavioural models.

621. REs conduct risk assessments of new and developing technologies before introducing them. AML or compliance officers participate in these risk assessments and the risk assessments are approved by top management.

*Wire Transfers*

622. There are 20 Banks and 21 MSBs (17 of which are banks) undertaking wire transfers. These FIs provide wire transfers only to their existent customers therefore money remittance services are not provided. Controls for ensuring information requirements for wire transfers are met and controls to detect missing or incomplete information fields are carried out. Controls are invariably a combination of real-time screening using transaction screening technology and ex-ante sampling. Incoming payments with missing information are stopped and returned or the remitting FI is requested to provide the information before the payment is released. The GFSC indicated that there are robust controls in place ensuring compliance with wire transfers even though there were few instances of REs identifying deficiencies in the monitoring of incoming payments when this was outsourced to other parts of the group indicative of their monitoring controls over outsourced functions.

*Targeted Financial Sanctions*

623. All REs carry out TFS screening during onboarding or before conducting transactions. All REs interviewed were using commercial systems for screening customers including BOs against various commercial databases which feed from official lists such as the UN's, EU's and the UK's list for screening purposes (refer to IO.11 for supervisory statistical data on the utilisation of TFS screening tools across sectors). The screening is conducted regularly (mostly overnight) on an on-going basis to customers, including BOs and other parties to a customer relationship and to transactions. Considering the misapplication of SDD on financial intermediaries, and issues with the appreciation BO via control through other means, noted in some cases, the AT could not conclude that the application of TFS is robust and uniform throughout the entire investment sector. This is partly mitigated by the fact that it involves only intermediaries based in Appendix C jurisdictions, while some REs met on-site also mentioned that they would be notified (and gave examples) by the intermediary in case that an underlying investor is identified as a designated person for TFS.

624. REs are also alerted to updates in sanctions lists through notices issued by the sanctions authority through the FIU's portal Themis and screen their entire customer database including BOs and other parties to a customer relationship against new designations. In general, commercial systems used for TFS screening apply fuzzy logic and potential hits do not require 100 % match. Potential hits are examined to establish if it is a true match. The number of true hits is small, but where they occur REs place blocks on accounts. Interviewed REs were aware that

reports of a customer relationship with a sanctioned person should be promptly reported to the Bailiwick's sanctions authority which is the Policy and Resources Committee.

625. The authorities advised that screening systems are robust and that in recent years more robust testing of screening systems and greater understanding of how screening systems work have been observed. Based on their supervisory experience authorities advised that REs demonstrated very strong understanding of and compliance with TFS obligations.

*Higher-Risk Jurisdictions*

626. REs have a good understanding of high-risk jurisdictions risks and countermeasures. REs place countries subject to a call for countermeasures from the FATF outside of their risk appetite. REs met on-site indicated that it is uncommon to have such clients, and when they do (with Iran only) the sole connection is that the client or BO was born there.

627. REs include jurisdictions under increased monitoring by the FATF as well as others (based on their own risk assessments) into their list of high-risk countries. REs use screening systems to identify connections between their customers including BOs, other related individuals and transactions similarly as the TFS screening systems during onboarding and on ongoing basis.

628. Connection to a high-risk country is a risk factor that leads to the application of EDD measures. The GFSC and the AGCC regularly publish and circulate information on higher-risk third countries to draw the attention of REs (see R.19). Such higher-risk third countries list are based on the FATF lists but go beyond, also listing countries considered to pose higher risks of TF and PF by other governmental and non-governmental institutions (e.g. OECD – tax implications, US-INSCR – drug trafficking implications, State Sponsors of Terrorism-US Treasury – terrorism implications, Transparency International-Corruption Perception Index).

### *5.2.5. Reporting obligations and tipping off*

629. The overall number of SARs is, in the AT's opinion, not in line with the ML risk of the Bailiwick as an international financial centre (see Table 6.4). Over the review period, 69% of SARs originated from eCasinos (and mainly one eCasino – 62%), followed by 12% from the TCSPs, 6% from retail banks and 4% from private banking. A decline in number was noted across all non-gambling material sectors (i.e. banks, TCSPs and investment sector), which the authorities attribute to the outreach and efforts to improve the quality of SARs (see section 3.2.2.).

630. The type of reported cases are partially in line with the country's risk profile, and largely in line in case of SARs reported by material non-gaming material. As can be seen from Tables 5.2 and 5.3 the most prevalent predicate offences underlying SARs are fraud (14%), tax evasion (9%), drug trafficking (4%) and corruption (2%), while the bulk (i.e. 69%) have no indicated underlying crime. When excluding SARs derived from eCasinos (exposed to different types of ML/TF risks), the most prevalent predicate offences result to be tax evasion (30%), fraud (26%) and bribery and corruption (9%). The volume of SARs with corruption and bribery connections remains low considering the significant incidence of foreign PEPs and the risk profile of the country where the main line of business consists in the provision of wealth management and investment services to non-resident high-net worth individuals and families.

631. In respect of the quality of cases reported, as elaborated under IO6 (see section 3.2.2) the majority of SARs remain reactive and triggered by external factors (e.g. adverse media or inability to conduct due diligence). SARs are triggered in view of suspicious flows/activities mainly in the case of retail banks (exposed mainly to domestic ML risks). There were also indications of failures to report and late reports in the TCSP sector (see section 3.2.2 – IO6). Thus, the AT believes that

further actions are needed to improve the type and quality of cases being submitted across material sectors.

632. There were 121 SARs related to TF during the assessed period, which appears in line with lower TF risk of the Bailiwick.

*Reporting Obligations*

*eCasinos*

633. The authorities advised that the high-amount of SARs from eCasinos result from the sheer amount of customers and transactions (e.g. 3.5M customers in the case of one eCasino) and the fact that eCasinos operate in various jurisdictions with a drive to report SARs in all countries where the eCasino is licensed. Thus, in a bulk of SARs the connection to the Bailiwick would merely be the license. In fact, an assessment of the SAR triggers for the largest SARs' contributor (one eCasino) shows that 62% of all SARs reported by this eCasino in 2023 were of a reactive nature and resulted from detected adverse open-source data, while another 16% resulted from inability to complete CDD (16%). The SAR types submitted by eCasinos are heavily impacted by the automated approach to the identification of SARs. 3% of SARs reported by this eCasino were fraud related suspicions, triggered via tools and systems put in place to detect fraudulent behaviour.

*Other material sectors (Banks, TCSPs and Investment Firms)*

634. As set out in the introduction the overall number of SARs from most material sectors are low (except for the TCSP sector) and on the decline. The higher prevalence of SARs from the banks (13%) and the TCSPs (16%) in comparison to other sectors, e.g. investment sector (4%), was explained by the authorities by the fact that private banking and TCSPs' relationships are long-term and for TCSPs there is a high degree of direct contact with customers and BOs which gives a greater insight into their financial affairs that better enables identification of suspicious activities. The lower prevalence of SARs in other sectors such as investment and insurance is considered by the country to reflect the less transactional nature of business.

635. The AT is not convinced that the nature of the services is the only reason for the low reporting volume and is of the opinion that SAR reporting is insufficient considering the volume of assets held and transacted in the jurisdiction, its risk profile and business model. Analysing sector-by-sector the SARs received from the banks (retail and private all together), are significantly lower to what can be observed in similar jurisdictions. However, the number of SARs from the TCSPs is significant and higher than most similar jurisdictions. The AT also encountered some cases within the investment sector where REs stated that they would simply not onboard customers in case of suspicions without submitting a SAR. The AT also perceived a reluctance from REs to report were they had concerns about the tax rationale of some structures, or when faced with indications of aggressive tax planning. There were also indications of failures to report and late reports in the TCSP sector (see section 3.2.2 – IO6).

636. The number of SARs from the private banking sector, TCSPs and investment firms shows decreasing trend. Authorities advised that the decrease is caused by increase in quality of SARs, as less "defensive" SARs reported as from 2022. While acknowledging this qualitative improvement it has to be said that the SARs are classified as "defensive" when they are triggered by an action made by a regulatory or law enforcement authority in relation to a specific client (e.g. a request for information on a client is received by the RE). Beyond this, the bulk of SARs submitted are still of a reactive nature, as SARs are mostly triggered because of adverse media information, reluctance by clients to provide CDD information, retrospective activity reviews, and requests received from tax authorities (often initiated by foreign countries) for most tax-related

SARs. This puts into question the robustness of ongoing monitoring transaction/activity efforts to detect suspicions transactions in real time[73]. Moreover, the average percentage of SARs involving attempted transactions range from 2-9% per year, with a significant decrease in attempted transaction reported in 2023. Some REs are still reluctant to report attempted suspicions connected to tax evasion, where the line between aggressive tax avoidance and tax evasion is hard to judge.

637. Excluding the eCasinos, most SARs across all other sectors relate to tax evasion (30%), fraud (26%) and bribery and corruption (9%). The type of cases are largely in line with the profile of the country, however the number of corruption related SARs remains low.

638. Recently, the FIU started providing direct feedback including feedback letters to REs regarding the quality of SARs. This should help to continue increasing the SAR quality (in terms of manner, format and content presentation of SARs) in the long-run and majority of interviewed REs praised this initiative. The AT still believes that more needs to be done to improve the quality of SARs in terms of type and quality of cases and suspicions that are reported to ensure closer alignment to country risks in particular when it comes to ML related to tax-evasion and corruption.

**Table 5.1: Number of attempted transactions reported to the FIU (2018-2023)**

| Reporting entities | 2018 | | 2019 | | 2020 | | 2021 | | 2022 | | 2023 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | ML | TF | ML | TF | ML | TF | ML | TF | ML | TF | ML | TF |
| Retail Banks | 20 | 0 | 19 | 0 | 11 | 0 | 19 | 0 | 45 | 0 | 10 | 0 |
| Private Banks | 35 | 0 | 49 | 2 | 27 | 1 | 14 | 2 | 16 | 0 | 4 | 0 |
| Investment Firms | 11 | 0 | 34 | 1 | 24 | 1 | 15 | 0 | 22 | 1 | 4 | 0 |
| Non-Regulated FSBs | 1 | 1 | 3 | 0 | 12 | 0 | 3 | 0 | 9 | 0 | 0 | 0 |
| Insurance | 3 | 1 | 5 | 0 | 4 | 0 | 3 | 0 | 3 | 0 | 1 | 0 |
| Currency Exchange | 12 | 0 | 4 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| eCasinos | 3 | 0 | 7 | 0 | 4 | 0 | 3 | 0 | 0 | 0 | 4 | 0 |
| TCSPs | 55 | 0 | 76 | 2 | 73 | 0 | 48 | 2 | 71 | 2 | 26 | 0 |
| Law Firms | 11 | 0 | 11 | 2 | 12 | 0 | 12 | 0 | 10 | 0 | 3 | 0 |
| Accountants | 5 | 0 | 10 | 0 | 12 | 0 | 4 | 0 | 3 | 0 | 2 | 0 |
| Estate Agents | 0 | 0 | 2 | 0 | 2 | 0 | 1 | 0 | 1 | 0 | 1 | 0 |
| High Value Dealers | 0 | 0 | 2 | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 0 | 0 |
| **Total** | **156** | **2** | **222** | **7** | **182** | **2** | **125** | **4** | **181** | **3** | **55** | **0** |

**Table 5.2: Predicate Offence Underlying SARs (2019-2023)**

| Predicate Offence | 2019 | | 2020 | | 2021 | | 2022 | | 2023[74] | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % |

[73] These triggers are likewise important and valuable. The AT is not criticising their relevance but rather the fact that the bulk of SARs are raised as a result of these triggers as opposed to others (e.g. real time transaction/activity reviews).
[74] In 2023 a new SAR reporting form was introduced which allowed to capture better data on underlying predicate offences.

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Money Laundering** | 1593 | 66 | 2354 | 77 | 3179 | 90 | 1966 | 75 | 483 | 24 | **9575** | **69** |
| **Fraud, False Accounting or Forgery** | 359 | 15 | 407 | 13 | 187 | 5 | 441 | 17 | 477 | 24 | **1871** | **14** |
| **Tax Evasion** | 284 | 12 | 215 | 7 | 168 | 5 | 174 | 7 | 302 | 15 | **1143** | **9** |
| **Drug Trafficking** | 18 | 0.7 | 24 | 0,8 | 3 | 0,08 | 5 | 0,2 | 499 | 25 | **549** | **4** |
| **Bribery and Corruption** | 58 | 2.4 | 51 | 1,7 | 34 | 0,9 | 48 | 1,8 | 50 | 2,5 | **241** | **2** |

**Table 5.3: Predicate Offences Underlying SARs – excluding eCasinos (2019-2023)**

| **Predicate Offence** | **2019** | | **2020** | | **2021** | | **2022** | | **2023** | | **Total** | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | No. | % | No. | % | No. | % | No. | % | No. | % | **No.** | **%** |
| **Money Laundering** | 430 | 46 | 386 | 47 | 259 | 33 | 186 | 29 | 143 | 20 | **1404** | **36** |
| **Fraud, False Accounting or Forgery** | 221 | 24 | 218 | 27 | 188 | 24 | 190 | 30 | 201 | 27 | **1018** | **26** |
| **Tax Evasion** | 337 | 36 | 257 | 31 | 206 | 26 | 177 | 28 | 182 | 25 | **1159** | **30** |
| **Drug Trafficking** | n/a | n/a | 16 | 2 | 24 | 3 | 13 | 2 | 10 | 1 | **63** | **2** |
| **Bribery and Corruption** | 77 | 8 | 71 | 9 | 82 | 10 | 63 | 10 | 55 | 8 | **348** | **9** |

639. The REs were able to describe the process of submitting SARs including escalation processes and analysis of suspicious activities. The vast majority of REs also in fact reported SARs in the past. All REs, to various extents depending on the nature and volume of business, reported having dedicated MLROs and in some cases MLRO teams to receive, and or make disclosures of suspicion to the FIU, that are provided with regular and tailor-made training (both inhouse and external). The vast majority of REs have an internal report form for their staff to use. The MLRO will determine from consideration of the report and any additional enquiries if there is a suspicion to report to the FIU. All REs reported giving their MLRO unfettered access to required information and decision making when it comes to reporting SARs.

*Tipping Off*

640. Regarding tipping off, interviewed REs displayed a strong understanding of the requirement to not tip-off customers and have introduced appropriate procedures to prevent tipping off (training, limited access to information only to MLRO, internal controls, internal audit). No case of tipping off has been detected during internal controls or by the supervisory authorities in the assessed period. Various REs also appreciated recent training and guidance provided by the FIU on tipping off that emphasized that requesting additional information from customer to determine suspicion does not automatically constitute tipping off and that REs are often the only entities that can obtain such information without raising suspicion. Following this training, many REs declared that they started to conduct more thorough investigations even in cases where they would have previously outright submitted SARs. Based on these investigations, the REs advised that they are able to provide more substantiated SARs or assess that SAR should not be submitted.

### *5.2.6. Internal controls and legal/regulatory requirements impending implementation*

641. Generally, REs have put robust internal controls and procedures in place that are commensurate to their size, complexity and risk profile. There are no legal or regulatory requirements that impede the implementation of internal controls and procedures, including the group-wide sharing of information.

642. REs are required to appoint money laundering compliance officers (MLCO) responsible for testing the effectiveness of the RE's AML/CFT policies, procedures and controls. Additionally, REs must also appoint MLROs. Both of these functions are management level appointments reporting to top management, which must also be approved by the supervisory authorities.

643. Most REs belonging to international groups are also subjected to audit on a group level and group policies enhance their procedures as the highest standard of all the jurisdictions within the group is generally applied.

644. More than 7% of staff working in FIs and the TCSPs in 2023 was employed in AML/CFT roles (the TCSP sector had the highest percentage with 10 %). No shortage of qualified employees was identified. The AT came across a number of former members of supervisory authorities that are currently working in private sector, often as MLCO or MLRO.

645. AML/CFT compliance functions are properly structured and resourced and adequate training tailored to specific roles is provided. New employees are screened for adverse media, sanctions and criminal convictions and vetted. Ongoing screening of employees is also often conducted during their employment with various frequencies (using some of the tools for CDD) and hits are investigated by the MLCO.

646. It was a common approach particularly in the most material sectors to have onboarding AML/CFT training for new employees that is partly generic and partly tailored to their specific roles. Trainings are done either face-to-face or online and are carried out by internal or external trainers. All relevant employees have to undergo AML/CFT training at least annually with many REs adopting higher frequency and thematic trainings on weekly or monthly basis or in case of trigger events (e.g. detection of new typology, new emerging trends).

*FIs*

647. FIs generally arrange their AML/CFT functions as governance structures based on three lines of defence approach. The first line of defence consists of front office that carries out operations and conducts initial CDD measures. Second line includes AML/CFT units overseeing that the first line of defence implements relevant procedures and following with investigations in case of escalations by the first line of defence. Third line of defence is dedicated to audit function that is carried out by internal department, external provider or on group level (especially in case of large international groups the audit is often conducted by all of these arrangements). Banks and some other larger FIs usually have their own internal audit department and smaller FIs use external audit providers. Audit reports are provided to the supervisory authorities.

648. Senior management oversees the AML/CFT functions by approving BRAs including risk appetite statements, reviewing audit findings including implementation of remedial measures and communication with MLCO and MLRO.

*DNFBPs*

649. AML/CFT functions in larger DNFBPs, especially ones belonging to the international groups, are similar to FIs. The smallest DNFBPs which do not have audit functions use external AML/CFT compliance.

### *Overall conclusions on IO.4*

650. The understanding of ML risks across the majority of material sectors is good, with improvements required in the investment sector. The understanding of TF risks requires to be enhanced in most sectors, other than TCSPs which demonstrated a more nuanced knowledge. Given the ML/TF risks of the Bailiwick, more emphasis should also be put on the proper understanding and assessment of complex structures as this understanding was not always consistent in the case of TCSPs and Investment Firms.

651. The understanding and application of AML/CFT measures is good and overall commensurate to risks. Some concerns were identified with the effective application of tax-evasion targeted countermeasures, the proper appreciation of the concept of control through other means and the application of SDD within the investment sector.

652. The overall number of SARs is not in line with the ML/TF risks of the Bailiwick. The AT notes that the number of SARs submitted by TCSPs are considerable and encouraging compared to jurisdictions with similar profile. However, the AT remains concerned that the majority of SARs have been originating from one online casino, with a decline in the most material sectors (i.e. banks and TCSPs). The AT was not convinced that this is attributed solely to the outreach and efforts to improve the quality of SARs by the authorities. The type of cases reported are in line to the country's risk profile to some extent, and largely aligned when taking into account non-gaming SARs. Further improvements are required when it comes to tax evasion and corruption related suspicions, and the overall quality of cases reported which remain mostly triggered by a posteriori events.

653. **Guernsey is rated as having a moderate level of effectiveness for IO.4.**

# 6. SUPERVISION

## 6.1. Key Findings and Recommended Actions

***Key Findings***

***Immediate Outcome 3***

a) The Bailiwick has robust market entry frameworks for all REs. Each authority has the necessary powers and tools to screen all relevant individuals and entities, including on an on-going basis. Authorities liaise and exchange information with other domestic authorities, and, where applicable foreign counterparts. The AGCC does not undertake any proactive market surveillance for unlicensed eCasinos but relies exclusively on external sources. For less material sectors, market entry requirements have only recently been introduced (i.e. for VASPs and registered directors), while not all DPMSs are subject to market entry requirements. Moreover, the Administrator's market entry framework has to further mature.

b) The GFSC and AGCC have a very good understanding of the ML/TF threats and vulnerabilities to which the supervised sectors are exposed. The two authorities also have commensurate processes to understand the risks of specific REs, with some room for additional improvements and granularity. The AT is not fully convinced about the suitability of risk categorisation of individual REs within the investment and TCSP sectors, and the extensiveness of risk data collected for TCSPs which could impact supervisory plans.

c) The GFSC has been implementing a risk-based supervisory model for several years and conducting good quality and thorough on-site examinations. These are then complemented by other supervisory tools, including thematic examinations whose themes are well aligned to national ML/TF risks and vulnerabilities. The extent of examinations in terms of client file sampling, and the frequency of full-scope examinations for medium-high risk entities, needs to be re-visited to ensure that it is risk-based. The AGCC's overall supervisory model may provide for the identification of AML/CFT issues before they become too serious but there is room to strengthen the same especially when it comes to testing the ability to detect and scrutinise unusual transactions.

d) The GFSC and AGCC have wide ranging remediation and enforcement powers to deal with AML/CFT breaches. The GFSC has been exercising its remediation powers to a significant extent and maintains an effective stance of taking enforcement action not only on REs but also their senior officers. The sometimes-lengthy enforcement actions however may detract from the effectiveness of the sanctioning measures taken. Moreover, considering the number of supervisory engagements, the cases in which pecuniary fines are imposed is quite low, especially with regards to high-risk sectors. Failure to report SARs is subject to a criminal sanction, and while the AT found evidence of some administrative actions taken by the GFSC in this respect, no criminal sanction was ever imposed. The AGCC relies exclusively on remedial actions and throughout the review period has never exercised its enforcement powers.

e) Both the GFSC and the AGCC undertake a series of training and outreach initiatives to ensure that REs apply AML/CFT obligations in a commensurate manner. This has helped in improving the overall compliance levels of REs. Their actions are complemented by the publication of guidance documents and detailed handbooks that assist REs in complying with their obligations at law.

***Recommended Actions***

***Immediate Outcome 3***

a) The GFSC should further enhance its supervisory process by: (i) recalibrating its risk categorisation process for investment firms and TCSPs, and (ii) revisiting the extent (in terms of sample size) of examinations, and frequency for medium-high risk entities to ensure these are adapted to size and risks.

b) The AGCC should further enhance, with more effective testing, its monitoring of e-Casinos' procedures and systems, particularly when it comes to the detection and scrutiny of unusual transactions.

c) The GFCC should monitor and reduce the timeframes involved in taking enforcement action and reaching a regulatory decision. Effective enforcement action should be taken in the case of SAR failures to instil a better reporting culture.

d) The AGCC should rethink and clarify the circumstances under which it takes enforcement action to ensure that it deals with serious, repeated and systemic breaches of AML/CFT obligations effectively, including addressing any legal impediments that may limit its ability to do so.

e) The GFSC should review its risk data gathering process to collect more granular data and on a systemic basis, deepening its risk understanding of material sectors and individual REs.

f) Both the GFSC and the AGCC should continue their outreach, training and guidance initiatives focusing on the gaps outlined under IO4. These should be complemented by the retention of as granular statistics as necessary to ensure that they can better understand whether their activities in this area are having the desired effect or otherwise.

g) Authorities should improve the Administrator's expertise and capacity in the application of market entry requirements.

654. The relevant IO considered and assessed in this chapter is IO.3. The Recommendations relevant for the assessment of effectiveness under this section are R.14, 15, 26-28, 34, 35 and elements of R.1 and 40.

## 6.2. Immediate Outcome 3 (Supervision)

655. The effectiveness of supervision for FIs, DNFBPs and VASPs, is taking into account the weighting of the various sectors (i.e. relative importance of each sector in terms of materiality and risk), as detailed under section 1.4.3. and applied for preventive measures (IO.4).

656. There are five authorities responsible for licensing, registration and market entry controls for FIs, DNFBPs and VASPs: the GFSC, AGCC, Guernsey Registry of Companies (Administrator), LOC and HM Greffier.

657. There are two AML/CFT supervisory authorities in the Bailiwick: the GFSC and the AGCC. Refer to Tables 1.4 for information on division of regulatory and supervisory responsibilities for FIs and DNFBPs.

658. As of end 2023, the GFSC had a staff complement of 121 FTEs, subdivided into different divisions including a Financial Crime Division responsible for AML/CFT supervision. The AGCC had a staff complement of 15 FTEs organised in two main Directorates – the Licensing Directorate and the Compliance Directorate.

### *6.2.1. Licensing, registration and controls preventing criminals and associates from entering the market*

*GFSC – FIs, TCSPs and VASPs*

659. The GFSC is responsible for implementing market entry requirements for FIs, TCSPs, and VASPs, including on the individuals and entities involved therein. In addition, Prescribed Businesses (i.e. accountants, real estate agents and legal professionals) are also required to register with the GFSC, which registration entails several probity checks on the entity and individuals concerned. The Authorisations & Innovation Division has a staff complement of 13 officers for implementing these requirements.

660. The application process for all entities is standardised. A new license application to be accompanied by: an application form, a three year business plan, a draft ML/TF business risk assessment, a detailed ownership chart, and a Personal Questionnaire ('PQ') completed by any individual that is to hold a 'supervisory role'. These roles include shareholder and indirect controllers, directors and managers, including MLROs and MLCOs. While the relevant laws do not capture ownership of non-voting significant shareholding (or with limited voting rights) (c.26.3), the GFSC confirmed that it reviews beneficial ownership holistically (see case study 6.1).

**Case-Study 6.1 – Relative as a Shadow Director of a TCSP**

The GFSC received an application for a TCSP licence. One of the controllers, Individual Z, was to be financed through a loan provided by a relative (Individual M). The GFSC had prior intelligence that Individual Z and the said relative M had a TCSP activity in a third country. Whilst M was not proposed as a director, it was indicated that she would provide mentoring and would attend board meetings. The GFSC was therefore concerned that the said relative M would be acting as a shadow director in the TCSP business. Authorisation was subsequently granted subject to the said relative not attending Board meetings, which condition the applicant agreed to and which was subsequently checked upon by the GFSC within six months of authorisation being granted. Verification also takes place whenever the GFSC carries out a supervisory examination on the TCSP.

661. The PQ is the start for the GFSC to assess the competence, the probity and integrity of individuals holding a prospective supervisory role. An individual that completes a PQ must confirm whether he was ever convicted including for ML/TF, fraud, or other financial crime, declare whether he is aware of any pending investigations in his regard and provide information on any disciplinary or regulatory process one may have been subject to. The latter covers adverse professional association and related entity proceedings or activities; adverse employment activities including investigations, disciplinary actions and dismissals; revocation of licences or similar authorisations, civil litigation proceedings and insolvency proceedings.

662. The Authorisations & Innovation Division also carries out a number of checks itself to assess one's fitness and probity. In most cases these will include (i) open source internet enquiries; (ii) checks against the Shared Intelligence Service ('SIS') database operated by the UK's FCA (a mechanism to collect and share material, including law enforcement information which assists in identifying potential criminal association); (iii) checks with foreign professional membership bodies; and (iv) company registries, (i.e. the Guernsey Registry and the UK's Companies House). All relevant individuals are screened through a third-party screening software to flag the involvement of PEPs (including close business associates and relatives), anyone subject to UNSCR sanctions and adverse media.

663. The GFSC also has an Intelligence Function which has access to the FIU's THEMIS system containing SAR information and intelligence concerning licensed entities made accessible by the FIU. The GFSC may then access the broader FIU intelligence through specific requests. Such requests are only sent where the GFSC has doubts about the individual's/entity's reputability and not systematically in all cases. There have been five instances where liaison with, or intelligence from, the FIU has assisted in the assessment of an application.

664. Where the individual or entity is resident or established outside the United Kingdom or the Channel Islands, the GFSC also seeks to obtain any relevant information from its counterparts in third countries. Data provided by the GFSC shows that this is done consistently whenever an applicant is new to the Bailiwick (i.e. no previous regulatory history) or where the GFSC has concerns on the same. A new application by someone known to the GFSC does not trigger a refresh of the information originally obtained from the GFSC's foreign counterparts, independently of the time lapsed, as the GFSC relies on its past interactions with the said applicant. There have been instances where the GFSC obtained good results through the use of information sourced from foreign counterparts as demonstrated by case-study 6.2.

**Case-Study 6.2 – Use of Information Obtained from Counterpart Authorities**

The GFSC received an insurer license application from Insurance Manager A. The application noted the involvement of Persons B, C, D, E and F with the entity. Person B was to provide the funding for the insurance entity with Persons C-F acting as directors. The GFSC already possessed information communicated to it spontaneously by a foreign counterpart, indicating significant concerns regarding Persons B, C and D. Information on the application and, eventually, on its outcome, was also communicated by the GFSC to the said counterpart authority. Media speculation had also begun regarding issues with Bank X and Person B alleging similar failings. The GFSC also sought information from a second foreign counterpart for information relating to Person B.

The said information had been omitted from the PQ for Person B. This prompted the GFSC to seek further clarifications from Person B and Insurance Manager A. This request for additional information led to Insurance Manager A withdrawing the said application shortly after.

665. FIs can also operate as ICCs or PCCs. ICCs have separate cell companies with their own legal personality. PCCs can have assets and liabilities segregated in cells which however do not have separate legal personality. The GFSC confirmed that it equates the constitution of a new cell, be it incorporated or otherwise, by a licensed entity as an event requiring its prior authorisation which triggers the same type and extent of checks described above.

666. Supervisory roles are sub-divided into categories, that is 'approved supervisory roles', 'vetted supervisory roles' and 'notified supervisory roles'. Roles are classified, depending on the sector concerned. The relevant ones are approved and vetted supervisory roles as they cover BOs or senior managing official. The difference between the two is that in the case of vetted supervisory roles, the GFSC has 60 days to determine an application or is otherwise deemed to be approved. This is not limiting the proper carrying out of checks since the GFSC can interrupt the said period of time whenever it needs additional information. The AT received confirmation that there were no instances where the GFSC failed to carry out proper and exhaustive checks on vetted supervisory roles within the allowed time.

667. The GFSC is particularly cautious with applications for business models falling outside its risk appetite or that involve innovative or esoteric activities. In such instances, it is not left to the Authorisations & Innovation Division to determine the outcome of the application, but an Authorisation Review Panel is convened to discuss the application. This panel brings includes

members from different divisions such as the Financial Crime Division. Where a decline is recommended, the Authorisation & Innovation Division will liaise with the applicant to have the application withdrawn. Should the applicant refuse to do so, then the matter will be determined through a more formal procedure involving Commissioners' Decision Committees.

**Table 6.1: Applications Received by the GFSC (2018-2023)**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|---|
| **Banking** | 0 | 1 | 0 | 0 | 1 | 2 |
| **Investment Services** | 82 | 65 | 69 | 69 | 51 | 33 |
| **Collective Investment Schemes** | 111 | 93 | 118 | 132 | 102 | 72 |
| **Insurance** | 116 | 89 | 69 | 82 | 64 | 46 |
| Of which ICC/PCC | 91 | 57 | 36 | 49 | 37 | 31 |
| **Lending, Credit & Finance** | 5 | 4 | 4 | 4 | 7 | 63[75] |
| Of which Money Services Businesses[76] | 0 | 1 | 1 | 1 | 1 | 4 |
| **Fiduciary (TCSPs)** | 13 | 14 | 14 | 22 | 14 | 16 |
| **Prescribed Businesses[77]** | 6 | 6 | 7 | 9 | 7 | 70 |

**Table 6.2 – Authorisation Review Panels & Commissioners' Decision Committees**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|---|
| ***Authorisation Review Panel*** | 6 | 9 | 11 | 8 | 6 | 12 |
| ***Commissioners' Decision Committee*** | 1 | 0 | 0 | 2 | 0 | 0 |

668. The following case-studies provide an example of the results of such a process:

**Case-Study 6.3 – VASP Application**

The GFSC was approached by Firm A to apply for a VASP licence to operate a small-scale proof of concept (total insured value of USD 60,000) in which an insurance-linked securities contract would be settled in virtual assets with the process partially automated using a smart contract. The 'investors' in this proof of concept would be employees of Firm A's parent.

An Authorisations' Review Panel made up of three Directors, the Deputy Director General and General Council agreed to issue Firm A with a licence approval in principle. This decision was taken following due consideration of the risks posed by Firm A including in respect of the asset class; its customers and technology employed and subject to it completing set actions. In making this decision, consideration was given to the limited scale and value of funds involved

[75] Entities licensed under the LCF law were prior to 2023 licensable under the Registration of Non-Regulated Financial Services Businesses Law. The increase in applications in 2023 is due to the LCF Law replacing the former law which required relevant entities to apply for a licence under the new law.
[76] MSBs are included separately as they must register as such notwithstanding that they are licensed under the LCF law.
[77] The increase in Prescribed Businesses applications in 2023 is due to the requirement for registered directors to register with the GFSC as a Prescribed Business in accordance with Schedule 5 to the PCL.

in the proof of concept and its use of a well understood business model. Firm A completed the actions set and was issued a VASP licence.

**Case-study 6.4 – Insurance Application**

The GFSC received an insurance license application through a GFSC licensed insurance manager. The entity would be providing its services to customers introduced through a UK licensed entity. Upon carrying out its checks on the UK licensed entity, it transpired that one of its previous owners, Individual 'A', had been found to be acting as a shadow director on the said entity. In addition, there was information about Individual 'A' having further business activities that were not run in a professional manner. The financing of the proposed insurance company was to be derived from company located in an offshore jurisdiction. The controllers for the proposed insurance company where also employees of the UK licensed entity, including Individual 'D'.

An Authorisations Review Panel was set up to consider this application and recommended that the application be refused. The main concern remained that the applicant would be controlled by Individual 'A' even though he did not feature in the application itself. The GFSC spoke with the insurance manager who had put forward the application and the application was subsequently withdrawn.

669. Market entry requirements led to the refusal of a number of applications. Where the GFSC opts not to grant an application it informs the applicant, and the application will be withdrawn. Applicants rarely refuse to do so and force the GFSC to formally refuse the same. This occurred once in 2023. All other cases where withdrawals and not necessarily AML/CFT related.

**Table 6.3: Number of Applications Withdrawn/Refused – GFSC 2018 - 2023**

| Year | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|---|
| Number | 5 | 6 | 4 | 2 | 6 | 12[78] |

670. As set out under R.28, when it comes to CSPs (directors) there is the possibility for an exemption from licensing where the CSP (director) has capped its activities to holding six or less directorships. As of 2023, these directors were required to register with the GFSC, and subject to a degree of probity checks along the lines already described above. The GFSC may decline an exemption application and require the submission of a licence application where the applicant does not qualify for the exemption or presents a high risk to the jurisdiction.

671. Directors of up to six companies are not required to register where the directorships are on Bailiwick company administered by a TCSP (being its resident agent) or a NPO registered in the Bailiwick. However, such positions still count in determining the up to six licensing exemption thresholds if other kind of companies are serviced by the same director. If the limit of six is exceeded, a TCSP license is always required.

There are some exemptions from licensing and AML/CFT obligations for certain TCSPs (see c.1.6(a), c.22.1(e) and c.28.4). These are considered to be reasonable exemptions or of law materiality. The GFSC can also exempt from licensing Private Trust Companies ('PTCs') which are established to administer the patrimony of specific individuals or families. This is not an automatic exemption and the GFSC ascertains that the PTC limits its fiduciary activities to a specific individual or family and is not providing services by way of business. The PTC must also be administered by a licensed TCSP, who has to retain all information on the BOs of the PTC.

[78] There was an increase in withdrawals/refusals in 2023 as a result of the introduction of the LCF Law.

672. Changes in supervised roles must also be notified to the GFSC and subject to the same checks and controls as at authorisation stage. The Supervision Division checks for any unnotified changes during supervisory examinations, on the receipt of any annual reports, and when changes in structure or changes in the business plan are communicated to the GFSC.

673. Another useful ongoing scrutiny mechanism is the cooperation and exchange of information between the Registrars of Companies and the GFSC. Any company directors' resignations or removals (but not shareholders changes as these are not known to the Registrars) are brought to the attention of the GFSC. Other relevant information on companies that are licensed entities may be provided through quarterly meetings.

674. In addition, the GFSC screens individuals holding supervisory roles through a third-party software solution on a daily basis. This involves the screening of 5,918 individual against databases containing information on PEPs, sanctions, regulatory and law enforcement actions, and other adverse information. In the case of individuals who are known to the GFSC, the submission of a new application would not trigger additional checks over and above this screening process, unless the GFSC has some concerns.

675. Data on licences/authorisations surrendered was provided only for the year 2023 (141 surrenders). There were nine instances in which the GFSC's actions in relation to fitness and properness resulted in the voluntary surrender of the license/authorisations. The GFSC explained that there were no license/authorisation withdrawals as in practice where issues were identified these led to the surrender of licenses as explained above.

676. The GFSC also takes several measures to detect unlicensed or unregistered activity, using social media, intelligence received from various sources and its own supervisory activities. The actions taken can be exemplified through case-study 6.5:

**Case-study 6.5 – Detection of Unlicensed Activity**

The GFSC conducted an AML/CFT onsite visit to a TCSP and identified that one of the TCSP's corporate clients was potentially undertaking activities that required license or registration with the GFSC. The TCSP provided additional information on the activities of the client company to the GFSC. Following legal advice, it was determined that the activity being undertaken required registration with the GFSC.

An application was submitted to the GFSC on behalf of the client company for registration under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008.

677. The AT was also provided with case-studies where the GFSC took administrative action against individuals and/or entities carrying out unlicensed activity (e.g. case-study 6.6)

**Case-study 6.6 – Sanctioning of Unlicensed Activity**

The GFSC became aware, from open-source information, that Person 'A' may have been undertaking regulated activities without the requisite licence. As a result of its investigations, the GFSC established that Person 'A' was acting as a TCSP without the necessary authorisation and in contravention of the Fiduciaries Law. This led to the imposition of an administrative fine of GBP 210,000, a prohibition on the said person for 9 years and one month, and the issue of a public statement on the GFSC's website.

678. Market entry requirements for VASPs came into effect in 2023. Presently there is only one VASP licensed. The said requirements are applicable to VASPs operating in and from the Bailiwick, be they Guernsey entities or otherwise. At the same time, a new regulatory framework came into effect for the Lending, Financing and Credit businesses. The GFSC confirmed that this

new law did not introduce or alter market entry requirements for these sectors included in earlier laws (i.e. Registration of Non-Regulated Financial Services Businesses Law). The LCF Law rather sought to strengthen conduct of business and consumer protection safeguards. There was also no automatic migration of entities from one regime to another. Existing operators had to seek authorisation afresh. This led to one entity being refused authorisation due to concerns related to it not meeting the minimum criteria for licensing (i.e. financial requirements), and a number of withdrawals (none of which related to criminal probity issues).

679. The GFSC is also responsible to licence dealers in bullion but not all DPMSs which are otherwise not subject to any market entry requirements.

*GFSC – Registration of Prescribed Businesses*

680. A legal professional, estate agent or accountancy services provider must register with the GFSC as a Prescribed Business. To register, these businesses must first have passed vetting by their respective regulatory authorities/bodies (see below), which are responsible for applying anti-criminality checks. At registration stage the GFSC also carries out anti-criminality checks and conducts a wider assessment of the proposed business plan and its AML/CFT risk framework. As of 2023, the GFSC started holding meetings with the regulatory authorities/bodies to discuss relevant issues which may come to the fore through the GFSC's supervisory activities.

*AGCC – eCasinos*

681. No land-based casinos are present in Guernsey. The AGCC is responsible for the market entry requirements applicable to e-Casinos. The AGCC's Licensing Directorate implements the necessary checks, at authorisation stage and on an on-going basis. It has a staff complement of three officers – a Director, a Deputy Director and an officer.

**Table 6.4: E-Casino Applications 2018 – 2023**

| Year | Number of eCasino applications | Number of eCasino applications withdrawn | Number of eCasino applications refused |
|---|---|---|---|
| **2018** | 6 | 2 | 0 |
| **2019** | 1 | 1 | 0 |
| **2020** | 7 | 0 | 1 |
| **2021** | 4 | 1 | 0 |
| **2022** | 5 | 0 | 0 |
| **2023** | 4 | 1 | 0 |

682. All those individuals who directly or indirectly hold at least three percent (3%) of the share capital of the eCasino as well as any key individual, i.e. all those holding key management functions are screened by the AGCC. None of the applications withdrawn or refused were due to any criminal probity issues. The AGCC refused one application in 2020 as it was not convinced that the applicant would be able to implement effective AML/CFT controls and hence would expose the jurisdiction to potential ML risks.

683. The AGCC uses different means to verify and establish the fitness and probity of key individuals. Individuals are screened using a series of third-party screening solutions and open sources. In cases of heightened ML/TF risks a third party is commissioned to conduct EDD on the applicant. The AGCC also seeks information from the FIU whether it has any adverse information on prospective key individuals. Checks also extend to the source of wealth, including the obtainment of financial statements in the case of entities, as well as documentation to evidence the source generating the BO's wealth.

684. A number of eCasinos also hold licences in other jurisdictions (including the United Kingdom, Malta, Gibraltar, and the United States). This notwithstanding the AGCC still carries out

its own checks but in such cases it regularly contacts its counterparts in the relevant jurisdictions to enquire about the company.

**Table 6.5: Number of Requests sent to Counterpart Authorities**

| | Requests | | Subjects of Requests | |
|---|---|---|---|---|
| | **New Applications** | **Licensed Entities** | **Entity** | **Key Individual** |
| **2018** | 1 | 0 | 2 | 0 |
| **2019** | 0 | 1 | 1 | 0 |
| **2020** | 5 | 1 | 10 | 2 |
| **2021** | 0 | 1 | 1 | 0 |
| **2022** | 0 | 3 | 0 | 3 |
| **2023** | 8 | 2 | 1 | 78 |

685. The AGCC's checks also extend to associates as demonstrated by case-study 6.7:

**Case-Study 6.7 – Detecting Associates**

In 2018, the AGCC received an eCasino license application from a non-EU resident. The AGCC wasn't very satisfied with the replies it received during an interview with the applicant, who seemed to be reading from a script, and taking into account also the risks of the jurisdiction involved decided to apply EDD measures with regards to this application.

The resulting information identified that the principals of the applicant might be acting as a proxy for a third party (family member) with possible criminal background. In view of this information, additional clarifications were sought from the applicant. The applicant failed to fully provide this information and was questioned further by the Licensing Directorate. The application was subsequently withdrawn.

686. With regards to on-going monitoring, a change in beneficial ownership or in a key management function is subject to notification to the AGCC within seven days. The fact that the change has to be notified *ex post facto* does not seem to pose a challenge to the AGCC as licensees more often than not inform the AGCC informally about a possible change well before it takes place. The AGCC has the necessary powers to order the removal of the said individual.

687. Some checks are in place to ensure that changes are actually notified to the AGCC. On an annual basis, a check is carried out against the Alderney BO Register, but no similar checks are carried out with regards to directors or shareholders. The AGCC does not conduct any checks for unlicensed activity but relies on information about any unlicensed activity it may receive.

688. The AGCC also re-checks the fitness and probity of licensed eCasinos and authorised key management functions while supervising the eCasino, with supervision happening yearly for all eCasinos.

*Registry of Companies – Accountants, Real Estate Agents and Foreign Legal Professionals*

689. As of 2023, the Guernsey Registry assumed the role of Administrator for accountants, real estate agents and foreign qualified legal professionals[79] that want to practice in Guernsey and became responsible for applying market entry checks. Prior to 2023 these entities/professionals were bound to register with the GFSC as prescribed businesses and subject to fit and proper checks, see section above. The Registry has eight officers responsible for this aspect, though these same officers carry out other duties.

[79] Foreign legal professionals do not act as independent professionals as set out in the standards but rather as managers, legal owners, or BOs of law firms.

690. These DNFBPs must register with the Administrator before starting to operate. Checks are carried out on all individuals, and in case of entities on all those involved individuals holding 15% or more of the shares or voting rights, are directors or senior managers and MLCOs and MLROs (in the case of accountancy firms). These individuals must complete a PQ based on the GFSC model. The information provided is double-checked by the Registry through third-party screening tools. Requests for information are also sent out to the FIU and to the GFSC for any adverse information. These checks do yield results (adverse information) which are taken into account as demonstrated by a case-study provided by the Administrator.

691. The AT was however concerned to note that this case (which is not a complex one) is still pending a registration decision by the Administrator since February 2024. This evidences that the Administrator's system still needs to mature to ensure that it is able to fulfil its duties efficiently and effectively.

692. On the entry into force of Schedules 6-8 to the PCL, all those practising/operating DNFBPs were bound to apply with the Administrator to continue practising/operating in the Bailiwick. No applications were refused, while one application was withdrawn since the applicant was exempted from the notification requirements in view of limited activities. The Administrator has also risk-rated all those who have registered with it, in an effort to ensure a more-risk based approach to their on-going monitoring of these same activities.

**Table 6.6: Risk-Classification of DNFBPs registered with the Registry of Companies**

| | Registration Applications Received (Entities / Involved Parties | Low Risk | High Risk |
|---|---|---|---|
| **Real Estate Agents** | 56 | 53 | 3 |
| **Accountants** | 257 | 248 | 9 |
| **Legal Professionals** | 40 | 39 | 1 |

693. To ensure that the said functions are fit and proper at all times, these are regularly screened using third-party screening tools (providing access to information on PEP status, sanctions lists and adverse media). The Administrator and the GFSC also hold regular meetings to discuss possible issues surrounding these activities. The Administrator is also on the lookout for unregistered activity through screening newspapers, social media and also by consulting company information held in the registry.

*HM Greffier and the Law Officers Chambers – Locally Qualified Legal Professionals*

694. Anyone wishing to practice law in Guernsey has to be called to the Bar and be registered in a list maintained by HM Greffier. Checks on legal professionals wishing to be called to the Bar are carried out by the LOC on behalf of the Royal Court. Candidates must (amongst others) complete a PQ (same questions on reputability as those for the GFSC process), and provide a copy of their police vetting record. The LOC verifies the information provided through open sources checks (e.g. UK lawyers' register). At this point no information is sought from the FIU (as the police vetting record is deemed sufficient), or from the GFSC. If everything is in order and no concerns arise, the candidate may then apply to join the Bar and, subsequently on joining the Bar notify the HM Greffier so that he/she is entered into the public register held by the HM Greffier. Entry in the said register depends on a series of conditions, including disclosing information about any professional investigation or disqualification or conviction.

695. As from October 2023 applicants for registration with the Greffier are being screened by the Registry of Companies on behalf of the Greffier and notified to the FIU and to the GFSC for any adverse information. The screening performed by the Registry would also detect any adverse

information held by the Registry on lawyers involved in registered legal entities (law firms) – see IO5 for further information on such screening on company officials and BOs. There were no cases of withdrawn or refused applications or registrations.

696. The Greffier is then responsible for ensuring the continued fitness and properness of individual lawyers. The Greffier relies on individuals themselves to report any relevant matters and on the daily screening carried out by the Guernsey Registry on his behalf. The HM Greffier advised that the FIU and GFSC, would also pass any adverse information they would have on lawyers / law firms. There are no formal processes to detect unlicensed activities. These gaps are minor ones considering that the close-knit small population of law professionals in Guernsey would make it hard for any professional or reputability concerns to go unnoticed.

697. In so far as law firms are concerned, these are run by lawyers that would have already been screened and checked as there is a restriction on lawyers being able to share profits from the exercise of their profession with non-lawyers.

### *6.2.2. Supervisors' understanding and identification of ML/TF risks*

*GFSC – All FIs and DNFBPs except for eCasinos*

698. At national level there is a good understanding of the level of ML/TF risks presented by the different sectors and sub-sectors as demonstrated by NRA1 and NRA2. The GFSC was heavily involved in both assessments and significant use was made of supervisory data and information. In addition, both from the meetings held with the GFSC as well as their publications, the GFSC has shown that it has a very good understanding of the main business models adopted by its licensees and the major ML/TF threats and vulnerabilities to which they are exposed to.

699. Regarding the risk understanding and assessment of individual REs, the two major tools available to the GFSC are: (i) an annual Financial Crime Risk Return (FCRR), which is a standard self-assessment questionnaire completed by all REs supervised by the GFSC (other than registered directors), and (ii) the Probability Risk and Impact System (PRISM) which assists the GFSC in streamlining and keeping track of relevant risk information on different REs.

700. The FCRR is common to all REs to solicit information on the inherent ML/TF risks and AML/CFT controls. It was first launched in 2015 (containing questions on inherent risks) and expanded in 2019 and 2020 (to also cover control aspects). The information from the FCRR is used to determine an inherent risk score and one for the effectiveness of the controls in place. A multiplier is then added (to adjust the risk rating of that RE taking into account the sectoral risk set out in the NRA). This results in a residual risk rating used to determine the frequency and intensity of supervisory engagements.

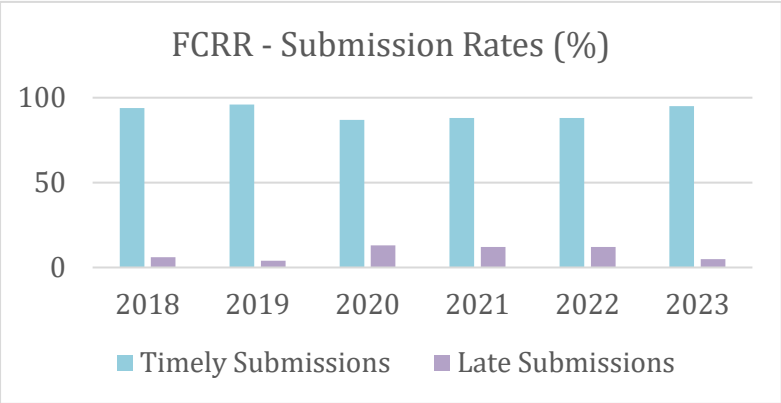
701. The FCRR, is supplemented with data from other returns (see below), providing the GFSC with useful data points such as the volume and value of financial flows with all jurisdictions for the banking sector, the geographical location of assets for CISs, and the location and number of intermediaries for CISs. When it comes to TCSPs there is room for improvement to better take into account more specific inherent risk factors. For example no information is gathered on corporate customers with multi-tier/complex structures, and no distinction is made as to whether it is the customer or the BO that is located in a high-risk jurisdiction.

702. The residual risk scores are calculated by the Risk Unit in October of each year, following the end of the submission period. They are then discussed with the Financial Crime Division to determine whether the risk score is in line with supervisory judgement. This allows information obtained through other sources, including supervisory examinations, regulatory returns (e.g. main outflows/inflows of funds for banks), information from the GFSC's Intelligence Function and

other information (such as from the FIU and the Companies and BO Registries) to be taken into account. These risk scores are then reviewed and adopted by the GFSC's Executive Committee. Upon approval by the Executive Committee they are then inputted in PRISM.

703. The submission rate of the FCRR is very high (an average 95% submission rate), with the remaining 5% being mostly submitted late or requiring corrections by the RE.

**Table 6.7 – FCRR Submission Rates (%)**




704. Between 2020-2022 there was a small spike in late submissions. The GFSC explained that this resulted from the revision of the FCRR (and inclusion of additional questions), which led to some cases of inaccurate completion of the FCRR. The high submission rates were reached at a time when there was no obligation for REs to submit the FCRR. It was only in 2023 that this was introduced and is to be effective as of the 2024 cycle.

705. As of 2015, the GFSC has also implemented a series of AML/CFT KRIs within PRISM. This allows PRISM to flag instances where the information submitted by a RE, including through the FCRR, falls outside the overall average for that sector. To better assist supervisors in identifying emerging trends, in 2019 the system was enhanced with the ability to generate and allow access to trend graphs. Where there is no reasonable explanation for a variation (based on the data and information available to the GFSC), clarifications are sought from the RE. This enables the GFSC validate the information obtained from the FCRR.

706. Until 2022 the bulk of KRI alerts were closed off by the GFSC itself on the basis of information and data it already held (i.e. 84% of 1850 KRI alerts). Since then, the GFSC fine-tuned the trigger thresholds to make the process more time and resource efficient.

707. The GFSC's risk methodology allows for the residual risk score to be revised between FCRR cycles. Information obtained from sources other than the FCRR (e.g. intelligence from the FIU or exit interviews with MLROs) may lead to a discussion with the Financial Crime Division and in a review of the risk rating being escalated for discussion with the Risk Unit. If agreement is reached, the proposed revised risk categorisation is forwarded for decision by the GFSC's Executive Committee. Case-studies were provided showing how information obtained from various sources, resulted in a revision of a REs' risk classification and, consequently, earlier supervisory action, including a case where a RE received a two-hour notice about an urgent on-site inspection. While this examination was triggered by concerns related to the implementation of Russia-related sanctions (out of scope for this IO) it still showcases the capacity of the GFSC's mechanism to deal rapidly with pressing compliance concerns.

708. In addition, whenever a RE undergoes a supervisory engagement, the GFSC subsequently determines the RE's probability risk rating. This is determined by the supervisory team based on the level of effectiveness of RE's controls identified. Where the probability risk is either High or

Medium-High, remedial action is mandated to reduce risk to an acceptable level. No action is perceived for lowers risks, which is logical and proportionate to risk.

**Table 6.8: Distribution of Residual Financial Crime Risk Ratings for 2023[80]**

| FINANCIAL SECTOR | High | Medium-High | Medium-Low | Low | Total |
|---|---|---|---|---|---|
| Banks | 6 | 8 | 4 | 2 | **20** |
| Investment | - | 7 | 24 | 616 | **647** |
| Insurance | - | 2 | 5 | 72 | **79** |
| MSBs and exchange offices[81] | - | - | 2 | 2 | **4** |
| Other FIs (licensed under the NRFSB / LCF)[82] | - | - | 3 | 21 | **24** |
| | | | | | |
| **NON-FINANCIAL SECTOR** | **High** | **Medium-High** | **Medium-Low** | **Low** | **Total** |
| Real Estate | - | - | - | 20 | **20** |
| Dealers in precious metals & stones | - | - | - | - | - |
| Legal professionals | - | - | 6 | 11 | **17** |
| Accountants & auditors | - | - | 6 | 52 | **58** |
| TCSPs (including personal fiduciary licensees) | - | 10 | 44 | 92 | **146** |

709. With regards to the residual risk categorisation of REs (see Table 6.8) the AT notes that for TCSPs and investment firms (weighted as most important and important sectors for the purposes of this analysis – see section 1.4.3) no entity is considered to pose a high risk while only 10 of the 186 TCSPs (i.e. 5.37%) and 7 of the 647 licensed investment firms and CISs (i.e. 1.1%) are considered to pose a medium-high risk. The GFSC explained that there are 3 banks which also provide investment services that were rated as high risk. However, it is unclear what was the main risk driver for the high-risk rating, and whether this related to the investment aspects of their services. One also appreciates that the investment sector includes numerous CISs administered by a limited number of fund administrators (with emphasis being put on the latter even from a risk perspective), and which justifies the significant number of investment sector entities being rated as L risk.

710. Moreover, as can be seen from Table 6.8, the number of H/MH rated REs was still a very small one. The limited number of REs in the higher risk bands (for important sectors other than Banks) raises doubts about the soundness of the categorisation process, especially considering that the NRA highlights that TCSPs and investment firms are exposed to higher and medium-higher residual ML/TF risks.

*AGCC – e-Casinos*

711. The AGCC was one of the authorities that participated in the processes relating to both NRA1 and NRA2, providing its views, data and information on the inherent risks and AML/CFT controls in the remote gaming sector. The AT is convinced that the AGCC likewise has a very good understanding of the main ML/TF risks for the sector, producing internal documents and citing examples of risky payment methods and of customer behaviour that can be symptomatic of collusion between players and the types of games most exposed to such a risk.

[80] The numbers in Table 6.8 may differ from those in Table 1.1. The figures under Table 1.1 represent the number of licences under each category, which may lead to a RE being accounted for more than once, the figures in Table 6.8 include REs as risk rated on the basis of their primary activity.
[81] There are 17 banks holding MSB registrations, which are listed under their primary sector of Banking.
[82] There are 11 banks which hold LCF licences. These are captured under their primary sector of Banking.

712. For individual entity risk, the AGCC has a manual risk process, which has been in place over the entire review period. The risk assessment and risk rating process takes into account data obtained mainly through an annual AML/CFT Risk Assessment Template (covering inherent risks and adequacy of controls). In addition, there are non-ML/TF returns that the operator must submit on a regular basis (daily, weekly and monthly) providing further valuable risk information (e.g the operational performance report, customer fund balances report, and also transaction reports providing data on transaction volumes and values per gaming product and for customers from high-risk jurisdictions). Additional information is sourced from the supervisory engagements with the different licensees as well as through the Relationship Manager (RM) who has close engagement with that specific eCasino. Overall the information gathered is substantial.

713. Although the risk calculation process is a manual one, the number of eCasinos supervised by the AGCC has always been quite contained (i.e. 20-25), limiting the need for an automated system. The AGCC explained that it revisits the risk rating where it obtains or receives adverse information on a particular licensee. The AGCC has provided examples where supervisory examinations were prioritised as a result of prior supervisory engagements or engagements with the RM. The AGCC also explained that there is frequent dialogue with the FIU and other competent authorities which would lead to the identification of any adverse information. However, no adverse information has ever been received.

714. The results of the risk assessment process are summarised in the following table:

**Table 6.9: Risk Classification of Live e-Casinos during 2020 - 2023**

| | Total Number of e-Casinos | Total Number of Live e-Casinos | High Risk | Standard Risk | Low Risk |
|---|---|---|---|---|---|
| **2020** | 25 | 16 | 0 | 6 | 1 |
| **2021** | 20 | 14 | 0 | 5 | 6 |
| **2022** | 25 | 15 | 0 | 6 | 7 |
| **2023** | 26 | 18 | 1 | 10 | 5 |

### *6.2.3. Risk-based supervision of compliance with AML/CFT requirements*

*GFSC – All FIs and DNFBPs other than eCasinos*

715. The AML/CFT supervisory function is entrusted to the GFSC's Financial Crime Division, composed of 21 FTEs. The Division is headed by a director supported by two deputy directors. The Division is divided into three teams, two of which are the Thematic & Pro-Active Supervision Team (10 officers) and the Event Driven Supervision & Policy Team (4 officers). In addition, there is a further team of four officers responsible for data analytics, such as reviewing KRIs, and handling FCRR queries. Officers rotate between the 3 teams. These officers do not focus on specific sectors or categories of REs. Where support is needed to better understand particular activities, they can leverage the resources of other GFSC Divisions, such as the prudential and conduct divisions which take an active role in AML/CFT/CPF supervision.

716. The main driver behind the supervisory engagements carried out on REs is the residual risk rating referred to under section 6.2.2 above. The minimum frequency and type of supervisory engagement undertaken by the GFSC is as follows:

**Table 6.10: Risk-Based Supervisory Model**

| | |
|---|---|
| **High Risk** | A pro-active on-site inspection at least once every two (2) years |
| **Medium-High Risk** | A pro-active on-site inspection at least once every four (4) years |
| **Medium-Low Risk** | A pro-active on-site examination at least once every five (5) years |

| | |
|---|---|
| **Low Risk** | No pro-active on-site examinations. Thematic examinations and reactive (i.e. event driven) based supervision are foreseen |
| **All Risk Categories** | Submission of FCRR and other returns subject to automated KRIs and general off-site supervision. Thematic examinations across all risk categories. |

717. Table 6.11 provides information on supervisory examinations (i.e. on-site inspections or thematic ones):

**Table 6.11 – GFSC – 2018-2023 Supervisory Examinations**

| Sector | 2021 | | 2022 | | 2023 | |
|---|---|---|---|---|---|---|
| | **Entities** | **Examinations** | **Entities** | **Examinations** | **Entities** | **Examinations** |
| **Banks** | 20 | 18 | 20 | 7 | 20 | 7 |
| **Investment Firms**[83] | 696 | 25 | 702 | 31 | 693 | 27 |
| **Insurance** | 84 | 4 | 88 | 6 | 85 | 3 |
| **Other financial institutions** | 61 | 15 | 60 | 6 | 60 | 9 |
| **Real estate** | 22 | 0 | 23 | 1 | 22 | 6 |
| **Dealers in Bullion** | 1 | 0 | 1 | 0 | 0 | 0 |
| **Law Firms** | 20 | 0 | 20 | 4 | 18 | 7 |
| **Accountants** | 66 | 1 | 66 | 0 | 63 | 6 |
| **TCSPs** | 187 | 22 | 183 | 29 | 186 | 19 |
| | | | | | | |
| | **2018** | | **2019** | | **2020** | |
| | Entities | Examinations | Entities | Examinations | Entities | Examinations |
| **Banks** | 23 | 4 | 22 | 6 | 20 | 8 |
| **Investment Firms** | 663 | 9 | 677 | 27 | 686 | 23 |
| **Insurance** | 79 | 2 | 92 | 2 | 87 | 6 |
| **Other financial institutions** | 59 | 4 | 64 | 6 | 58 | 10 |
| **Real estate** | 21 | 7 | 21 | 0 | 21 | 0 |
| **Dealers in Bullion** | 2 | 0 | 2 | 0 | 2 | 3 |
| **Law Firms** | 20 | 1 | 19 | 2 | 20 | 1 |
| **Accountants** | 55 | 1 | 57 | 1 | 57 | 1 |
| **TCSPs** | 192 | 31 | 183 | 17 | 184 | 20 |

718. The statistics provided show that the GFSC is implementing its RBA model for all the material sectors. There was one case of a high-risk bank for which an on-site examination was repeated after five years since the first one. This was one exception case where throughout the covid-19 period the GFSC had decided to supervise this bank through thematic review only. Infact the bank was subjected to three different thematic reviews, in between the first and last full scope inspection. The AT notes that the 4-year cycle envisaged for MH REs is somewhat too long, especially considering that only a small proportion of the REs' population falls under the high and medium-high risk category (including %).

719. For DNFBPs (other than TCSPs) the number of inspections are reduced however this is in line with the sectoral vulnerabilities as identified through the NRA process (see Chapter 1).

*On-Site Examinations*

720. Onsite examinations consist of an assessment of; information gathered from the RE (including AML/CFT policies and procedures, and customer file reviews), and from meetings held with RE representatives including the board members, the MLRO, MLCO and front-line employees. The GFSC's Financial Crime Risk Based Inspection Guidance Document requires a suitable customer file sample with the supervisors articulating within the internal pre-onsite scoping note the number to be reviewed which must be commensurate with the size and nature

[83] CISs are reviewed when undertaking inspections to investment licensees.

of the RE. The average sample size of customer files reviewed, as also confirmed by all the REs met on-site, ranges between 15-25. However, at times additional files may be asked to be reviewed during an on-site examination (see case study 6.8). The GFSC also referred to its use of skilled persons who, as part of their engagement, may also be required to review a sample of files to confirm the extent of shortcomings.

**Case-Study 6.8 – Increase in File Sample**

A joint AML/CFT and prudential onsite inspection was undertaken on Bank A, where the agreed scope prior to the inspection was for the onsite team to review 16 files. A further two additional files were requested and reviewed whilst onsite. The onsite inspection identified systemic issues with regards to Bank A's policies, procedures and controls and oversight by the Board. The review of two additional files confirmed the issues already noted.

As part of the monitoring of remediation actions imposed by the GFSC, the GFSC also appointed a skilled person to review 50 additional customer files to ascertain the prevalence of customer file AML/CFT non-compliance. The skilled person identified systemic breaches across 46 files in total.

721. The GFSC, however did not provide the AT with any data as to the frequency with which additional files are requested while on-site examinations are ongoing nor as to the number of additional files that are on average so reviewed. In addition, in the case provided the appointment of the skilled person was not done throughout the supervision phase, but rather at the subsequent remediation implementation monitoring phase. As such the AT remains unconvinced that at supervision stage the GFSC assesses a proper cross-sectoral representation of a RE's customer base. This raises doubts whether the extent of examinations is entirely proportionate to the size and risks of the RE being reviewed, and hence effective to uncover systemic issues.

722. Throughout on-site examinations supervisors assess the application of CDD, EDD (if applicable), relationship risk assessments and the transactions and activity that has occurred, as well as how sanction screening is conducted, including the systems used. The assessment of on-going monitoring involves not only a walkthrough of the respective procedures and processes but also a sample testing to analyse how this is implemented in practice.

723. When reviewing legal persons/arrangements particular attention is given to compliance with BO obligations and to ensuring that "straw men" are not being used to conceal the identity of the true BO(s). For the TCSP sector, where the customers are Guernsey legal persons, supervisors also sample check that the information submitted to the BO Register aligns with the beneficial ownership records held by the specified business and any subsequent updates to the Registry are done by the specified business in accordance with the Beneficial Ownership Law.

724. When interviewing board members, supervisors determine if they can clearly articulate the ML/TF risks of the business and what types of customers, products, and services they are willing to entertain i.e. describe their risk appetite. Supervisors also review the RE's internal SAR register and assess: (i) whether the REs' reporting procedures have been correctly followed, (ii) whether the reporting volume is adequate based on the nature, scale and complexity of the business; (b) whether potential ML and TF red flags are properly identified; (c) the timing of reporting; and (d) the quality of SAR contents.

725. No specific timeframe for the examination itself is set, though the GFSC seeks to provide a draft report to the RE within 70 days from the conclusion of the inspection. There were very instance over the review period (30 out of more than 400 examinations) were this deadline was not met. In the majority of cases the delays were very brief (i.e. one to eight days). The delays are

more significant where the on-site examination led to remedial actions or to referral to the Enforcement Division, where there were some instances where the timeframe almost doubled, which is to a certain extent (see below analysis) understandable considering the need to carry out more extensive reviews and hold discussions with the RE itself as well as within the GFSC.

726. The description of the examination process in the Supervisory Guidance and meetings held on-site are indicative of good quality examinations.

*Thematic Examinations*

727. The GFSC regularly conducts thematic examinations. These have focused on aspects that are of relevance to the country's risk profile and/or the perceived vulnerabilities of the sectors. A total of eight AML/CFT related thematic examinations were carried out during the review period (roughly one each year) focusing on (i) beneficial ownership; (ii) SOW/SOF obligations; (iii) sanctions; (iv) risk management frameworks; (v) the business risk assessment; (vi) PEP-related obligations; and (vii) SAR submissions. These each included an element of off-site review and of on-site engagements with a selected number of entities. Each of these thematic examinations result in a published paper setting out the main findings of the thematic examination, together with examples of good and bad practices. The GFSC also indicated that another thematic on beneficial ownership (tier 2 and 3) focused on 12 TCSPs flagged by the Guernsey Registry had just been concluded before the on-site, and the conclusion where being drawn up.

728. The selection of the topic on which to conduct a thematic examination is mainly dictated by what the GFSC notices in terms of compliance issues and vulnerabilities in the AML/CFT framework of REs. In most instances, the on-site component of thematic examinations involves the completion of a survey by all or by selected REs. Based on the information collected and the information already available to it, the GFSC then chooses some REs on which to carry out an on-site examination, involving also a review of sample files.

729. The number of REs selected for these thematic reviews on average varies between 20-30 REs. The number of client files reviewed at each RE varied between 5 in the case of the thematic review on SOW/SOF and 20 for the one on BOs. Depending on the scope of the thematic review, the GFSC may also hold meetings with key personnel and/or carry out system testing. Thematic reviews are effective in identifying and actioning cases of non-compliance. By way of example from the SOF/SOW and the risk management frameworks' thematic reviews, 17 RMPs were imposed, and one case escalated to enforcement. However, these are not always extensive enough to yield reliable results that are representative of the actual level of compliance by that RE.

*Other Supervisory Engagements*

730. The GFSC has other supervisory tools (running in parallel with on-site and thematic reviews) and which are reasonable for supervising low-risk REs. These include (a) exit interviews with MLROs introduced in 2020; (b) the FCRR itself and especially the monitoring of KRI divergencies highlighted through PRISM as well as for risk events; and (c) the notifications that REs must send when unable to comply with the GFSC's instructions for jurisdictions with non-equivalent AML/CFT safeguards, and about AML/CFT material failures identified (e.g. following an audit) and (d) remediation monitoring. These are complemented by the GFSC's prudential functions' interaction with REs which are an added means through which potential AML/CFT issues may be identified and flagged to the Financial Crime Division.

*AGCC – E-casinos*

731. The AGCC commences its supervisory interaction with an e-casino within 12 months after licensing. Prior to commencing operations eCasinos need to have their Internal Control System

(ICS) approved by the AGCC which also contributes to monitoring compliance. Each licensee is assigned a Relationship Manager (RM) who is its point of contact at the AGCC and who develops an in-depth understanding of the business model adopted by the e-casino. The RM would also be the person responsible for all supervisory examinations of that eCasinos. Each RM is rotated once every four years so as to address any possible issue of regulatory capture.

732. The supervisory cycle is planned and carried out on an annual basis. The AGCC uses a number of supervisory engagement tools, the main one being the on-site examination. AML/CFT specific on-site examinations are envisaged to take place at least annually for both Low and Standard risk-rated licensees. High risk rated licensees are to be subjected to general examinations (i.e. AML/CFT and other gaming law reviews) at least annually. The AGCC explained that the AML/CFT component in both AML/CFT specific and general inspections is identical in nature, and the AGCC ensures that the length of inspections is adjusted on a case-by-case basis to ensure this. In so far as Standard rated licensees are concerned, these are subject to an annual AML/CFT specific examination and a general examination once every two (2) to four (4) years.

733. As seen from Table 6.12, this ensured the coverage of the entire population in any given year between 2020 and 2023 (exception being made for 2020 due to the COVID-19 pandemic).

**Table 6.12: Number of On-Site Examinations carried out**

| Year | Number of eCasinos | Number of live eCasinos | Total number of on-site examinations | AML/CFT specific examinations | General Examinations (inc. AML/CFT) |
|---|---|---|---|---|---|
| **2018** | 27 | 19 | 18 | 11 | 7 |
| **2019** | 20 | 18 | 17 | 10 | 7 |
| **2020** | 25 | 16 | 8 | 4 | 4 |
| **2021** | 20 | 14 | 14 | 8 | 6 |
| **2022** | 25 | 15 | 15 | 9 | 6 |
| **2023** | 26 | 18 | 18 | 9 | 9 |

734. AML/CFT on-site examinations are risk aligned in terms of aspects covered. The first on-site examination for a RE after licensing is wider in scope as the AGCC seeks to better understand the policies, procedures and systems of the eCasino and how they are implemented. This enables the AGCC to focus its subsequent examinations on aspects in line with its understanding of the operations and risks of the eCasino concerned. This prioritisation takes place by considering areas flagged through the risk assessment process and the outcome of previous supervisory engagements, including any remediation measures (ReMe) that the licensee had to undertake.

735. An AML/CFT examination has two aims. That is to confirm that the licensee's policies and procedures communicated to the AGCC are still current and that they are being implemented in practice. This is done through discussions with relevant personnel, consideration of the written documentation, walk-throughs of the various systems and file reviews. By way of example, in the case of on-going monitoring the AGCC will seek a walk-through of the relevant systems, see what are the triggers that should lead to a given transaction being flagged and whether these are duly documented. The AGCC explained that the system is then tested by selecting customers whose transactions or transaction patterns should have been flagged to see whether these were actually flagged and how these were dealt with. This allows the AGCC to: (i) test the application of specific CDD measures that are triggered by particular transaction thresholds (e.g. ID verification and PEP measures), as well as (ii) the eCasino's capacity to detect and scrutinise anomalous transactions not aligned to the customer's behaviour. In addition, the AGCC also assesses the implementation of the internal reporting system to assess whether suspicious transactions are being flagged internally and whether the MLRO reached the right conclusion in dealing therewith. The AT

however could not fully corroborate this as through the meetings with the sector no reference was made to any transaction-monitoring system testing occurring in most recent supervisory examinations.

736. There are nine officers within the Directorate of Operations responsible for the RM aspect and all supervisory engagements and considered to be sufficient. One officer is dedicated to monitoring B2B operators which are out of scope of AML/CFT obligations. The procedure of the on-site examinations is generally well suited to identify any issues. However, there are some concerns as to the quality of these examinations.

737. The AT has been provided with sanitised inspection reports which indicate that most checks adopt a tick-based approach (i.e. whether the eCasino has in place a particular policy or procedure, or not) and findings are described in a telegraphic manner. The AGCC explained that this is done so as to allow the RM to discuss in more detail the issues identified by the AGCC and action the same through the ReMeS imposed. The AGCC also confirmed that the most common finding relates to failures to update ICSs to reflect the introduction of new policies and procedures by the operator, often mandated by other AML/CFT supervisors in jurisdictions where the e-casino would also be licensed. The AGCC explained that this is due to the fact that the examples provided related to long-standing licensees who have mature systems and compliance standards, and moreover it pointed out that compliance issues may be identified and fixed in real time outside the ambit of examinations.

738. The AT notes that during the review period there have never been any findings with regards to failure to detect customers' unusual/anomalous transactional activity. The AGCC argues that this is, in part due to the maturity of the sector. The AT however notes that the AGCC itself attributes an increase in ReMeS (see 6.2.4) to more recent licensees which do not have as mature systems. The AT notes that not even in these latter cases were concerns with detection of anomalous transactions identified.

### *6.2.4. Remedial actions and effective, proportionate, and dissuasive sanctions*

*GFSC – All FIs and DNFBPs (except e-Casinos)*

739. The GFSC has a number of supervisory and enforcement tools at its disposal including the imposition of remedial actions, skilled persons (independent third parties), administrative sanctions and restricting or withdrawing REs' licences. In addition, action may also be taken against senior managers. These supervisory and enforcement tools can be applied concurrently to a case to address both past and the future lack of or misapplication of AML/CFT obligations. Case studies provided show that all these tools have been applied by the GFSC.

740. Non-adherence to the reporting obligation is subjected to criminal sanctions under the Disclosure Law and the Terrorism Law.

*Remedial Action*

741. A RE can be directed to take remedial action, in the form of a so-called Risk Mitigation Program (RMP), when following supervisory engagement, the RE is assessed by the GFSC to present a Financial Crime Probability Risk equivalent to Medium-High or High. The Probability Risk is defined as the risk or likelihood that a firm will fail in complying with AML/CFT obligations (see section 6.2.2).

742. Where the Probability Risk is either Low or Medium-Low, no RMP is proposed. This is a reasonable risk-based approach, taking into account that the RE is still notified through the

supervisory report about any compliance issues, which are also tracked in PRISM and used for risk ratings and subsequent supervision purposes.

743. RMPs are adopted in agreement with the RE concerned and set out the issue, outcome, action and deadline for completion. The GFSC explained that it ascertains that RMPs are duly completed by: (i) asking for an attestation from the RE's Board for lower-level deficiencies, (ii) appointing a skilled person to assist with and confirm the implementation of the RMP to the GFSC, and (iii) undertaking a follow-up inspection.

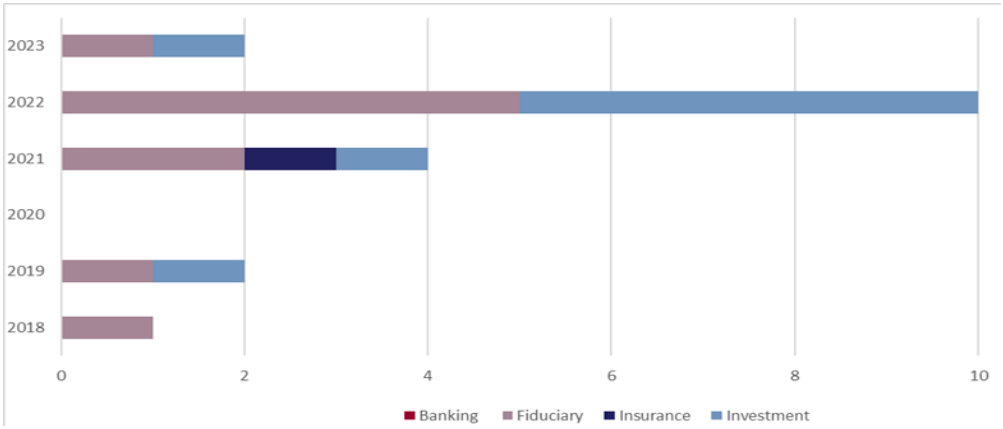
744. The number of RMPs imposed over the review period is substantial, and in most cases are completed within the timeframes set or extended by the GFSC. Between 2019 – 2023 there were a total of 343 RMPs, out of which 288 were completed. The completed RMPs correspond to 109 REs. The GFSC itself assessed the level of implementation in the case of 28 REs whereas a skilled person was appointed in the case of another 26 REs. In another 14 cases the GFSC carried out a follow-up assessment and also requested the appointment of a skilled person to verify the completion of the RMP. For the remaining 41 REs, the GFSC asked the RE to produce a Board declaration that the RMPs had been completed successfully. In all cases, the GFSC also monitors the implementation of the RMP through the submission of periodic progress reports. The AT notes that out of all the 288 completed RMPs (by the 109 REs), the GFSC relied on an attestation for 41 of these REs (i.e. 38% of all REs). This is reasonable and following a risk-based approach. The AT also came across isolated instances where REs attempted to mislead the GFSC on the completion of RMP, which cases were referred to the GFSC's Enforcement division.

**Table 6.13: RMPs imposed between 2018 - 2023**

| Year | Banks | Investment Firms | Insurance | Other FIs | Real Estate Agents | Law Firms | TCSPs | Total |
|---|---|---|---|---|---|---|---|---|
| **2018** | 6 | 8 | 3 | - | - | - | 42 | **59** |
| **2019** | 12 | 5 | 2 | - | - | - | 30 | **49** |
| **2020** | 6 | 9 | 1 | - | - | - | 29 | **45** |
| **2021** | 3 | 21 | 3 | 2 | - | - | 31 | **60** |
| **2022** | 9 | 40 | 4 | - | 2 | - | 42 | **97** |
| **2023** | 10 | 50 | 7 | - | 2 | 4 | 19 | **92** |
| **Total** | **46** | **133** | **20** | **2** | **4** | **4** | **193** | **402** |

745. RMPs may also be accompanied with license conditions/directions to REs. These may include license restrictions to pose a further incentive for the RE to complete the RMP within the agreed timeframe. It is also beneficial to mitigate any potential risks until all the necessary remediation takes place. Case-studies provided to the AT, indicate that these can include a prohibition against taking on new business or to provide an integration plan. The number of directions imposed (19 over the review period) are set out in the following table:

**Table 6.14: Directions imposed between 2018 - 2023**




*Enforcement Action*

746. Where the GFSC considers that the supervisory findings are serious, repeated and/or systematic, in addition to remediation, it may escalate the case to the Enforcement Division which then carries out its own assessment to determine whether it is to take on the said case. There is a formal process that all supervisory divisions (including the Financial Crime Division) have to follow when referring cases to the Enforcement Division. Referral decisions involve supervisory judgement and are taken by the Director/Deputy Director of the referring division taking into account precedent cases.

747. Supervisory judgement considers a number of factors (set out in a memorandum), including the nature of the breaches identified, the duration of the breaches, whether the RE disclosed itself the breaches, whether it had started to take remedial action etc.

748. While the GFSC relies on supervisory judgement in applying these factors (with no specific guidance how and the extent to which every factor is to be weighted), the AT considers that there is consistency in the GFSC's approach to determine whether a case is to be referred to the Enforcement Division or handled through an RMP. The GFSC provided a series of cases that evidence that whenever there are issues being both serious and systemic, failure to remediate and repeated breaches, lack of commitment to AML/CFT and even indications of having facilitated financial crime, the case will be referred to the Enforcement Division. This in addition to the imposition of RMPs to address the AML/CFT deficiencies on a forward-looking basis. On the other hand, where there is a willingness to cooperate, and the breaches identified are not deemed serious, even though they may be systematic, then the likelihood is that the case will be addressed through RMPs.

*Administrative Fines*

749. In terms of pecuniary penalties imposed, the GFSC has made use of this power over the years as can be seen from the following table:

**Table 6.15 – Pecuniary Penalties imposed by the GFSC (2018 – 2024 (End April))**

| Sector | | Number of Fines | Total Value of Fines (GBP) | Value of Fines still to be Recovered by GFSC |
|---|---|---|---|---|
| **TCSP** | **Fine Imposed on RE** | 7 | 1,085,800 | 0 |
| | **Fine Imposed on Officers of RE** | 37[84] | 1,811,300 | 500,500 |
| **Insurance** | **Fine Imposed on RE** | - | - | - |
| | **Fine Imposed on Officers of RE** | 2 | 60,000 | 37,000 |
| **Securities** | **Fine Imposed on RE** | 3 | 310,000 | 30,000 |

[84] Fines imposed on RE officers are in conjunction with fines imposed on the RE.

| | | | | |
|---|---|---|---|---|
| | **Fine Imposed on Officers of RE** | 8 | 419,810 | - |
| **Total** | | **52** | **3,310,810** | **532,500** |

750. Apart from instances where there were liquidation issues involved, the GFSC has collected the amounts due to it. Only in three cases was the GFSC's decision appealed. On average a pecuniary penalty imposed on an RE amounted to GBP 140,000 while that imposed on an officer of an RE amounted to GBP 45,500. The case-studies provided, show an element of proportionality in the fines imposed considering the factors of the cases, including the RE's turnover.

751. In determining the quantum of an administrative penalty, the GFSC has adopted guidance and criteria. These include the seriousness of the contravention (including the nature of the obligation itself), the systematic or repeated nature of the contravention and the duration thereof, whether the breach was brought to the attention of the GFSC by the RE or otherwise, the remedial action undertaken by the RE as well as the possible implications for the RE, customers and the jurisdiction itself. While the GFSC still retains discretion to determine the quantum of an administrative penalty, this guidance significantly decreases the element of subjectivity and ensures an element of objectivity when considering different cases.

752. Administrative penalties are usually imposed on both the RE and its officers, as long as the latter can be held responsible for the identified breaches. Administrative penalties against RE officers are often accompanied by prohibitions imposed on sitting directors from continuing or taking on new supervisory positions.

753. The AT is of the view that the number of pecuniary penalties imposed over the review period is quite low in comparison to the supervisory activity undertaken by the GFSC. In particular, over the review period, even though there were banks that were subject to RMPs and had skilled persons appointed, none were subject to enforcement action. The AT was informed that one case has recently been referred to the Enforcement Division but this is still under investigation.

**Table 6.16 – Number of Prohibitions issued on Directors per Sector (2019 – 2024)**

| Sector | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 (End April) |
|---|---|---|---|---|---|---|---|
| **Investment Services** | - | 1 | 4 | - | 1 | - | |
| **TCSP** | 1 | - | 4 | 2 | 1 | 5 | 3 |
| **TSCP & Investment Services** | - | - | - | 5 | - | - | |
| **Total** | **1** | **1** | **8** | **7** | **2** | **5** | **3** |

754. The duration of such prohibitions varies, ranging from one to ten and a half years. There were also four indefinite prohibitions. The GFSC explained that to date it was only in one case that an individual subject to a prohibition that expired sought to be reappointed to a supervisory role.

755. In addition, the GFSC imposed a further nine prohibitions, which are not included in the table above, as they are still pending appeal. In most cases (i.e. 16 of the 27 cases) the concerned individuals challenged the prohibitions exhausting the entire enforcement procedure. This shows the effectiveness and dissuasiveness of the measures taken on senior management officials.

756. All enforcement actions taken by the GFSC result also in a very detailed public statement accessible through its website, informing other REs and the public at large of the cause of the failings and resulting enforcement action. Such a "name and shame" policy is effective and dissuasive considering the negative impact it has on one's reputation.

757. The GFSC's stance to rooting out the individuals who are causing issues makes for a better compliance culture. What can be somewhat concerning in terms of enforcement action is the timeliness of taking any such action. To ensure independence between investigation and decision-making the Enforcement Division is not empowered to reach a final decision on the case itself, but there are several stages where its decision is reviewed and where the RE is allowed a provide representations. A first stage involves a review and submission of representations to a Case Review Panel consisting of senior officers of the GFSC. At a second stage the case is referred to a Senior Decision Maker who is appointed by the GFSC. It is only at this stage that there are clear timelines included, with the Senior Decision Maker having 180 days to reach a conclusion and decide on the enforcement action to be taken.

758. When a case is referred to the Enforcement Division, a settlement or a decision by the GFSC can be expected on average within two and a half years. There were also a few cases where this average was significantly exceeded. In one case the enforcement process took three years to be settled. In two other cases the GFSC's decision only came after almost three and four years respectively. Moreover, there are on-going cases where the two-and-a-half-year mark has already been exceeded. In one instance the investigation and representation stage has already taken almost three and a half years. The AT appreciates that when tackling cases of this nature a swift resolution is not always possible. In particular, one has to highlight the need to ensure due process throughout so as to avoid being faced with challenges based on human rights issues. Moreover, the documentation involved can very well be significant. The AT however considers that overall, the time being taken to resolve cases referred to Enforcement Division (and the recent gradual increase thereof) is long. Nonetheless it is to be remarked that the negative impact resulting from such a lengthy process is in part mitigated through the imposition of RMPs, which are equally used by the GFSC in cases escalated for enforcement action, resulting in breaches being addressed at the expense of the RE concerned at an earlier stage than the imposition of punitive measures.

759. In terms of appeals to the Royal Court from the GFSC's enforcement decisions, these are limited in number as can be seen from Table 6.17. However, the duration of some of these court appeals is concerning, more so, when considering the limited number thereof which should ensure an expedited resolution. This is not impinging significantly on the effectiveness of the GFSC's sanctions given the limited number of appeals and that to date all appeals have ultimately resulted in the GFSC's decisions being upheld.

**Table 6.17: GFSC Decisions Appealed (2018 – 2023)**

| | GFSC Decision Appealed | Appeal Decided | Appeal Pending |
|---|---|---|---|
| **2018** | 1 | 1 | - |
| **2019** | - | - | - |
| **2020** | - | - | - |
| **2021** | 3 | 2 | 1 |
| **2022** | 2 | 1 | 1 |
| **2023** | 2 | - | 2 |

760. The GFSC is also involved in detecting possible cases of failure to submit a SAR, which is a failure subject to criminal rather than administrative sanctioning, and hence may not be enforced by the GFSC. Any possible instances of failure to submit a SAR, as well as possible instances of ML/TF, are reported by the GFSC to the FIU by means of a SAR or are otherwise discussed during the regular meetings the GSFC has with the FIU and the EFCB.

761. In at least three instances, the GFSC detected possible failures to submit a SAR and brought the matter to the attention of the FIU. In two (2) cases, the investigation by the EFCB

concluded that there were no reporting breaches whereas in the third case, criminal investigations focused on the customers rather than the RE itself. During the review period there was only one prosecution for failure to submit a SAR, which was eventually dropped as the prosecution was satisfied that it was a genuine mistake.

762. In at least another two (2) cases, the GFSC has been the recipient of intelligence from the FIU which has led to supervisory and enforcement action on its part, including the imposition of administrative fines on both the reporting entity and its officers, for failures relating to on-going monitoring and internal reporting procedures. In parallel the FIU was undertaking action with regards to possible instances of ML and failure to submit a SAR. Considering the issues related to the low volume and quality of SARs (across most material sectors – see IO4), the AT remains unconvinced that authorities are effectively actioning failures to submit a SAR.

*AGCC – e-Casinos*

763. Breaches of AML/CFT obligations within the remote gaming sector, can be dealt with through the imposition of remedial actions, administrative or regulatory sanctions, criminal sanctions, and limitations to or withdrawal of licence. In addition, key individuals involved in the commission of any such breach can also be subject to sanctions themselves.

764. The AGCC makes regular use of remedial measures whenever it identifies possible breaches from its supervisory engagements, as can be seen from the table hereunder:

**Table 6.18 – AGCC Remedial Measures (2018 – 2023)**

| Year | No. of inspections | Licensees with ReMes | No. ReMes | Different ReMe Items[85] |
|---|---|---|---|---|
| **2018** | 19 | 16 | 85 | 29 |
| **2019** | 18 | 12 | 86 | 37 |
| **2020** | 8 | 7 | 27 | 18 |
| **2021** | 14 | 10 | 51 | 19 |
| **2022** | 15 | 11 | 82 | 14 |
| **2023** | 18 | 18 | 225 | 13 |

765. These are agreed to with the licensee. The timeframe will be influenced by a number of factors, including the number of remedial actions that need to be taken, the nature of the findings to be remedied, the risk rating of the licensee, and whether the remedial action requires any technological developments. While the timeframe can also be proposed by the licensee, the ultimate say rests with the AGCC as exemplified by a situation where the licensee proposed a 12-month turnaround, which was refused and replaced by the AGCC by 1 month.

766. To monitor the actual implementation of any remedial action, the AGCC makes use of the relationship manager (RM) and of the licensee's own internal audit function. Completion of the RMP is tested in practice at the following supervisory engagement which happens yearly and is thus a reasonable follow-up approach. As set out in section 6.2.4. there are issues with the testing of on-going monitoring and overall quality of supervisory examinations. This thus also impacts the AGCC's ability to validate the completion of ReMes it imposes.

767. No enforcement actions were ever taken on eCasinos. The AGCC has never considered that the results of its supervisory activities or the conduct of an eCasino in carrying out remedial action justified an escalation. It is therefore not possible to actually assess whether the

[85] This column provides figures on the overall singular type of obligations breached throughout ReMes issued that year (e.g. in 2023 there were 225 ReMes covering 13 different type of breaches)

enforcement process leads to the imposition of enforcement measures deemed to be proportionate, effective and dissuasive.

768. The AGCC explained that it did use its enforcement powers to suspend an eCasino in 2023 whilst awaiting a regulatory hearing in 2024. The AT however considers the case to be a precautionary measure. Infact the AGCC explained that this case was eventually dropped as the eCasino surrendered its licence, which brought to an end the AGCC's enforcement remit over the said entity. This presents a weakness in the overall framework as it allows eCasinos an avenue to avoid enforcement action by the AGCC. The AT recognise that information on the entity and individuals involved is retained by the AGCC for future reference (and also shared with counterpart authorities), however involved entities and individuals can neither be barred from future authorisations.

769. The AGCC's stance is one that overly favours remediation as opposed to enforcement action. This was particularly visible in at least two instances where a foreign AML/CFT supervisor responsible for the same eCasino, flagged issues with the AML/CFT controls of the eCasino and even took enforcement action in relation thereto. In these two instances, the AGCC explained that it had already taken remedial action to address the issue and, unlike the foreign supervisor, saw no significance in taking further and retrospective enforcement action vis-à-vis earlier AML/CFT breaches.

770. Furthermore, the documentation provided by the AGCC puts into question whether the sanctioning process would in actual fact lead to the imposition of proportionate, dissuasive and effective sanctions. While the AGCC's Enforcement Policy does make reference to a series of factors that should be taken into account in any such determination (e.g. the type of the breach, the effects it would have on the Bailiwick and the regulatory environment in general etc.), no guidance is given as to what constitutes a sufficiently serious or systemic breach to ensure its escalation for enforcement action and how the circumstances of the case, including any mitigating or aggravating factors, may impact the kind of enforcement action taken and/or the quantum of any administrative penalty imposed. This leaves a significant degree of subjectivity to the AGCC which may not always impact positively the taking of enforcement action. According to the same policy, administrative penalties and/or restrictions on the licensee would only be considered in the event that the breach impacts one's standing as a fit and proper person. This creates further vagueness, as one of the licensing conditions for eCasinos is adherence to AML/CFT obligations, but there is no clarity about the threshold and extent of non-compliance that would impact a eCasino's fitness and properness. In addition, the absence of any timeframes within which different stages of the enforcement process are to be carried out does not allow any assessment as to the timeliness of the process itself.

### *6.2.5. Impact of supervisory actions on compliance*

*GFSC – All FIs and DNFBPs (excl. eCasinos)*

771. The GFSC considers that its supervisory, enforcement and guidance activities have had an overall positive impact on the level of AML/CFT compliance. The meetings held with the REs have also proven that there is an overall good level of compliance. Although improvements are still needed on some aspects especially when it comes to detecting and reporting suspicious activities in certain sectors, the AT could clearly see the investment and enhancements that REs have been making to improve compliance levels (e.g. investment in systems/tools, introduction of adequate risk assessment tools, provision of continuous training to staff among others).

772. The GFSC has surely been a main contributor to this improved culture. The expertise, dedication and professionality of the GFSC members was clearly visible to the AT not only through the conversations held but also through the various good quality guidance material provided. This view was also consistently shared by the private sector entities met.

773. The GFSC has also provided the AT with statistics and data to objectively prove this improved level of compliance. Reference was made to the number of RMPs that have been imposed between 2019 and 2023, especially on TCSPs, as an indicator that compliance is improving. The GFSC also has provided data on the duration taken to complete the said RMPs which has been decreasing. This view was also shared by the private sector representatives.

774. When it comes to TCSPs, in 2023 that there has been a significant decline in the number of RMPs on the fiduciary sector. The AT welcomes this improvement which is the result (among other things) of the added supervisory effort the GFSC has been putting on this sector.

775. The GFSC also provided data on the obligations subject of RMPs. The data provided however only makes reference to the general category of the obligations (e.g. CDD, on-going monitoring etc.) and is therefore not granular enough to analyse whether there is an overall decline in breaches of more serious obligations. If anything, the gradual increase of cases being referred to the GFSC's Enforcement Division may point at a situation where more serious findings are presenting themselves, aligned with an increase in the supervisory engagements resulting in the identification of AML/CFT findings.

776. Hence when looking at empirical supervisory data provided the AT could not gauge the improvements in compliance level across all sectors. The GFSC should enhance the statistics and data retained to effectively measure the impact of its work, and to also identify areas and sectors that should be further actioned. In addition, a number of FIs form part of larger international groups, which in itself is contributing to the increased level of compliance due to changes and improvements at the group level independent from the GFSC's own supervisory and outreach activities.

*AGCC – e-Casinos*

777. The AGCC has also been commended for its openness and availability to assist eCasinos in complying with their AML/CFT obligations, and the eCasinos met on-site have clearly shown that they have been investing in improving their compliance levels. In addition, it's supervisory approach (i.e. annual reviews), and its use of RMs and ReMes, are positive aspects and contribute to address identified compliance issues at the earliest. This notwithstanding, the issues relating to the AGCC's quality of supervision and enforcement approach limit the extent to which compliance improvements can be mainly attributable to the AGCC.

778. The AGCC is also of the view that its actions have had a positive impact on compliance levels. In particular, the AGCC refers to the decrease in the areas where it has directed licensees to undertake remedial action (refer to Table 6.18 above). These have in actual fact decreased from a high of 37 in 2019 to 13 in 2023 as per table hereunder. However, this cannot be taken as conclusive evidence that the AGCC's actions have impacted the levels of compliance.

779. Indeed, the overall number of remedial actions within the remedial programmes has remained relatively constant and spiked to 225 in 2023. The AGCC attributes this spike in ReMeS to the going live of new licensees which were not as mature as the rest of the operators. It is however difficult for the AT to conclusively say that this is the case. An increase is also noted in remedial actions related to key obligations for eCasinos. Thus, whereas in 2019 there were 24 actions on CDD trigger dependent measures, these have increased to 60 in 2023. The same can be said with regards to ReMeS involving reporting procedures, these having been 6 in 2019 but

15 in 2023. This trend is also applicable to other material AML/CFT obligations. Moreover, in the absence of more granular details, it is impossible to say whether these remedial actions relate to minor infringements or to more serious ones.

### *6.2.6. Promoting a clear understanding of AML/CFT obligations and ML/TF risks*

*GFSC – All FIs and DNFBPs (excl. e-casinos)*

780. The GFSC undertakes a number of initiatives to promote a clear understanding of AML/CFT/TFS obligations and ML/TF/TFS risks. This it does through the issue of guidance documents and outreach initiatives.

*Guidance Documents*

781. The primary document used by the GFSC to communicate regulatory requirements surrounding AML/CFT/CFP legislation, rules and guidance to industry is the Handbook on Countering Financial Crime and Terrorist Financing (the 'Handbook'). Updates are made as and when relevant changes happen; this is communicated to industry via the GFSC's website as news articles and a revision to the online version of the Handbook. Revisions to Schedule 3 and the rules in the Handbook are issued in draft for consultation with industry before being finalised, allowing the GFSC to receive and consider feedback on whether there are any technical impediments and/or challenges to implementation, enabling the GFSC to gauge where some further clarifications may be beneficial.

782. As already highlighted, the GFSC carries at least a thematic examination once a year. The results of these examinations, including good and bad practices, are also communicated to the private sector. GFSC "news" such as publication of consultations, reports, public statements on its enforcement actions and speaking events regularly make the news in the local media[86], including the GFSC's external thematic review of "Reporting Suspicion" in summer 2021, the sanctions thematic, and the latest PEP thematic in July 2023 which further promotes the GFSC's messages. The GFSC also fields direct queries from specified businesses via a dedicated email address. The aim is to assist supervised entities in interpreting the regulatory requirements in place and is not a means of approving the regulatory approaches / processes / controls taken by the specified businesses. Announcements on AML/CFT matters on the GFSC's website are closely followed by industry as exemplified by the number of views.

*Outreach Initiatives*

783. The GFSC also utilises presentations (some jointly with other competent authorities) and workshops to communicate important changes in the AML/CFT regime to the wider industry[87]. They are provided free of charge, and also encompass regulatory self-assurance exercises for attendees to take away and discuss with their colleagues to help assess how effective their specified businesses' controls are in a particular area. These events have been popular, with 600 industry representatives attending workshops on revisions to the Handbook and 400 attending the workshops on how specified businesses should apply the NRA. Attendee records are kept so that the GFSC can check on which specified businesses/individuals attended and which did not. This is factored into the RE's supervisory risk assessments.

784. The GFSC undertakes regular industry presentations and frequently presents at events organised by the professional associations. Themes discussed are topical at the time of the

[86] GFSC puts risks posed by PEPs under microscope | Guernsey Press
[87] https://www.gfsc.gg/events

presentation and serve to pass key messages to the industry. Following the publication of the last five external thematic reports, the GFSC has held its own or used invitations to speak at external events to promote these reports and their findings. Details of all the presentations and number of attendees may be found in Guernsey's statistical digest.

785. The GFSC works closely with the FIU on the development of guidance and training to the industry on the submission of SARs. For example, following the GFSC's external thematic review on reporting, the GFSC ran joint training seminars with the FIU to approximately 250 people in November 2021.

*AGCC – e-Casinos*

786. The AGCC maintains a dedicated AML/CFT area on its website to facilitate eCasinos' ability to access guidance and other relevant AML/CFT material. The AGCC published Guidance for e-Gambling businesses on Countering Financial Crime and Terrorist Financing in December 2020, last updated in March 2024. In addition, the AGCC publishes Instructions when necessary to advise e-Casinos on matters such as when a risk review has been carried out and these Instructions[88] can set out matters that e-Casinos need to consider within their control documentation. RMs take into account these Instructions when conducting off-site monitoring, monitoring ICS reviews and revisions as well as during on-site inspections. Changes to FATF high-risk jurisdiction lists are made via the publication of Business from Sensitive Sources Notices.

787. The AGCC holds an annual AML/CFT event in conjunction with the FIU and other relevant stakeholders. The AGCC licensing and compliance teams also attend these events along with members of the support staff where the content assists them in their duties. These sessions allow eCasinos to interact and discuss matters with AGCC and FIU staff outside of the routine compliance structure. The AGCC requires that eCasinos, in their first year of operation, send delegate/s to these events. These events have proved popular as they provide operators with relevant material which can then be incorporated into their internal training regimes. These events afford other key Bailiwick stakeholders a valuable opportunity to meet with an entire sector which has been of use to the ODPA and the Director of Financial Crime and Regulatory Policy, States of Guernsey. Attendance records are kept so that the AGCC monitors eCasinos'/individuals' interest and willingness to keep abreast and strengthen their compliance culture. Details of all the presentations and number of attendees were provided to the AT.

788. The AGCC's RM structure gives eCasinos a consistent, direct, and immediate point of contact. The RM either answers any query immediately or, if necessary, consider the issue with the relevant AGCC staff before responding. Any query that cannot be immediately answered can be escalated to the Director of Compliance or Director of Licensing as appropriate. This "open door" policy means that when eCasinos are considering changes to their operations (jurisdictions, games, payment methods) they have the ability and confidence in the AGCC to openly discuss these in principle and ensure such changes are compatible to their regulatory obligations.

## *Overall conclusions on IO.3*

789. The Bailiwick's AML/CFT regulatory framework presents positive elements under all relevant criteria. Fitness and probity controls applied by the GFSC and the AGCC for FIs, DNFBPs and VASPs are robust and effectively applied upon market entry and on an on-going basis, with some minor improvements required. For less material sectors regulated by the Administrator, considering the very recent take up of its market entry role the system needs to further mature.

[88] Instructions, Notices and Guidelines | AGCC

790. The GFSC and AGCC have a very good understanding of the ML/TF risks and the business models of the regulated sectors. Both AML/CFT supervisors have been collecting risk data for many years to better understand ML/TF risks to which specific REs are exposed. There is some room for improvement and further granularity in this area. The AT is also not convinced about the suitability of risk categorisation of individual REs in some of the most material sectors (i.e. investment firms and TCSPs), which may hamper supervisory plans.

791. The GFSC has been implementing a risk-based supervisory model for the entirety of the review period. The AML/CFT examinations conducted are of good quality, and the themes chosen are aligned to national risks and vulnerabilities. The extent of examinations (in terms of customer file samples reviewed) need to be appropriately varied to size and risk of REs, while the frequency of on-site examinations for medium-high risk entities is not considered adequate.

792. The GFSC seeks to drive compliance mainly through remedial actions. It also takes enforcement actions for serious and significant AML/CFT deficiencies including on senior managing officials responsible for those failings, which is positive. Nonetheless the number of administrative penalties is overall low for high-risk sectors. The AT also has some concerns with the timeframes involved in taking enforcement action which may detract from the dissuasive and effective nature thereof. The AT is also unconvinced that the authorities are effectively actioning failures to submit SARs, which as set out under IO4 is a concerning aspect of the ML/TF preventive efforts.

793. With regards to the AGCC, there are positive aspects to its activities but there are also concerns with regards to the quality of its supervisory engagements particularly when monitoring REs' effectiveness in detecting and scrutinising unusual transactions. Its overfocus on remedial actions and some legal obstacles to sanctioning REs that surrender their license are also impacting effectiveness.

794. Both AML/CFT supervisors (i.e. GFSC and AGCC) makes use of various means to promote a clear understanding of AML/CFT/TFS obligations and ML/TF/TFS risks. These initiatives are of good quality and aligned to risks and vulnerabilities. REs deem these initiatives to be very useful and also commend the openness and availability of both authorities.

795. **Guernsey is rated as having a moderate level of effectiveness for IO.3.**

# 7. LEGAL PERSONS AND ARRANGEMENTS

## 7.1. Key Findings and Recommended Actions

***Key Findings***

***Immediate Outcome 5***

a) Information on the types and process of creation of legal persons and arrangements is publicly accessible.

b) Bailiwick authorities have a good understanding of how legal persons and arrangements can be used for ML purposes. The 2024 sectorial risk assessment presents a detailed and significant improvement on the analysis contained in the NRA1. The TF risk understanding is adequate but less developed. There remain aspects of the ML/TF risk analysis and understanding that need to be further enhanced.

c) There are various effective measures to prevent the misuse of legal persons and arrangements and to ensure the availability of adequate, accurate and up-to-date basic and BO information for legal persons. These include: (i) public availability of basic information (ii) company registers and fully populated BO registers with corresponding checks at registration and on an ongoing basis, (ii) the use of resident agents for legal persons, (iii) the involvement of REs in the creation and running of legal persons and (iv) the supervisory functions of the Registries, the GFSC and the Revenue Service. There is an overall good level of compliance with CDD obligations by material REs serving legal persons/arrangements, and resident agents.

d) The checks carried out by the Registries at registration and upon change notifications ensure that registered basic and BO data is adequate and accurate, and that BOs are not subject to adverse information. On-site examinations carried out by the GFSC and Revenue Service are of good quality, and in 2023 started being complemented by the Guernsey Registry's on-site inspections which need to be sustained. On-site examinations would also benefit from a more extensive coverage of file samples. The Registries moreover undertake data analysis and thematic exercises to enhance compliance by resident agents with their BO disclosure obligations. Accuracy of the Registry information is confirmed annually by legal persons through provision of an annual validations.

e) BO information is accessible to competent authorities through various means. This include BO Registers (except for companies with shares held in some trusts) that are directly accessible to the GFSC, the FIU, the EFCB and the Revenue Service. The authorities presented no issues with accessing BO data and effectively do so regularly on request of foreign counterparts.

f) In the case of trusts, the main source for basic and BO information are the REs. Overall, findings on the ID&V requirements applied by REs, especially banks and TCSP, are of a good quality. The GFSC carries out a series of inspections on both banks and TCSPs to assess the level of BO controls applied but the coverage of Guernsey trusts administered by its licensees is somewhat limited. These are complemented by the supervisory initiatives of the Revenue Service, although in view of data limitations the AT could not verify their effectiveness.

g) There are various sanctions and measures available to deal with breaches of basic and BO related obligations. While the GFSC did impose administrative sanctions for breaches of BO obligations, it mainly focuses on the imposition and monitoring of remedial actions. The

penalties imposed by the Registries and the Revenue Service were not always deemed to be proportionate, effective and dissuasive, and there were no pecuniary fines for breaches of BO obligations. The limited enforcement action is also impacted by the recent launch of on-site examinations by the Guernsey Registry, and the gaps in extent of supervision by the authorities. Nonetheless, there are no indications, including from supervisory and other BO data verification initiatives undertaken so far, of notable non-compliance with BO obligations. The Registries take effective action to strike off companies that do not adhere basic information obligations.

***Recommended Actions***

***Immediate Outcome 5***

a) The GFSC, Registries and the Revenue Service should continue and increase their supervisory activities to ensure that REs, legal persons and resident agents are complying with their basic and BO information obligations. The authorities should widen the sample of files reviewed at on-site inspections, while the GFSC should also consider extending cross-checks against BO information held in the Registries for all legal persons' files sampled during inspections rather than just a selection thereof.

b) The Registries and Revenue Services should ensure that in case of more serious and systemic failures to comply with basic and BO information requirements appropriate sanctions are applied.

c) The Bailiwick should further improve its ML/TF risk understanding for legal persons and arrangements by analysing in more detail: (i) the risks associated with the misuse of complex and multi-layered structures, (ii) the risks associated with legal persons not banked in the Bailiwick, (iii) the adequacy of controls in place to mitigate the abuse of legal persons and arrangements, and (iii) improving the understanding of their TF risk exposure.

d) The Bailiwick should re-consider the current exemptions from disclosure of BO information to the Beneficial Ownership Registers, allowing the said registers to become a single point of access to beneficial ownership, independently of the regulatory status of the legal person.

796. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R R.24-25, and elements of R.1, 10, 37 and 40.[89]

## 7.2. Immediate Outcome 5 (Legal Persons and arrangements)

797. Section 1.4.5 sets out the type of legal persons and arrangements that may be set up in the Bailiwick, and provides further information on the numbers, nature and purpose of each type.

These include: (i) companies (ii) limited liability partnerships (iii) limited partnerships, with or without legal personality (iv) general partnerships, (v) foundations and (vi) trusts. In Alderney only companies (non-cellular) may be established. The most predominant types by far are the Guernsey Company and Trusts. Companies limited by shares, and trusts (usually discretionary) are also mostly used as part of estate planning and wealth management solutions. Trusts are also

[89] The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

used to establish pension schemes or employee benefit schemes. As set out under section 1.4.5 the AT will, for the purposes of this assessment, regard limited partnerships (without legal personality) as legal persons, while it would not be analysing general partnerships.

### *7.2.1. Public availability of information on the creation and types of legal persons and arrangements*

798. Information on the different types, forms and basic features, of legal persons and arrangements is publicly available and set out in the different laws regulating the various Bailiwick legal persons and arrangements. These laws also set out how the said legal persons and legal arrangements can be created. The said laws are publicly accessible online.

799. The States of Guernsey and Alderney websites offer information with respect to the setting up or dissolution of a business, including information and website links with respect to the regulatory environment, the Guernsey and Alderney Registries, and the Revenue Service.

800. The laws are complemented by information and guidance available on the websites the Guernsey and Alderney Registries. Information is provided on the process for the formation and registration of all legal persons/arrangements, the documentation that needs to be submitted, and the registration fees. The registry websites also contain comprehensive information on the legislation. Standard forms used to register legal persons are available online and the staff at the Registries also provide guidance by telephone, email or in person on the formalities for establishing a legal person.

### *7.2.2. Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities*

801. The authorities demonstrated a good understanding of how legal persons and arrangements can be misused for ML, and this based on various national and authority level initiatives. There are some aspects that would benefit from a more detailed analysis. These include (i) a more detailed analysis of risks associated with the misuse of complex and multi-layered structures, (ii) the risks posed by legal persons not banked in the Bailiwick and (iii) the adequacy of controls in place to mitigate the abuse of legal persons and arrangements. This is also applies for the TF risk analysis. The TF risk analysis is based on determining connections of BOs and involved parties to TF high risk countries, and an analysis of the nature and location of the activities of legal persons and arrangements.

802. The Bailiwick considered the risks and vulnerabilities associated with legal persons and arrangements set up in the Bailiwick in its NRA1 process. This risk assessment produced different risk ratings for ML and TF and considered a wide range of factors derived from an analysis of FIU SARs and international cooperation data (i.e. MLAs, supervisory and FIU cooperation) involving legal persons and arrangements such as the ownership (i.e. foreign vs domestic), types of legal persons and/or arrangements predominantly featuring in suspicious cases, and activities they undertake. The main risk factor described in the NRA report is the exposure to cross-border business, however non-public appendices to NRA1 evidence the consideration of other factors as explained above. NRA2 furthermore concluded that foreign-owned legal persons are mostly at risk of being misused for the laundering of foreign proceeds of crime originating from bribery and corruption, fraud and tax evasion.

803. While NRA 1 sets out what is the residual risk presented by different legal persons and arrangements, this was not backed by an analysis of the effectiveness of the mitigating measures

in place. The NRA and supporting documentation provided only included reference to the mitigating measures in place leading to the quantification of the residual risk.

804. In April 2024 the Bailiwick issued a specific risk assessment on legal persons and arrangements, providing a more detailed analysis of the risks and vulnerabilities for legal persons and arrangements. It included a more detailed analysis of aspects such as beneficial ownership, directorship, the geographical location of involved persons and activities. Like NRA1, the sectoral risk assessment provides separate risk ratings for ML and TF. It also goes beyond the standards assessing risks posed by foreign legal persons and arrangements having links to Guernsey.

805. The analysis underpinning NRA1 and the 2024 specific risk assessment took into account how beneficial ownership manifests itself, including looking at how common each tier of beneficial ownership is with regards to specific forms of legal persons. In addition, an analysis of how complexity of legal structures can be abused was carried out, although largely based on data from sanction notifications. This analysis drew interesting conclusions on defining complexity as well as concluding that complexity poses the same risks for sanctions evasion as for ML/TF. This latter conclusion is however not based on other data (apart from sanctions notifications) that would be relevant for a better understanding of specific patterns within a ML/TF context, especially drawing from ML/TF cases or suspicions that factually involved Bailiwick legal persons or arrangements.

806. All risk assessments conclude that the main ML threat for legal persons and arrangements comes from cross-border business. This is especially so where legal persons or arrangements are used as asset holding vehicles (on their own or as part of larger structures). It is highlighted that the further down the chain of transactions across several jurisdictions the Guernsey legal person or arrangement is, the more difficult it becomes to ascertain the legitimate origin of the assets so held. These companies have been identified as being mostly foreign owned.

807. The NRA1 and the sector specific risk assessment include a collection of cases portraying how trusts or companies are typically abused for ML (particularly derived from tax evasion and corruption proceeds). The NRA2 includes information on ML threats to which legal persons and arrangements are exposed and on typologies how these various threats may manifest themselves which are then cross-referred to in the sector specific risk assessment.

808. The ML/TF risk is considered to be mitigated by the presence in most of these structures of a GFSC licensed TCSP acting as administrator (i.e. as director, company secretary, trustee or equivalent function) and the location of assets being in jurisdictions considered to have equivalent AML/CFT frameworks. The domestic threat is considered to be much lower. While there is still the possibility of legal persons and arrangements being used for tax evasion, the means employed are much simpler than those involving foreign elements.

809. The TF risk is considered to be much lower than ML considering the main use of legal persons or arrangements within asset holding structures. The assessment is mainly based on connections of BOs and involved parties to TF high risk countries considered to be minimal, and the nature and location of activities undertaken by legal persons and arrangements. In respect of TF modalities, the NRAs highlight that Guernsey is mainly exposed to the risk of movement of funds as a transit jurisdiction and is unlikely to involve trusts. It is however not analysed the extent to which this can involve legal entities and what types of entities. The modalities of abuse of legal entities for TF was tackled in a guidance issued by the authorities, based on internationally sourced material and case-studies chosen based on relevance to the Bailiwick, and which showcases the authorities' understanding of this aspect.

810. Moreover, similarly to NRA1, the 2024 specific risk assessment while it identifies some of the controls put in place, does not assess the adequacy of the same.

811. When it comes to trusts there is no specific analysis of settlors' profiles (e.g. the incidence of HNWIs, PEPs). This is however mitigated by the fact that NRA2 considered the incidence of high-risk clients, PEPs and jurisdictional location of customers and beneficial owners (including settlors) when assessing the vulnerabilities of Private Banking, TCSPs, CISs and Investment Firms, which are the REs mainly servicing Guernsey trusts.

812. Various authorities conducted their own specific risk assessments. As of 2023, the Guernsey Registry adopted a five-point risk rating system for all registered legal persons, based on a quarterly assessment of a series of data points. These include their activities, links to high-risk jurisdictions, use of nominees, adverse information, late filings and other information. This has resulted in the following risk classification:

**Table 7.1: Legal Persons Risk Ratings – Guernsey Registry**

| Legal Entity Risk Rating Classification | % of legal person |
|---|---|
| Higher | 1% |
| Medium Higher | 22% |
| Medium | 16% |
| Medium Lower | 52% |
| Lower | 10% |

813. Higher risks legal persons typically include TCSP administered asset holding companies, forming part of a bigger structure, where there would be the use of corporate directors and potentially of nominees.

814. Prior to 2023, the Guernsey Registry had another risk assessment process in place, which was also comprehensive. The Alderney Registry conducted risk assessment exercises in relation to all companies in 2021 and 2023, using similar data points. In all risk assessments, predominant considerations included the activity carried out by legal persons, links to high-risk jurisdictions, adverse intelligence, involvement of PEPs and aspects like the corporate structure.

815. In 2023, the FIU conducted a strategic analysis on legal persons and arrangements. The analysis highlighted that the most at risk Guernsey vehicles are the non-cellular company limited by shares and trusts. Tax evasion was the main identified predicate offence for ML threats relevant to trusts. In the case of legal persons these also included fraud apart from tax evasion. The findings of this Strategic Analysis fed into the 2024 sector specific risk assessment. In the 2023 Typologies Report, the FIU reported that most cases reported revolved around trusts administered by a Guernsey trustee and not so much on companies or other legal persons.

816. All relevant competent authorities were aware and agreed that the main risks of legal persons and arrangements set up in Guernsey arise out of their use as asset holding structures, and the challenges to establish the legitimate provenance of the assets held through the said structures. The authorities were equally adamant that the absence of any significant volume of transactions in these cases and the involvement of TCSPs significantly lowered the ML/TF risks of the Bailiwick through such use of legal persons and arrangements.

### *7.2.3. Mitigating measures to prevent the misuse of legal persons and arrangements*

817. The Bailiwick has several measures in place to prevent the misuse of legal persons and arrangements. These consist in (i) CDD by REs that service legal persons and arrangements or are involved in their management; (ii) the supervisory activity of the GFSC and the Revenue

Service, (iii) Company and BO Registries and (iv) the resident agent, the latter two applicable with respect to legal persons. The measures are overall effective in preventing the misuse of legal persons and arrangements.

*Registries*

818. Most legal persons created in the Bailiwick need to be registered at the Registry in Guernsey or Alderney (except for LPs without legal personality – see R.24). LPs are subject to registration with the Revenue Service, which include the submission of most basic and BO information including BO (general partners) information on an annual basis (see R.24). The registries hold basic and BO information. The Alderney Register is by far smaller, with only 291 companies registered (at the end of 2023). These are mainly eCasinos licensed by the AGCC or companies carrying out local economic activities. At the same year end the Guernsey Register had 18,086 legal persons registered. Numbers have been quite constant over the years demonstrating no significant shift in terms of registered legal persons.

819. The respective registers also administer the BO registers (established and fully populated since 2018) which hold information on the BOs of registered legal persons. All the necessary basic and BO information and documentation must be provided before registration.

820. Each Register implements a series of verification checks prior to registration. All managing officials, resident agents and BOs must be registered with the Guernsey Register of Persons, which allocates a unique ID to the individual. This registration takes place only after the individual is screened through third-party software solution (i.e. for PEP, sanctions, law enforcement or regulatory enforcement lists, and adverse information checks) to identify any high-risk indicators and the necessary verification of identity is carried out. Over the review period, there were 9,827 individuals registered and issued with a unique ID. This unique ID is then used to track the individual's different involvement with legal persons within the Bailiwick.

821. A review of the management and control of the legal person is undertaken to ensure the BOs are correctly determined. In case of complex structures or where further clarity is required, the Registries request copies of structure charts and/or additional supporting information and documentation. This especially where structures involve foreign legal persons.

822. Further thorough and comprehensive checks are undertaken by the registries including: (i) assessing the proposed purpose, economic activity (and location thereof) of the legal person and whether this matches the profile of the managing officials and BOs; (ii) screening managing officials, resident agents and BOs for adverse information through third-party software; (iii) cross-checks against other registries held by the respective Registrar to identify and action any discrepant information; (iv) general checks on the basic information of the legal person (name, registered office, managing officials, basic regulating powers); (vi) beneficial ownership and nominee information checks; (vii) identification of any high risk indicators (i.e. if managing officials, resident agents or BOs have any positive matches under the verification checks described above or are resident in a high risk country). These checks have been in place for quite some time, covering also the evaluation period. Prior to 2023 the Alderney registry relied on the Guernsey Registry for screening purposes, but now conducts its own process.

823. Where further information is required or there are high-risk indicators, the Registries will not proceed with the registration until the necessary information is obtained and/or the necessary checks conducted. In such cases input is also sought from the GFSC and FIU. The Guernsey Registry explained that it defers the processing of approximately 5% of applications to request further information where necessary. Where insufficient information is provided,

applications will be rejected. Between 2018 to 2023, the Guernsey Registry rejected 33 applications for registration.

824. Registration applications must be presented by a TCSP, which must attest that it verified the BOs. This entails another layer of checks done by the TCSP on the prospective directors and BOs and on the proposed company activities. TCSPs are considered to implement effective identification and verification measures and take adequate measures to understand the purpose, intended nature and rationale of the business relationship including the purpose and rationale of corporate structures. Some gaps were however noted in respect of mitigating measures for tax-related ML (to which legal persons are particularly exposed), detecting and reporting of ML/TF suspicions (see IO4).

825. The Registry screens daily all individuals involved with the registered entities (i.e. managing official, resident agents and BOs), against any law or regulatory enforcement lists, adverse media, sanction hits or changes in PEP status using third-party screening tools. A lower match percentage to return a hit is set for individuals linked to higher risk legal persons.

826. Changes to registered basic and BO information must be notified to the register within specific timeframes (i.e. 14 to 30 days depending on the nature of the change). Any change is subject to the same checks as at registration stage. Between 2018 and 2023, there have been over 42,000 change of director notifications filed to the Guernsey (42,040) and Alderney (624) Registries. Changes to BO information, must be notified by the resident agent within 14 days. Between 2018 and 2023, there were just over 30,000 BO changes notified to the Guernsey (30,075) and Alderney (64) Registries. In addition, enquiries are made with legal persons by the Registries to ensure that BO information is up to date on an ad hoc basis when there have been other changes (e.g. changes in shareholding).

827. Notification failures and late notifications are subject to sanctions by the registries (see Table 7.9). The majority of director changes were notified on time, while for the 12% of changes that were notified late, the Guernsey Registry exercised its sanctioning powers. Although such cases are rare, there are situations where a company may no longer have such a resident agent, usually where the resident agent, a TCSP, and terminates the relationship with the legal person (see Table 7.10). A resident agent is effectively appointed shortly after the Registries start the civil penalties or striking-off process. In addition, some minor timeliness issues have started to surface in respect to notifications of BO information changes, as resulted from the thematic review conducted by the registry (see section 7.2.4).

828. Another long standing and effective measure is the annual validation report. This needs to be submitted to the Registry to confirm that registered information is still current and valid. The said information is extensive and includes substantial details on the legal person itself, the activities it carries out and its BOs. The compliance rate is very good (i.e. 98% for Guernsey legal persons and 97% for Alderney ones).

829. The Registries also report suspicions of ML/TF to the FIU and any adverse or unusual information to the GFSC to inform the supervision and oversight of legal persons. This is an important measure in preventing abuse of legal persons in the jurisdiction. The creation of an Oversight & Sanctions function in May 2021 has contributed to an increase in the reports submitted to the two authorities, as demonstrated by the following table:

**Table 7.2 – Reports submitted by the Guernsey Registry to the FIU and the GFSC**

| Year | FIU (SARs) | GFSC |
|---|---|---|
| 2019 | 1 | 5 |
| 2020 | 3 | 2 |

| | | |
|---|---|---|
| 2021 | 12 | 2 |
| 2022 | 17 | 16 |
| 2023 | 10 | 11 |

*The Resident Agent*

830. In addition, most registered legal persons must have a resident agent. This does not include Guernsey CISs, companies supervised by the GFSC, companies listed on a recognised stock exchange, and LPs without legal personality. Basic and BO information for such entities is available through the GFSC, the one stock exchange licensed in Guernsey, and general partners, the Revenue Services as well as the Guernsey Registry in case of LPs without legal personality (see R.24).

831. Resident agents are TCSPs or individual resident directors (or equivalent position). This ensures that competent authorities have a liaison in the Bailiwick privy to information on legal persons and who may assist in procuring information, identifying the BOs, and in any financial crime investigations. Resident agents are duty bound to ascertain and verify the BOs of legal persons prior to formation and to keep information accurate and updated.

**Table 7.3 – Resident Agents as at September 2023**

| Category of Legal Person (form and type) | Licensed Resident Agent (TCSP) | Resident Agent (Natural Person) | Resident Agent Exempt |
|---|---|---|---|
| **Guernsey Legal Persons[90]** | | | |
| **Companies** | **10844** | **5258** | **2026** |
| Cellular company - incorporated cell company with limited liability | 31 | 15 | 25 |
| Cellular company - incorporated cell with limited liability | 197 | 253 | 109 |
| Cellular company - protected cell company with limited liability | 273 | 9 | 124 |
| Non-cellular company - company limited by shares | 10,267 | 4,770 | 1,766 |
| Non-cellular company - company limited by guarantee | 64 | 210 | 1 |
| Non-cellular company - unlimited liability company | 12 | 1 | 1 |
| Non-cellular company - mixed liability company | 0 | 0 | 0 |
| **Limited Liability Partnerships** | **134** | **38** | **0** |
| **Foundations** | **98** | **37** | **0** |
| **Alderney Legal Persons** | | | |
| **Companies** | **96** | **195** | **0** |
| Company limited by shares | 95 | 191 | 0 |
| Company limited by guarantee | 1 | 4 | 0 |

832. Most Guernsey companies (i.e. 60%), being the more material, have TCSPs as resident agents, which undertake effective CDD measures (see IO4). The other 40% have non-TCSP resident agents. The majority of legal persons with non-TCSP resident agents have a lower risk profile as they have stronger ties to the Bailiwick and/or no overseas activities (i.e. 98% are

[90] With respect to registered limited partnerships, in September 2023, nominated general partners were responsible for assuming the resident agent information duties in respect of beneficial ownership. In December 2023, legislative changes came into effect which required registered LPs to appoint a resident agent to assume resident agent obligations (rather than such obligations automatically falling on the general partner).

directed and managed in the Bailiwick, 87% undertake commercial activity only in the Bailiwick and 75% hold property only in the Bailiwick). Moreover, in most of these cases the resident agent is, or has a strong connection to, the BO (i.e. in 83% the resident agent is also one of the BOs).In such instances, more reliance is placed on the BO checks undertaken by the Registries or by REs servicing the company (i.e. TCSPs always involved at company formation stage) and other REs such as banks who apply CDD commensurate in line with the risk. The authorities have not identified any major issues with the BO information reported to the registers. This category of resident agents has however only recently started being subject to on-site inspections by the Guernsey Registry, although there was prior ongoing prior engagement in the form of assistance.

833. Resident agent are also duty bound to ensure that the BO information they hold remains current and accurate. They are bound to notify the registers in case of BO changes within 14 days and must declare on every annual validation that BO information is correct and current as at 31 December (for companies) or end of February (for LPs, LLPs and foundations).

*Mitigating measures by Reporting Entities*

834. REs provide for another layer of scrutiny and prevention. REs are especially important vis-à-vis trusts as, they are not subject to registration with and hence checks by the Registry. They are however subject to registration and reporting obligations for tax purposes.

835. All TCSPs are subject to AML/CFT obligations, including CDD and record keeping for possible use by the authorities. Most legal persons and arrangements are serviced by one or more REs, in particular banks. Of the 16,159 legal persons not licensed by the GFSC, 52% have a bank account in the Bailiwick, and the vast majority of the rest (i.e. 42%) are either administered by a TCSP or otherwise serviced by accountants and/or lawyers based in the Bailiwick. There is therefore nearly always contact with a RE albeit not necessarily to the same degree.

836. The IO4 report highlights that in the case of Banks and TCSPs the implementation of CDD obligations is good and effective. These measures are effective to deter the misuse of companies for the threats to which the Bailiwick is exposed (i.e. corruption and drug-trafficking), however the AT was unconvinced with the robustness of measures in place to deter their misuse for tax evasion purposes, and the appreciation of risks and controls around complexity of corporate structures. The low SAR numbers (except for TCSPs) and quality issues was also concerning and may also be indicative of deficiencies with the effectiveness of on-going monitoring to detect potential suspicions.

837. The supervisory activity of the GFSC is especially important to ascertain the robustness of measures adopted by REs. This supervisory activity is complimented by the compliance activities carried out by the Revenue Service with respect to REs in pursuance of their different reporting obligations as considered below. The AT has some concerns as to the adequacy of the GFSC's coverage of the TCSP sector (see below) which impacts the effectiveness of this form of control over REs.

*The Revenue Service*

838. The automatic exchange of information under the CRS and FATCA is overseen by the Revenue Service and provides an enhanced measure with respect to foreign owned legal persons and arrangements. Information on accounts held by foreign owned legal persons and arrangements, including BO information, must be reported by FIs to the Revenue Service on an annual basis. This information is then exchanged with foreign tax authorities where the entity accountholder, its BOs or individual accountholders are tax resident. The Revenue Service informed the AT that no foreign authority has disputed the quality of BO information exchanged.

839. In addition, the Revenue Service assesses compliance with economic substance requirements applicable to legal persons and arrangements resident in Guernsey and which carry out geographically mobile activities. These are susceptible to being used for base erosion and profit shifting. Where a legal person or arrangement holds high-risk intellectual property or where it fails to meet the economic substance requirements, it must disclose its BOs to the Revenue Service. Only a small percentage of legal persons carry out an activity that triggers the economic substance test (i.e. only 2,672 legal persons in 2021) and the Revenue Service concluded that the said test was not met in an even smaller number of legal persons (26 in 2021).

840. The Revenue Services also shares relevant information with other competent authorities.

**Table 7.4 - Disclosures by the Revenue Service re Basic & BO information**

| Year | FIU | EFCB | GFSC |
|---|---|---|---|
| 2018 | 1 | 1 | 2 |
| 2019 | 2 | 1 | 1 |
| 2020 | 7 | 0 | 1 |
| 2021 | 3 | 1 | 2 |
| 2022 | 4 | 1 | 3 |

841. The disclosures made to the FIU, by the Revenue Service, mainly relate to suspected SAR reporting failures. The Revenue Service may also disclose to the FIU information deemed relevant for a foreign FIU or LEA. Where the Revenue Service (through its tax assessments or analysis of data received under the CRS) identifies suspicions that a legal person or arrangement committed a criminal offence (i.e. tax evasion, fraud, facilitation of tax evasion, including foreign tax evasion) the matter is reported to the EFCB, which is of relevance and aligned with the country's main ML threats. Disclosure to the GFSC, are made in case of concerns regarding licensed persons (e.g. where CDD issues are detected as part of CRS compliance checks). In all instances this will involve the disclosure of basic and BO information. Such exchanges have assisted in the analysis and investigations of criminal activity and the GFSC has used four such reports as part of its supervisory and enforcement processes.

*Other risk mitigating measures*

842. Bearer shares are prohibited in Guernsey and Alderney, both to newly registered and re-domiciled companies. Nominee shareholders are allowed but their activities are subject to licensing by the GFSC as well as to AML/CFT obligations, including CDD, record keeping and reporting obligations in respect client entities and their BOs. In addition, the Bailiwick has confirmed that it is not possible to have nominee directors as anyone appointed as a director is bound by the full extent of director's duties (see. c.24.11 and c.24.12).

### *7.2.4. Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons*

843. Guernsey has several measures in place to ensure timely access to adequate, accurate and current basic and BO information on legal persons: (i) the Registries, (ii) REs (mostly TCSPs), (iii) supervision and discrepancy reporting by competent authorities, and (iv) obligations posed on legal persons, managing officials and resident agents. Competent authorities confirmed that they can access basic and BO information with respect to legal persons without any obstacle.

*Registries*

844. The Guernsey and Alderney Registries implement a series of measures to ensure that the basic and BO information they hold is accurate and current. The Registries are 100% populated with basic and BO information. The accuracy of the registered data is checked before incorporation/registration of the legal persons, and upon any change. Additionally, annual validations confirm that the basic and BO information held by the Registries remains accurate and current. These measures are overall effective (see section 7.2.3). There are still some issues which impact the extent to which the information available is accurate, current and up-to-date.

845. The Registries have conducted data comparison exercises to ensure the accuracy and currency of the information they hold. The Guernsey Registry conducted cross-check against: (a) data held by the Revenue Service on residents involved in Guernsey Companies (2020-2022 data); (b) against information obtained from the UK Land Registry and the Register of Overseas Entities; and (c) against the FIU database covering approx. 1% of legal persons identified as high risk by the Guernsey Registry (in 2022). The cross-check with the Revenue Service data is still on-going and anomalies identified are still being analysed. The other cross-check exercises did not result in any discrepancies being identified.

846. Similar exercises are conducted by the Alderney Register with the UK Register of Overseas Entities annually since 2022. Checks against the FIU database for all legal persons were carried out in 2021 and 2024, while it also cross-checked its registered BO information with that held by the AGCC in 2022 and 2023. No discrepancies resulted from these cross-checks.

847. Cross-checks against the BO registers are also routinely carried out by the GFSC, the Revenue Service and the FIU in the course of carrying out their functions. Cross-checks are carried out by the GFSC when inspecting TCSPs and for those legal persons for which the TCSP acts as a resident agent. Over the evaluation period up until October 2023, the GFSC had considered 620 Guernsey-registered legal persons through its onsite supervisory activities on TCSPs. However, it only ran cross-checks on 225 (i.e. roughly one-third) of the examined legal persons where the TCSP was acting as a resident agent. In total the GFSC raised 20 discrepancies with the Registry and ensured that any discrepancies were rectified by the respective TCSP. The FIU and the Revenue Service did not identify any discrepancy.

848. The Registries also carry out supervisory functions including analysis of registry data, and most notably, desk-based enquires, thematics and on-site supervision on registered legal persons. This supervisory function reduces the reliance on the information provided by legal persons and their resident agents. On-site supervision commenced in May 2023. Between May 2023 and April 2024, a total of 297 legal persons with resident agents were inspected.

849. Legal persons are selected for inspections, based on the risk-rating, data anomalies (derived from an analysis of registry data), and other intelligence such as findings from desk-based thematics, adverse media reports, lateness with filing requirements, and BO categorisation. The risk factors considered are relevant and effective to select the types of entities where a higher focus should be put. Various records are inspected and compared with information filed with the Guernsey Registry. These corporate structure charts, evidence used to determine the BO, and registers held by the entities for BOs, members and directors, as well as records of nominees and nominators, financial statements and company resolutions.

850. These supervisory examinations are of good quality and an effective tool in ensuring that BO information held within the register is adequate, current and up to date. This procedure is relatively recent with only 267 of the total 17836 companies (i.e. 1.7%) covered between May 2023 to April 2024. These 267 companies included six high risk ones and twenty (20) medium-high risk. When considering that the Guernsey Registry classifies 178 legal persons as high risk

and 3,929 as medium-high (see Table 7.1), the coverage of the higher risk entities has been quite limited. The Registry is commended for initiating this process and encouraged to step-up its implementation.

851. Other limitations impact the availability of BO information through the BO Registers. Where shares in a legal person are held in a trust administered by a GFSC-licensed trustee, there is no obligation to disclose information to the Registries on the beneficiaries of the trust (i.e. the ultimate BOs of the legal person), and other trust parties (i.e. settlor and protector) who may control the trust and thus the legal person. This information always remains available through the GFSC and the REs servicing the legal person and the trust, but for a limited number of companies (i.e. at least 1,741 legal persons) administered through a GFSC licensed TCSP, information is not available in the Guernsey Registry.

852. With regards to the updating of registered BO information, BOs must notify the legal person's resident agent within seven days of becoming BOs. The resident agent then has 14 days to update its records and those at the BO register. The submission to the Registry will include the effective date when one became a BO and the date when the resident agent was informed. This information allows for the detection of late submissions. The Guernsey Registry ran such an exercise close to the on-site visit and managed to identify some cases of late submissions by both licensed TCSPs and non-licensed resident agents. The number of detected late submissions was small (i.e. 14), with eight cases being cases of resubmission information which was originally reported inaccurately and six being late due to the deployment of new IT systems. This limited number may also be a result of the limited period of BO changes notifications covered through this exercise (i.e. December 2023 to April 2024). The Guernsey Registry is encouraged to extend this useful check to ensure continued timeliness in BO changes notifications.

853. In addition, from the supervisory examinations conducted since May 2023 the Guernsey Registrar uncovered instances (in 16 legal persons - 6% - of the 297 legal persons reviewed), where the BO on record with the resident agent (in Guernsey) was different from that reported on the register, with the one held with the resident agent being the correct one. The Registry is actioning these cases through remediation plans. A total of 17 RMPs have been imposed, out of which 6 were eventually considered unjustified as either the information had been correctly reported or the legal person was exempt from the obligation to have a resident agent. All remaining 11 RMPs were eventually implemented by mid-August 2024. Delays in implementation were mainly due to the communication issues between the Registry and the legal person, which led to a review and enhancement of the procedures governing the said reviews. This finding reflects an earlier one resulting from the GFSC's own thematic review, that the submission of incorrect or inaccurate BO data are limited.

*Reporting Entities*

854. Another source of basic and BO information are the REs. As highlighted in the previous section the level of CDD (identification and verification measures and updating of CDD information) on legal persons in place by Banks and TCSPs is good and effective. Some concerns were noted with some REs in the investment sector when it comes to identifying BOs that control a legal person through other means.

855. The level of compliance rests also with the effectiveness of BO obligations supervision by the GFSC, especially when it comes to TCSPs. BO checks are undertaken during every routine onsite inspection. This comprises the reviewing of an RE's policies and procedures and its compliance monitoring programme for ascertaining BOs and the CDD checks that are applied. The BO and CDD records for a sample of client files are reviewed and checked against the BO Register

at the relevant Registry (see comments on the limited number of such checks above). During the review period the GFSC carried out on-site inspections on almost one-third of licensed TCSPs (i.e. 52) servicing a total of 5,522 legal persons. Just over 620 legal persons were reviewed as part of the GFSC's sample check. A further 170 legal person's files were reviewed in onsite inspections to other REs during the evaluation period. Hence, the coverage of legal persons through on-site examinations was limited throughout the review period.

856. Apart from the routine inspections, the GFSC also carried out one BO thematic exercise on TCSPs in 2018. This thematic examination focused on TCSPs acting as resident agents (i.e. 190) and their compliance with BO disclosure obligations, including to the Registry. The said examination comprised two parts; collection of information through an ad hoc questionnaire and then, based on an analysis of data, the selection of a number of TCSPs for an on-site inspection.

857. The questionnaire contained very pertinent questions, including: (i) whether the TCSP was request to change a legal person's structure since the introduction of the BO disclosure obligations, (ii) type of BOs identified, (iii) activities carried out by the legal persons serviced; (iv) level of direct contact with the BOs; and (v) ownership of legal persons via a legal arrangement.

858. Some relevant results came out including that only 8% of legal persons administered by TCSP had senior managers as BOs, and in two thirds of all corporate clients reviewed the TCSP had physically met the BOs. Moreover, there were very few instances when the TCSP was asked to restructure an entity's structure following the introduction the BO Register. This is quite telling, and indicative of no particular concerns with BO concealment. There were only twelve instances reported, with two of these involving the relocation of the legal person from Guernsey to another jurisdiction and in seven cases through the inclusion of a trust in the ownership and control structure.

859. The on-site inspections covered 20 TCSPs and a total of 381 company files. Issues were identified in only 18 files. These issues did not include cases where BOs were erroneously determined, but rather situations where incorrect or incomplete information was made available to the BO registers. The said issues were subsequently corrected and the GFSC ascertained itself of as much. BO obligations were also to an extent indirectly considered through the thematic reviews on SOW/SOF (2020), and on PEPs (2023).

860. From the supervisory examinations outlined above as well as the meetings held with the private sector (see IO4) the level of compliance when it comes to beneficial ownership is assessed to be good. The GFSC made available several remediation and enforcement case studies. It was only in two of these that serious BO related shortcomings were identified (i.e. BO concealment). In one case enforcement action was taken on four directors of the TCSP (fines ranging from GBP14,000 to GBP100,000) while in the other enforcement procedures are pending.

861. The IO4 report highlights some findings related to the misapplication of SDD on intermediaries within the investment sector. The AT does not consider these relevant for IO5 purposes. This since the number of cases where the underlying investors would qualify as BOs in terms of ownership or control is deemed to be very limited. The AT was also provided with case studies showing that the GFSC does monitor such cases and the adequate application of SDD.

*Revenue Service*

862. As of 2021, the Revenue Service commenced on-site inspections to ensure compliance with CRS requirements. Until the end of the review period it carried out 44 such inspections, comprising 35 TCSPs, 7 banks and 2 investment services licensees. An integral part of these CRS inspections include monitoring the RE's adherence to its BO obligations. The Revenue Service apply a risk-based approach in the carrying out of these inspections. Prior to the on-site

inspection the CRS/FATCA reports filed by the entity, any relevant intelligence and the answers to a pre-inspection questionnaire, are reviewed to better understand the entity and identify a set of sample files. On average, this sample includes 12 to 20 files selected on a risk-sensitive basis. In addition a random sample of 5 to 7 files are also reviewed during the on-site. The sample can be increased where systemic issues are identified, and an independent inspector appointed. It is unclear whether this ever happened in practice. No major issues of non-compliance with BO requirements were identified. The AT believes that a widening of the sample size in proportion to the customer-base of the RE would increase the effectiveness of these inspections in identifying potential BO compliance issues.

863. There is also an effective degree of cooperation between authorities when it comes to the inspections they carry out as they share their respective list of intended inspections so as to avoid repeatedly examining the same obliged entity.

*Access to Basic and Beneficial Ownership Information*

864. Competent authorities may access basic and BO information from multiple sources, applying a multi-pronged approach. The basic information in the Registries is publicly available and, in the case of the Guernsey Registry, is accessible by competent authorities through its online portal. The BO information on the Registries is also accessible electronically.

865. REs are another source of basic and BO information for the competent authorities. This is especially true of TCSPs where the legal person is held in trust or the information accessible through the Registries is to be supplemented by CDD documentation.

866. The FIU receives several RFIs for BO information. It was always able to obtain the requested BO information and never received any negative feedback on the adequacy or accuracy of the basic and BO information provided.

**Table 7.5: Requests for Information from Counterpart FIUs involving BO Information**

| Year | No. of Requests | No. of BO information requests | No. of BO information responses | Cases were BO information on Trusts was provided | Cases were information was obtained via requests to TCSPs |
|---|---|---|---|---|---|
| **2018** | 85 | 15 | 20[91] | 5 Trusts | - |
| **2019** | 70 | 11 | 15 | 5 Trusts | 1 |
| **2020** | 48 | 27 | 25 | 4 Trusts | 10 |
| **2021** | 70 | 25 | 24 | 4 Trusts | 7 |
| **2022** | 79 | 22 | 19 | 3 Trusts | 6 |
| **2023** | 71 | 18 | 17 | 15 Trusts | 2 |

867. The FIU also receives Beneficial Ownership Information Requests ('BOIR') from UK authorities within the framework of the EoN framework:

**Table 7.6 – BOIR received within the EoN Framework by the FIU**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|---|

[91] The higher number of BO information responses in 2018 and 2019 compared to BO information requests is due to responses provided by the FIU for entities even in the absence of an express request for BO information.

| | | | | | | |
|---|---|---|---|---|---|---|
| **Requests Received** | 12 | 9 | 6 | 10 | 12 | 4 |
| **Full Replies** | 8 | 6 | 6 | 6 | 10 | 3 |
| **Partial Replies** | 2 | 0 | 0 | 0 | 0 | 1 |
| **Nil Replies** | 2 | 3 | 0 | 4 | 2 | 0 |

868. The scenarios resulting in a nil reply are usually three, i.e. the legal person for which BO information is requested: (i) does not exist or (ii) is not established in Guernsey; or (iii) the information provided to identify the legal person is insufficient to determine the actual legal person for which BO information is sought.

869. Notwithstanding the availability of BO Registers, there is still reliance (though not significant – see Table 7.5) by the FIU on TCSPs to obtain information to reply to BO information requests accurately and adequately.

870. The Revenue Service is likewise able to obtain and share BO information with its foreign counterparts effectively. It received a total of 392 EOI requests from its counterparts. 152 of this required BO information. 129 of these related to legal persons.

**Table 7.7 – EOI Requests involving BO information – Revenue Services**

| Year | EOI requests | Related to Beneficial Ownership | Company/Legal Person only | Trust/Legal Arrangement only | Trust with asset holding Legal Person | Individual only |
|---|---|---|---|---|---|---|
| **2018** | **42** | 13 | 4 | 2 | 7 | 0 |
| **2019** | **68** | 36 | 6 | 2 | 28 | 0 |
| **2020** | **65** | 23 | 11 | 0 | 8 | 4 |
| **2021** | **87** | 39 | 9 | 4 | 26 | 0 |
| **2022** | **60** | 16 | 3 | 2 | 11 | 0 |
| **2023** | **70** | 25 | 3 | 8 | 13 | 1 |
| | **392** | **152** | **36** | **18** | **93** | **5** |

871. All requests were replied to. In some instances (61 EOIRs), the counterpart authorities informed the Revenue Service that the information provided was of particular assistance, enabling them to also uncover a number of tax evasion cases.

872. The same can be said of the EFCB, the Bailiwick law enforcement agencies and the LOC, which have successfully sourced basic and BO information from the Registries to meet their own investigative requirements and provide assistance to their counterparts abroad.

### *7.2.5. Timely access to adequate, accurate and current beneficial ownership information on legal arrangements*

873. The situation involving legal arrangements (i.e. trusts) is somewhat different from that of legal persons. There is no BO register for trusts, nor an obligation to have a figure like the resident agent in place. Notwithstanding, competent authorities are still able to obtain BO information from a number of sources, namely the managing officials of trusts, REs and in particular TCSPs,

the BO Registries (where trusts form part of the ownership structure of a legal person), and other competent authorities like the GFSC and the Revenue Service. The effectiveness of the preventive and supervisory measures gain more weight here. All competent authorities confirmed that they effectively obtain BO information with respect to trusts.

874. In addition, a small number of trusts are administered by non-professional trustees who are obliged to obtain and retain trust and BO information. These are not subject to supervision by the GFSC, but by the Revenue Service for tax compliance purposes. There are only a limited number of these trustees and declining (i.e. at December 2021, there were 134 such trusts, with 70% of these holding Guernsey real estate (directly or through Guernsey companies). Non-professional trustees would be often acting in a family or social context, having a close relationship with the settlor and with the trust established for succession planning. Their use is declining also as changes to the Bailiwick's inheritance laws have made the use of trusts for succession planning less prevalent. The Revenue Service carried out a thematic review (explained below) on these trustees which indicated that the level of compliance with trust and BO information retention was effective.

875. As explained under section 7.2.4 the level of CDD carried out by TCSPs is good. REs are required to identify and verify all trust parties in line with the definition of BO for trusts and similar legal arrangements, except in case of GFSC licensed trustees. BO information in such cases is available from the GFSC.

876. With regards to the adequacy of BO supervision for legal arrangements, the GFSC explained that its examinations involve reviewing the policies and procedures of the TCSPs, as well as the adequacy of the TCSP's compliance monitoring programme. 52 TCSPs were reviewed by the GFSC during the review period which were responsible for the administration of just over 7,000 trusts. However, the actual number of trusts looked at as part of the customer file reviews is quite limited, totalling 267 legal arrangements. A further 35 trusts were reviewed through examinations carried out on 35 banks. This represents a very small percentage (i.e. just over 2%) of the total number of trusts administered by TCSPs established in the Bailiwick. The GFSC explained that in some cases, determining the BO of a legal person includes understanding also the beneficial ownership of trusts administered by the same TCSP as it is common for structures to comprise both a legal person and a legal arrangement set up under Guernsey law. However, the AT notes that the number of legal persons with trusts in their structures while not uncommon is not as extensive (i.e. 1,848 legal persons). The GFSC's supervisory activity is complemented by that of the Revenue Service as explained further on. This is especially relevant as of the 13,078 trusts in Guernsey, 10,186 (78%) are reportable under the CRS/FATCA reporting requirements.

877. The Registries are another source through which BO information on trusts can be obtained. However, the number of legal persons with trusts in their ownership and control structure is very limited (i.e. 1,848) with 1,741 thereof being administered by GFSC licensed trustees which are exempted from reporting beneficiary information (see section 7.2.4.). Compared to the 13,000 circa trusts administered by Guernsey TCSPs, this represents a very small number of trusts for which BO information may be sourced from the Registries. The Registry websites contain useful guidance containing relevant examples of different situations that may arise in respect of trusts including on how to apply the 3-tier test in more complex cases[92].

878. Another source of basic and BO information for trusts, is the Revenue Service. Anyone resident in Guernsey has to declare within the income tax return whether the person has an

[92] Beneficial Ownership Guidance - Guernsey Registry & Beneficial Ownership - Alderney Court.

interest in a partnership and/or whether the person is a settlor in a trust. Where the taxpayer (or their spouse) is a settlor they are required to provide information on the name of the trust, the date of settlement, the name(s) and address(es) of trustees, whether the trust is revocable, and detail any income arising/accruing from the trust in the calendar year. In addition, from 2022, all taxpayers must declare whether they act as non-professional trustees (i.e. trustee not by way of business).

879. The Revenue Service runs a series of validation checks to verify the information received from non-professional trustee and to also understand the risks involved. The Revenue Service validates the identity of any settlor, beneficiary, trustee and protector, it checks where the relevant information and documentation is being kept, screens the names through a third-party software solution, and carries out cross-checks against other tax returns and information to make sure that there is consistency between the information provided, especially by different parties who may all be subject to the same disclosure requirements to the Revenue Service.

880. While the number of non-professional trustees has been declining, they still play a role in accessing basic and BO information when it comes to trusts. Between 2023 and 2024 the Revenue Service carried out a thematic review on non-professional trustees, to assess whether they retain all the necessary information on the trust and the parties thereto. The Revenue Service did not identify any major issue through this exercise. This review however helped to identify two cases of tax evasion, involving trusts which were initially flagged via disclosures received from the FIU and the GFSC.

881. As already mentioned, 35 TCSPs were reviewed by the Revenue Service for compliance with CRS/FATCA reporting requirements. The AT was informed that these TCSPs administered a total of 4,415 trusts. These checks included an assessment of the quality of TCSP's policies and procedures to determine beneficial ownership, and of a sample of customer files. The Revenue Service however did not provide data on the number of actual trusts included within these samples and hence it is not possible to determine the effectiveness of these inspections to ensure the correctness of BO information held by the examined TCSPs.

882. Trusts feature significantly in requests for information received by both the Revenue Service and the FIU (see Tables 7.5 and 7.7). Both authorities fulfil these requests for information. In particular, the Revenue Service, obtains BO information in a timely manner from trusts (regulated and non-regulated) voluntarily, and, in most cases, by using its information gathering powers under the Income Tax Law. Of the 139 information notices issued by the Revenue Service in 2022 and 2023, the large majority of the required information was provided upon first request. Where the information was not complete or required clarification (8% of cases), a further information notice was issued requiring clarification, with all the required information subsequently obtained.

883. The EFCB, the Bailiwick law enforcement agencies, and the LOC, all successfully source BO information on trusts to meet their own investigative requirements and provide assistance to their counterparts abroad.

### *7.2.6. Effectiveness, proportionality and dissuasiveness of sanctions*

884. A range of administrative and criminal sanctions for failing to provide basic and BO information are available.

*Registries*

885. The two Registries may impose financial penalties where: legal persons fail to keep their own registers updated or and to keep them at the registered office, fail to notify changes to basic

information, do not appoint a resident agent or fail to submit other information or documentation to the Registry. The said financial penalties have undergone a series of revisions over the review period and today range from GBP90 to GBP2,500 depending on the nature of the breach, the period of the default and whether the legal person is licensed by the GFSC or a NPO. The system of civil penalties was introduced gradually as from 2020, when the first range of civil penalties for failure to file annual validations were introduced. The process was completed at the end of 2023 when civil penalties became applicable to all information retention, updating and notification requirements. Prior to 2020, financial penalties consisted of late filing fees which varied depending on whether the legal person was administered by a TCSP or not.

886. Civil penalties are imposed for different requirements and the amount depends on the delay in filing the necessary information with the registry. There are fixed amounts for a delay of one week, delays between one week and one month, and delays exceeding one month. Some obligations like having a resident agent, are subject to a flat civil penalty of GBP2,500.

887. Table 7.8 shows the financial penalties imposed over the review period for late filing of changes in directors or the annual validation:

**Table 7.8 - Financial Penalties Imposed by the Guernsey Registry – Changes in Directors' Notification and Annual Validation**

| | **Guernsey Registry** | | | |
|---|---|---|---|---|
| **Year** | **Number of late change of director filings** | **Financial penalties (change of director late filing)** | **Number of financial penalties issued – Annual Validation** | **Value of financial penalties paid - Annual Validation** |
| 2018 | 1123 | £59,392 | 347 | £69,000 |
| 2019 | 985 | £47,070 | 385 | £63,000 |
| 2020 | 1092 | £50,922 | 459 | £66,000 |
| 2021 | 968 | £114,935 | 210 | £132,750 |
| 2022 | 781 | £93,515 | 209 | £117,500 |
| 2023 | 790 | £94,170 | 312 | £206,250 |
| | **Alderney Registry** | | | |
| | **Number of financial penalties issued – Annual Validation** | | **Value of financial penalties paid - Annual Validation** | |
| 2018 | 14 | | £1600 | |
| 2019 | 20 | | £2400 | |
| 2020 | 13 | | £1520 | |
| 2021 | 7 | | £3680 | |
| 2022 | 12 | | £1280 | |
| 2023 | 11 | | £3400 | |

888. Annual validations and notifications of directors' changes are in their large majority filed on time (i.e. 98% (Guernsey) and 96% (Alderney) of annual validations are filed on time as are 86% of notifications relative to directors). Moreover, most late submissions are filed within one (1) month from the end of the submission period. Even though the average penalty for late filing of annual validation as from 2021 is quite low (i.e. GBP600) the levels of compliance with these notifications are very high, indicating no concerns in this area.

889. Unpaid penalties lead to the issuance of public statements on the website of both registers once the said penalty is confirmed via a court judgement. No public statement has been issued by the Alderney Register during the review period as all penalties were paid. The Guernsey Registry issued 27 statements in 2023 and 38 in 2022. In these cases the status of the legal person on the Registry is marked as 'In Default', which also has a detrimental reputational effect and contributes to added levels of compliance.

890. No penalties were issued during the review period against legal persons for not keeping their registers updated, including the registers of members which is especially important for Guernsey legal persons as it is the main source of information for comprehensive and updated shareholders' (or equivalent) information. The Registries may also impose discretionary financial penalties of up to GBP20,000 for BO information compliance failures. Likewise, these powers have not yet been exercised, with the Registries' approach being that of addressing any concerns through remediation plans. The AT cannot conclude that this is owed to good compliance levels since on-site inspections (on this aspect) only started in 2023 (see section 7.2.4).

891. The Registries may also strike-off any legal person that fails to comply with its obligation to: (a) appoint a resident agent, (b) submit an annual validation; (c) persistent or gross contraventions of the legal persons' laws (including, failure to comply with information requirements); (e) pay a civil penalty; (f) comply with economic substance requirements; (g) give written notice of a new registered office or the existence of an ineffective registered office (companies and foundations); and (h) to have the minimum required number of managing officials. The Registries may also strike off defunct legal persons (i.e. no longer active).

**Table 7.9 – Strike-Offs – Guernsey and Alderney Registers – 2018 - 2023**

| Year | Total strike offs | Failure to file annual validation | Defaulting/Defunct/Inactive | No resident agent | No managing official | Ineffective Registered Office |
|---|---|---|---|---|---|---|
| **Guernsey Registry** | | | | | | |
| **2018** | 303 | 256 | 9 | 6 | 0 | 32 |
| **2019** | 312 | 268 | 3 | 9 | 1 | 31 |
| **2020** | 222 | 166 | 5 | 8 | 1 | 42 |
| **2021** | 121 | 39 | 6 | 16 | 13 | 47 |
| **2022** | 96 | 20 | 1 | 27 | 19 | 29 |
| **2023** | 403 | 43 | 291[93] | 19 | 11 | 39 |
| **Alderney Registry** | | | | | | |
| **2018** | 28 | 19 | 9 | 0 | 0 | 0 |
| **2019** | 18 | 12 | 5 | 1 | 0 | 0 |
| **2020** | 19 | 17 | 2 | 0 | 0 | 0 |
| **2021** | 23 | 16 | 7 | 0 | 0 | 0 |
| **2022** | 27 | 9 | 15 | 3 | 0 | 0 |
| **2023** | 30 | 13 | 11 | 6 | 0 | 0 |

892. Very few legal persons that were struck-off were re-instated on the Registers. Over the review period this happened only in the case of 60 Guernsey companies out of 1,457 struck-off legal persons and only once all updated basic, BO and other required information, had been provided. The strike-off process is therefore a very effective tool. It has been mainly used with respect to failures to file annual validations. The registry also explained that the striking off takes

[93] The increase in struck-off legal persons in 2023 is a result of the thematic exercise carried out by the Guernsey Registry in 2023. The purpose of the exercise was to establish whether a number of winding up, insolvency or UK Court Orders proceedings had been concluded and thus the companies were in fact defunct. Of the 405 companies identified as undergoing such proceedings, 290 companies were considered defunct and were struck off the Register in 2023.

place after the concerned entity is notified and pre-warned. This in itself also contributes to ensuring compliance. By way of example 75% of all legal persons who were notified in view of failure to have a resident-agent remedied the situation within the two-month striking-off pre-notice. The manner in which this measure is implemented however has some negative repercussions. This since in the case of struck-off companies the Registry does not up date its records, while no adverse information/intelligence checks are carried out with the FIU/EFCB prior to proceeding with the strike-off.

893. There is no stand-alone power to strike-off a legal person for BO disclosure breaches. There are however a series of administrative and criminal sanctions that may be applied on the legal person and/or its resident agent. The Registries opine that such breaches could still lead to the striking-off of the legal person concerned as long as such breaches are considered as gross or persistent contraventions of the law. The authorities explained that they had no such instances where a strike-off on these grounds would have been justified.

894. Apart from civil or discretionary financial penalties, failures to comply with information updating obligations and notification requirements constitute criminal offences subject to fines and/or a term of imprisonment. These sanctioning powers were never used as over the review period there were no serious cases, that would justify such action.

895. Furthermore, where legal persons fail to comply with basic and BO information requirements, the Registries have other measures available, including: private reprimands, public statements and restriction on shareholders' rights (including voting and dividend rights). These measures were likewise not used.

*GFSC*

896. The sanctioning methodology adopted by the GFSC has already been discussed under section 6.2.5 with the findings likewise relevant for this core-issue. TCSPs are one of the most sanctioned sectors when compared to the rest but the concerns expressed under section 6.2.5 still pose a limitation on the effective and dissuasive nature of the sanctions applied. In addition, the issues identified with the risk assessment and supervisory process are a limitation on the ability of the GFSC itself to identify situations where sanctioning may be called for.

*Revenue Service*

897. The Revenue Services also has a range of enforcement powers for breaches of the income tax law. There are also criminal sanctions, however these have not been applied during the review period as there were no serious cases warranting such sanctions. Penalties imposed for late filing of tax returns are set out below. The Revenue Service indicated that none of the late submitters were trustees.

**Table 7.10 - Number of Tax Returns Filed Late and Issued with Penalties**

| Tax Year | 2021 | 2020 | 2019 |
|---|---|---|---|
| Personal tax returns received | 32,900 | 33,200 | 33,000 |
| *of which - those that declared income from a trust* | *25* | *18* | *10* |
| Company tax returns received | 18,600 | 17,700 | 16,600 |
| *of which - those that are trustee cases*[94] | *51* | *53* | *48* |
| Total received late and automatically issued with late filing penalties | 4,500 | 4,600 | 9,900 |

[94] Trustee cases are those where a trustee is chargeable to income tax for income arising from assets held in the trust.

| | | | |
|---|---|---|---|
| *of which - personal* | *2,800* | *3,000* | - |
| *of which - company* | *1,700* | *1,600* | - |
| Total initial and daily late filing penalties | *£4,593,500* | *£6,103,970* | |
| *Of which personal* | *£1,213,560* | *£2,094,320* | |
| *Of which company* | *£3,379,940* | *£4,009,650* | |

898. Penalties are also imposed where the information provided is either incorrect or incomplete (and a decision is made not to prosecute for a criminal offence). These are usually cases uncovered through civil investigations into tax evasion leading to different forms of sanctioning, including to additional tax and surcharges:

**Table 7.11 - Number of Omissions Identified in Domestic Tax Returns and Penalties Imposed with respect to Legal Persons and Arrangements**

| Year | No. of Cases Settled | Total Omissions | Additional Tax | Surcharges | Penalties | Total Settlement |
|---|---|---|---|---|---|---|
| 2018 | 4 | £478,894 | 76,260 | £30,217 | 0 | £106,477 |
| 2019 | 2 | £1,340,280 | 283,018 | £225,629 | £30,150 | £538,797 |
| 2020 | 4 | £2,599,814 | 400,116 | £6,548 | 0 | £406,664 |
| 2021 | 4 | £4,068,734 | 647,366 | £258,502 | In process | £905,868 |
| 2022 | 1 | £2,052,911 | 410,582 | £459,017 | £165,000 | £1,035,099 |

899. Penalties are also applied where a RE does not comply with its CRS obligations (i.e. non-filing or filing of incorrect information). The compliance rate in terms of filings was very high (i.e. on average 97% over the years 2021 – 2023 and reaching as much as 99% in 2023), resulting in very few cases subject to penalties.

**Table 7.12 – Number of Penalties Issued for Late CRS Reporting**

| Year Late CRS Penalties Imposed | CRS Reporting Period | Total Number of Late CRS Penalties | Value of Total Late CRS Penalties |
|---|---|---|---|
| 2022 | 2021 | 192 | £57,600 |
| 2023 | 2022 | 130 | £39,000 |

**Table 7.13 – Number of Continuing Penalties Issued for Late CRS Reporting**

| Year Late CRS Penalties Imposed | CRS Reporting Periods | Total Number of CRS Continuing Penalties | Value of Total Late CRS Continuing Penalties |
|---|---|---|---|
| 2021 | 2019 | 1 | £17,650 |
| 2022 | 2019- 2021 | 20 | £74,300 |
| 2023 | 2019 -2022 | 83 | £393,100 |
| 2024 | 2019 -2022 | 8 | £89,900 |

900. While the number of late CRS submissions for which continuing penalties have been imposed has decreased in 2024, there were a significant number of such penalties imposed between 2022 and 2023 and for late submissions covering three to four years. It is therefore questionable whether the penalties imposed are sufficiently effective to ensure that deficiencies are corrected within the shortest time possible, thus ensuring that accurate and up-to-date BO information is made available to the Revenue Service. While the increase in continuing penalties has been explained to be the result of one CRS remediation case where daily penalties had to be escalated to GBP1,000 per day, the case hadn't been resolved until September 2024 and therefore puts into question the effectiveness of the penalties being imposed.

### *Overall conclusions on IO.5*

901. The Bailiwick has demonstrated a good risk understanding of the extent to which legal persons and arrangements can be misused for ML purposes, and an adequate but less developed understanding of TF Risk. The 2024 legal persons/arrangements provides a detailed analysis on how legal persons and arrangements can be exploited for ML/TF/PF, building on the earlier NRAs of 2021 and 2023. There are some aspects of ML/TF risk understanding that still need to be enhanced.

902. Bailiwick authorities have always managed to obtain BO information in a timely manner, with the exchange of information with counterpart authorities having never resulted in any negative feedback. It has adopted multi-pronged approach to BO transparency, which allows authorities to obtain accurate, adequate and up to date basic and BO information from multiple sources. These include the Registries, which hold both basic and BO information on legal persons, the different REs (especially TCSPs) and the use of resident agents. The supervisory activities of the GFSC are complemented by those of the Revenue Service, and more recently (i.e. 2023) the Registries. These are commendable efforts, which should be continued and expanded upon in terms of extent.

903. The Registries and the Revenue Service have a number of sanctioning measures at their disposal, including administrative and criminal penalties, as well as the possibility to have defaulting legal persons struck off from the Registries. Both authorities have imposed a series of administrative penalties, though the instances in which this was done were limited. The AT is of the view that the supervisory and enforcement actions to detect and deal with serious and systemic breaches need to be refined and expanded upon. Overall, the AT notes and gives due weighting to the fact that the level of compliance with BO obligations by Banks and TCSPs is good and effective, while supervisory and other BO data verification actions undertaken so far, as well as the international exchanges of BO data have not indicated any notable concerns of non-compliance with BO obligations.

904. **The Bailiwick is rated as having a substantial level of effectiveness for IO.5.**

# 8. INTERNATIONAL COOPERATION

## 8.1. Key Findings and Recommended Actions

***Key Findings***

***Immediate Outcome 2***

a) The Law Officers' ECU MLA Team demonstrated professional efficiency in executing incoming MLA requests with comprehensive processes, detailed guidance for the practitioners, and mechanisms for prioritisation and case management. As a result, the response times have been gradually and significantly reduced throughout the assessment period.

b) Legal assistance has not been sought to an extent that would be commensurate with the risk profile of the jurisdiction and the potential volume of illicit assets held in the Bailiwick. The low number of outgoing MLAs is likely attributable to the underperformance of the recently established EFCB for reasons described under IO7.

c) LEAs seek and provide international cooperation through various formal and informal channels, but these possibilities appear to be far from being exhausted (such as the use of CARIN network by the EFCB).

d) Other competent authorities of the Bailiwick, notably the supervisory authorities and the Revenue Service, actively seek and provide other forms of international cooperation either to pursue domestic ML or other crimes, or for regulatory objectives.

e) The FIU cooperates regularly and effectively with its foreign counterparts (mainly the UK) actively seeking and providing information in a timely way and good quality, both spontaneously and upon request. However, the number of requests to foreign counterparts appears not to be in line with the country's risk profile as an IFC.

f) The Guernsey authorities share BO information with their foreign counterparts upon request with due proactivity. All relevant authorities demonstrated their capability to respond to such requests in a timely and effective way.

***Recommended Actions***

***Immediate Outcome 2***

a) In line with the conclusions under IO7, Guernsey authorities should increase their efforts to obtain the necessary resources for the EFCB to the extent it is required for its capacities to identify and seek information and evidence abroad which is expected to result in initiating more, targeted LORs in line with the jurisdiction's risk profile.

b) The LOC and other competent authorities should continue their efforts in implementing the recently adopted set of guidance documents in the field of MLA and extradition so as to ensure that the current, smooth processes will remain as effective for handling an increased number of incoming and outgoing requests.

c) The FIU should more systematically seek the assistance of foreign counterparts when links with foreign countries are identified especially in complex ML cases.

905. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40 and elements of R.9, 15, 24, 25 and 32.

## 8.2. Immediate Outcome 2 (International Cooperation)

### *8.2.1. Providing constructive and timely MLA and extradition*

906. The AT acknowledge the commitment of the Bailiwick to providing MLA throughout the assessment period. Following the first few years of the assessment period characterized by longer response times (see below in Table 2.1) all authorities involved, but most notably the LOC Economic Crime Unit (ECU) and its MLA Team, excelled in addressing foreign requests in a more effective and timely way every year, which was convincingly corroborated by the positive feedback gathered and received from the requesting countries.

*MLA procedural outline and resources*

907. The Bailiwick has the legal and institutional framework in place to provide the widest possible range of MLA. The LOC (through the person of the Attorney General) are the competent central authority for responding to requests for MLA and extradition, which are dealt with by a dedicated MLA Team within the ECU. It comprises a full-time Lawyer and Senior Officer, supported by a paralegal, and executive legal assistants who also assist other teams in the ECU. The authorities advised that both the ECU and its MLA Team are well-resourced to make and coordinate requests for MLA and extradition.

908. The MLA Team is assisted by the BLE and the EFCB, whose members act as their agents for execution purposes such as preparing drafts of affidavits, or information to support applications for coercive orders. In practice, applications for assistance are often received after preliminary contact has been made at an early stage in an investigation and advice has been given by the LEAs or the FIU or as a result of spontaneous intelligence being disseminated by the FIU.

909. Such preliminary contacts are also suggested in the document entitled Guidance on Applying to the Bailiwick of Guernsey for Mutual Legal Assistance which is published on the Law Officers' website with comprehensive information for requesting countries facilitating the process to submit an MLA request and how to contact the LOC MLA Team for further support and information which, as confirmed by some of the positive feedback shared with the AT, has routinely been provided upon request.

910. At a legislative or judicial level, there are very few procedural rules applicable to MLA requests, and such that exist are primarily there to facilitate the provision of assistance (e.g. through the admissibility of foreign court orders). The Bailiwick does not require a treaty, MoU or other agreement to be in place in order to provide assistance or to share or repatriate assets, which all give the jurisdiction the flexibility to provide MLA in whatever way is most effective.

*Case management and prioritisation*

911. The process to be followed by the MLA Team in dealing with MLA requests is set out in a range of internal policy and guidance documents, such as the Prioritisation Policy[95] that sets out a risk-based approach to prioritising MLA requests, the MLA Manual[96] that sets out the process

[95] Policy and Procedure for a Risk-Based Approach to Responding to Requests for Mutual Legal Assistance (October 2023)

[96] Manual on the Provision of Mutual Legal Assistance (October 2023)

for dealing with MLA requests once prioritised, the Recording Guidelines[97] that assist in cataloguing incoming MLA requests for both statistical and operational purposes, and the Asset Sharing Policy[98] that sets out the principles and processes to be applied when considering asset sharing or repatriation.

912. Whilst the number, the coverage and the objectives of these documents are impressive, the AT needs to note that most of them were or appear to have been issued only recently (e.g. in October 2023) and therefore they could not have had a significant impact on the timeliness and effectiveness of the execution of incoming MLA requests. Some of these policy documents had however been preceded by similar ones, such as the Prioritisation Policy the previous version of which was to implement the findings of NRA1, as well as a less detailed, internal MLA guidance document that had been in place since 2016 and an MoU with the BLE on the handling of MLA requests from 2019.

913. The MLA Team uses a SharePoint-based electronic case management system which also records the operational history and outcome of MLA requests together with a wide range of supplementary details, which in turn enables detailed statistical analysis to be carried out. To maintain confidentiality, access to the CMS is limited to certain users on a need-to-know basis and each LOR is logged onto the CMS within its own dedicated workspace.

914. When receiving a LOR, the MLA Lawyer and/or the MLA Senior Officer undertake an initial review within 5 working days (or earlier in case of urgency) as part of which the request is prioritised in accordance with the Prioritisation policy, using a 2-stage process for cases of absolute and relative priority. Cases that involve pressing operational considerations (e.g. links to terrorism or TF, other threats to the safety of persons or property, etc.) are given the highest priority, and the rest are prioritised in line with the ML/TF/PF risks to the jurisdiction identified under the NRA process, as a result of which each case is assigned a priority rating (red-amber-green).

915. A prioritised LOR is reviewed in more detail to assess whether the information contained is sufficient to meet the legal tests for providing MLA (e.g. dual criminality) and if yes, a copy of the LOR along with a summary of the review is routinely sent to the EFCB and the FIU for de-conflicting (to avoid or prevent unwanted collision with domestic operations) and to make some preliminary enquiries, including establishing if the FIU retains any intelligence relating to the MLA. When the LOR has been fully approved by the MLA Team, the EFCB is requested to complete its enquiries in order to give effect to the LOR, which in many cases does not involve making any application to the Court just a statutory notice to the relevant individual or entity.

916. The average number of incoming MLA requests per year was 22 during the period subject to review with figures ranging from 15 to 30. The number of requests showed a pattern of decrease since 2022, which the authorities attributed to the increased use of other gateways, such as international tax information exchange mechanisms in recent years.

917. The tables below show that MLA was provided to a high degree, as approximately 88% of incoming requests has been executed (including withdrawn ones where preliminary enquiries were carried out). Of the remaining 14 cases, 12 were still pending at the time of the on-site visit (in some of which cases additional information was awaited from the requesting countries) and assistance has been refused in only 2 cases. These were linked requests from the same country

[97] Guidelines for recording requests for mutual legal assistance

[98] Asset Sharing & Repatriation Policy (undated)

and were refused for political reasons (in which respect the AT was given proper explanation onsite).

**TABLE 2.1: Total number of incoming requests and average execution time**

| | Received | Executed | Average time of execution (days)[99] | Pending as of 26.04.2024 | Refused |
|---|---|---|---|---|---|
| **2018** | 18 | 18 | 216 | 0 | 0 |
| **2019** | 30 | 29 | 141 | 0 | 1 |
| **2020** | 25 | 24 | 179 | 1 | 0 |
| **2021** | 26 | 24 | 85 | 1 | 1 |
| **2022** | 20 | 19 | 90 | 1 | 0 |
| **2023** | 15 | 13 | 49 | 2 | 0 |
| **Total** | **134** | **127** | | **5** | **2** |

918. As regards the notably longer response times for 2018 to 2020, the Guernsey authorities attributed these to staffing issues followed by restrictions under the global pandemic as well as to the extra time that was needed to deal with a small number of particularly time-consuming cases in those years. Reference was made, for example, to a request in 2020 for several production orders from local entities in support of high profile civil forfeiture proceedings in the requesting state, the provision of which assistance was delayed by the need to address an issue about the scope of the court's powers under the domestic legislation, which involved a number of court hearings (this legal issue has since been settled as a result of subsequent changes to the legislation).

919. The AT is inclined to accept that the 2018 figures (with few cases but extremely long response times) were caused by understaffing at the competent authorities. Then 2019 appears to show the positive results of the authorities' efforts (with significantly more requests dealt with in a considerably shorter timeframe) while 2020 was again a year of decline (less requests with longer response times) for the reasons discussed above. The response times then became considerably shorter in 2021 and 2022 (with not much fewer requests received) and finally dropped to a remarkably low level in 2023 (although with a similar drop in the number of requests) which appears to signify a positive trend attributable to the improved case management and prioritisation mechanisms as well as the early outreach to the requesting jurisdictions.

920. The Bailiwick had recently assessed the timeliness and quality of the MLA provided in a project coordinated by the FIU to obtain feedback, among others, from jurisdictions who had made MLA requests between 2018 and 2022. The findings from the feedback provided were predominantly positive, indicating general satisfaction with the timeliness of the assistance despite the temporary setback mentioned above. In addition, the Law Officers have received positive feedback on specific cases from individual jurisdictions (in most cases from the UK and the USA but also from others) praising the speed and efficiency of the responses.

*Practice in MLA matters*

921. Consistent with the Bailiwick's profile as an IFC, the incoming MLA requests were received from all over the world but, as was the case at the time of the last evaluation, the vast

[99] Without counting the time passed while waiting for additional information from the requesting jurisdiction.

majority came from the UK followed by the USA, Portugal (due to the presence of Portuguese communities in the Channel Islands) and Jersey.

**Table 2.2: Requesting jurisdictions (excerpt)**

| Requesting jurisdictions[100] | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|---|
| Belgium | 1 | | 2 | 1 | | |
| France | 1 | 1 | 4 | | | 1 |
| Germany | | 2 | | 1 | | 1 |
| Jersey | | 2 | 1 | 4 | | |
| Netherlands | 1 | 1 | 1 | | | 1 |
| Poland | 1 | | | 1 | 2 | |
| Portugal | | 1 | 2 | 4 | 4 | |
| Russia | 1 | 1 | | 1 | | |
| Switzerland | 1 | 1 | | 1 | | |
| United Kingdom | 3 | 14 | 7 | 7 | 3 | 3 |
| USA | 2 | 3 | 4 | 2 | 1 | 2 |

922. During the assessment period, four criminal confiscation orders with a combined value of just over £14 million and one non-conviction based forfeiture order with a value of just over £5 million were made at the request of other jurisdictions. In three of these cases, assets with a combined value of approximately £3,200 000 have been shared with the requesting country (see below). Of the remaining two cases, one is currently the subject of an appeal and tripartite negotiations about the repatriation of the assets are underway in the other.

923. The most common criminality occurring in the incoming requests was ML represented in 50% to 69% of all LORs received, while the most frequent predicate offence was fraud (including tax evasion), followed by corruption related offences, which is generally in line with the risk profile of the jurisdiction.

**Table 2.3: Requests by the underlying criminality**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|---|
| Money laundering | 9 | 20 | 14 | 18 | 9 | 9 |
| ← Proportion of ML related LORs | 50% | 66% | 56% | 69% | 45% | 60% |
| Participation in an OCG and racketeering | 1 | - | - | 3 | - | - |
| Illicit trafficking in narcotics etc. | - | 2 | 3 | 2 | 2 | - |
| Illicit trafficking in stolen goods | - | - | - | 1 | - | - |
| Corruption and bribery | 4 | 5 | 3 | 9 | 4 | 3 |
| Fraud (inc. tax crimes) | 15 | 23 | 11 | 12 | 13 | 9 |
| Counterfeiting, piracy of products | - | 1 | - | - | - | - |
| Murder, grievous bodily injury | - | | 2 | 1 | - | - |
| Robbery or theft | 4 | 2 | | 1 | 1 | 2 |
| Smuggling (all forms) | - | 1 | - | 1 | - | 1 |
| Extortion | - | 2 | 1 | - | - | 1 |
| Forgery | 1 | 2 | | - | 1 | 1 |
| Insider trading and market manipulation | 2 | - | - | - | - | 1 |
| Other | | 1 | - | 4 | - | - |
| **Total (LORs)** | **18** | **30** | **25** | **26** | **20** | **15** |

[100] Only jurisdictions from which more than 2 requests were received during the assessment period are indicated here.

924. Some of the relevant sectors were not affected at all by the requests, such as foreign legal arrangements, NPOs, emerging products and technologies including VASPs, the real estate sector as well as legal persons and legal arrangements with domestic activities. Nonetheless, the sectors or products most frequently involved in the requests (such as the private banking sector and TCSPs) are consistent with the risk profile of the Bailiwick.

**Table 2.4: Requests by sectors / product (relevant sectors only)**

| Sector/product | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total |
|---|---|---|---|---|---|---|---|
| Private banking sector | **9** | **4** | **5** | **2** | **2** | **4** | **26** |
| TCSP sector (legal persons & arrangements) | **5** | **3** | **10** | **9** | **6** | **4** | **37** |
| Foreign legal persons | **0** | **3** | **1** | **1** | 0 | 0 | **5** |
| Domestic legal persons & legal arrangements with cross-border activity | **0** | **5** | **4** | **3** | **4** | **0** | **16** |
| Retail banking sector | **0** | **8** | 0 | **1** | 0 | 0 | **9** |
| Investment sector (asset management etc) | **1** | **3** | **1** | 0 | 0 | **2** | **7** |
| Investment sector (collective investment schemes) | **0** | **1** | 0 | **1** | **1** | **0** | **3** |

925. While various forms of MLA have been provided, the majority of requests involved the provision of documentary evidence which appeared in more than half of all incoming LORs (ranging from 43% to 65%). Other requests for evidence (such as witness interviews) and service of documents were still represented to a notable extent.

**Table 2.5: Requests by nature of assistance sought**

| Nature of assistance | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|---|
| Restraint & obtaining doc. | 3 | | | 1 | 1 | |
| Restraint/freeze of assets | | 1 | | 3 | 2 | |
| Confiscation | 1 | 2 | 1 | 2 | 1 | 1 |
| Obtaining doc. evidence | 10 | 21 | 18 | 13 | 12 | 10 |
| Permission to use evidence for other purposes | 1 | 2 | | | | 1 |
| Witness interview | 5 | | 4 | 4 | | 2 |
| Service of documents | | 2 | 2 | 4 | 2 | 2 |
| Informal assistance | 1 | 1 | 2 | 2 | 1 | |
| **Total** | **21** | **32** | **27** | **31** | **21** | **16** |

*Seizures and confiscations*

926. The Bailiwick has demonstrated in several cases made known to the AT that it is capable of successfully assisting other jurisdictions in recovering assets under both criminal (conviction-based) and civil forfeiture regimes, also considering that the majority of the respective cases involved a transnational component where assets were held in Guernsey or were linked to overseas jurisdictions through legal persons or legal arrangements in the Bailiwick.

**Case study 2.1: Asset recovery case**

On 30th May 2023, following an application made by His Majesty's Comptroller (Guernsey's Solicitor General), the Royal Court of Guernsey ordered the registration and enforcement of two

external confiscation orders made by the Supreme Court of Thailand against funds which had been placed in an account portfolio with a Guernsey based bank. The application was made in response to LORs from the Office of the Attorney General in Thailand.

The funds were derived from the criminal conduct of three defendants who, as senior officials of a Thai bank, established a finance and investment company back in 1995, which they used to facilitate loan exchange agreements with the said bank, which provided investment units to the company. The defendants then dishonestly converted and sold 100 million units, misappropriating funds to the value of over USD 47 ½ million, and a further USD 2.2 million in cash assets, which were then transferred to various offshore investments for their own benefit. Their actions caused catastrophic losses to the bank, leading to its collapse in 1996, and consequently contributing to the 1997 financial crisis across Asia.

In 1999 the Guernsey FIU received a SAR from the Guernsey branch of a private bank regarding the involvement of the defendants in connection with the fraud and embezzlement of assets. The FIU disseminated an Intelligence Report to the Thai authorities to inform them that the defendants held an account in Guernsey with funds to an approximate value of USD 7.2 million. Following an earlier MLA request from the Thai authorities, the Royal Court of Guernsey agreed that the three defendants were the beneficial owners of the funds held in Guernsey and granted a restraint order in 2006 against these funds. In the meanwhile, the defendants were convicted in Thailand for the crimes mentioned above

As a result of the enforcement orders, the funds, which formed part of millions of pounds stolen from the Thai bank were to be returned to Thailand. Under the terms of the Guernsey enforcement orders (pending appeal at the time of the onsite visit) USD 7,237,127.02 was recovered to be applied towards satisfaction of the respective Thai orders.

**Case study 2.2: Asset recovery case**

AR, a Pakistani national and resident, who was indicted in the USA for insider trading offences could not be extradited to the US to face criminal proceedings. The US authorities therefore took non-conviction-based civil asset recovery proceedings against the criminal proceeds, applying a legal concept in America of "fugitive disentitlement". The US courts ordered the forfeiture of several millions USD, of which some USD 6 million was held in a Guernsey bank account.

A request for assistance to forfeit the Guernsey funds was made to the Law Officers of the Crown, as the competent authority for the Bailiwick of Guernsey. The request was for the US forfeiture order to be registered by the Royal Court and then enforced against the funds held locally.

The request gave rise to several issues. One was the need for AR to be located and process served, which was not straightforward given his location in Pakistan and a lack of certainty as to his address. To achieve service, Guernsey drew upon, and was given assistance through, the informal asset recovery networks Guernsey authorities (the FIU in particular) participate in, including CARIN, ARIN-AP and ARIN-WCA. Service was undertaken in mid-2020.

The Law Officers then applied to register the US Order, which was challenged on complex legal grounds involving the legal processes used to obtain the US order. After intensive work by the Law Officers (including obtaining advice from a specialist barrister from the UK) to reach a resolution, the legal challenge was withdrawn by agreement. In early June 2021 an Order was granted by the Royal Court of Guernsey for the forfeiture of the funds held locally.

**Table 2.6: Incoming requests for restraint or confiscation[101]**

| Reference year | Incoming requests (restraint / confiscation) | | Outcome |
|---|---|---|---|
| | ML (+predicate) | Predicate only | |
| 2018 | 2 | 2 | 4 executed |
| 2019 | 3 | - | 2 executed 1 unexecuted |
| 2020 | - | 1 | 1 pending |
| 2021 | 5 | 1 | 2 executed, 3 unexecuted, 1 pending |
| 2022 | 3 | 1 | 1 executed, 2 unexecuted, 1 pending |
| 2023 | 1 | - | 1 pending |

927. The statistical figures above indicate a seemingly high proportion of unexecuted requests (9 executed vs. 6 unexecuted) but it only occurred in cases where no assets were found to be held in the Bailiwick or where the foreign request had been withdrawn.

928. The execution time of the incoming requests appear to have been relatively long which is, however, not unusual in such cases. Average execution times of requests for restraints ranged between 103 and 217 working days in the assessed period. As regards confiscation requests, average figures were provided for two years (237 days for 2019 and 321 days for 2021) but one can also see a request executed in 2021 which had been submitted before the assessment period (i.e. before 2018) and a number of requests are pending before the court.

**Table 2.7**

| Reference year | Restraint | Amount restrained | Confiscation | Amount confiscated |
|---|---|---|---|---|
| 2019 | 2 (ML) | 2,961,047,04 GBP<br>945,246.98 EUR | | |
| 2020 | | | 2 (ML) | 1,569,679.19 GBP<br>6,386.17 GBP |
| 2021 | 1 (ML)<br><br>1 (pred) | UK property/shares approx. 10M GBP<br>512,599.51 GBP | 1 (pred)[102] | 6,440,078 USD |
| 2023 | 1 (pred) | 360,999 GBP | 2 (ML) | 7,237,127 USD<br>5,368,512 GBP |

929. The table above summarizes the outcome of the executed requests for restraint or confiscation (the years indicate when the respective restraint or confiscation orders were obtained which may be different from the year of the receipt of the request).

930. Guernsey has reportedly been cooperative in repatriating the proceeds of crime to foreign victim states in accordance with its international obligations including sharing of confiscated assets with other jurisdictions. The grand total of shared and repatriated amounts throughout the assessment period was £14,380,250.38[103].

**Table 2.8: Assets shared and repatriated**

| Year | Asset repatriation | Asset share | Details of the case |
|---|---|---|---|
| 2020 | 6,386.17 GBP | | UK – conspiracy to steal |

[101] The same figures are also included in the first three rows of Table 2.5 above.

[102] Request received outside the assessed period

[103] Totals converted to GBP value at time confiscation order made, where applicable.

| | | | |
|---|---|---|---|
| | | 784,679.59 GBP<br>[50% from a total of 1,569,679.19 GBP] | UK - conspiracy to corruption, ML, and fraud by abuse of position |
| 2021 | | 3,220,039.13 USD<br>[50% from a total of 6,440,078 USD] | US – insider trading |
| 2023 | 5,368,512.62 GBP | | UK - corruption/ML<br>(pending repatriation to Nigeria) |
| | 7,237,127.02 USD | | Thailand – theft, and fraud<br>(pending appeal) |

Extradition

931. As with the case of incoming MLA requests, a document[104] is published on the Law Officers' website to provide comprehensive preliminary information for other jurisdictions. The process to be followed in dealing with extradition requests is set out in the Law Officers' Extradition Manual[105], a comprehensive guidance which however, was only issued in November 2023 and thus could not have had any practical impact on any of the few extradition cases. All extradition requests are logged on the same CMS as that used by the ECU and the same steps and time frames as those for MLA are to be followed. The case is then assessed and prioritised in line with the Prioritisation policy, before allocating it to a lawyer within the LOC.

932. In case of requests from the UK, Jersey or the Isle of Man, it is checked first whether the relevant offence is indictable and if it is, the allocated lawyer will liaise with the EFCB and the court over the practicalities of having an arrest warrant issued and with the requesting country about transferring the person to that jurisdiction. For other requests, the allocated lawyer must assess whether the LOR and supporting evidence or information (see under R.39) are sufficient to justify the person's arrest, and if they are the matter will be sent to the court for a decision on an arrest warrant.

933. There has not been much experience with incoming requests during the assessment period. The Bailiwick has not received a request for extradition under the Extradition Law, although it has the necessary operational procedures in place for such cases. A total of 8 requests have been received from the UK none of which was related to ML or TF, and only 2 involved proceeds-generating offences, such as the case below, in which an incoming request related to a drug trafficking offence was successfully executed:

**Case study 2.3: Extradition case**

In December 2017, a UK court issued a warrant for the arrest of Person A, who was then residing in Guernsey. Person A had been convicted and sentenced to imprisonment in Slovenia for offences of fraud, forgery, robbery and money laundering. A request for his extradition from the Slovenian authorities had been received by the UK authorities because at that time, extradition from Guernsey was governed by the UK's Extradition Act 1989 as extended to the Channel Islands. The process for extradition from Guernsey under this regime was that the authorisation of the UK Home Secretary was required before a case could proceed, after which a warrant would be issued in a UK court, and that warrant would then be sent to Guernsey for backing in a Guernsey court. The person in question would then be arrested and taken back to the UK by UK

[104] Guidance on Making an Extradition Request to the Bailiwick of Guernsey

[105] Manual: Requests for Extradition (November 2023)

officers. The UK authorities would then organise the transfer of the person to the requesting country.

On receiving the warrant for the arrest of Person A, the Law Officers put steps in train for its immediate backing by a Guernsey court. However, the UK authorities then requested the Law Officers not to proceed with the matter at that time, as they were not able to accompany Person A back to the UK. In July 2018 the UK authorities informed the Law Officers that they were now ready to proceed with the matter. The warrant was therefore backed by a Guernsey court on 2 July 2018. Person A was arrested the following day and was subsequently escorted to the UK for onward transfer to Slovenia.

934. The remaining 7 requests were received in 2019 (2) 2020 (2) and 2022 (3) and the underlying criminality was sexual offences (2 requests, both executed), manslaughter by gross negligence (1 request, executed), driving under the influence of drugs (1 request, executed), assault (2 requests relating to the same matter, not executed as the subject was found to be in the UK and was arrested there) and attempted theft, criminal damage and assaulting a police officer (1 request, not executed at request of the UK).

935. In all these cases, measures were taken to give timely effect to the requests and for those that were executed, this was done in a matter of days, often only one. Where cases were not executed, this was because they were not proceeded with by the UK authorities. This practice is thus limited yet it demonstrates the legislative and organisational means being in place to provide all required assistance in such cases.

### *8.2.2. Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements*

*MLA*

936. As with inbound requests, the LOC through the Attorney General is the competent authority for making MLA and extradition requests, which are dealt with by the same teams as those that deal with the incoming ones. Outbound MLA requests are subject to the same case management protocols as described under the previous Core issue.

937. Upon identifying that relevant evidence is located outside of the Bailiwick, the EFCB or BLE (depending on the nature of the offence) are responsible for producing the first draft of any LOR for obtaining such evidence. These LEAs often conduct "pre-MLA" enquiries with their counterparts in the requested jurisdiction to identify the relevant material. The prosecutor then considers the draft before approval and transmission to ensure its compliance with the relevant legislation and whether it is directed at the competent authority.

938. In order to ensure that the LOR satisfies all country-specific requirements, the MLA Team often engages with the counterpart authorities before formal transmission of the request, including to have LORs informally and provisionally agreed by the contact point in the relevant jurisdiction, which was reported to have been greatly reduced response times (in many cases to a few days or even one day) and practically prevented the occurrence of issues concerning conflicts of jurisdiction or the incompleteness or poor quality of the outbound request. In this respect, the ECU has developed fruitful relationships with a number of central authorities of which the UKCA and US DOJ being contacted most frequently.

939. As result of these efforts, no LORs have been refused by the other jurisdictions in the assessment period, which demonstrates the good quality of the outgoing MLA by the Bailiwick. The AT also learnt that in all the prosecutions for ML and economic crime within the same period,

huge reliance has been placed on evidence obtained from other jurisdictions and despite numerous challenges the Court has always upheld the admission of evidence obtained through such channels.

940. In the assessed period, requests for assistance have been made in relation to both criminal investigations and in investigations for the purposes of possible civil forfeiture. In most cases, the suspected criminality was ML (represented in 30-40% of the cases) followed by fraud and drug trafficking, which range of offences is in line with the jurisdiction's risks. The majority were for the purposes of evidence gathering (primarily bank records), but requests were also made for the restraint or freezing and confiscation of assets.

941. **Table 2.9: Requests by the underlying criminality (outgoing LORs)**

| | 2018 | 2019 | 2020 | 2021 | 2022 |
|---|---|---|---|---|---|
| Money laundering | 6 | 5 | 4 | 5 | 7 |
| ← Proportion of ML related LORs | 100% | 29% | 33% | 41% | 43% |
| Illicit trafficking in narcotics etc. | - | 3 | 6 | 2 | 4 |
| Fraud (inc. tax crimes) | 4 | 6 | 3 | 2 | 4 |
| Other | | 4 | 1 | 3 | 1 |
| **Total (underlying criminality)** | 10 | 18 | 14 | 12 | 16 |
| **Total (LORs) [106]** | **6** | **17** | **12** | **12** | **16** |

942. The countries to whom requests were made included the UK, the USA, France, Australia, Latvia, the Netherlands, many other European countries, Brazil, and the UAE. Most countries have reportedly been able to comply with requests for evidence to be used in civil forfeiture proceedings although the Guernsey authorities indicated that this being an uncertain area the transmission of such a request was always preceded by prior engagement with the counterparts.

**Table 2.10: Total number of MLA requests made per year**

| | Sent | | Executed | | Pending | |
|---|---|---|---|---|---|---|
| | Criminal | Civil | Criminal | Civil | Criminal | Civil |
| **2018** | **3** | **3** | **3** | **3** | **0** | **0** |
| **2019** | **14** | **3** | **14** | **3** | **0** | **0** |
| **2020** | **12** | **0** | **12** | **0** | **0** | **0** |
| **2021** | **10** | **2** | **10** | **2** | **0** | **0** |
| **2022** | **15** | **1** | **14** | **1** | **1** | **0** |
| **2023** | **8** | **4** | **4** | **2** | **4** | **2** |
| **Sub total** | **62** | **13** | **57** | **11** | **5** | **2** |
| **TOTAL** | **75** | | **68** | | **7** | |

**Table 2.11: Number of requests by nature of assistance**

| Nature of assistance | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|---|
| Restraint/freezing of assets | | | | 1 | 2 | |
| Confiscation | | | | | 1 | |
| Obtaining documentary evidence | 7 | 17 | 12 | 11 | 13 | 8 |
| Permission to use evidence for other | | | | | | 2 |

[106] LORs indicated by reference to the number of individual requests transmitted, as a single LOR may relate to multiple types of criminality.

| | | | | | | |
|---|---|---|---|---|---|---|
| purposes | | | | | | |
| Witness interview | 1 | 3 | 2 | 5 | 5 | 1 |
| Service of documents | | | | | | 2 |

943. The AT agrees with the conclusion of the Guernsey authorities that the number of requests made is proportionate to the number of ML investigations with a cross-border element as described under IO7. This is, however, not necessarily an achievement, as both figures appear relatively low on their own. As it was concluded under IO7, the EFCB to date have not yet delivered the desired outcomes in terms of ML investigations and, apparently, the same goes for the number of outgoing MLA requests. An average of 10 LOR made per year in criminal investigations (59/6 years) and another 3 on average related to civil forfeiture (17/6 years) cannot be considered significant and being entirely in line with the jurisdiction's risk profile.

944. The AT is ready to accept the authorities' claim that Guernsey prosecutors have always sought MLA in any case where there were believed to be assets or evidence in another jurisdiction that were relevant to a Bailiwick investigation. However, the LOC can only proceed with MLA to the extent a draft LOR is prepared and delivered by the LEAs.

945. As discussed under IO7, the Guernsey authorities attributed the recent decline in the number of ML investigations to the strategic shift in the EFCB's approach as a result of which now more attention is paid to more complex and transnational ML cases more aligned with the country risks. This new approach, on the other hand, should have resulted in more activity to seek evidence overseas regarding the actual ownership and the potentially illicit source of property suspected to have been laundered in the Bailiwick and such an increased activity would necessarily result in an elevated frequency of international cooperation. It appears not to be the case for the period since the establishment of the EFCB considering that whereas the figure for 2022 was somewhat higher, the 2023 score signifies a decline again, to a level unattested since 2018.

946. It appears therefore that shortcomings identified under IO7 seem to have affected the jurisdiction's ability to effectively and proactively seek ML-related MLA and the positive changes expected as a result of the establishment of the EFCB are yet to be seen in this field.

Extradition

947. Extradition requests must be made in line with the recently issued Extradition Manual (November 2023) and the Prioritisation policy. The steps required to make an extradition request, depending on the particular requirements of the requested country and diplomatic or foreign policy issues are reflected in the Extradition Manual, which specifies that prosecutors must make advance contact not only with their counterparts in the other jurisdiction but also with the UK authorities if necessary.

948. Two extradition requests (i.e. warrants) involving low-level domestic proceeds-generating offences (drug trafficking, burglary, and theft) were made by the Bailiwick in the assessment period, both to the UK, but neither have been executed by the time of the onsite visit. In one of these cases, enquiries were still ongoing to establish the whereabouts of the suspect while in the other case, the suspect was captured in the UK but the extradition proceedings were discontinued for proportionality reasons (considering the low scale offences and, on the other hand, the extremely violent behaviour of the individual and the consequent risks of his transfer).

949. The number and nature of these requests appears consistent with the Bailiwick's low domestic crime rate, and the fact that drug trafficking is one of the few predicate crimes of any significance. The lack of associated ML is consistent with the finding in both NRAs that the proceeds of domestic criminality are likely to be laundered within the jurisdiction (see in IO7).

There have been no extradition requests or warrants involving other than proceeds-generating offences during the assessment period (it was considered in a few such cases but did not prove necessary).

### *8.2.3. Seeking other forms of international cooperation for AML/CFT purposes*

FIU

950. The FIU has been a member of the Egmont Group since its inception in 1995 and it exchanges information regularly with foreign FIUs via Egmont Secure Web (ESW), which is monitored by Intelligence Support Officers (ISOs) and entered on THEMIS. In addition to making Egmont requests, the FIU seeks assistance internationally from other agencies such as LEAs and tax authorities such as H.M. Revenue and Customs (UK) based on a Letter of Understanding of 2018, the International Anti-Corruption Coordination Centre (IACCC) through its associate membership since 2021, and the UK's National Crime Agency (NCA) Joint Intelligence Money Laundering Intelligence Task Force (JIMLIT) based on an MoU of 2022.

951. In addition to making Egmont requests, the FIU seeks assistance internationally from other agencies such as LEAs and tax authorities, via cooperation agreements[107], and through the FIU membership to several international/regional joint initiatives, networks and forums such as the IACC, JIMLIT, CARIN and the Quad Island Forum of FIUs (QIFF)[108] which helps fostering collaborative working and the sharing of intelligence, operational, and tactical objectives in the global fight against ML/FT/PF. The QIFF serves to foster collaborative working and the sharing of intelligence, operational, and tactical objectives as well as joint trainings in key areas (ML/TF, corruption, strategic analysis, etc.) through a number of sub fora such as the CFT Forum, the Strategic Analysis Forum, the Private Public Partnership (PPP) Forum, the FIU/ECU Forum and the FIU/Tax Authority Forum.

952. Although there is no legislative requirement for the FIU to sign an MoU in order to exchange information, there are some instances where an MoU is required by the law of a requesting jurisdiction. The FIU has the ability to enter into MoUs autonomously which it has done to date with the FIUs in a total of 32 jurisdictions worldwide.

953. The FIU principally makes requests for international assistance by sending requests for assistance to foreign counterparts via the ESW which took place in a total of 213 instances in the period 2018 to the end of 2023 (around 36 per year).

**Table 2.12: Outgoing requests / spontaneous disseminations sent by the FIU to Foreign FIUs**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total |
|---|---|---|---|---|---|---|---|
| ESW total | 670 | 634 | 667 | 434 | 725 | 574 | 3704 |
| *Requests sent* | *35* | *69* | *19* | *31* | *35* | *24* | *213* |
| *Spontaneous disseminations* | *635* | *565* | *648* | *403* | *690* | *550* | *3491* |

954. The number of outgoing requests was generally stable throughout the assessed period without any noticeable trends apart from an outstandingly high number in 2019 (attributable to

[107] For example, a Letter of Understanding signed in 2018 allows the FIU to seek assistance directly from the HMRC in the UK.

[108] A forum composed by FIUs from Gibraltar, Isle of Man, Jersey, and Guernsey, with sub-forums focused on TF, strategic analysis and tax evasion.

a particular operation by the FIU resulting in 26 referrals to the EFCB) and two moderate drops in 2020 and 2023. The majority of the requests (130 of 213 that is 61%) were related to the FIU's own operations while 83 (39%) were initiated by the FIU on behalf of other domestic authorities (69 for the EFCB and its predecessors, 8 for BLE and 6 for the GBA).

955. The AT learnt that most communications dealt with UK related cases and therefore the UKFIU was the main partner in exchanging financial intelligence internationally, especially considering that most requests and disseminations sent originated from SARs where the majority of subjects and accounts identified were located in the UK.

956. The FIU extensively shared information spontaneously with its foreign counterparts during the assessed period. It submitted 3491 spontaneous disseminations (around 582 per year) via ESW mainly to the UK and to lesser extent to a wide range of jurisdictions all over the world. A generally positive feedback was received on the use and usefulness of these disseminations from several jurisdictions, which was also demonstrated by several case studies. However, it is unclear if and to what extent these spontaneous disseminations arose from cases that were not further pursued by the FIU and rather sent to the foreign counterparts for information.

**Table 2.13: Top 6 Recipient Jurisdictions of Requests for Assistance sent by the FIU**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total | % |
|---|---|---|---|---|---|---|---|---|
| United Kingdom | 2 | 14 | 5 | 8 | 6 | 1 | 36 | 18% |
| USA | 0 | 10 | 4 | 3 | 3 | 1 | 21 | 11% |
| Switzerland | 1 | 4 | 3 | 2 | 2 | 2 | 14 | 7% |
| France | 2 | 2 | 0 | 1 | 2 | 2 | 9 | 5% |
| Italy | 2 | 2 | 1 | 1 | 1 | 0 | 7 | 4% |
| Jersey | 0 | 3 | 1 | 1 | 1 | 0 | 7 | 3% |

957. ML was the suspected criminality within the largest proportion of requests for assistance by the FIU (45%), usually due to the lack of identification of a predicate offence within the SARs at the origin of such requests. Fraud, false accounting and forgery follow (20%), and then tax evasion (11%), bribery, and corruption (11%) while none of the requests concerned TF given the lower risk. (In addition, the AT was advised onsite that in relation to a TF suspicion, international assistance would be requested via specific networks such as the UK CT network rather than the Egmont channel.)

958. All these are mostly in line with Guernsey's risk profile and the findings in the NRAs. The volume of outgoing requests seems nevertheless limited given Guernsey's status as an IFC and the large number of predicate offences not identified in relation to foreign criminality.

**Table 2.14: Suspected Criminality in Requests for Assistance sent by the FIU (5% and more)**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total | % |
|---|---|---|---|---|---|---|---|---|
| Money Laundering | 18 | 29 | 9 | 12 | 20 | 2 | 90 | 45% |
| Fraud and similar crimes | 10 | 14 | 3 | 6 | 7 | 5 | 45 | 23% |
| Bribery and Corruption | 0 | 11 | 2 | 6 | 2 | 2 | 23 | 12% |
| Tax Evasion | 3 | 11 | 2 | 2 | 3 | 2 | 23 | 12% |
| Drug trafficking | 0 | 3 | 2 | 2 | 2 | 0 | 9 | 5% |

959. An example of the FIU successfully requesting and obtaining assistance from another counterpart FIU is described in Case Study 6.1 under IO6 where assistance from a foreign FIU confirmed that a false identity had been used to generate fake invoices as part of a scheme to

launder the proceeds of crime. In the same case, assistance was sought and obtained from the specialist Cyber Operational Support Unit of the UK's National Crime Agency.

GFSC

960. The GFSC proactively exchanges financial intelligence and supervisory information with foreign counterparts as part of its authorisation, supervisory and enforcement activities, a significant part of which is carried out under MMOUs (multilateral MoUs) with the International Organisation of Securities Commissions, the International Association of Insurance Supervisors, the European Securities and Markets Authority, and the Group of International Finance Sector Supervisors as well as through its membership of the Financial Crime Information Network (FIN-NET, an organisation operated under the auspices of the UK Financial Conduct Authority to facilitate the sharing of information between LEA and supervisors) and of the UKFCA's Shared Intelligence Services (SiS) database for supervisors and law enforcement to share information and intelligence. The GFSC has also signed bilateral MoUs with a wide range of its foreign counterpart authorities from all around the world.

961. Between 2018 and 2023 the GFSC made 201 requests to foreign counterparts using its legal gateways as part of its authorisations checks (where applicants for a licence, registration etc. have indicated that they are supervised in another jurisdiction) for outgoing supervisory cooperation (bilaterally on a case-by-case basis) and in relation to obtaining information to assist its enforcement cases (including, among others, the production of evidence or location of an individual of interest to interview). All international cooperation requests are logged centrally on an internal database.

962. As noted under IO3, authorisation checks are done only when an applicant is new to the Bailiwick or where the GFSC has concerns on the same. Otherwise, the GFSC relies on its screening tools and previous interactions with the said applicant rather than obtaining information from counterpart authorities (the 2023 figures are cited under IO3 according to which out of the 150 first-time applicants who were not resident within the British Isles only 21 were checked through counterpart authorities). On the other hand, the GFSC also demonstrated to have obtained good results through its use of information obtained from foreign counterparts (see Case Study 6.2 under IO3).

AGCC

963. The AGCC requests information from international gambling regulators or other international bodies in various circumstances including checks whether an applicant for licence has any other licence or permission allowing them to conduct any form of gambling lawfully in another jurisdiction. If the applicant is a registered company, they will specifically request UBO information of that company.

964. Information is requested from abroad also when the AGCC is notified of a licensed operator having the status of any of its licence or permission to conduct gambling in another jurisdiction changed and that event may have a bearing on the licence or certificate issued by the AGCC, in which case the AGCC will request from the other jurisdiction all relevant information.

965. AML/CFT related requests in the assessment period can be found in the table below. (The increased number of requests for 2023 is due to two applications for licences from two companies holding multiple licences in multiple jurisdictions.) None of the requests were refused by the foreign counterparts.

**Table 2.15: Supervision**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 Q2 |
|---|---|---|---|---|---|---|
| Requests sent by supervisory authorities related to AML/CFT specifically | 3 | 14 | 13 | 6 | 8 | 75 |
| Number of requests sent and executed by foreign authority | - | 14 | 13 | 5 | 8 | 75 |

BLE

966. BLE (including the Customs service) has a range of mechanisms to obtain assistance from foreign counterparts. First, it is the BLE through which the Bailiwick is included with the scope of the UK's membership of Interpol, which allows for making or receiving requests for information via Interpol channels. An example of the use of these channels is described in Case Study 11.2 under IO.11. In addition to that, agreements/arrangements with the UK, Jersey, and France are in place, in line with the Bailiwick's geographical profile, for requesting information from those jurisdictions, such as a tri-partite agreement to pro-actively tackle the smuggling of commodities including cash between the various jurisdictions, particularly through commercial and private maritime traffic.

967. For example, subject to the nature of the investigation, BLE uses the services of the UK NCA and its network of International Liaison Officers, who can support the BLE with the effective transmission of urgent spontaneous information or intelligence in relation to ML, TF, or predicate criminality. To illustrate the effectiveness of this cooperation, the Guernsey authorities made reference to a case where relevant information related to a suspected case of kidnap for ransom in a third country could immediately be obtained using, among others, the resources of the UK NCA Kidnap and Extortion Team while, at the same time, the Guernsey Police contacted the British Embassy in the said third country which sought assistance through diplomatic channels from the local authorities. These successfully tracked and traced the victims without delay and the matter was resolved in 24 hours.

EFCB and CARIN

968. The EFCB has been a member of CARIN since 2021 where the law enforcement participation of Guernsey had previously been carried out through the BLE since the inception of the CARIN in 2004. In addition, the EFCB joined the Anti-Money Laundering Operational Network (AMON) in 2023.

969. The following table details the number of requests for assistance made by the Bailiwick through the CARIN Network during the assessment period. The AT needs to note, however, that the figures are relatively low as compared to the pivotal role and responsibility of the EFCB in pursuing ML activities in line with the jurisdiction's risk profile. An average of 2 to 3 requests per year cannot be considered commensurate to the risks identified, for which reason the findings under Core issue 2.2 relating to the low number of MLA requests are also valid here.

**Table 2.16: Number of outgoing requests through the CARIN Network**

| Year | Number | Jurisdictions |
|---|---|---|
| **2018** | 3 | Bahamas, Turks & Caicos Islands |
| **2019** | 7 | USA, Belgium, South Africa, Romania, Switzerland, Isle of Man, Luxemburg |
| **2020** | 2 | Thailand, Italy |
| **2022** | 3 | Switzerland, Spain, Thailand |

| | | |
|---|---|---|
| **2023** | 1 | Spain |

970. The effective use of the CARIN Network was however demonstrated by a case study where relevant information regarding the perpetrator's real estate property in Thailand and the company through which he owned that property were successfully obtained from the Thai authorities by way of a CARIN request and response.

971. Operative enquiries at Police level have regularly occurred with counterpart authorities to seek information for law enforcement purposes. The requests for assistance sought by the Guernsey LEAs (BLE/EFCB) are indicated in the table below.

**Table 2.17: Number of outgoing requests for assistance (LEA)**

| Year | Requests / criminal investigation | Requests / civil forfeiture |
|---|---|---|
| 2018 | 5 | 12 |
| 2019 | 4 | 11 |
| 2020 | 9 | 5 |
| 2021 | 3 | 1 |
| 2022 | 14[109] | 19 |
| 2023 | 10 | 5 |

972. The sudden drop in 2021 and the sharp increase in 2022 can both be attributed to the effects of the establishment of, and the transition of powers to the EFCB as a new LEA, which effects, however, ceased to have any impact in 2023 the figures for which year are moderate again, quite similarly to those in the first half of the assessment period. The underlying criminal offences in all these cases included mostly ML and fraud, with a limited occurrence of other crimes (drug trafficking or corruption). The purpose of engagement was typically to obtain information on the criminal conduct and the flow and/or source of funds.

*Revenue Service*

973. The Revenue Service exchanges information with other jurisdictions in line with international tax agreements through its dedicated Policy & International Team. Specifically, Guernsey is party to 61 Tax Information Exchange Agreements and 14 Double Taxation Arrangements and is a participant in the Multilateral Convention of Mutual Administrative Assistance In Tax Matters (with 147 participating jurisdictions) all of which provide a substantial network for the exchange of information.

974. In the period from 2018 to 2022, the Revenue Service made 2 requests for the exchange of information to partner jurisdictions in relation to transactional banking information where they had already exhausted all domestic means. In one of the cases, the information obtained assisted in discovering the full extent of the tax evasion, where omissions of income and false claims for allowances and deductions totalled over £2 million (the case has reportedly been referred to the EFCB for considering a criminal investigation).

975. As explained, the low number of requests reflects the fact that in the majority of investigation cases, no international cooperation was necessary as the GRS achieved the co-

[109] Including one case related to criminal restraint or confiscation of assets.

operation of the taxpayer or was able to use its formal information gathering powers to obtain the required information.

### *8.2.4. Providing other forms international cooperation for AML/CFT purposes*

FIU

976. Throughout the assessment period, the FIU has received international requests for assistance via the ESW from other international FIUs; via the FIN-NET from other members of the UK's Financial Crime Information Network; via Beneficial Ownership Information Requests (BOIR) under an Exchange of Notes with the UK; and other informal requests from international LEAs via telephone or secure email.

977. In the period 2018 to mid-2023 the FIU received 996 requests for assistance out of which 222 via the ESW, 661 via FIN-NET, 52 BOIRs and 61 other international requests for assistance, as shown below:

**Table 2.18: International requests for assistance received by the FIU**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023* | Total | % |
|---|---|---|---|---|---|---|---|---|
| FIN-NET | 116 | 180 | 76 | 108 | 82 | 99 | 661 | 53% |
| ESW | 37 | 44 | 32 | 41 | 46 | 22 | 222 | 18% |
| BOIRs | 12 | 9 | 6 | 10 | 12 | 3 | 52 | 4% |
| Other International | 13 | 10 | 8 | 13 | 12 | 7 | 61 | 5% |

978. Requests for assistance are entered onto THEMIS, the central intelligence database as MARFs (Mutual Assistance Requests, Financial) while spontaneous Intelligence Reports received from external FIUs are entered as Financial Intelligence Messages. Incoming MARFs are referred for risk rating in accordance with the FIU's risk prioritisation matrix, and then assigned for operational analysis leading to the dissemination of intelligence in response to the request.

979. While the FIU deals with all incoming requests and spontaneous disseminations in a similar fashion as SARs (see IO6) the prioritisation mechanism is different, as no priority score is produced automatically by THEMIS but will be assigned manually by a supervisor based on risk and urgency. Overall, the prioritisation and processing of such requests in the assessed period seem adequate and risk-based.

980. The incoming requests often involved complex cases and frequently required operational analysis for a meaningful response. Regardless of that, the average response time for international requests during the assessment period was 21 days, which demonstrate an adequate level of timeliness. No notable delays have been recorded during the period under review.

**Table 2.19: Incoming requests and spontaneous disseminations received by the FIU from Foreign FIUs**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total |
|---|---|---|---|---|---|---|---|
| ESW total | | | | | | | |
| Requests received | 37 | 44 | 32 | 41 | 46 | 46 | 246 |
| Average response time | 22 | 14 | 23 | 16 | 25 | 27 | - |
| Spontaneous disseminations | 14 | 18 | 19 | 32 | 32 | 27 | 142 |

981. Jurisdictions requesting assistance and the relevant criminality for the same period are shown in the following tables where not only the predominance of requests from UK can be seen (62%) but also that a total of 34% of the requests arrived from countries representing 1% or less, which means that a wide range of jurisdictions from all around the world had requested and received assistance from the FIU.

**Table 2.20: Jurisdictions requesting assistance (above 1%)**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total | % |
|---|---|---|---|---|---|---|---|---|
| United Kingdom | 131 | 203 | 93 | 128 | 110 | 105 | 770 | 62% |
| Malta | 4 | 4 | 2 | 3 | 6 | 7 | 26 | 2% |
| Jersey | 5 | 6 | 5 | 4 | 1 | 2 | 23 | 2% |

**Table 2.21: Offences involved in requests for assistance (above 1%)**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023* | Total | % |
|---|---|---|---|---|---|---|---|---|
| Money laundering | 141 | 185 | 49 | 58 | 69 | 31 | 533 | 43% |
| Fraud and similar crimes | 73 | 103 | 48 | 67 | 41 | 47 | 379 | 31% |
| Bribery and corruption | 9 | 16 | 8 | 9 | 8 | 12 | 62 | 5% |
| Tax evasion | 5 | 7 | 5 | 11 | 4 | 2 | 34 | 3% |
| Drug trafficking | 12 | 7 | 1 | 4 | 2 | 2 | 28 | 2% |
| Terrorism including TF | 3 | 6 | 0 | 5 | 5 | 2 | 21 | 2% |
| Other / unidentified (total) | 20 | 6 | 13 | 13 | 28 | 31 | 111 | 9% |

982. The quality of the assistance provided by the FIU was demonstrated by a feedback project focused on international disseminations between 2017 and 2022. The findings of the project were that information provided by the FIU had contributed to the success of specific cases in other jurisdictions (e.g. the freezing of £2.45m in suspected criminal funds in the UK) and the feedback was generally positive as regards quality, timeliness and usefulness of the disseminations.

983. Furthermore, the Guernsey authorities demonstrated that the majority of all inbound financial-related MLA requests (LORs) received by the LOC either resulted from, or were linked to previous exchange of financial intelligence between the FIU and foreign counterparts. Of the 113 such LORs between 2018 and 2023, 71 (63%) were linked to intelligence that was held by the FIU.

**Table 2.22: Incoming LORs with or without link to FIU intelligence**

| | LORs shared with FIU | Number linked to FIU Intelligence | Number with no link to FIU Intelligence |
|---|---|---|---|
| 2018 | 14 | 9 | 5 |
| 2019 | 22 | 16 | 6 |
| 2020 | 22 | 15 | 7 |
| 2021 | 22 | 15 | 7 |
| 2022 | 20 | 9 | 11 |
| 2023 | 13 | 7 | 6 |
| **TOTAL** | **113** | **71** | **42** |

984. The GFSC received and executed requests from foreign supervisory authorities related, in most cases, to whether a particular regulated entity or individual was subject to any sanctions or pending supervisory actions in the Bailiwick. The majority of the approximately 300 formal information requests received between 2018 and 2023 arrived from the UK (38), Ireland (33), Luxembourg (22), Malta (20) the Cayman Islands (16), South Africa (16), Sweden (16) and Jersey (10) which is consistent with the Bailiwick's geographical proximity and economic ties, in particular within the collective investment scheme sector. The average length of time taken to provide a full response was 20 days, with many taking less than 7 days.

985. The GFSC Intelligence Unit has handled foreign regulatory and LEA enquiries relating to potential criminal matters in the assessed period either on a bilateral basis or through the GFSC's membership of FIN-NET or through SiS (see under Core issue 2.3). The Intelligence Unit also regularly provided spontaneous disclosures (voluntarily, in the absence of a request) to foreign counterparts. The GFSC Enforcement Division also shared information on a spontaneous basis, by making voluntary disclosures to foreign supervisors under the IOSCO MMOU.

**Table 2.23: Assistance on potential criminal matters by the GFSC's Intelligence Unit**

| Year | Spontaneous disclosures | IOSCO MMOU request | FIN-NET | Bi-lateral | Total |
|---|---|---|---|---|---|
| 2018 | 8 | 4 | 1 | 3 | 16 |
| 2019 | 5 | 1 | 3 | 7 | 16 |
| 2020 | 2 | 3 | 1 | 4 | 10 |
| 2021 | 5 | 4 | 2 | 2 | 13 |
| 2022 | 6 | 0 | 4 | 7 | 17 |
| 2023 Oct. | 9 | 0 | 8 | 10 | 27 |

AGCC

986. The AGCC has regularly received information requests from other authorities on licensed operators, their BOs and/or senior management to assist with their application investigations or compliance function. In these cases, the AGCC database was searched and any relevant information shared with the requesting authority, in all cases as a matter of urgency (all requests executed within an average of one day).

**Table 2.24: Foreign requests AGCC**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 Q2 |
|---|---|---|---|---|---|---|
| Foreign requests received by supervisory authorities related to ML/TF specifically | 15 | 8 | 31 | 22 | 27 | 15 |
| Average time of execution (days) | 2 | 1 | 2 | 1 | 1 | 1 |

BLE

987. The BLE has used the information sharing mechanisms and gateways described under Core Issue 2.3 to provide assistance as well as to seek it, an example of which is described in the case study below.

**Case study 2.4: BLE International cooperation**

The Guernsey Police received a Request for Information (RFI) from Country M in December 2023, relating to the report of the theft of antiquities in that country. Investigators in that country had traced what they believed to be the stolen property to a museum in the UK. UK Police officers attended the museum, which produced documents to indicate that the item was owned by a

Guernsey legal person, as a result of which the RFI was sent to Guernsey. The Guernsey Police investigators approached the Guernsey FIU for assistance as the item was owned by a company and it was suspected that the item had been purchased by this legal person. The FIU then began a joint money laundering intelligence investigation with Guernsey Police investigators, which included identifying the natural persons, behind the Guernsey legal person. In addition, there was concern that payments might have been made to acquire the item to the person who had committed the criminal offence in country M. Guernsey FIU used its compulsory powers to secure information concerning the identification of the natural persons. This intelligence was passed on to the investigators, who went to interview those persons. Meanwhile, the FIU gathered financial intelligence concerning the payments for the item, identifying all the parties concerned and their accounts. This information, together with the evidence gathered by the Guernsey Police investigators was sent back via Interpol to country M in January 2024.

EFCB

988. The information sharing mechanisms and gateways described under Core Issue 2.3 have also been used to provide assistance on request. Throughout the assessed period, the EFCB and its predecessor authority received and executed a moderate number of incoming foreign requests for the provision of information, in relation to both criminal investigations and civil forfeiture proceedings. From 2018 to 2020 a total of 10 such requests were received and executed, all related to criminal investigations into fraud (9) and ML (1). In 2022, the recently established EFCB received 8 requests, out of which 2 related to criminal investigations and 6 to civil forfeiture while only 1 request was received in 2023. The underlying criminality in these cases included corruption, fraud, and ML.

989. In addition, a moderate number of requests were received through the CARIN Network from various countries, that is 2 requests in 2019 and 1 in each year from 2020 to 2022 (no cases indicated for 2023-2024) which were also executed.

990. The EFCB also provided spontaneous information to foreign counterparts which took place in 2022 in 5 separate cases (of which 1 ML case) while no such disclosures occurred in 2023.

Revenue Service

991. During the assessed period (2018 to 2023), the Guernsey Revenue Service received 392 requests from partner jurisdictions worldwide for exchange of information (EOI) of which 149 (38%) were seeking further documents and information concerning BO information of a company or a trust. The vast majority of the requests were received from Europe followed by countries from Asian and Pacific and the Americas. The AT were advised that 35 of the 392 requests received (almost 10%) were directly linked to intelligence previously disseminated by the FIU to foreign counterpart authorities.

**Table 2.25: Statistics of EOI requests**

| Year | Total number of EOI requests | Requests made as a result of FIU intelligence | Requests made based on suspicion of tax evasion | % of tax evasion based requests |
|---|---|---|---|---|
| 2018 | **42** | 7 | **23** | 55% |
| 2019 | **68** | 6 | **46** | 68% |
| 2020 | **65** | 3 | **50** | 77% |
| 2021 | **87** | 11 | **64** | 74% |
| 2022 | **60** | 1 | **51** | 85% |

| | | | | |
|---|---|---|---|---|
| 2023 | **70** | 7 | **50** | 71% |

992. Focusing on the EOI requests received until 2022, the GRS provided a full response (with all requested documents/information) in almost 50% (150 requests) within a 90 day period and to a total of 75% (229 requests) within 180 days of receipt, demonstrating the timeliness and effectiveness of the co-operation.

### *8.2.5. International exchange of basic and beneficial ownership information of legal persons and arrangements*

993. The authorities of the Bailiwick have regularly received foreign requests in respect of basic and BO information held on legal persons and legal arrangements, and all relevant authorities demonstrated their capability to respond to such requests in a timely and effective way.

994. The LOC have received and acceded to MLA requests for BO information. The AT learnt that the majority of MLA requests for documentary evidence would include the provision of BO information in some form, either as a result of being explicitly sought by the requesting state, or being included in the material provided by the requested entity (such as within KYC or source of wealth/source of funds material). In case of such requests, material was obtained from a variety of sources, utilising a range of coercive powers most typically by way of serving a statutory notice on the Guernsey Registry, TCSPs, Registered Agent or other relevant entity. The prosecutors' experience is that in such cases, cooperative and expeditious responses were received from both the Registry and the private sector, which in turn has enabled effective responses to the MLA requests.

995. The majority of Intelligence Reports disseminated internationally by the FIU identify the legal and/or beneficial owners of the Guernsey legal persons or arrangements involved. Whenever such entities are the subject of an Intelligence Report, this identification takes place automatically by use of the FIU's direct access to the Register of Beneficial Ownership of Legal Persons.

996. A generic Beneficial Ownership Information Request form (BOIR) is the current mechanism to request BO information from the FIU. Over half of such requests have been received from the NCA followed by other UK authorities (the UK being the only requesting jurisdiction in this context).

**Table 2.26: Foreign authorities requesting BO information from the FIU**

| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total | % |
|---|---|---|---|---|---|---|---|---|
| National Crime Agency (UK) | 9 | 7 | 4 | 2 | 5 | 3 | 30 | 54% |
| HMRC (UK) | 2 | 1 | 0 | 2 | 4 | 0 | 9 | 18% |
| Serious Fraud Office (UK) | 0 | 1 | 0 | 3 | 2 | 0 | 6 | 12% |
| Financial Conduct Authority (UK) | 1 | 0 | 2 | 0 | 0 | 0 | 3 | 6% |
| International Anti-Corruption Coordination Centre (IACCC) | 0 | 0 | 0 | 1 | 1 | 0 | 2 | 4% |
| Other (Regional UK Police Forces) | 0 | 0 | 0 | 2 | 0 | 0 | 2 | 4% |
| Total Requests Received by Guernsey FIU | 12 | 9 | 6 | 10 | 12 | 3 | 52 | 100% |

997. An Exchange of Notes and TOR agreed between the Bailiwick and the UK in 2016 requires the FIU to respond to BO requests from the UK within 24 hours, except in cases of emergency when a response within one hour is required. The FIU has responded in a timely manner to all incoming BO requests over the period, also including partial responses (e.g., when the request detailed a local resident agent rather than the natural or legal person involved in the suspicion) or "nil" replies (e.g., when a search of the BO register has not identified any information).

**Table 2.27: FIU Responses to BO requests**

| | | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|---|---|
| Number Responded to | ...in Full | 8 | 6 | 6 | 6 | 10 | 3 |
| | ...in Part | 2 | 0 | 0 | 0 | 0 | 0 |
| | ...with Nil Reply | 2 | 3 | 0 | 4 | 2 | 0 |
| Total BOR Responses | | 12 | 9 | 6 | 10 | 12 | 3 |

998. Other relevant authorities also provided BO information upon foreign requests. As regards the BLE reference is made to the case example above in relation to foreign antiquities. The AGCC has reported that it had provided BO information to requests made by other gambling regulators seeking information about AGCC licensed eCasinos and the feedback received indicates that responses were provided in a timely manner with relevant information.

999. As regards the Revenue Service, a significant part of their work carried out under International Tax Agreements is exchanging BO information with counterparts. Of the 322 incoming requests the Revenue Service received for the exchange of information, 124 (38%) were seeking further documents and information concerning the BO of a company and/or a trust, in all of which cases the GRS had utilised a range of measures, including their information gathering powers to obtain BO information and the underlying CDD documentation. In all relevant cases the BO information obtained was validated by the GRS using its access to the BO Register, to ensure the transmission of accurate and current BO information to partner jurisdictions.

### *Overall conclusion on IO.2*

1000. All competent authorities generally demonstrated efficiency and timeliness in executing incoming requests for MLA and other forms of international cooperation, which was also corroborated by positive feedback from international partners. On the other hand, MLA has not yet been sought to an extent that would be entirely in line with the country risk profile as an IFC and the potential volume of illicit assets held in the Bailiwick.

1001. The LEAs and the FIU actively and proactively cooperated with their foreign counterparts through all available fora during the assessment period, either upon request or spontaneously. Notwithstanding that, the LEAs do not seem to have exhausted all possibilities to seek international cooperation in their investigations and the number of outgoing FIU requests for seeking information does not seem to be in line with the country risk profile.

1002. The supervisory authorities proactively exchanged financial intelligence and supervisory information with foreign counterparts as part of their authorisation, supervisory and enforcement activities.

1003. The authorities of the Bailiwick have regularly received foreign requests in respect of basic and BO information held on legal persons and legal arrangements and all of them demonstrated their capability to respond to such requests in a timely and effective way.

1004. **Guernsey is rated as having a substantial level of effectiveness for IO.2.**

## TECHNICAL COMPLIANCE ANNEX

This annex provides detailed analysis of the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations in numerical order. It does not include descriptive text on the country situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in [date]. This report is available from [link].

### *Recommendation 1 – Assessing risks and applying a risk-based approach*

At the time of the 2015 Report on Fourth Assessment Visit, there was no requirement to conduct a national risk assessment or other risk-related requirements set out in R.1.

#### *Criterion 1.1*

Guernsey conducted its first ML/TF National Risk Assessment (NRA1) between 2016 and 2019, which was coordinated by Guernsey's AML/CFT Advisory Committee[110], at the request of the States of Guernsey Policy & Resources Committee, using the IMF Methodology with a slightly expanded version of the risk rating scale[111] for individual sectors and products. The assessment was organised around the three components of risk: threat, vulnerability and consequence, and was based on data covering 2014 to 2018 and previous risk assessment work, including a TF risk assessment carried out in 2016. The NRA1 was published in January 2020. Multiple sources of information were consulted.

In 2023, Guernsey undertook a follow up NRA (NRA2), which was coordinated by the Anti-Financial Crime Advisory Committee (the successor body to the AML/CFT Advisory Committee[112]), and was published on 29 December 2023, using the same methodology. Material has been added in a range of areas, including on charities and other NPOs, virtual assets (although with some limitations in terms of consideration of data (see c.15.3)), retirement solutions, private trust companies, collective investment schemes, higher-risk jurisdictions, and introduced a section on the financing of proliferation of weapons of mass destruction. Moreover, whilst the assessment of risk legal persons and arrangements was included in the NRA1, for NRA2 a more detailed separate risk assessment of legal persons and legal arrangements was published in April 2024.

Both NRA1 and NRA2 cover an overview and likely modalities for both ML/TF including domestic and foreign proceeds of crime and consider mitigating measures that lead to residual risks ratings for individual sectors and products.

#### *Criterion 1.2*

The Bailiwick's Anti-Financial Crime Advisory Committee (AFCAC) is the body responsible for co-ordinating action to assess risk that reports to "*The Five Committees*"[113]. It is chaired by the Head

[110] It was created over 15 years ago and comprised senior representatives from government, the Attorney General's Chambers, Law Enforcement (which at that time included the FIU as well as Customs), the GFSC, the AGCC, the Guernsey Registry, the Alderney Registry, the Guernsey and Alderney Registrar of NPOs, the Sark Registrar of NPOs and the Revenue Service ( i.e. all the AML/CFT competent authorities).
[111] Guernsey authorities added two additional grades to the scale, Medium Higher and Medium Lower.
[112] The "AML/CFT Advisory Committee" was renamed, following the publication of NRA1, "The Anti-Financial Crime Advisory Committee" rather than being dissolved and replaced.
[113] The Policy & Resources Committee, the Committee for Home Affairs, and the Committee for Economic Development of the States of Guernsey; the Policy & Finance Committee of the States of Alderney; and the Policy & Finance Committee of the Chief Pleas of Sark.

of the Public Service and comprises representatives of the AGCC, EFCB, Financial Crime Policy Office, FIU, GFSC, Guernsey Registry, LOC or the Revenue Service, among other authorities[114] (Terms of Reference of the AFAC as agreed and issued by The Five Committees and The National Strategy for AML/CFT/CFP).

***Criterion 1.3***

To keep the jurisdictional risk assessments up to date is required under the Terms of Reference of the AFCAC, which has the discretion to update risk assessments both periodically and when required by circumstances.

***Criterion 1.4***

Guernsey's NRA is a public document, and the results are available to all relevant competent authorities, FIs and DNFBPs, including on the websites of the government, the FIU, the GFSC[115] and the AGCC[116].

Moreover, the competent authorities are aware of the results of the NRA via their participation in this process as members of the AFCAC, through the underlying work related to assessing risk and different workshops and publications for the purpose of dissemination of NRA results.

In February 2020, sessions on NRA1 were organised for the private sector (≈600 attendees) by representatives from government, the GFSC and the FIU and the presentations slides were then published on the States of Guernsey website. The GFSC and the AGCC have also conducted outreach events about NRA1 and its use for sectors under their supervision. Guernsey has disseminated NRA2's results in a similar manner, with representatives of the government, GFSC, AGCC, FIU and the Guernsey Registry hosting presentations and workshops on 23 January 2024, whose slides are also publicly available at the GFSC website.

Similarly, results of the legal persons and legal arrangements assessment were disseminated to all relevant authorities, IFs and DNBPs in an event held in April 2024 with hundreds of attendees.

***Criterion 1.5***

The NRA1 was completed in 2019 and published in 2020, followed by the adoption of National AML/CFT/CFP strategy, which was updated in October 2023, informed by risks identified in the NRA processes.

Guernsey developed several national AML/CFT Strategies since 2020, which were most recently updated in October 2023 based on the results of the NRA1 (see. Criterion 2.2), which include ensuring operational capacity and capability. Following these strategies, a formal action plan was adopted in March 2024[117] and risk-based were adopted by all relevant authorities, allowing for the application risk-based approach (RBA) to allocating and prioritising resources in most cases and implementing measures to prevent or mitigate ML/TF.

***Criterion 1.6***

(a) The eGambling legislative framework in Guernsey does not exempt eCasinos from any of the FATF Recommendations (Schedule 4 of the eGambling Ordinance).

Acting as a director or partner of specific types of entities (supervised entities in Guernsey or other IOSCO member country or companies listed on recognised stock exchanges) is exempt from

[114] It also includes representatives of the Alderney Registry, Bailiwick Law Enforcement, Data Protection authority, Guernsey ports, HM Greffier, the Office of the Aircraft Registrar, the Office of the Director of Civil aviation and the Sark Registrar of NPOs.
[115] https://www.gfsc.gg/commission/financial-crime/national-risk-assessment
[116] https://www.gamblingcontrol.org/regulation-framework/amlcft-resources
[117] Authorities advised that its initial drafting had begun in February 2023.

licensing (Section 3(1)(d), (e) and (af) of the Fiduciaries Law), and hence from AML/CFT obligations, even when done by way of business, which is not in line with the requirements of R.22, R.23 or R.28 (in the case of directors/partners of supervised entities in IOSCO member countries only, as for the other 2 cases (Guernsey supervised entities and companies listed on stock exchanges) criminal probity checks exist). These are, however, considered to have a low materiality (for further details see c.22.1(e) and c.28.4)

Additionally, a natural person providing directorship services to 6 or less companies is also exempted from applying certain AML/CFT obligations (risk assessment, internal controls and procedures) (Paragraph 1(3), Schedule 3 of the Proceeds of Crime Law). Authorities advised that the types of directorship services exempted correspond to situations that are either outside the scope of the FATF Recommendations or entail a low ML/TF risk, based on a review conducted by the GFSC (see IO.1).

The GFSC has the power to exempt the requirement to apply for a license under the Fiduciaries Law for certain private trust companies (PTCs) as long as the trustee services are not provided by way of business, which makes them out of scope of the AML/CFT obligations of R.22, R.23 and R.28).

Moreover, Paragraph 1(2) of Schedule 3 to the Proceeds of Crime Law exempts a legal professional, accountant or an estate agent from applying the AML/CFT obligations (Schedule 3) and from registration and AML/CFT supervision by the GFSC (paragraph 1(1) of Schedule 5 to the Proceeds of Crime Law), if a set of criteria is met (annual turnover not exceeding GBP 50,000, occasional transactions are not conducted (or deposits not held in the case of real estate agents), the services are provided only to residents in Guernsey and the origin of funds is from a Guernsey bank). Most of the criteria to be met in order to utilise the exemption are linked to a proven low risk based in NRAs findings (the risk of domestic ML from predicate crimes committed by Guernsey residents is low, and the risks of domestically funding terrorism even lower).

(b) For FIs, there is an exemption from licensing (Section 20 of the Lending, Credit and Finance Law) for certain categories of financial services business if specific criteria are met (mainly the total turnover not exceeding GBP 50,000 (and the financial activity not exceeding 5% of the persons' turnover), no occasional transactions being conducted, the financial activity being ancillary and not the main activity of the business and not offered to the public). The exemption cannot be applied to the provision of MVTS (Section 20(1)(e) of the Lending, Credit and Finance Law) and neither to banking, insurance (excluding general non-life business), VASP or fiduciary activities, as exemptions under Section 20 apply only to "financial firm businesses" licensed under section 16 of the LCF Law.

Moreover, Section 21 of the same law provides further exemptions from licensing to persons, businesses, services or transactions, as specified by the GFSC by means of regulations and provided that certain conditions, restrictions or requirements specified in those regulations are met. Such regulations are issued by a Committee of the States of Guernsey (in this case the Policy and Resources Committee) after consultation with the GFSC and must then be approved by the States of Guernsey. No such regulations have been made.

Although undertaking these activities is exempt from licensing, a person which meets the exemption criteria must still apply the AML/CFT requirements in Schedule 3 of the Proceeds of Crime Law (see Part 1 of Schedule 1 to the Proceeds of Crime Law).

It should also be noted that, for any business whose financial activity is considered to be "incidental", they are not considered as FIs for the purposes of the Proceeds of Crime Law, meaning that they are not subject to registration, licensing or the application of AML/CFT

obligations. The criteria to determine when a financial activity is to be considered incidental is laid out in Part II of Schedule 1 of the Proceeds of Crime Law (most notably in Paragraph 32)[118], which is mainly in line with the criteria explained in the paragraph above concerning the licensing exemptions for FIs.

These exemptions are in line with the requirement of providing a financial activity on an occasional or very limited basis such that there is a low ML/TF risk.

***Criterion 1.7***

(a) Guernsey requires FIs and DNFBPs to take enhanced measures to manage and mitigate higher risks (including in relation to correspondent banking and PEPs) (Paragraph 5(1) of Schedule 3 of the Proceeds of Crime Law). One of the situations where EDD measures must be applied refers to high risk business relationships deemed as such having regard to the NRA.

Paragraph 2(7)(c) of Schedule 4 of the eGambling Ordinance explicitly requires eCasinos to take enhanced measures to manage and mitigate higher risks identified in their business and customers risk assessments. Paragraph 2(7)(a)(ii) explicitly requires eCasinos to have policies, procedures and controls to manage and mitigate risks identified NRA that are relevant to the business. Paragraph 4(1) requires the application of EDD in business relationships involving foreign PEPs, high-risk jurisdictions or other high-risk situations (including high-risk relationships deemed as such having regard to the NRA – Paragraph 4(1)(d)).

(b) Guernsey also requires that FIs and DNFBPs document their risks and incorporate information on higher risks identified by the NRA into their risk assessments (Paragraph 3(3) of Schedule 3 of the Proceeds of Crime Law and Paragraph 2(7)(a)(ii) of Schedule 4 of the eGambling Ordinance).

***Criterion 1.8***

Guernsey allows FIs and DNFBPs (except for e-casinos) to apply simplified due diligence measures where following a risk assessment, a relationship has been assessed as low-risk by the specified business or in accordance with the NRA (Paragraph 6(1) of Schedule 3 of the Proceeds of Crime Law).

Chapter 9 of the GFSC Handbook provides guidance for the application of SDD in respect of specific types of customers, including Bailiwick residents, Bailiwick public authorities, CIS authorised by the GFSC, Appendix C businesses (FSBs operating in Guernsey or equivalent third countries), intermediary business and pooled bank accounts. The rationale for SDD was part of a review by the GFSC, which assessed those situations as low risk (see IO.1).

For the avoidance of doubt, simplified CDD shall not be exercised where the specified business forms a suspicion that any party to a business relationship or occasional transaction or any beneficial owner is or has been engaged in ML or TF, or in relation to business relationships or occasional transactions where the risk is other than low (Paragraph 6(3) of the same Schedule).

For e-casinos, the AGCC has determined that there is no concept of low risk for CDD purposes within Alderney's eGambling framework, therefore no possibility of reduced or simplified due diligence measures for this sector.

[118] This paragraph excludes banking, investment business, long term insurance, insurance intermediary, insurance manager and TCSP activities, as well as MVTS.

***Criterion 1.9***

Supervisors monitor that FIs and DNFBPs (with the exception of the provision of directorship services to 6 or less companies, which are not subject to risk assessment requirements) are implementing their obligations under R.1. Paragraph 16 of Schedule 3 of the Proceeds of Crime Law appoints the GFSC as the supervisory authority with responsibility for monitoring and enforcing compliance of FIs and DNFBPs (other than eCasinos) with the requirements of the POCL (this including risk assessment obligations) (for more information, see R.26).

Section 3B(1)(b) of the eGambling Ordinance establishes that the functions of the AGCC include "the countering of financial crime and of the financing of terrorism in the eGambling sector", which can be interpreted broadly as to also encompass supervising and ensuring that the sector complies with their obligations under R.1, even if there no such specific reference. This notwithstanding, the business risk assessment is to be provided by eCasinos for approval prior to commencing operations (Paragraph 2(1)(a), Schedule 4, eGambling Ordinance) and keep them up-to-date, seeking approval of the AGCC whenever the results of the review of the risk assessment lead to changes in their internal control systems (Paragraph 2(1)(b), Schedule 4, eGambling Ordinance). Authorities advised that they are also checked during onsite inspections.

***Criterion 1.10***

FIs and DNFBPs (with the exception of the provision of directorship services to 6 or less companies) are required to take appropriate steps to identify, assess and understand their ML/TF risks (for their customers, the countries or geographic areas in which they operate, their products and services, their transactions and their delivery channels – Paragraph 3(3) of the Proceeds of Crime Law and Paragraph 2(4) of the eGambling Ordinance). This includes being required to:

(a) document their risk assessment (Paragraph 3(1)(a) of Schedule 3 of the Proceeds of Crime Law and Paragraph 2(1)(a) & (2) of Schedule 4 of the eGambling Ordinance);

(b) consider all relevant risk factors in determining the level of overall risk and the relevant mitigation measures (Paragraph 3(2) of Schedule 3 of the Proceeds of Crime Law and Paragraph 2(3) of Schedule 4 of the eGambling Ordinance);

(c) keep their assessments up to date (Paragraph 3(1)(b)) of Schedule 3 of the Proceeds of Crime Law and Paragraph 2(1)(b) of Schedule 4 of the eGambling Ordinance); and

(d) have appropriate mechanisms to provide risk assessment information to competent authorities and regulators (Paragraph 14(3) & 14(6)(b)(ii) of Schedule 3 of the Proceeds of Crime Law and Paragraph 12(5)(b) of Schedule 4 of the eGambling Ordinance).

***Criterion 1.11***

FIs and DNFBPs are required to:

(a) have policies, controls and procedures, which are approved by senior management, to enable them to manage and mitigate the risks that have been identified (either by the country or by the FI or DNFBP) (Paragraph 2(b), 3(6)(a) & Paragraph 15(1)(b) of Schedule 3 of the Proceeds of Crime Law and Paragraph 2(7)(a) of Schedule 4 to the eGambling Ordinance);

(b) monitor the implementation of those controls and to enhance them if necessary (Paragraph 2(b)(v), 3(6)(b) & 15(1)(c) of Schedule 3 of the Proceeds of Crime Law and Paragraph 2(7)(b) of the eGambling Ordinance); and

(c) take enhanced measures to manage and mitigate the risks where higher risks are identified (Paragraph 3(6)(c) of Schedule 3 of the Proceeds of Crime Law and Paragraph 2(7)(c) of Schedule 4 to the eGambling Ordinance).

***Criterion 1.12***

Guernsey allows simplified due diligence measures (except for eCasinos) and criteria 1.9 to 1.11 are met. As stated under c.1.8, SDD cannot be applied when there is a suspicion of ML/TF.

*Weighting and Conclusion*

Guernsey has implemented most of the requirements of R.1. However, there are some gaps in the assessment of risks for VA and VASPs (c.1.1), and the exemptions in relation to acting as a director or partner of specific types of entities (Section 3(1)(d), (e) and (af) of the Fiduciaries Law) are not in line with the Standards (although they are considered to have a low materiality) (c.1.6). **R.1 is rated LC.**

### *Recommendation 2 - National Cooperation and Coordination*

In the 2015 Assessment Report, Guernsey was rated compliant with national co-operation and coordination requirements.

***Criterion 2.1***

Guernsey has reviewed its national AML/CFT policies informed by the risks identified in its risk assessments and as a result, the political and operational authorities adopted the following documents on 31/10/2023 including the requirement be reviewed periodically (if a regional or global event or other event/development creates a trigger of sufficient materiality or if a risk assessment exercise, whether as part of a formal NRA or otherwise, identifies a significant new threat or an existing threat which was not, but has become, significant, which is deemed a systemic or critical threat to the Bailiwick) :

- The National Strategy.
- An updated AML/CFT Strategy
- An updated Anti-Bribery and Corruption Strategy (which is set to be reviewed periodically)
- Tax Strategy
- Counter Terrorism Strategy
- Statement on an Overarching Approach to Guernsey and Alderney Non-Profit Organisations
- Statement of Support for International Cooperation

***Criterion 2.2***

The Anti-Financial Crime Advisory Committee (AFCAC) acts as the co-ordinating body within the Bailiwick with responsibility for the development of jurisdictional strategies and other jurisdictional policies under its Terms of Reference and the National Strategy (for more details see analysis under Criterion 1.2).

***Criterion 2.3***

The National Strategy highlights the structure for the development and implementation of AML/CFT policies which builds on existing mechanisms for cooperation and coordination. It is

overseen by governmental committees in Guernsey, Alderney and Sark. At the top is the Strategic Coordination Forum, which comprises representatives of government and the operational authorities and sets strategic and legislative direction on the advice of the AFCAC. One of the objectives of the AFCAC is to coordinate the exchange of information obtained by its members in the course of their operational activities to enable an understanding of the extent to which national strategies, policies and actions plans are addressing risks in practice.

Below the Strategic Coordination Forum sits the Anti-Financial Crime Delivery Group[119], which comprises senior civil servants and representatives from the operational authorities and is responsible for the delivery of the Bailiwick's strategic objectives, including ensuring that the operational authorities have the resources that they need to discharge their functions effectively, promoting collaborative working and monitoring the extent to which strategic objectives are being achieved.

At an operational level, there are two pan-authority committees dealing with AML/CFT/CPF-related issues, the Sanctions Committee[120] and the Anti–Bribery and Corruption Committee, and all of the operational authorities have agreed a multi-agency statement on collaborative working with regard to charities. Moreover, an NPO working group was set up, in 2013, by the Registrar of NPOs for Guernsey and Alderney, to advise on legislative changes for compliance with international standards. In addition, there are bilateral arrangements in place between authorities to govern collaborative working, including the signature of several MoUs.

***Criterion 2.4***

The financing of proliferation of weapons of mass destruction is included in the National Strategy and the Terms of Reference of the AFCAC and therefore falls within the cooperation and coordination mechanisms described under criterion 2.3. Moreover, the Sanctions Committee is in charge of co-ordinating sanctions-related activities (includes PF-related TFS), ensuring that information is distributed publicly and to provide advice on sanctions and giving priority to matters concerning terrorist financing or the financing of proliferation of weapons of mass destruction (Terms of reference of the Sanction Committee as updated on 23rd April 2024).

***Criterion 2.5***

A representative of Office of the Data Protection Authority[121] sits on AFCAC, which reinforces compatibility with data protection principles. Besides, the National Strategy requires ensuring security of data in one of its strategic pillars.

*Weighting and Conclusion*

All criteria are met. **Recommendation 2 is rated C.**

### *Recommendation 3 - Money laundering offence*

The Bailiwick was rated LC with the former R.1 in the 2015 MER without any particular technical deficiencies as the downgrading factors were related to issues of effectiveness. The former R.2

[119] Membership: Chief Strategy and Policy Officer, Chief Operating Officer, Director of Operations and Senior Manager - Home Affairs, Director of Operations -Economic Development, Director of International Relations and Constitutional Affairs, Director of Financial Crime Policy, Senior Media and Communications Officer. Representation from operational authorities: AGCC, EFCB, Financial Crime Policy Office, FIU, GFSC, Guernsey Registry, LOC, Revenue Service

[120] Membership: Regulatory and Financial Crime Policy Team of the Policy & Resources Committee, LAO, the GFSC, the Guernsey Border Agency, the AGCC and the States of Alderney.

[121] It is the independent supervisory authority for the purposes of the Bailiwick's data protection legislation.

was not assessed in the previous round of evaluation. Unless it is indicated otherwise, no relevant changes have taken place in the applicable legislation since the last assessment.

***Criterion 3.1***

As at the time of the last evaluation, the ML offence is criminalised by three different pieces of legislation, that is, is the Proceeds of Crime Law[122] (POCL), the Drug Trafficking Law[123] (DTL) and the Terrorism Law[124] (TL) the scope of which offences has in all aspects remained the same.

The ML offences in the POCL apply to proceeds of "criminal conduct" meaning any conduct other than drug trafficking that is triable on indictment (section 1[1] POCL) which covers practically all crimes except public order offences in the Summary Offences Law and breaches of road traffic regulations. The ML offences at sections 38 to 40 POCL cover, respectively, the concealing or transferring of the proceeds of criminal conduct, assisting another person to retain such proceeds, and the acquisition, possession or use of such proceeds. The proceeds of drug trafficking offences are separately provided for by corresponding ML offences at sections 57 to 59 DTL whilst there is a specific ML offence at section 11 TL in respect of terrorist property including the proceeds of FT and other acts of terrorism.

The physical and material elements of the three ML offences were meticulously analysed in the 2015 MER and those provided under the POCL and DTL were overall accepted to be compliant with the respective FATF standards.

ML offences related to the concealment, disguise, conversion, transfer or removal of criminal proceeds are adequately and identically covered by the POCL and DTL (sections 38 and 57, respectively). The same goes for ML offences related to the acquisition, use, and possession of proceeds (sections 40 and 59, respectively) except for the defence based on the concept of "adequate consideration" in para (2) of both sections which, on the face of it, goes beyond the standard set forth in the two Conventions. In this respect, however, the assessors accept the explanation[125] provided in the 2015 MER why there are sufficient safeguards in the Bailiwick law so that this divergence cannot pose an actual technical deficiency. Finally, both ML offences discussed above remained supplemented by the third offence in sections 39 and 58 of the respective laws on assisting another person to retain the proceeds of criminal conduct[126].

The ML offence at section 11(1) TL, as analysed in detail by the 2015 MER[127], covers only some of the material elements of the ML offences as defined in the two Conventions, but also sets an evidentiary standard more demanding than what is required by the FATF standards which would pose an obstacle to applying the provision to the full range of situations required by the Conventions. Considering however that FT and other acts of terrorism are considered as "criminal conduct" (indictable offences) under the POCL such situations would automatically be covered by the ML offence as provided by the POCL.

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[122] Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999

[123] Drug Trafficking (Bailiwick of Guernsey) Law, 2000

[124] Terrorism and Crime (Bailiwick of Guernsey) Law, 2002

[125] See page 41 paragraphs 133 to 134

[126] See page 41 paragraph 135 of the 2015 MER for more details

[127] See page 41-42 paragraphs 137 to 138

***Criterion 3.2***

Under section 1(1) POCL, all offences other than drug trafficking that are indictable under the law of the Bailiwick ("criminal conducts") are predicate offences for ML the range of which includes, as noted under c.3.1 above, practically all crimes. Drug trafficking and similar crimes are predicate offences for the ML offence under the DTL but also under the POCL if prosecuted together with other criminal offences. The ML offence at section 11 TL encompasses proceeds of FT and other acts of terrorism which, however, also meet the criteria of "criminal conduct" in the POCL and are potential predicate offences in both regimes (see above). Taking all these into consideration, the 2015 MER confirmed[128] that the full range of designated categories of offences are statutory or customary law offences in the Bailiwick, and the position has not changed since then.

***Criterion 3.3***

The Bailiwick apply a combined (threshold and list) approach. First, there is a threshold approach under the POCL where the ML offences apply to predicate offences which meet the test for "criminal conduct" and covers practically all criminal offences other than drug trafficking, including TF and related offences too (see above). Second, there is a list approach in the DTL where section 1(1) defines "drug trafficking" as actions that amount to specified offences under the DTL and the Misuse of Drugs Law irrespective of the penalties applicable to them.

***Criterion 3.4***

ML offences in sections 38 to 40 POCL and sections 57 to 59 DTL equally apply to property that directly or indirectly and wholly or in part represents the proceeds of crime (including drug trafficking). Both Laws define "property" as including money and all other property, real or personal, immovable or movable, including things in action and other intangible or incorporeal property, whether it is situated in the Bailiwick or elsewhere, regardless of its value (section 50 POCL and section 68 DTL).

The concept of "terrorist property" as defined by section 7 TL also includes proceeds of the commission of acts of terrorism or those carried out for the purposes of terrorism, meaning any property which wholly or partly, and directly or indirectly, represents the proceeds of such an act (including payments or other rewards too). The scope of "property" is defined by Section 79 TL roughly in line with that in the POCL and DTL.

Further analysis of the applicable legal background (with a particular regard to the coverage of indirect proceeds and legal instruments evidencing title to assets and property) can be found in the 2015 MER[129].

***Criterion 3.5***

None of the three relevant statutes (POCL, DTL, and TL) require a conviction for the predicate offence to prove that property constitutes proceeds of that crime. The fact that no conviction is necessary had already been confirmed by case law by the time of the previous round of evaluation[130].

***Criterion 3.6***

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[128] See page 43-44 paragraphs 146 to 150

[129] See page 42 paragraphs 142 to 143

[130] See page 43 paragraphs 144 to 145

All ML offences are punishable without respect to whether the predicate offence was committed in the Bailiwick or in another jurisdiction. The relevant legislation (POCL, DTL, and TL) differs only in that whether or not it is required that the extraterritorial conduct should also constitute an offence in the country of perpetration, in which respect a detailed analysis can be found in the 2015 MER.

***Criterion 3.7***

All ML offences apply to the person who committed the predicate offence. In case of ML offences consisting of the concealment, disguise, convertion, transfer or removal of proceeds (section 38 POCL and section 57 DTL) this is expressly provided by law, while the acquisition, possession or use of one's own proceeds (section 40 POCL and section 60 DTL) is only implicitly covered by the relevant legislation but, as specified in the 2015 MER[131], has been confirmed by case law. Similarly, the offence at section 11 TL applies to all terrorist property, irrespective of whether or not that property has resulted from a crime committed by the defendant.

***Criterion 3.8***

It is a fundamental principle, derived from both the customary law of the Bailiwick and the common law of England and Wales, that the requisite mental element of any offence (including ML, FT, or predicate crimes) may be inferred from the circumstances surrounding the offence and any other evidence before the court. It was already specified in the 2015 MER that acceptance of circumstantial evidence had been confirmed in case law[132].

***Criterion 3.9***

Natural persons if convicted on indictment of any of the ML offences stipulated by sections 38 to 40 POCL, sections 57 to 59 DTL, or section 11 TL, are equally liable to imprisonment for a term not exceeding 14 years, an unlimited fine, or both. On summary conviction[133], the maximum term of imprisonment is 12 months for ML offences under the POCL and DTL (but only 6 months for the ML offence under the TL) and the fine cannot exceed level 5 on the uniform scale of fines (which is £10,000 according to the legislation being in force[134].) These criminal sanctions, provided under sections 38(4), 39(6) and 40(10) POCL, section 62 DTL, and section 17 TL respectively, are dissuasive and sufficiently proportionate.

In addition, the criminal courts have the power under section 1 of the Compensation Law[135] to order an offender, whether a legal or a natural person, to pay compensation to a victim of any crime. This could be invoked in cases where the laundering of the proceeds of a predicate offence such as fraud had prevented the victims from recovering their property.

***Criterion 3.10***

All of the ML offences (in the POCL, the DTL, and in the TL) make reference to acts by a "person" without differentiating between natural and legal persons. Under the Schedule to the

[131] See page 45 paragraph 159

[132] See page 58 paragraph 224 (discussed in the context of the then applicable SR.II on TF criminalisation)

[133] See page 43 paragraph 148 of the 2015 MER for more information regarding the indictability of the criminal offences in the Bailiwick and the relevance of summary proceedings

[134] The Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, and the Uniform Scale of Fines (Alderney) Law, 1989

[135] Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990

Interpretation Law[136], the definition of the term "person" includes any corporate or unincorporated body (with express reference to a body corporate or any other legal person) so the ML offences can equally be committed by natural and legal persons.

On the same legal basis as discussed under c.3.9 above, legal persons convicted on indictment of a ML offence are liable to an unlimited fine, which can be considered a dissuasive sanction, while on summary conviction the maximum fine is £10,000. The power to order an offender to pay compensation to the victim also applies here.

Both the GFSC and the AGCC have the power to impose a range of administrative sanctions that may be invoked against legal persons involved in ML or TF if such legal persons are their (former) licensees (or whose application for a licence has been refused) by applying to the court for an order that the respective legal person be dissolved, wound up or placed into administration under the Enforcement Law. In similar cases, legal persons qualifying as an NPO can be struck off the NPO Register by the Registrar.
As noted already in the 2015 MER[137], there is nothing in the legislation or under general principles of Bailiwick domestic law that precludes parallel criminal, civil or administrative proceedings but, in practice, criminal proceedings would take priority and the LOC would cooperate with the regulatory authorities to ensure that such proceedings were not prejudiced by regulatory action.

***Criterion 3.11***

The legislation of the Bailiwick provides for the full range of ancillary offences, including conspiracy to commit an offence under section 7 of the Attempts Law[138], attempt to commit an offence under section 1 of the same Law, and aiding and abetting, counselling or procuring the commission of an offence under section 1 of the Aiding and Abetting Law[139].

As discussed more in detail in the 2015 MER[140], persons convicted of any of these ancillary offences are liable to the same penalties as could be imposed for the primary offence. Not only, that all these provisions apply to all ML offences set out in any of the three relevant Laws, but the same range of ancillary offences are expressly included in relation to ML offences under the POCL and drugs-related ML offences under the DTL.

*Weighting and Conclusion*

**R.3 is rated C**

### *Recommendation 4 - Confiscation and provisional measures*

The former R.3 was rated LC in the 2015 MER which confirmed that the provisional measures and confiscation regime was technically compliant with the FATF standards and only noted issues of effectiveness. Unless it is indicated otherwise, no relevant changes have taken place in the applicable legislation since the last assessment.

***Criterion 4.1***

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[136] The Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016

[137] See page 58 paragraphs 225 to 226 (discussed in the context of the then applicable SR.II on TF criminalisation)

[138] Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law, 2006

[139] Criminal Justice (Aiding and Abetting etc.) (Bailiwick of Guernsey) Law, 2007

[140] See page 46 paragraphs 161-163

a) The laundered property is considered to be subject to confiscation in all instances since the scope of the property that is recoverable upon conviction (Section 2 POCL) includes all property that is obtained "as a result of, or in connection with" a criminal conduct committed by any person. Criminal proceeds are therefore to be confiscated also from a stand-alone money launderer who otherwise has no actual ownership of the property derived from someone else's criminal offence. This interpretation had already been confirmed by case law in the Bailiwick at the time of the previous assessment[141].

b) Confiscation of proceeds of crime in non-drug cases is provided for under Part I of the POCL where sections 2 to 12 provide specifically for the preconditions and legal effects of a confiscation order, while there is an identical regime in relation to drug trafficking in Part I of the DTL. These conviction-based confiscation regimes, the detailed analysis of which can be read in the 2015 MER[142], were then found to be compliant with the FATF standards corresponding to the current c.4.1(b) and have since remained unchanged.

In addition to that, non-conviction-based forfeiture is possible under the Civil Forfeiture Law which applied, throughout the period subject to assessment, to cash or funds of £1,000 or more in bank accounts which have been detained or frozen on the grounds that there are reasonable grounds to suspect that they are the proceeds of crime ("unlawful conduct"). In general terms, the court must make a forfeiture order on the application of the Attorney General in respect of the cash or funds unless a person claiming to be entitled to them can demonstrate their lawful origin. This scope has recently been extended by the new FOAL[143] which entered into force on the last day of the onsite visit (26 April 2024) and abolished the limitations on the types of assets that can be forfeited in civil proceedings.

Property representing instrumentalities, or intended instrumentalities of a crime can be confiscated by the court, upon the conviction of the person, under section 3 of the Police Property and Forfeiture Law. This provision applies to all categories of criminal offences, but there are further provisions for the confiscation of instrumentalities of specific crimes. In respect of drug trafficking, section 26 of the Misuse of Drugs Law permits the forfeiture and also the destruction of drugs and drug-related instrumentalities, while section 57(1) of the Customs Law permits the forfeiture of vehicles, containers, or any other thing that has been used for the carriage, handling, deposit or concealment of items that are themselves liable to forfeiture such as drugs or contraband goods.

It is also possible for a forfeiture order to be made under the Civil Forfeiture Law in respect of cash or funds in bank accounts that are intended to be used for the purposes of crime.

c) Section 18 and Schedule 2 of the TL deal with forfeiture orders that may be made where a person is convicted of a TF offence, where the court may order the forfeiture of any money or other property that the defendant had in his possession or control at the time of the offence and which he or she intended, knew or had reasonable cause to suspect would or might be used for the purposes of terrorism (thus including property specifically related to terrorist acts or

[141] See page 62 paragraphs 249 to 250

[142] See page 60-61 paragraphs 241 to 245

[143] Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023

terrorist organisations). The detailed analysis of this regime as included in the 2015 MER[144] has since remained relevant.

In addition to that, there are also powers of civil forfeiture relating to "terrorist cash" at section 19 and Schedule 3 of the TL referring to cash and BNIs intended to be used for the purposes of terrorism, consists of the resources of a proscribed organisation or is or represents property obtained through terrorism.

Proceeds derived from TF offences (as "criminal conducts") can also be confiscated under the confiscation regime set out in the POCL.

d) As discussed in the 2015 MER[145], the confiscation of assets of a corresponding value is covered by both the POCL and DTL where confiscation orders require the payment of a sum that reflects the value of the proceeds and can be enforced against any assets of a defendant or a third party that fall within the definition of realisable property. The TL does not make specific provision for the forfeiture of assets of a corresponding value to the money or other property that may be confiscated under its section 18, but such assets can nevertheless be confiscated under the POCL regime as mentioned under c.4.1(c) above.

For the purposes of a confiscation order, the value of instrumentalities can be included in the assessment of the proceeds of criminal conduct. This term expressly includes any property obtained by a person at any time in connection with criminal conduct/drug trafficking by any person, which would also include instrumentalities (Section 4 POCL).

***Criterion 4.2***

a) All of the measures described under R.31 are available to identify, trace and evaluation property that is subject to confiscation.

b) The complex regime of provisional measures has not changed since the previous assessment. Its main components, such as the restraint orders, the realty charging orders, and the personalty charging orders (sections 25 to 28 in both the POCL and DTL) are available, ex-parte and without prior notice, at each stage of the criminal procedure and are described more in detail in the 2015 MER[146]. While the powers at sections 25 to 28 POCL apply to terrorism-related criminal conducts too, section 18 and Schedule 2 of the TL contain specific powers to issue a restraint order prohibiting any person from dealing with any property that is liable to forfeiture.

Under the Civil Forfeiture Law, cash may be detained by the police and funds of over £1,000 in bank accounts may be frozen by the court.

In addition, as noted in the 2015 MER[147], the Police Powers and Criminal Evidence Law gives a general power to the police in the course of an authorized search to seize an item if there are reasonable grounds for believing that it has either been obtained in consequence of the commission of an offence or it is evidence in relation to an offence and if there is a necessity to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

c) There are sufficient safeguards in the law of the Bailiwick to comply with this criterion. Most property that is the subject of an action to prejudice the ability to freeze, seize or recover property

[144] See page 61-62 paragraphs 246 to 248

[145] See page 63 paragraphs 256 to 257

[146] See page 64-65 paragraphs 259 to 262

[147] See page 65 paragraph 263

will be caught by the confiscation regime irrespective of the transaction, treated as "realisable property" under the POCL and the DTL on which basis the court can effectively void the transaction in question. The detailed analysis given in this respect by the 2015 MER has remained valid[148] (also regarding why and how the forfeiture regime under the TL complies with this criterion without any specific provision).

Transactions intended to hinder the obtaining of a confiscation, forfeiture, restraint or realisation order would also themselves constitute ML or TF offences, or ancillary offences, so as to give rise to confiscation proceedings. Furthermore, as specified in the 2015 MER, it is still a common and customary legal principle also confirmed by case law that contracts can be set aside on the grounds that they are illegal or contrary to public policy.

d) All of the investigative measures described under R.31 are available for the purposes of asset recovery.

***Criterion 4.3***

As discussed more in detail in the 2015 MER[149], the POCL, the DTL, and the TL contain mechanisms to protect *bona fide* third-party rights at each stage of the confiscation process.

In the POCL and DTL confiscation regimes, the amount that might be realised excludes the total amount payable in respect of any obligations having priority, and the value of any third-party interest in any realisable property must be deducted from the value of that property as assessed by the court (sections 6 and 7 in both Laws).

As regards provisional measures, both Laws contain a range of specific provisions to protect the rights and interests of third parties, all unchanged since the last evaluation. Persons affected by a restraint or charging order have the right to notification thereof and to apply for the discharge or variation of such an order (sections 25[5][c] and 25[7]) persons holding an interest in realisable property have the right to make representations to the court (section 29[8]) and so forth, with further provisions discussed in detail in the 2015 MER[150]

Under section 18(7) TL, a forfeiture order cannot be made without giving a third party who claims an interest in the relevant property the right to be heard. Similarly to the POCL/DTL regime as above, persons affected by a restraint order have the right to notification and to apply for the order to be discharged pursuant to Schedule 2 to the TL.

There is also protection for third parties affected by the forfeiture of instrumentalities under section 1(1) of the Police Property Law, enabling them to apply to the court for return of of the property[151].

In addition to these specific provisions, any third party who claims to be affected by the exercise of the powers of confiscation, forfeiture, restraint and realisation may apply for the relevant decision to be judicially reviewed based on case law referenced in the 2015 MER[152].

[148] See page 68 paragraphs 282 to 284

[149] See page 67 paragraph 277

[150] See page 67 paragraph 278

[151] See page 68 paragraph 280 of the 2015 MER

[152] See page 68 paragraph 281

Third party rights are also protected by the Civil Forfeiture Law, section 16 of which provides that any person who claims ownership of detained or frozen assets may apply to the Royal Court for their release at any time. There is also a power to pay compensation to third parties in cases of bad faith at section 17A.

***Criterion 4.4***

Both the criminal confiscation and civil forfeiture regimes provide for the management of seized and, if applicable, confiscated/forfeited assets, which duties duties belong to the competence of H.M. Sheriff (an executive officer of the Royal Court) whom the Court can appoint as "Receiver" with powers to manage the property and to maintain its value. Reference is made to sections 26 to 29 in both POCL and DTL and, as far as section 12 et al. in the new FOAL, which entered into force on the last day of the onsite visit (26 April 2024). To supplement and to support this legislative framework, there is also an asset management policy agreed by the LOC, the EFCB, the police, and H.M. Sheriff ("Asset Management and Disposal Policy") dated 31 October 2023.

*Weighting and Conclusion*

**R.4 is rated C**

### *Recommendation 5 - Terrorist financing offence*

In the 2015 MER, the Bailiwick of Guernsey was rated C with the then applicable SR.II.

***Criterion 5.1***

The main offence to criminalise TF on the basis of the TF Convention is provided by section 8 TL ("fund raising") covering the collection (solicitation and receipt) and provision of money or other property with the intention or reasonable cause to suspect that it will be used for the purposes of terrorism. As discussed more in detail in the 2015 MER[153] the main TF offence is supplemented by further offences in sections 9 and 10 covering, in general terms, the possession and use of funds for the purposes of terrorism and the participation in arrangements as a result of which funds are to be made available to another for the purposes of terrorism, as well as the terrorism-related ML offence in section 11 (which is discussed under R.3 above). Neither of the TF offences in section 8 to 10 has since been amended and their composite coverage remains being in line with the TF offence in Art. 2 of the TF Convention.

"Terrorism" is defined at section 1(1) TL in two parts, following the approach under the TF Convention. Under section 1(1)(a), terrorism is defined fully in line with Art. 2(1)a of the Convention as the use or threat of action which involves the commission of an offence or is an act of the type described in the instruments listed in the annex to the TF Convention. The 2015 MER confirmed[154] that all of these offences had been, and thus still are, incorporated under Schedule 10 to the TL. Section 1(1)(b) provides for the generic definition of "terrorism" mostly in accordance with Art. 2(1)b of the TF Convention, as it is analysed and demonstrated in the 2015 MER[155]. The only minor divergence lies in the purposive element required by section 1(1)(b) that goes beyond the Convention, in which respect the assessors accept the conclusion drawn in the 2015 MER that the latest amendment to the legislation made this mental element sufficiently

[153] See page 52-53 paragraphs 193 to 194

[154] See page 53 paragrahs 198 to 199

[155] See page 53 paragraph 200

wide to cover the vast majority of potential acts of terrorism and provide for adequate compliance with the FATF standards[156].

***Criterion 5.2***

The relevant provisions of the TL to meet this criterion have not changed significantly since the previous round of evaluation (including their coverage of both direct and indirect collection or provision of funds or other assets, as well as the matters relating to the mental element).

a) TF offences apply to activity carried out for the purposes of terrorism so will apply to all acts that fall within the definition of terrorism at section 1 TL (see under c.5.1)

b) The provision and collection of funds for terrorist organisations that are proscribed under the TL is expressly dealt with, as actions taken for the benefit of a proscribed organisation are defined as acts for the purposes of terrorism under section 1(5). In contrast to the time of the previous assessment, this proscription no longer takes place in the Bailiwick legislation (where proscribed organisations used to be listed in Schedule 1 to the TL) but under the law of the United Kingdom as section 3 TL provides that an organisation is proscribed if it is listed in Schedule 2 of the Terrorism Act 2000 ("the UK Schedule") or it operates under the same name as an organisation listed in that Schedule.

The provision and collection of funds for terrorist organisations (whether or not proscribed) or for an individual terrorist, is also expressly dealt with by section 1A(1) TL which extends the definition of "purposes of terrorism" to the provision of support to a person involved in terrorism. A "person involved in terrorism" is defined by section 1A(2) as any legal or natural person, body, group, organisation or entity, whether or not proscribed, who commits, participates in, organises, directs or contributes to acts of terrorism. The definition of the purposes of terrorism at section 1A(1) TL expressly applies even if support is not provided in relation to a specific act of terrorism, which is further underpinned by section 1A(3) specifying that support to a person involved in terrorism involves support for any purpose[157].

***Criterion 5.2bis***

Under Section 1A(4), the definition of "purposes of terrorism" is extended to include travel by individuals to a state or territory other than their states of residence for the purpose of participation in terrorism (including the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training and the provision of support of any kind to a person involved in terrorism). As a result, financing this travel comes within the scope of all of the TF offences.

***Criterion 5.3***

The TF offences in the TL apply in respect of money or other property, where the term "property" is defined by Section 79 TL as including property wherever situated and whether real or personal, hereditable or moveable, and things in action or other intangible or incorporeal property. The 2015 MER found this definition being in almost full compliance with the scope of "funds" as provided by the TF Convention, apart from certain minor divergencies, which were then examined and found to be implicitly covered upon broad interpretation of the respective Bailiwick law and commentaries.

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[156] See page 54 paragraphs 202 to 204

[157] See page 55-56 paragraphs 205 to 213 of the 2015 MER for a detailed analysis on this matter

In the present round, the AT further examined whether the same broad interpretation also covers the scope of "funds or other assets" as provided in the FATF Glossary to the Methodology (as amended in 2017). There is recent and relevant case law in the Bailiwick on interpreting the definition of property in the POCL (which the court found being wide enough to encompass funds or assets of any kind, thus including all of the various types of assets specifically referred to in the FATF definition) which, by analogy, is also relevant for the definition of property in the TL."

***Criterion 5.4***

The test in the TF offences is the purpose for which funds are collected, or provided, and therefore it needs only be established that the funds are intended to be used for the purposes of terrorism, or that there are reasonable grounds to suspect that the funds will or may be used for the purposes of terrorism. The TF offences do not therefore require that the funds or other assets were actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act.

In addition, as noted above, the definition of "purposes of terrorism" in Art. 1A(1) includes the provision of support to a person involved in terrorism regardless of whether such support is provided in relation to a specific act of terrorism, while section 1A(3) clearly stipulates that support provided for the purposes of terrorism includes the provision of financial support for any purpose.

***Criterion 5.5***

For the reasons discussed under c.3.8 above, this criterion can also be regarded as being satisfied.

***Criterion 5.6***

Criminal sanctions for TF offences are set out at section 17 TL quite similarly to those available for ML offences (see c.3.9 above). A natural person convicted on indictment is thus liable to an imprisonment of up to 14 years, an unlimited fine, or both, while the maximum term of imprisonment is 6 months, and the maximum fine is £10,000 on summary conviction. These sanctions can be considered dissuasive and sufficiently proportionate. In addition, the power to order an offender to pay compensation to the victim (see under c.3.9) also applies.

***Criterion 5.7***

Findings under c.3.10 above are, mutatis mutandis, applicable to this criterion too.

***Criterion 5.8***

All sorts of ancillary offences required under c.5.8 are provided for and are subject to the same penalties as could be imposed for the primary offence:

(a) attempt to commit a TF offence is criminalized by section 1 of the Attempts Law (applying to indictable offences including TF)

(b) participation as an accomplice in a (completed or attempted) TF offence is criminalised by section 1 of the Aiding and Abetting Law (applying to all offences) and sections 7 and 8 of the Attempts Law (as conspiracy)

(c) organising or directing others to commit a (completed or attempted) TF offence is criminalised by the same provisions mentioned under (b)

(d) contributing to the commission of one or more (completed or attempted) TF offence(s) by a group of persons acting with a common purpose is criminalised by sections 7 and 8 of the Attempts Law (as conspiracy).

***Criterion 5.9***

All TF offences at sections 8 to 10 TL are indictable pursuant to section 17 of the same Law. Consequently, they fall within the definition of "criminal conduct" in section 1 POCL and thus comprise predicate offences for ML. In addition, the terrorism-related ML offence contained in section 11 TL is applicable with respect to TF predicate offences in most cases[158].

***Criterion 5.10***

The relevant legislation provides for the criminalization of TF in a substantially international context, in full compliance with c.5.10.

First, the definition of "terrorism" (as the object of financing) at section 1(4) TL encompasses actions outside the Bailiwick and actions that affect persons or property wherever situated, the public of a country or territory other than the Bailiwick, and the government of a country or territory outside the Bailiwick. Second, actions taken for the benefit of a proscribed terrorist organization are provided by section 1(5) TL with no restriction in respect of the location of that organization or the area in which it may be operating. Equally, the provision of support to a person involved in terrorism is not confined to persons acting or located within the Bailiwick. Finally, section 62 TL provides that a person may be held criminally liable for committing any act abroad that would have amounted to an offence under sections 8 to 11 TL had it occurred within the Bailiwick.

*Weighting and Conclusion*

**R.5 is rated C**

### *Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing*

Guernsey was rated LC in SR.III. The shortcomings identified concerned the practical applicability of the criminal procedural rules to seize/freeze assets in the interim period between a UN and an EU designation; and further efforts being required to ensure the immediate communication of the UN/EU designations to the obliged entities and thus the effectiveness of the freezing actions.

At the time of the last evaluation, the Bailiwick gave effect to the UNSC 1267/1989 and 1988 sanctions regimes and UNSCR 1373 by implementing EU Regulations.

Following Brexit, the UK introduced the Sanctions and Anti-Money Laundering Act ("SAMLA") in 2018. Guernsey introduced in 2018 its own Sanctions Law. By virtue of sections 2, 26, 27 and 29 of the Sanctions Law, the Sanctions Implementation Regulations were issued in 2020, which give effect to UK sanctions regulations under the SAMLA. Regulation 1 of the Sanctions Implementation Regulations provide that all UK sanctions regimes listed in Schedule 1 have full force and effect in Guernsey (subject to modifications provided in regulation 2 to facilitate domestic implementation, such as references to UK authorities having to be read as references to its Bailiwick counterparts). Under regulation 1(3)(a), this includes any designations made or applicable under any of the UK sanctions regimes. This includes the UK ISIL regulations (implementing the 1267/1989 sanctions regime), the UK Afghanistan Regulations (which implement the 1988 sanctions regime) and the UK International Terrorism Regulations and the UK Terrorism Regulations (both of which implement UNSCR 1373).

[158] See page 57 paragraph 219 of the 2015 MER for a more detailed analysis

For constitutional reasons, the Bailiwick does not have a direct relationship with the UN. Any designation proposals from the Bailiwick must be made through the relevant UN Committee by the UK Mission to the UN.

***Criterion 6.1***

(a) The P&R Committee[159] is the party within the Bailiwick responsible for making proposals to the UK for onward transmission to the UN, as stated in section 2A(1)(a) of the Sanctions Law. The P&R Committee being the competent authority for financial sanctions, including making designation proposals is also on the States of Guernsey (SoG) website[160].

An MoU between the States of Guernsey's P&R Committee and the UK's FCDO, most recently amended in August 2023 (it replaces a previous 2014 MoU), governs the way in which listing proposals are to be made. This requires the P&R Committee to transmit the proposal along the necessary underlying evidence to the contact point in the FCDO who will keep the P&R Committee informed of any decisions made. The FCDO will deal with a proposal for listing from the Bailiwick under the same procedures that the UK uses.

(b) Section 2B(1)(a) of the Sanctions Law states that the P&R Committee must take steps to identify possible subjects for designation proposals, including obtaining information as necessary, whether from persons within the Bailiwick or elsewhere. This legal provision, however, does not explicit the steps for the identification of targets for designation.

However, in section 6 of the P&R sanctions manual (April 2024), it is further stated that the P&R Committee routinely reviews information at its disposal to identify the need to make a listing proposal, as well as seeking input from other authorities represented on the Sanctions Committee[161], who also routinely review, for the same purposes, the information they hold.

In addition to the above, the Sanctions section of the SoG website indicates that the private sector (especially those entities with international links) shall "keep in mind the importance of identifying" and that they can "provide information relating to the identification of any possible designation targets, whether for designation by the UN, the UK of the P&R Committee". A designation proposal form and an e-mail address to contact the P&R Committee is publicly accessible. The designation proposal is to be used concerning proposals in relation to autonomous UK designations and UNSC designations given effect under a UK sanctions regime. These mechanisms constitute recommendations and best practices.

(c) Section 2B(1)(b) of the Sanctions Law establishes that, if the P&R Committee is satisfied that there are "reasonable grounds" for suspecting that a person meets the criteria for inclusion on a UN sanctions list, it must request to the UK to use its best endeavours and provide it with any relevant information to secure that the person in question is added to the UN sanctions list. Section 2B(2) of the same law further clarifies that there is no requirement for the person subject to the designation proposal to be or have been subject to criminal proceedings.

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[159] The Policy & Resources Committee is a Senior Committee of the States, with effect from 1 May 2016, composed by a President and four members who shall be members of the States of Guernsey. Its President or one of its members has to be the States of Guernsey lead member for external relations (Policy & Resources - States of Guernsey (gov.gg))

[160] Sanctions - States of Guernsey (gov.gg) ("Proposals for Designation" section).

[161] The Sanctions Committee is the body in charge of coordinating and ensuring compliance with UN and UK sanctions. It comprises representatives from the P&R Committee, the Committee for Home Affairs, the LOC, GFSC, AGCC, Guernsey and Alderney Registries, Guernsey Customs, Guernsey Police, FIU, EFCB, Revenue Service, Guernsey Harbourmaster and Registrar of British Ships, Aircraft Registry and the Director of Civil Aviation,

(d) Section 2B(b)(iii) of the Sanctions Law requires the P&R Committee to take the necessary steps to ensure that the designation proposal is made in accordance with the procedures (including the use of any standard forms) as specified by the relevant UN Committee. In practice, since it will be the UK making the designation request on behalf of Guernsey, such request would be treated in the same manner as a designation proposal made by the UK itself, which means that the UN's standard forms and procedures for listing would be used (see c.6.1(d) analysis of the UK MER).

(e) Section 2B(1)(b)(ii) of the Sanctions Law determines that the P&R Committee must, when submitting a designation proposal to the UK, provide the reason for the request and any relevant information that the Committee may lawfully disclose.

In section 6 of the sanctions manual, it is part of the procedures for listing that the responsible officer has to prepare a listing proposal form (LPF) and evidence pack to be submitted for formal legal review (by the LOC) before the designation proposal is approved to be referred to the UK. If referred to the UK, the information contained in the LPF and evidence pack would equally be disclosed to the FCDO. The LPF would require details on the person making the proposal, the nature of the proposal (whether for UK to designate the person or to make a proposal to the UN), the subject of the proposal (the name, identification details and address/location of the person proposed to be designated) and the grounds of the proposal.

The decision on the status as a designating state would correspond to the UK, since it would be, in last instance, the designating state (even if on behalf of Guernsey).

***Criterion 6.2***

The relevant legislation in relation to the implementation of UNSCR 1373 are the Terrorist Asset-Freezing Law (the "TAFL") and the UK Terrorism and International Terrorism Regulations (which are given effect under the Sanctions Implementation Regulations).

(a) Under the TAFL, the P&R Committee may designate a person on an interim (section 2) or final (section 4) basis if it reasonably suspects that the person is or has been involved in terrorist activity (or is owned or controlled directly or indirectly by, or acting on behalf of, such a person) and the P&R Committee considers that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions (including in relation to economic resources) should be applied to the person. An interim designation lasts for 30 days or until a final designation is made under section 4, whichever is earlier (TAFL, Section 3(1)(b)).

A final designation expires 12 months after it was made (or last renewed), unless it is renewed again (TAFL, Section 5(3)), and is of no effect during any period when the person is a designated person under other provisions of the TAFL (TAFL, Section 5(1)(a)).

The sanctions manual provides further information on the processes concerning interim and final designations. Section 2 states that the P&R Committee will review every interim designation within 14 days or as soon as possible after the designation is made or an application for revocation or change is received. For final designations, the revision would occur within 28 days of receiving an application for revocation or change or every 60 days since the final designation was made in order to assess whether it should be revoked or changed or, in the case of the last 60 days before expiration, if it should be renewed.

Section 8A(1)(b) of the TAFL establishes the P&R Committee as the authority in charge of receiving and making determinations in respect of requests from other jurisdictions to make, renew, vary or revoke a designation under the corresponding sections of the TAFL.

(b) Section 8A(1)(a) of the TAFL requires the P&R Committee to take steps to identify possible subjects for designation, including obtaining information as necessary, whether from persons within the Bailiwick or elsewhere.

Section 2 of the sanctions manual (section 2) states that the responsible officer within the P&R Committee routinely reviews information held by the Committee and seeks input from the authorities of the Sanctions Committee to verify whether there is a need for an interim designation.

Section 8A(1)(b) of the TAFL states that the P&R Committee would have to determine whether to make, vary or revoke a domestic designation if receiving a request from another jurisdiction.

(c) To date, no request to make a designation has been received by the P&R Committee. Section 8A(1)(b) requires the P&R Committee to make determinations in respect of requests from other jurisdictions. In section 4 of the sanctions manual the steps that the Committee would take when receiving a freezing request from another jurisdiction under the TAFL are described, including determining whether sufficient information has been provided to demonstrate reasonable suspicion or belief as required under the TAFL. If there is insufficient information, it should be requested to the requesting jurisdiction. The responsible officer should also consider establishing whether there are any relevant assets located in Guernsey. After that, the responsible officer would consult the FCDO, relevant authorities on the Sanctions Committee or any other party to verify the information provided by the requesting jurisdiction.

(d) The test for an interim designation (and designations made on the request of another jurisdiction) is "reasonable suspicion" (TAFL, section 2) and "belief" in the case of a final designation (TAFL, section 4), not explicitly "reasonable belief" (although it is implicit, because the grounds of appeal against a final designation include the fact the decision was not reasonable – section 42).

Section 8C of the TAFL states that, for the purposes of making a designation under the same law there is no requirement that the person subject to the designation is or has been the subject of criminal proceeding in the Bailiwick or elsewhere.

(e) Section 8B of the TAFL requires the P&R Committee, when making a freezing request to another jurisdiction, to provide it with the reason for the request and any relevant information that the Committee may lawfully disclose. Section 3 of the sanctions manual further clarifies that if the information provided to the other jurisdiction is insufficient to meet its requirements, the responsible officer within the P&R Committee will obtain any additional information to meet the requirements of the other jurisdictions. There have been no cases where the P&R Committee had any reason to make a designation under the TAFL or request another country to give effect to it.

***Criterion 6.3***

(a) The P&R Committee can obtain information from any person resident in Guernsey for the purposes of making designation recommendations to the UN and the UK (Sanctions Law, section 15(1)(f) and (h)). Failure to comply with these requirements is subject to imprisonment not exceeding 2 years, a fine, or both or, in the case of summary convictions, imprisonment not exceeding 6 months, a fine not exceeding level 5 (GBP 10,000) or both (Section 19(3), Sanctions Law). Additionally, Article 18(5)(ab) allows the P&R Committee to require any person resident in the Bailiwick any information required for the purposes of exercising its powers to make, vary or revoke a designation.

(b) Section 2B(2)(a)(ii) of the Sanctions Law indicates that, for the purposes of making a designation proposal (to the UK or the UN via the UK), there is no requirement that the person

subject to the designation proposal should be given notice of a designation proposal being considered, being made or having been made.

Section 8C of the TAFL establishes that there is no requirement for the purposes of making a designation under the TAFL that the person subject to the designation is given notice that the designation is being considered or will be made, including due to a request from another jurisdiction (TAFL, Section 8C(b)(i)).

***Criterion 6.4*** In relation to domestic designations under UNSCR 1373, Part II of the TAFL establishes the prohibitions (freezing of funds and economic resources and not making funds or financial services available) in relation to designated persons under the same law (interim or final designations made by the P&R Committee according to sections 2 and 4 of the TAFL).

According to section 6(1) and (2) of the TAFL, domestic designations must be notified to the designated person and publicised, unless the person is under the age of 18 or it is considered that the publication should be restricted for the security of Guernsey, for prevention of serious crime or in the interest of justice.

Section 2E of the Sanctions Law establishes that a designated person is subject to the same prohibitions under Part II of the TAFL as if that person had been designated under the TAFL. Section 2F(1) clarifies that a designated person means any person, group or entity designated under a UK sanctions measure in Schedule 5 of the Sanctions Implementation Regulations (which explicitly encompass the UK ISIL regulations, UK Afghanistan Regulations and the UK International Terrorism Regulations and the UK Terrorism Regulations. These sanctions regimes are immediately applicable in Guernsey, meaning that TFS are implemented without delay.

Section 2F(2) of the Sanctions Law establishes that for designations under a Schedule 5 UK sanctions regime that include, or purports to include, persons named by the UNSC, any of those persons, groups or entities will be designated persons within the meaning of section 2F(1) and, as such, subject to the prohibitions of Part II of the TAFL.

***Criterion 6.5***

(a) A person becomes a designated person by virtue of section 2F of the Sanctions Law or when designated under sections 2 and 4 of the TAFL. They would be subject to the asset freezing provisions found in Part II of the TAFL.

Section 9(1) of the TAFL states that a person (individual, body corporate, any other legal person or unincorporated body of persons) must not deal with funds or economic resources owned, held or controlled by a designated person if it knows, or has reasonable cause to suspect that is dealing with such funds or economic resources. The definition of "dealing with" (section 9(2)(a)) of the TAFL[162]) meets the requirement of "freezing" funds and economic resources. Section 9(4) of the TAFL states that any funds or economic resources must be frozen without delay and without prior notice to the designated person concerned. The freezing obligation however is narrowed to situations where a person knows or has reasonable doubts to suspect that is dealing with funds related to a designated person.

A person who fails to comply with a requirement to freeze funds or other assets, is subject to an imprisonment term not exceeding 7 years, a fine or both (or a maximum of 12 month

[162] "deal with" means –
(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.

imprisonment, a level 5 fine (GBP 10,000) or both on summary convictions) (Section 26(1) of the TAFL). Under section 3 of the Sanctions Law, it is a criminal offence to contravene any prohibitions or requirements under any sanctions measures, which would be subject to the same penalties (Section 19(1) of the Sanctions Law).

(b) The prohibition to deal with funds or economic resources of section 9(1) of the TAFL applies to any funds or economic resources owned, held or controlled by a designated person, therefore there is no requirement for them to be tied to a particular terrorist act, plot or threat.

Section 32A of the TAFL defines that the funds or economic resources include those owned, held or controlled, directly or indirectly, and wholly or jointly, by a designated person (section 32A(1)(a)), those in which the person has any direct or indirect legal or equitable interest (regardless whether is held jointly with any other person) (section 32A(1)(b) or any tangible property (other than immovable property) or bearer security (section 32A(1)(c)). Section 32(2) clarifies that funds being owned, held or controlled directly or indirectly jointly with another person does not prevent those funds being treated as being owned, held or controlled by a designated person.

Subsections under 32A further clarify the concepts of direct and indirect control over funds and economic resources and over legal persons. Section 32A(3) indicates that funds being owned, held or controlled indirectly by a person includes situations where those funds and economic resources are owned, held or controlled by another person that acts at the direction, on behalf or in accordance with the directions or instructions of the former.

Under section 30(1) of the TAFL, funds mean financial assets "of every kind", including any interests, dividends and other income on or value accruing from or generated by assets (section 30(1)(d)). Economic resources (section 30(2)) refer to assets of every kind, tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.

(c) Part II of the TAFL prohibits making funds or financial services available to: (i) a designated person (Section 10); or (ii) for the benefit of a designated person (Section 11); as well as not making economic resources available to: (i) a designated person (Section 12); or (ii) for the benefit of a designated person. Section 13A clarifies that the prohibitions extend to making funds, financial services or economic resources available: (i) to or for the benefit of persons or entities owned or controlled, directly or indirectly, by designated persons or acting on behalf of them; and (ii) wholly or jointly to or for the benefit of designated persons.

Contravening any of the above is an offence, punishable with an imprisonment not exceeding 7 years, a fine or both, or, in the case of summary convictions, an imprisonment not exceeding 12 months, a fine of GBP 10,000 or less, or both (Section 26(1) of the TAFL).

The prohibitions referred above are only applicable if the person knows or has reasonable cause to suspect that is making the funds, financial services or economic resources available to a designated person or for its benefit. Additionally, it will only be considered that funds and financial services are made available for the benefit of a designated person or economic resources are made available to or for the benefit of a designated person if the person making those available obtains, or is able to obtain, a significant financial benefit (sections 11(2), 12(2), and 13(2) of the TAFL), which narrows the scope of the prohibitions.

The issuance of licences to designated persons to authorise access to frozen funds is dealt with the P&R Committee (Section 15(2) of the TAFL).

(d) Notices of any new designations or changes to designations by the UN or the UK are transmitted electronically to REs via the FIU portal 'THEMIS'. This allows FIU to send a 'Sanctions

Notice' directly to MLROs or others who have signed up to receive information from THEMIS. The recipient will receive an email advising them and providing them with a link to the new designation. Registration in THEMIS is not compulsory, but authorities advised that all REs are registered.

Authorities advised that the communication between the P&R Committee and the FIU would usually take place "within hours" of the new designation or changes to a designation taking place and that the FIU will "prioritise" circulating the sanctions notice to the private sector.

The notices are also published on GFSC's website and the websites of the FIU and the AGCC websites have a link to it[163].

Detailed information and guidance on the obligations under the freezing mechanisms (including links to guidance issued by the UK) is available on the sanctions page of the SoG website[164], including a "sanctions FAQ", guidance and a form to REs concerning reporting obligations, or an overarching guidance on TFS.

(e) Both section 14(1)(c) of the Sanctions Law and section 17(1)(b) of the TAFL requires "relevant institutions" (FIs or DNFBPs providing services in or from Guernsey) to inform the P&R Committee "as soon as practicable" of any assets frozen or actions taken in compliance with a sanctions measure (a UNSCR or UK sanctions regulation), including attempted transactions.

In the sanctions page of the SoG website guidance on reporting obligations is available, as well as a sanctions compliance reporting form[165] (to provide general information, information on assets frozen or other actions taken and on suspected breaches of financial sanctions).

(f) Both section 30A of the Sanctions Law and section 35A of the TAFL deal with the exclusion of liability in equal terms. A person is not liable in damages or personally liable in any civil proceedings in respect to anything done, or omitted to be done, in compliance or purported compliance with any prohibition or requirement imposed by either the Sanctions Law or the TAFL or any sanctions measure, unless done or omitted in bad faith.

***Criterion 6.6***

(a) Section 2C of the Sanctions Law sets out that the P&R Committee must deal with any de-listing request received in relation to a UN or UK sanctions list. Section 2C(2) requires the P&R Committee, in cases of de-listing requests relating to a UN sanctions list, to provide the UK with the reason of the request and any relevant information that the Committee may lawfully disclose and to request the UK to secure that the person is removed from the UN sanctions list.

Section 7 of the sanctions manual deals with the procedures to handle de-listing requests, which mainly consist in the responsible officer within the P&R Committee reviewing all the information provided by the applicant (which should include the identity of the person, details of the relevant listing, the grounds on which it is claimed that the listing should be set aside and supporting evidence) and, once satisfied that it is sufficient, will immediately transmit the request to the UK FCDO, in line with the MoU. According to it, the FCDO will inform the P&R Committee about the proposals for de-listing at regular intervals, and will inform the applicant of the progress of the request when appropriate and of the outcome at the earliest opportunity. The P&R Committee will decide with the FCDO what information is passed to the applicant.

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[163] Sanctions — GFSC

[164] Sanctions - States of Guernsey (gov.gg)

[165] https://gov.gg/CHttpHandler.ashx?id=177420&p=0

UK authorities follow the relevant UNSC Committee Guidelines as a standard.

The SoG website contains information about de-listing procedures. It provides: (i) guidance on applications for P&R Committee assistance with challenging UK and UN designations; and (ii) a sanctions review request form[166] to be used by persons wishing to make a de-listing request or challenge in respect of a designation under the TAFL or to request assistance to the P&R Committee in relation to a UK or UN designation. The page also provides relevant contact details to submit de-listing requests to P&R, the UN (although the available link does not redirect to the relevant "procedures for de-listing" section of the UN website), the UK (limited to the physical address of the FCDO and a link to the sanctions review request form for listed persons) and the EU.

(b) Interim designations under the TAFL are subject to automatic expiry after 30 days unless replaced with a final designation, according to section 3. A final designation automatically expires after 12 months unless renewed, according to section 5. In addition, a designation may be revoked by the P&R Committee at any time (section 7). Expiry or revocation of a designation must be communicated to the person and steps must be taken to bring the expiry or revocation to the attention of anyone who knew of the designation (sections 3(2), 5(5) and 7(2) of the TAFL).

Section 8 of the sanctions manual addresses the handling of unfreezing requests (requests the P&R Committee receive for assistance in getting assets unfrozen from non-listed persons who have been inadvertently affected by an asset freeze or persons who have already been de-listed but their funds had not yet been unfrozen). The SoG website contains information about the unfreezing process, including guidance on unfreezing[167] and on applications for revocation or variation of designations[168].

Under section 22 of the SAMLA, a designation made under the UK Terrorism Regulations and the UK International Terrorism Regulations may be revoked at any time. Under regulation 8(2) of both the aforementioned UK regulations, revocation of a designation must, without delay, be communicated to the person in question and be publicised.

(c) Under section 24 of the TAFL, any person may appeal to the court against any decision of the P&R Committee in relation to making or varying an interim or final designation, to renew a final designation or not to vary or revoke an interim or final designation, on the grounds that the decision was an error of law, unreasonable, made in bad faith, non-proportionate or there were material errors as to the facts or the procedure.

A designated person may apply to the court for a designation under the UK Terrorism Regulations and the UK International Terrorism Regulations to be set aside (see section 38 of the SAMLA).

(d) and (e) This is dealt with under the MoU between the P&R Committee and the UK FCDO. It covers matters such as contact points and the provision of information and updates. In addition, the SoG website provides links to, in the case of UNSCR 1988 designations, the UN focal point mechanism for delisting (although the available link does not appropriately redirect to the relevant section of the UN website) and, in the case of UNSCR 1267/1989 designations, the page of the United Nations Office of the Ombudsperson on the UN website. It also explains that the P&R Committee may assist a listed person in dealing with the UN. Relevant contact points for the P&R Committee and the UK FCDO are provided.

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[166] https://gov.gg/CHttpHandler.ashx?id=177411&p=0

[167] https://gov.gg/CHttpHandler.ashx?id=177442&p=0

[168] https://gov.gg/CHttpHandler.ashx?id=177442&p=0

(f) Public procedures available at the SoG website, as well as in the relevant sections of the sanctions manual (see c.6.6(b)). The P&R Committee may assist people whose assets are affected false positives, if satisfied that the assets are not linked to a designated person.

Section 8A(1)(d)(iv) of the TAFL requires the P&R Committee to publish procedures in relation to the unfreezing of funds or other assets in "false positive cases". Section 8D of the same law defines false positive cases as cases of "innocent parties" who have the same or similar name of that of a designated person and their funds or other assets have been inadvertently affected by action taken by another person as a result of this.

(g) The process for communicating designations to FIs and DNFBPs described under c.6.5(d) applies equally to communicating de-listings and unfreezings.

In terms of guidance, this is provided in the SoG website (see c.6.6).

***Criterion 6.7***

*UNSC 1267/1989 (Al Qaida) and 1988 sanctions regimes*

Access to frozen funds or other assets may be authorised under the licensing process at regulation 29 of both the UK ISIL regulations and the UK Afghanistan Regulations. This is subject to criteria at Schedule 2 which are in accordance with UNSCR 1452 and successor resolutions (which includes basic needs, payment for legal reservices, maintenance of frozen funds and economic resources and extraordinary expenses). The P&R Committee is the competent licensing authority (regulation 2(t) of the Sanctions Implementation Regulations) in Guernsey.

*UNSCR 1373*

For asset freezings resulting from domestic designations, access to frozen funds or other assets may be authorised by the P&R Committee under the licensing process at section 15 of the TAFL. This process does not make explicit reference to licenses having to be granted in relation to frozen funds or other assets which have been determined to be necessary for basic expenses, payment of certain types of fees, expenses and services charges or extraordinary expenses, but under section 15(3A) of the same law, it is required that the P&R Committee ensures that granting a license does not lead to a contravention of a UN or UK sanctions measure or the purposes of designation being frustrated.

Section 14 of the TAFL provides exceptions allowing a relevant institution to credit a frozen account with, inter alia, interest or other earnings due on the account or payments due under contracts, agreements or obligations that were concluded or arose before freezing.

SoG website contains relevant information in relation to licenses, in particular a guide regarding license applications related to financial sanctions[169] and a template for making license requests to P&R[170], which requires, among others, to provide information on the relevant sanctions regime, the party who is making the request or on whose behalf is being made, activity for which the license is requested and why is necessary, the licensing grounds or the controls that will applied if the license is granted, among others.

Section 5 of the sanctions manual addresses license applications (concerning licenses to be issues under the TAFL or any UK or UN sanctions regime implemented in Guernsey), which can be

[169] https://gov.gg/CHttpHandler.ashx?id=174695&p=0

[170] https://www.gov.gg/CHttpHandler.ashx?id=150896&p=0

summarised by the responsible officer conducting an initial review of the information, consulting the LOC and seeking specialist legal advise and submitting the draft license to the political members of the Committee for its approval and eventual notification to the applicant. Licenses are only to be issued in line with any criteria, exceptions, restrictions or requirements that may apply under the sanctions regime to which the license relates.

In relation to assets frozen as a result of UK designations, access to frozen funds or other assets may be authorised under the licensing process at regulation 31 of both the UK Terrorism Regulations and the UK International Terrorism Regulations. The P&R Committee is also the competent licensing authority (regulation 2(t) of the Sanctions Implementation Regulations).

*Weighting and Conclusion*

Shortcomings remain in relation to: (i) the freezing obligation being narrowed to situations where a person knows or has reasonable doubts to suspect that it is dealing with funds related to a designated person (c.6.5(a)), (ii) prohibitions to making funds, financial services and economic resources to designated persons only being applicable when a person suspects that is making them available and obtains a financial benefit (c.6.5(c)). **R.6 is rated LC.**

### *Recommendation 7 – Targeted financial sanctions related to proliferation*

These requirements were not previously assessed.

***Criterion 7.1 -*** As explained under R.6, following Brexit all UNSCRs are given effect in the Bailiwick by implementing UK sanctions regulations through the Sanctions Implementation Regulations.

UNSCRs relating to the proliferation of weapons of mass destruction and its financing are implemented in Guernsey by giving effect, by virtue of Section 1 and Schedule 1 of the Sanctions Implementation Regulations, to the Democratic People's Republic of Korea(Sanctions) (EU Exit) Regulations 2019 (the "UK North Korea Regulations"), which implements UNSCR 1718 and subsequent resolutions in the UK[171]. Under regulation 10 of the UK North Korea Regulations, each person for the time being named for the purposes of paragraph 8(d) of UNSCR 1718 is a designated person for the purposes of the targeted financial sanctions (asset freezing) at regulations 13 to 17. The effect of this is that as soon as a person is named on one of the relevant sanctions lists, the person is designated for the purposes of the UK North Korea Regulations and by extension is immediately designated for the same purposes in Guernsey.

Additionally, section 2F of the Sanctions Law defines a designated person as any person, group or entity that is designated under a relevant UK sanctions measure for the purposes of a regime that is specified in Schedule 5 of the Sanctions Implementation Regulations (which also explicitly includes the UK North Korea Regulations). A designated person according to the meaning of that section is subject to the prohibitions of Part II of the TAFL (essentially asset freezing and prohibition of making funds, financial services or economic resources available to or for the benefit of designated persons), according to section 2E of the Sanctions Law.

[171] The Sanctions Implementation Regulations also give effect to the Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019 ("the UK Iran Regulations"), implementing UNSCR 2231 in the UK. However, on 18 October 2023, the TFS elements of UNSCR 2231 expired. Therefore, assessors did not assess the implementation of UNSCR 2231.

***Criterion 7.2 –*** As is the case under R.6, the P&R Committee is the authority in charge of the effective implementation of sanctions measures in Guernsey, according to section 2 of the Sanctions Law.

(a) Under both regulation 13(1) of the UK North Korea regulations and section 9 of the TAFL, a person must not "deal with" funds or economic resources owned, held or controlled by a designated person if it knows, or has reasonable cause to suspect that is dealing with such funds or economic resources. The definition of "dealing with"[172] (section 9(2)(a)) of the TAFL and regulation 13(4) of the UK North Korea regulations) meets the requirement of "freezing" funds and economic resources. However, as also expressed under c.6.5(a), the freezing obligation is narrowed to situations where a person knows or has reasonable doubts to suspect that is dealing with funds related to a designated person.

A person who fails to comply with a requirement to freeze funds or other assets, commits an offence (Section 9(3) of the TAFL), which is subject to an imprisonment term not exceeding 7 years, a fine or both (or a maximum of 12-month imprisonment, a level 5 fine (GBP 10,000) or both on summary convictions) (Section 26(1) of the TAFL). Additionally, under section 3 of the Sanctions Law, it is a criminal offence to contravene or cause or permit the contravention of any prohibitions or requirements under any sanctions measures implemented in Guernsey, which would be subject to the same penalties (Section 19(1) of the Sanctions Law).

(b) The prohibition to deal with funds or economic resources of section 9(1) of the TAFL and regulation 13(1) of the UK North Korea regulations applies to any funds or economic resources owned, held or controlled by a designated person, therefore there is no requirement for them to be tied to a particular terrorist act, plot or threat.

Section 32A of the TAFL regulations defines the meaning of funds or economic resources being "owned", "held" or "controlled" by a person, specifying that those would include funds or economic resources owned, held or controlled, directly or indirectly, and wholly or jointly, by that person (section 32A(1)(a)), fund or economic resources in which the person has any direct or indirect legal or equitable interest (regardless whether is held jointly with any other person) (section 32A(1)(b) or any tangible property (other than immovable property) or bearer security (section 32A(1)(c)). Section 32(2) of the same law further clarifies that funds being owned, held or controlled directly or indirectly jointly with another person does not prevent those funds being treated as being owned, held or controlled by a designated person for the purposes of the law. Similar considerations are found in regulations 13(6)-(7) of the UK North Korea regulations.

Subsequent subsections under 32A of the TAFL further clarify the concepts of direct and indirect control over funds and economic resources and over legal persons. In particular, section 32A(3) indicates that funds being owned, held or controlled indirectly by a person includes situations where those funds and economic resources are owned, held or controlled by another person that acts at the direction, on behalf of or in accordance with the directions or instructions of the former.

Section 30 of the TAFL provides a wide definition of funds and economic resources. Funds (section 30(1)) mean financial assets "of every kind", including any interests, dividends and other income on or value accruing from or generated by assets (section 30(1)(d)). Economic resources

[172] deal with" means –
(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.

(section 30(2)) refer to assets of every kind, tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services. The same definitions apply for the purposes of the Sanctions Law, according to its section 25. A similar definition of funds and other economic resources is available under section 60 of the UK SAMLA, which is applicable to the UK North Korea regulations.

(c) As explained under c.6.5(c), sections 10-13A of the TAFL define the prohibitions in relation to designated persons, including not making funds, financial services or economic resources available to or for the benefit of a designated person. As also stated, these provisions would apply, by virtue of the Interpretation Law, to any individual, body corporate or other legal person and unincorporated body of persons in Guernsey. Concerns expressed under c.6.5(c) in relation to the prohibitions only applying when a person knows or has reasonable cause to suspect that is making the funds, financial services or economic resources available and funds and financial services will only be considered as being made available if the person making them available obtains or is able to obtain a significant financial benefit equally apply.

Similar provisions are found in regulations 14 to 17 of the UK North Korea regulations.

Contravening any of the referred provisions of the TAFL constitutes an offence, punishable with an imprisonment not exceeding 7 years, a fine or both, or, in the case of summary convictions, an imprisonment not exceeding 12 months, a fine not exceeding level 5 (GBP 10,000) or both (Section 26(1) of the TAFL).

(d) The same communication mechanisms (sanctions notices circulated through THEMIS, publication of sanctions notices in the GFSC website and information available on the sanctions page of the States of Guernsey website) explained under c.6.5(d) equally apply here.

(e) Both section 14(1)(c) of the Sanctions Law and section 17(1)(b) of the TAFL requires "relevant institutions" to inform the P&R Committee "as soon as practicable" of any assets frozen or actions taken in compliance with a sanctions measure, including attempted transactions. A "sanctions measure" refers to, according to Section 1 of the Sanctions Law, a UNSCR or a UK sanctions regulation. Relevant institution would encompass any person carrying on financial services business, relevant business (DNFBPs) or eGambling business in or from Guernsey (Section 32 of the TAFL and Section 14(7) of the Sanctions Law). Failure to comply with this requirement is an offence under section 3 of the Sanctions Law – see under (a).

There are also reporting obligations under regulation 99 of the UK North Korea Regulations. These however refer to informing in cases of knowing or having reasonable grounds to suspect that a person is designated person or has committed an offence in relation to the financial prohibitions under the regulations, as well as of the nature and amount or quantity of funds and economic resources held for the customer at the time the first knowledge or suspicion occurred. References to informing the UK Treasury under the regulations are to be interpreted as to the P&R Committee in terms of their application in Guernsey, by virtue of regulation 2(t) of the Sanctions Implementation Regulations.

Guidance is available in the SoG website (see c.6.5(e)).

(f) Both section 30A of the Sanctions Law and section 35A of the TAFL deal with the exclusion of liability in equal terms. In particular, a person is not liable in damages or personally liable in any civil proceedings in respect to anything done, or omitted to be done, in compliance or purported compliance with any prohibition or requirement imposed by either the Sanctions Law or the TAFL or any sanctions measure, unless the thing was done or omitted to be done in bad faith.

***Criterion 7.3 -*** Non-compliance with several provisions of both the Sanctions Law and the TAFL are subject to penalties under sections 19 and 26, respectively. This includes non-compliance with asset freezing, reporting and provision of information and documents obligations and, more broadly, any contravention of any of the prohibitions in or requirements of any sanctions measures as implemented in Guernsey through the Sanctions Implementation Regulations. The latter would be subject to imprisonment of 7 years, a fine, or both or, on summary convictions, imprisonment of 12 months, a fine of GBP 10,000 or less or both.

The GFSC (Section 16(2A) of Schedule 3 of the POCL) and the AGCC (Paragraph 15 of Part V of Schedule 4 of the eGambling Ordinance) monitor the measures that FIs and DNFBPs have in place to ensure compliance with sanctions obligations (including any sanctions regime implement in Guernsey through the Sanctions Implementation Regulations). An FI or DNFBP that fails to have sufficient measures in place is liable to the sanctioning powers of the GFSC or the AGCC as the case may be.

***Criterion 7.4***

(a) The de-listing procedures described under c.6.6(a) are equally applicable here.

(b) The unfreezing procedures described under c.6.6(f) are equally applicable here.

(c) Access to funds or other assets may be authorised under the licensing process at regulation 88 of the UK North Korea Regulations. This is subject to licensing criteria (basic needs, payment of legal services, maintenance of frozen funds and economic resources, extraordinary expenses, pre-existing judicial decisions, humanitarian assistance activities, diplomatic missions, etc.) at Part 1 of Schedule 3 to the UK North Korea Regulations. The P&R Committee is the licensing authority in Guernsey (regulation 2(t) of the Sanctions Implementation Regulations).

Additionally, and as also explained under c.6.7, section 15 of the TAFL designates the P&R Committee as the authority in charge of granting licenses to access frozen funds or other assets as long as the granting of the license does not lead to a contravention of a UN or UK sanctions measure or frustrates the purposes of the designation (section 15(3A)).

References to guidance available in the sanctions page of the States of Guernsey website and the P&R Committee sanctions manual made in c.6.7 are equally applicable here.

(d) Communication mechanisms of c.6.5(d), 6.6(g) and 7.2(d) apply here.

***Criterion 7.5***

(a) Section 14(1) of the TAFL allows for crediting a frozen account with interest or other earnings due on the account, or payments under contracts, agreements or obligations that were concluded or arose before the account became frozen A “frozen account” means an account with a relevant institution held or controlled, directly or indirectly, by a designated person (with the meaning provided under section 2F of the Sanctions Law). If a relevant institution credits a frozen account under these circumstances, it must inform the P&R Committee about this fact “without delay” (section 14(4), TAFL).

Similar exceptions from prohibitions allowing to credit frozen accounts can be found at regulations 81(3) to (5) of the UK North Korea Regulations.

(b) This requirement concerns UNSCR 2231 exclusively, which is outside the scope of the analysis.

*Weighting and Conclusion*

Similarly to R.6, there are certain shortcomings in relation to provisions limiting the application of asset freezing to situations where: (i) there is knowledge or reasonable suspicion that funds, financial services and economic resources are being made available to designated persons; and (ii) funds, financial services and economic resources are only considered made available if there is the obtention or potential obtention of a financial benefit (c.7.2(a), c.7.2(c)). **R.7 is rated LC.**

### *Recommendation 8 – Non-profit organisations*

Guernsey was rated LC with SR.VIII. The shortcomings identified concerned a not sufficiently comprehensive NPO registration system (as Guernsey and Alderney manumitted NPOs were exempted from registration obligations), lack of publicly available information on manumitted NPOs and sanctions for non-compliance with registration requirements still not being effective and dissuasive.

#### *Criterion 8.1*

*(a)* Guernsey has 2 different types of organisations that can fall under the scope of the FATF definition: charities and NPOs[173]. References to NPOs will include both. NPOs can be distinguished between having a domestic, Channel Islands or international focus, and being public or privately funded. Additionally, there is also a distinction between self-administered NPOs and TCSP-administered NPOs (previously referred as manumitted NPOs).

Guernsey and Alderney NPOs are administered by the Guernsey Registry ("the Registry"), and Sark NPOs are administered by the Sark Registrar of NPOs.

*Guernsey and Alderney*

In 2022, the Charities Ordinance and the Charities Regulations were enacted. These set out new registration requirements for Guernsey and Alderney NPOs and bring TCSP-administered NPOs within the registration requirements (as from which they were excluded before).

Guernsey and Alderney NPOs with gross assets and funds of, 100,000 GBP or over and/or a gross annual income of 20,000 GBP or over (Charities Ordinance, section 10(3)(a)), as well as organisations whose activities involve raising or disbursing assets outside the Bailiwick[174] (Charities Ordinance, section 10(3)(b)) are required to register. Other NPOs can voluntarily register.

This is in line with the requirement to identify NPOs more vulnerable to TF abuse, but it does not fulfil the prior requirement of identifying the subset of NPOs that fall within the FATF definition (which could also include domestic NPOs regardless of the amount of assets and income).

All registered NPOs meet the FATF definition. Only "internationally active" NPOs are considered as potentially having TF risk and are risk-rated by the Registry in 3 risk groups (A, B and C).

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[173] Charities are organisations whose purposes are charitable or are purely ancillary or incidental to any of its charitable purposes and that provide or intend to provide benefit for the public or a section to the public in Guernsey, Alderney or elsewhere (Charities Ordinance, section 9(2)-(3)). NPOs are other types of organisations that are established solely or principally for the non-financial benefit of their members or the society, which includes, without limitation any social, fraternal, educational, cultural or religious purposes, or any other types of good works (Charities Ordinance, section 9(5)).

[174] Except when those comprise incidental expenditures, occasional distributions of physical items, provision of medical, educational or other assistance to Bailiwick resident and when those distributions are *de minimis*.

Criteria for risk-rating concerns mostly the exposure, through donor or beneficiary relationships, to TF Focus Countries (for more information see IO.10).

As of March 2024, 667 NPOs were registered, out of which 543 are domestic (341 voluntary and 202 compulsory) and 124 international (20 in Group A, 36 in Group B and 68 in Group C).

In October 2023, the P&R Committee, the Committee for Home Affairs, the Committee for Economic Development of the States of Guernsey, the Policy & Finance Committee of the States of Alderney and the Guernsey Registry issued a policy document a "Statement of Approach" in relation to Guernsey and Alderney NPOs. This is a policy document and, therefore, is of no mandatory compliance.

*Sark*

All Sark NPOs are required to be registered by virtue of the Sark Registration Law. There has been no assessment to identify how many of those NPOs would fall under the FATF definition. All Sark NPOs have exclusively a domestic focus and are considered by the authorities to have no risks of TF abuse. The amendments to the Law of April 2024 introduce additional requirements for NPOs that are international organisations, which can allow to infer that the risks of TF abuse are equally perceived by the authorities to concern organisations that raise or disburse funds internationally for Sark NPOs as well (for which there are no cases).

In addition, a similar statement of approach to that for Guernsey and Alderney NPOs was issued by the Chief Pleas of Sark and the Sark Registrar on April 26th, 2024 (last day of the onsite visit).

*(b)* Risks of the NPO sector are assessed both in NRA1 (2020) and NRA2(2023). Analysis in NRA1 mostly concern high-level conclusions and is not sufficiently detailed. However, is based on the analysis of a significant amount of data that was not made public. Comparatively, the analysis in NRA2 is more detailed, as a consequence of the Registry having more data following the update of the legislative framework in 2022.

Both iterations of the NRA identify, as main threats for the sector, the diversion of legitimate assets of NPOs to fund terrorism and the abuse of NPO programmes at the point of delivery, especially when operated in close proximity to conflict zone with an active terrorist or TF threat, as well as countries where a section of the population is targeted for support and cover by terrorist organisations. Other risks mentioned include NPOs being affiliated to organisations situated or working in areas with active terrorist or TF threats or the NPO being (knowingly or unknowingly) affiliated with a terrorist organisation, as well as well-meaning NPOs financing terrorism through deception (terrorists or terrorist organisations creating sham NPOs or portraying themselves as being involved in philanthropic activity).

These risks are theoretical and are not considered to be likely to affect Guernsey or Alderney NPOs in practice, due to an overall "lower" risk consideration for both self-administered and TCSP-administered NPOs.

Sark NPOs are included in the assessment of the nature of threats posed by terrorist entities in NRA2.

*(c)* The Charities Ordinance and the Charities Regulations were enacted in 2021 (in effect since April 2022) and 2022, respectively. They incorporate more risk-based obligations for registered NPOs. The Ordinance was further revised and amended, by means of Regulations, in December 2022 and March 2024.

The Sark Registration Law was also significantly amended in April 2024 (in force since April, 26th), at the very end of the assessed period, with an aim to incorporate risk-based requirements

(concerning international organisations[175]) more in line with those for Guernsey and Alderney NPOs (prior to that the duties of Sark international organisations concerned only the filing and keeping of annual financial statements and notification of changes within 21 days of occurring). These changes did not originate as a result of a change in the risks perceived for the sector, but with the goal to cover potential eventualities (as there are no international organisations in Sark as of the time of the assessment).

Both the statements of approach (point 4 in both cases) mention that the adequacy of measures, including laws and regulations, that relate to NPOs that may be abused for TF will continue to be monitored by the authorities to be able to take proportionate and effective actions to mitigate the risk.

*(d)* Point 5 of both statements of approach mention that the NPO sectors are to be reassessed periodically by reviewing new information on the sector's potential vulnerabilities to terrorist activities. No periodicity is mentioned in this regard.

In practice, the reassessment of the Guernsey and Alderney NPO sector has happened in 2020 for NRA1 and 2023 for NRA2. Additionally, authorities advise that registered NPOs are reviewed by the Registry on an annual basis when they submit the annual validation required by section 12 of the Charities Ordinance, notify a change to any matters stated in the registration within 21 days of occurring (Charities Ordinance, section 19) or report a payment of 100,000 GBP or above (Charities Regulations, regulation 12) as required by section 18 of the Charities Ordinance. The risk rating assigned by the Registry to the NPO will be reconsidered on the basis of the new information.

Regarding Sark NPOs, their profile has been considered (very briefly) in NRA1 and, more extensively, in NRA2, and the information to be provided for the annual renewal of registration required by section 5 of the Schedule of the Sark Registration Law is also reviewed by the Sark Registrar.

***Criterion 8.2***

*(a) Guernsey and Alderney*

Provisions under regulation 4 and the Schedule to the Charities Regulations require that the board of NPOs is comprised by at least, a chair, secretary and treasurer or equivalent, that the treasurer or equivalent and at least one of the other roles must be unconnected to one another and that all the board members have to be of proven integrity and probity with suitable and appropriate skills and experience. In this sense, under section 15 of the Ordinance, a person who has been convicted of a criminal offence or is subject to a disqualification cannot own, control or direct the activities of a registered organisation.

Regulation 6 of the Charities Regulations requires the involvement of at least two unconnected individuals for the release of funds (which can be achieved with having dual signatory powers on the NPO's bank account) (regulation 6(1)(b)), that the assets of the registered NPO are, as far as reasonably possible, kept separate from those of any third party (regulation 6(1)(c)) and that policies and procedures following accepted principles of accounting and control are adopted (regulation 6(1)(d)).

[175] An international organisation means a registered organisation the activities of which involve raising or distributing assets outside the Bailiwick, other than distributions of assets that comprise incidental expenditures, occasional distributions of physical items, provision of medical, educational or other assistance for the benefit or Bailiwick residents or are *de minimis*.

Section 16 of the Ordinance requires registered NPOs to make, keep and retain records of all financial transactions (section 16(1)(a)) and to produce and submit (except for voluntarily registered NPOs) to the Registry annual financial statements (section 16(1)(b)). The financial records must be sufficiently detailed to enable verification that assets, funds and income have been applied or used in a manner consistent with the purposes and objectives of the NPO, while the annual financial statements must comprise all funds or other assets raise or accepted and remitted. Regulation 6(1)(e) requires registered NPOs who solicit or accept donations, funds or contributions from the general public to make their most recent annual financial statements publicly available. This is not yet fully achieved in practice, since out of the 260 registered NPOs that are publicly funded, 83% of them are publishing their financial statements or making them available.

Under section 13 of the Charities Ordinance, the Registry may decline to register an NPO on several grounds, including where the control and governance of the NPO or its assets is not adequate (section 13(1)(e)), if it is owned, controlled or directed by a person who is prohibited from acting as such or who is unlikely to ensure that the obligations will be applied (section 13(1)(f)(g)), or if registration is not in the public interest (section 13(1)(h)).

Guidance available in the Registry website[176], most notably the "FAQ" document contains further detail.

*Sark*

Under paragraph 8 of the Schedule to the Sark Registration Law, international NPOs and any organisation with gross assets of at least GBP10,000 or an annual gross income of at least GBP 5,000, must keep records of all financial transactions, and file annual financial statements with the Registrar.

After April 2024, similar requirements in terms of constitutional documents (section 7A) and financial probity and transparency (section 7C) as the ones described for Guernsey and Alderney NPOs have been introduced in the Schedule to the Sark Registration Law.

*(b)* The Registry website contains abundant FAQ documents and guidance aimed at the sector, on aspects such as managing officials, risk awareness, legislative changes, oversight and enforcement, governing documents or how to use the Registry portal to file the requested documentation. It also contains fundraising guidance aimed at the donor community. The website of the Sark government contains a link that directs to the TF-related guidance documents available on the Guernsey Registry website. Authorities, most notably the Registry, have been particularly active throughout the period 2021-2024 in terms of trainings and outreach events aimed at the NPO sector.

*(c)* Authorities advised that work with the Association of Guernsey Charities was done in relation to preparing and issuing guidance during the development of the new legal framework of 2022. There were also consultation sessions with the sector in relation to the new legal framework of 2022, and the sector was engaged during the processes for NRA1 and NRA2.

Anti-financial crime policies of NPOs (which should cover TF risk management) are reviewed by the Registry whenever updated versions are submitted or during oversight actions.

[176] Charity/NPO Guidance & Information - Guernsey Registry

Engagement with Sark NPOs appears to have been, comparatively, more limited, although authorities indicated that the most recent legislative changes were also preceded by a consultation process with the sector.

*(d)* Regulation 6(1)(a) of the Charities Regulations and section 7C(1)(a) of the Schedule to the Sark Registration Law require registered organisations and international organisations, respectively, to put in place a requirement for all funds given to or received to pass, so far as is reasonably possible, through its bank account, and where is not possible, to record it and the reason, with the exception of funds that do not exceed a total of 1,000 GBP in a period of 12 months or that are payments ancillary or incidental to the purpose of the organisation.

***Criterion 8.3***

*Guernsey and Alderney*

Duties on registered NPOs include, most notably, (i) an annual validation of the NPO information (Charities Ordinance, section 12) and the obligation to notify of any change within 21 days of taking place (Charities Ordinance, section 19), (ii) reporting of any payment above 100,000 GBP (except incidental or in relation to a British parent entity) (Charities Ordinance, section 18); (iii) constitutional documentation and governance requirements (including the Treasures having to be unconnected to board members and two unconnected persons being necessary for the release of payments; and the provision of proof of absence of criminal records for the managing officials) (regulation 4 and Schedule to the Charities Regulations); (iv) record-keeping (of names of board members, board meetings, annual financial statements and other relevant documentation for 6 years) (regulation 6, Charities Regulations); (v) filing annual financial statements (except voluntarily registered NPOs, who are only obliged to maintain them) (Charities Ordinance, section 16), (vi) identification of significant (donations/payments above 15,000 GBP) donors and beneficiaries (or, in the case of branches of British NPOs, their parent company) (regulation 8, Charities Regulations); and (vii) establishing an anti-financial crime policy and additional mitigation controls regarding financial crime risks and international partners (regulations 9, 7 and 10 of the Charities Regulations, respectively).

These measures present some considerations, depending on the geographic scope of their activities. For example, in terms of the annual financial statements, (i) having a balance sheet, filing them to the Registry and following accepted accounting principles and standards are not required for voluntarily registered NPOs, or (ii) in cases of branches of UK-based NPOs, filing to the Registry only income and expenditure statements is sufficient. Other aspects would include, governing documents only requiring to cover matters not already dealt with in the constitution of the British parent organisation in the case of Guernsey branches or the identification of significant donors not being required for NPOs with an exclusive domestic focus.

*Sark*

Sections 7A to 7H, and section 8A of the Sark Registration Law introduced additional risk-based obligations for international Sark NPOs in similar terms to those for Guernsey and Alderney NPOs.

Monitoring of compliance with these new obligations has not been exercised yet by the Sark Registrar due to their very recent introduction and not being internationally active NPOs in Sark.

***Criterion 8.4***

*(a)* Section 3(1)(c) of the Charities Ordinance establishes, as one of the functions of the Registry, the monitoring and enforcement of compliance of registered NPOs with the provision of the Ordinance or any other relevant enactment in Guernsey and Alderney (which includes the Charities Regulations). Schedule 3 to the Charities Ordinance grants the Registry powers to

request and obtain information (section 1) and to conduct on-site visits, either with notice and agreement (section 2) or without (sections 3 and 4) and to request information during such visits (section 6).

Sections 9A to 9F of the Schedule to the Sark Registration Law have granted similar powers (obtention of information and conducting on-site visits) to the Sark Registrar, which have not been exercised yet due to only being in force since April 2024 and absence of internationally active NPOs.

*(b) Guernsey and Alderney*

Criminal sanctions and civil financial penalties are applicable to: (i) a disqualified person with a prohibition to own a registered organisation who owns, controls or directs the activities of a registered organisation (Charities Ordinance, section 15(6)); (ii) organisations and persons owning, directing or controlling the activities of organisations who are not registered when they would be obliged to (Charities Ordinance, section 21), non-compliance with any of the duties of Part IV of the Ordinance (submission of annual financial records, governance requirements, reporting of payments, notification of changes within 21 days) or any of the duties under the Charities Regulations (constitutional documents, record-keeping, financial probity and transparency, risk mitigation, identification of donors and beneficiaries, anti-financial crime policy and measures to international partners) (Charities Ordinance, section 23 and Charities Regulations, regulation 13), persons who do not comply with a request of information from the Registry or who disclose information that may prejudice a criminal or regulatory investigation or proceedings (Charities Ordinance, section 24) and provision of false or misleading information to the Registry (Charities Ordinance, section 25).

Criminal offences are punishable with imprisonment not exceeding 2 years, an unlimited fine or both (Charities Ordinance, section 26(1)). Managing officials can also have criminal liability in all cases except for offences related to registration or section 23 of the Ordinance, if the offence is committed with their consent, connivance or negligence (Charities Ordinance, section 27(1)). This would exclude criminal liability of managing officials for offences related to the majority of the duties under the Ordinance and all the duties under the Regulations.

Civil financial penalties can amount to a maximum of GBP 20,000 (Charities Ordinance, section 31(1). These penalties are applicable to "a relevant entity" or "other person", which is interpreted to also include the managing officials of an NPO. In addition, civil financial penalties can also be applied for failures to submit the annual validation (Charities Ordinance, section 22(1)(a)).

The Registry can also strike off NPOs at any time (Charities Ordinance, section 30), impose private reprimands (Charities Ordinance, section 32), publish public statements (Charities Ordinance, section 33) and issue disqualification orders to prevent a person from owning, controlling or directing the activities of a registered NPO (Charities Ordinance, section 34) in cases of contraventions of any provisions of the Ordinance (but not the Charities Regulations).

The Registry can also impose administrative penalties by virtue of Schedule 7 to the Charities Ordinance for cases of failure to register (GBP 2,000) and failure to submit an annual validation, annual financial statements or to respond an information request (GBP 250 per month). These amounts are not dissuasive, and do not encompass all the obligations of NPOs, but the other available penalties mitigate this issue.

*Sark*

Similar offences and penalties have been made available for Sark NPOs. In this regard, controlling, owning or directing (managing officials) an international organisation when prohibited to do so

(section 4A(6)), and failures in relation to any of the governance duties under Parts II and III of the Schedule to the Law (section 7I(a)) are punishable with imprisonment up to 2 years, an unlimited fine or both (section 7A of the Law), and for the managing officials, to a civil financial penalty (section 7I(b)). These offences are also subject to civil penalties for a maximum amount of GBP 20,000 (Schedule to the Sark Registration Law, section 12B).

Other sections of the Law set out other criminal offences. Failure to register (section 1(4)) and providing false or misleading information (section 7) are also subject to criminal sanctions. Registration failures can only be punished with a fine not exceeding GBP 5,000, which is not proportionate to the severity of the breach and when compared to all the other criminal sanctions available. For both of these offences, section 9(1) of the Law allows for the imposition of criminal sanctions if the offence was committed with the consent, connivance or negligence of a managing official.

Sark Registrar is also empowered to strike off organisations (section 10), issue private reprimands (section 12C), issue public statements (section 12E) and issue disqualification orders (section 12E).

Section 12A of the Schedule to the Sark Registration Law allows the imposition of administrative penalties for the same amounts and types of offences.

***Criterion 8.5***

*(a)* Given the fact that the Guernsey Registry holds information about both legal persons and NPOs, information about NPOs that are Guernsey legal persons can be cross checked against information about NPOs, and vice-versa. Information can be shared with the other domestic authorities under section 3(1)(ca) of the Ordinance, and all of the other competent authorities have the necessary powers to share information with the Registry and with one another. A protocol entitled Multi-Agency Statement on Collaborative Working ("the Collaboration Statement") has been agreed, in October 2023, by the AML/CFT authorities[177]. Paragraphs 4 and 5 of the Collaboration Statement contain a high-level statement concerning co-operation, co-ordination and information-sharing.

*(b)* Point 13 of both statements of approach address this issue, as well as point 6 of the Collaboration Statement.

There have been no TF investigations concerning NPOs in Guernsey. Any cases where TF would be suspected would be investigated by the EFCB under its overarching responsibility to investigate TF, using the investigative powers as described under R.30 and R.31. TF investigations would be prioritised by the EFCB and its members are trained on TF. In addition, Guernsey can obtain support in TF cases from the UK law enforcement authorities.

*(c)* The Registry can share all information held about a registered NPO for the purposes of an investigation under section 2 of Schedule 2 to the Charities Ordinance. Where an investigation requires additional information which the Registrar of Charities does not hold, this can be obtained from an NPO or a third party by using the information gathering powers under Schedule 3 to the Charities Ordinance. In the case of the Sark Registrar, information can be shared for the purposes of an investigation under section 14 of the Schedule to the Sark Registration Law, and additional information from NPOs can be obtained under section 9. Information from the

[177] Alderney Registry, AGCC, Data protection authority, EFCB, Revenue Service, P&R Committee, GFSC, Guernsey Registry, BLE, FIU, HM Greffier, HM Procureur, Sark Registrar on NPOs.

Registries would be shared with the EFCB who could obtain further information directly from an NPO or third party by using the investigatory powers in the Terrorism Law (see R.31).

(d) Any suspicion of any person (which would therefore include NPOs) is engaged in terrorist financing or that certain property is or is derived from terrorist property must be reported to the FIU by REs under sections 15 to 15AAA of the Terrorism Law, and by other businesses or professions (which is interpreted as also including the authorities) under section 12 of the Terrorism Law. This however falls short from the specific mechanism required by c.8.5(d), especially in relation to points (2) and (3). Authorities referred to other disclosure of information provisions in legislation (the Disclosure Law, GFSC Law, the Gambling Law or the laws governing each type of legal person and the beneficial ownership requirements), however these are broad powers concerning, generally, the discharge of the functions of different authorities or the prevention, detection, investigation or prosecution of criminal offences, and do not specifically address the NPO and TF-related circumstances required in c.8.5(d).

Point 7 of the Collaboration Statement states that if any authority other than the FIU suspects or has reasonable grounds to suspect that an NPO is involved or exploited for TF purposes, it has to communicate it immediately to the head of the FIU, who would (or if the FIU itself has the suspicion) liaise with the appropriate parties (at a minimum, the LOC, EFCB and BLE). Point 15 of both statements of approach refer to authorities having to record in writing appropriate mechanisms for the purposes of c.8.5(d). These are, however, high-level statements in policy documents, and do not constitute concrete procedures, mechanisms or legal requirements.

***Criterion 8.6 -*** Section 4A of the Charities Ordinance provides for the co-operation with foreign authorities "for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings" (section 4A(1)(b)). In the case of Sark NPOs, section 14(2) (e) of the Sark registration law provides similar powers, as it explicitly references that crime or criminal proceedings can be in the Bailiwick or elsewhere.

The Registry has a "manual on obtaining, retaining & disclosing information by the Registrar" which also deals with its communication and co-operation duties both domestically and internationally. Both the websites of the Guernsey Registry and the Sark government contain contact details (mail addresses) for international enquiries, which are regularly monitored. The GFSC, the FIU, the EFCB and the Attorney General (in cases of MLAs) can provide information to counterparts (including NPO information) under the powers described under R.40.

The need to establish appropriate points of contact and procedures to respond to international requests for information regarding NPOs suspected of TF or involvement in other forms of terrorist support is also mentioned in point 16 of both statements of approach.

*Weighting and Conclusion*

There has not been an identification of the subset of NPOs that fall within the FATF definition before making the requirement to register applicable to internationally active NPOs and domestic NPOs exceeding certain thresholds (c.8.1(a)), not all types of penalties are applicable to all types of offences under the Charities Ordinance and Regulations (in particular, exclusion of criminal liability of managing officials for offences related to the majority of the duties under the Ordinance and all the duties under the Regulations; and the administrative penalties of Schedule 7 to the Ordinance not encompassing all types of NPO obligations. In the case of the latter, the amounts are also not dissuasive) (c.8.4(b)), co-operation, coordination and information-sharing between authorities do not specifically address the TF-related circumstances of points (1) to (3) or are partly established through high-level statements in policy documents (c.8.5(d)).

For Sark NPOs, the same deficiencies apply, and, in addition: (i) dissuasiveness of certain sanctions (failure to register, administrative penalties) is lower than other available criminal and civil sanctions (c.8.4(b)). Materiality of deficiencies of Sark NPOs is considered low due to the low number of entities, their domestic focus and low risk of TF abuse. **R.8 is rated LC.**

### *Recommendation 9 – Financial institution secrecy laws*

Guernsey was rated C with the former R.4 in the 4th Round MER.

***Criterion 9.1 -*** Guernsey's financial services are governed by the common law principle of confidentiality established by jurisprudence[178], which also foresee exemptions to this principle including when an FI is compelled by law to provide information and in view of public duty.

*Competent Authorities – Access to and sharing of information*

The powers of the competent authorities to compel the production of or gain access to information to conduct their functions are set out under c.27.3, c.28.1(c), c.28.4(a), c.29.3 and c.31.1 all of which are fully compliant. Arrangements and legal provisions enabling the exchange of information by competent authorities at domestic and international level are set out under c.2.3, c.37.1 and c.40.1 which are fully compliant.

*Sharing of Information between FIs*

There are no impediments for the sharing of information and documents between REs to ensure compliance with the requirements under R.13, R.16 and R.17.

*Weighting and Conclusion*

**Recommendation 9 is rated C.**

### *Recommendation 10 – Customer due diligence*

Guernsey was rated LC with former R.5. The technical deficiencies included: lack of application of EDD in some higher-risk categories; possibility to refrain entirely from CDD measures in respect of authorised CISs with limited number of investors; SDD for non-residents was not limited to only those from jurisdictions that effectively implemented the FATF standards and for public companies it was not limited to those subject to adequate disclosure requirements.

The AML/CFT preventive measures for all REs (collectively "specified businesses" – para 1(1) of Schedule 3 - POCL) are set out under Schedule 3 to the POCL (hereinafter "Schedule 3"). Activities envisaged under the definition of financial institutions in the FATF Standards are covered in Schedule 1 of the POCL and defined as financial services businesses. Part II of Schedule I exempts a number of incidental and ancillary financial services. These are in line with the standard.

***Criterion 10.1***

Para 8(1)(a) of Schedule 3 prohibits REs from setting up or keeping anonymous accounts or accounts in fictitious names. Moreover, in terms of para 4(1)(b) REs were expected to conduct CDD in respect of anonymous account holders as soon as the Schedule came into force.

***Criterion 10.2***

[178] *Tournier v National Provincial and Union Bank of England; Re B; B v T (Court of Appeal, 11 July 2012)*

a) Para 4(2)(a) of Schedule 3 requires REs to undertake CDD measures upon the establishment of a business relationship with the customer.

b) The obligation to conduct CDD measures on occasional transactions (involving more than £10,000 carried out in a single or two or more operations that appear to be linked) is set in para 4(2)(b) of Schedule 3. Para 21(1) defines the term occasional transaction.

c) CDD measures are partially covered by Regulation (EU) 2015/847 in force in Guernsey according to section 1 of The Transfer of Funds Ordinances[179]. However, not all CDD measures envisaged in c.10.3-10.5 are covered. In terms of Regulation EU 2015/847 FIs (i.e. PSPs of the payer), are only subject to identification and identity verification requirements when carrying out occasional transactions that are wire transfers, for the payer. The CDD measures set out in c.10.4 and c.10.5 regarding persons purporting to act on behalf of the customer or the BOs are not covered.

d) Para 4(2)(c) of Schedule 3 requires REs to undertake the CDD measures (set out under c.10.3 - c.10.6 envisaged in para 4(3)) in case of ML/TF suspicions, regardless of any exemptions or thresholds. Para 11(1)(b) requires REs to scrutinise any transaction or activity occurring within a business relationship including suspicious ones.

e) CDD measures must be applied when a RE has doubts about the veracity or adequacy of previously obtained identification data - para 4(2)(d) of Schedule 3.

***Criterion 10.3***

Para 4(3)(a) of Schedule 3 requires REs to identify the customer and verify the identity of the customer using identification data. Customer is defined in para 21(1) of Schedule 3 and includes natural and legal persons (as set out under the Interpretation and Standard Provisions Law) and legal arrangements, in the context of both business relationships and occasional transactions.

Identification data is defined under para 21(1) to mean documents, information, and data from a reliable and independent source.

***Criterion 10.4***

According to para 4(3)(b) of Schedule 3 REs must identify the person purporting to act on behalf of the customer and verify that person's identity and authority to so act.

***Criterion 10.5***

Para 4(3)(c) of Schedule 3 requires REs to identify the BO and to take reasonable measures to verify such identity using identification data (see definition under c.10.3).

***Criterion 10.6***

The requirement to understand and, as appropriate, obtain information on the purpose and intended nature of the business relationship is set out in para 4(3)(e) of Schedule 3. Schedule 3 requires the application of this obligation also to occasional transactions.

***Criterion 10.7***

a) Para11(1)(b) of Schedule 3 stipulates that REs shall perform ongoing and effective monitoring of any business relationship. This includes scrutinising transactions or other activities to ensure they are consistent with the RE's knowledge of the customer, their business and risk profile (including, where necessary, the sources of funds) and also paying particular attention to all

[179] Transfer of Funds (Guernsey) Ordinance, Transfer of Funds (Alderney) Ordinance & Transfer of Funds (Stark) Ordinance.

complex, large and unusual transactions, and unusual patterns of activity or transactions which have no apparent economic purpose or no apparent lawful purpose.

b) Para 11(1)(a) of Schedule 3 requires REs to review identification data and records to ensure they are kept up to date, accurate and relevant, and update such data and records when they are not up to date, accurate or relevant. The extent and frequency of such monitoring is to be based on materiality and risk (para. 11(2)).

***Criterion 10.8***

Paragraph 4(3)(c) of Schedule 3 requires REs to take measures to understand the nature of the customer's business and its ownership and control structure of the customer.

***Criterion 10.9***

REs are required to identify and verify the identity of customers (see c.10.3).

*Legal Persons*

For legal persons (including PCCs, ICCs, LPs, LLPs and foundations) this must include the identification and verification of a minimum set of identity aspects (see Commission Rule[180] 7.30, 7.63, 7.72, 7.77 & 7.82). These include:

(a) name and legal form of the legal person. The above referenced Commission Rules require the obtainment of the legal person's official identification number, and date and country of establishment. The Handbook moreover suggests the obtainment of a confirmation that the legal person has not been, and is not being, dissolved, struck off, wound up or terminated (see Cap 7.31 and 7.83 of the Handbook). This information taken together is tantamount to proof of existence, however the information envisaged under cap 7.31 and 7.83 is not mandatorily required to be obtained. In the case of foundations, proof of existence is mandated via Handbook Commission Rule 7.82 which requires REs to obtain information about the legal status of the foundation which is interpreted to mean whether the foundation is still in existence, dissolved or struck off;

(b) names of senior managers (i.e. directors or equivalent depending on the type of legal person, all councillors in case of foundations, and the powers that regulate and bind the legal person / foundation – see Commission Rule 7.30 and 7.82); and

(c) the registered office address and principal place of business/operation/administration (where different from the registered office).

*Legal Arrangements*

In case of express trusts and similar legal arrangements the identification and verification process (see Commission Rule 7.97 of the Handbook) entails the obtainment and verification of the full name, identification number, and date and place of establishment of the trust. In terms of Chapter 9 of the Handbook, where the trustee is a TCSP licensed by the GFSC verification of the trust details are not required (see Commission Rules 9.27, 9.28 and 9.31).

(a) REs are not required to obtain information on the legal form of the trust or trust-like relationship. REs are obliged to obtain certified copies of relevant extracts of the trust deed or similar instrument only in case of high-risk business relationships or occasional transactions. The fact that this measure is discretionary (except in high-risk cases – see Commission Rule 7.100) does not suffice as proof of existence;

[180] Mandatory provisions of the Handbook, denoted by the wording "shall" or "must", are binding and enforceable (see para. 3(7) of Schedule 3 and para. 20 of the Handbook). The GFSC is empowered to make rules, instructions and guidance, which any court shall take into account when determining whether a person complied with the obligations under Schedule 3, 4 and 5.

(b) REs shall identify and take reasonable measures to verify the identity of the trustee(s) being the one responsible for administering the trust. They are however exempt from this obligation in case of trustees that are Guernsey REs (see Commission Rule 7.97(b)), subject to identifying that they are licensed trustees. In terms of Commission Rule 7.97(a)(ii) REs shall obtain information on the powers that regulate and bind the trust or similar legal arrangement.

(c) Trusts and similar legal arrangements do not have legal personality, with the trustee being the legal owner (see para 7.2 of the Handbook). As set out in (b) REs are required to identify and verify the trustee (except Guernsey REs), which would also include its/his registered/residential address.

***Criterion 10.10***

REs must identify the BO and take reasonable measures to verify such identity (see c.10.5). The notion of beneficial ownership for legal persons is defined under para 22 of Schedule 3, to include the following natural persons:

(a) Those who ultimately control the legal person through ownership. Thresholds for determining control through ownership of a legal person are defined in para 22(6) as being, the direct or indirect holding of: (i) more than 25% of the shares, other equivalent interests or voting rights, or (ii) the right to appoint or remove directors or other managing officials that have a majority say in the entity's management. In the case of foundations this also includes all natural persons having a beneficial interest of more than 25% of the foundation's assets.

Where a controlling interest in a legal entity is owned by a "transparent legal person" (defined under para 22(10) to include companies listed on a recognized stock exchange, Guernsey state owned entities, and regulated entities (i.e. REs licensed or registered with the GFSC), the transparent legal person is the BO. Thus, REs are not expected to identify and verify the natural persons who ultimately own or control the transparent legal person (see para 22(5) of Schedule 3). The exemption applicable to regulated entities is not in line with the standard.

(b) if no such person (as under para (a)) exists or can be identified, the natural person who ultimately controls the legal person through other means.

(c) if no such person exists or can be identified, the natural person who holds the position of a senior managing official of the legal person.

***Criterion 10.11***

(a) In relation to trusts, according to para 22(8) of Schedule 3 the definition of BO, that must be identified and has his identity verified (see c.10.5), includes:

(i) any beneficiary who is a natural person, whether his or her interest under the trust is vested, contingent or discretionary, and whether that interest is held directly by that person or as the BO of a legal person or a legal arrangement that is a beneficiary of the trust (i.e. indirectly including through a chain of ownership).

The Handbook requires also the identification of any class of beneficiaries and any other person who is likely to benefit from the trust (see Commission Rule 7.97). In the case of beneficiaries designated by characteristics or class the firm must obtain sufficient information concerning the beneficiaries to satisfy itself that it will be able to identify and verify them at the time of pay out or when they gain vested rights (Commission Rule 7.111 of the Handbook).

In accordance with Commission Rule 7.99 the extent of identification and verification for all types of beneficiaries varies depending on whether that person is likely to benefit from the trust, with a minimum requirement to obtain the full name and date of birth for all beneficiaries. Commission

Rules 7.107 and 7.108 of the Handbook however permit REs to verify the identity of all beneficiaries (except for high-risk cases) at the time of distribution of assets. This blanket exception, for all non-high-risk relationships is not in line with the standards. The authorities explained that this is justified and reasonable given that most Bailiwick trusts are discretionary where the beneficiaries' right to benefit is conditional and subject to determination by the trustee and the beneficiaries have no control over the trust assets. In the AT's view this blanket exception goes beyond the scenario of discretionary trusts, or low risk scenarios (which would be justified under the SDD framework). Moreover, the requirements of c.10.11 are applicable to all trust clients and not only those administered in Guernsey or governed by Guernsey law. The AT does not consider this deficiency to be major, since: (i) at the time of any asset distribution verification has to take place, (ii) identification details of the beneficiaries have still to be obtained, and (iii) in case of high risk the exception does not apply.

ii) any trustee, settlor, protector or enforcer of the trust who is a natural person or that is a transparent legal person. In the case of a transparent legal person the RE need not identify its BOs. As set out under c.10.10(a), this exemption applicable to all regulated entities (defined as transparent legal persons) is not in line with the FATF Standard.

iii) if any trustee, settlor, protector or enforcer of the trust is a legal person (other than a transparent legal person), or a legal arrangement, any natural person who is the BO of that legal person or legal arrangement,

iv) any natural person or transparent legal person (other than a trust beneficiary, trustee, settlor, protector or enforcer), who has power to appoint or remove trustees, direct the distribution of funds or assets, direct investment decisions, amend the trust deed, or revoke the trust.

vi) any natural person who is a BO of a legal person or legal arrangement (other than a transparent legal person) holding any of the powers in subparagraph (iv) (other than a trustee, settlor, protector or enforcer of the trust), and

vii) any other natural person who exercises ultimate effective control over the trust.

(b) According to para 22(9) of Schedule 3, the BO of legal arrangements other than trusts is any natural person or transparent legal person holding positions equivalent to the above.

***Criterion 10.12***

FIs issuing life, or other investment insurance policies must in addition to identifying and verifying the customer and BO undertake additional measures in respect of the beneficiaries of such policies as soon as they are identified or designated – Commission Rule 7.143 & 7.144 of the Handbook. These requirements fully reflect those under c.10.12.

***Criterion 10.13***

FIs issuing life, or other investment insurance policies are bound to take into account the beneficiary as a risk factor in conducting a relationship risk assessment. Where the beneficiary is considered to pose a high-risk, and that beneficiary is a legal person or arrangement, the FI must undertake EDD. This should include identifying and verifying the identity of the beneficiary's BOs prior to any distribution – Commission Rule 7.147 & 7.148.

***Criterion 10.14***

Para 7(1) of the Schedule 3 stipulates that identification and verification of the identity of any person or legal arrangement must be carried out before or during the course of establishing a business relationship or before carrying out an occasional transaction.

Para 7(2) of Schedule 3 states that verification of the customer or BO's identity may be completed following the establishment of a business relationship provided that to do so would be consistent with the risk assessment of the business relationship conducted and:

(i) the verification is completed as soon as reasonably practicable thereafter,

(ii) the need to do so is essential not to interrupt the normal conduct of business, and

(iii) appropriate and effective policies, procedures and controls are in place to manage risk. This includes a set of measures, such as a limitation of the number, types and/or amount of transactions that can be performed or the monitoring of large or complex transactions being carried out outside the expected norms for that business relationship.

***Criterion 10.15***

See reference to para 7(2) of Schedule 3 in c.10.14.

***Criterion 10.16***

Para 4(1)(b) of Schedule 3 requires REs to undertake CDD measures in relation to a business relationship established prior to the coming into force of Schedule 3[181]: (i) as soon as possible after the coming into force of Schedule 3 and before such account is used again, in case of anonymous accounts or accounts in a fictitious name, and (ii) in other cases, at appropriate times on a risk-sensitive basis, unless this already occurred. In accordance with Handbook Cap. 17.25 REs should consider whether and when any CDD measures have been previously applied and the adequacy of identification data held.

Commission Rule 17.27 required all business relationships to be reviewed by 31 December 2021.

***Criterion 10.17***

EDD, including situations when it must be performed, is defined in para 5(1) and (2) of Schedule 3. These include: specific high-risk scenarios by operation of the law, situations where EDD is called for by the GFSC having regard to the NRA, and business relationships or occasional transactions assessed to be high-risk by the RE. These conditions for applying EDD as well as the EDD measures are in line with the FATF Standard. EDD measures are specified in para 5(3).

***Criterion 10.18***

Conditions when SDD can be conducted are stated in para 6(1) of Schedule 3.

SDD is possible only in case that a business relationship or occasional transaction has been assessed as a low-risk relationship by the RE or in accordance with the NRA.

According to para 6(3) of Schedule 3, SDD is not possible if the RE suspects that any party to a business relationship or occasional transaction or any BO is or has been engaged in ML/TF, or in relation to business relationships or occasional transactions where the risk is other than low.

The Schedule and also the Handbook (see sections 9.3 – 9.9) permit the application of SDD in respect of specific customers including: (i) Bailwick Residents, (ii) Bailwick Public Authorities, (iii) CISs authorized by the GFSC, when CDD is being performed by persons other than the nominated firm (typically a fund administrator) responsible for the implementation of AML/CFT

[181] Schedule 3 came into force in March 2019.

obligations for the scheme, (iv) Appendix C Businesses[182], (v) Intermediaries for specific limited insurance and investment services (Commission Rule 9.65) and (vi) pooled bank accounts.

In the case of Bailwick public authorities, CISs and Appendix C businesses, the Schedule and the Handbook enable the automatic application of SDD irrespective of whether the business relationship or occasional transaction represents a low risk.

As set out under c.10.11, REs are also permitted to verify the identity of all trust or trust-like beneficiaries (except for high-risk cases) after the establishment of the trust relationship but prior to any distribution of assets. The application of this exception not only to low-risk scenarios is not in line with the Standard. Its impact is however not considered to be major (see c.10.10)

***Criterion 10.19***

When the RE is unable to comply with any of the CDD requirements, para 9 of Schedule 3 requires the RE to:

(a) Met - in the case of an existing business relationship, terminate that business relationship, and in the case of a proposed business relationship or occasional transaction, not enter into that business relationship or carry out that occasional transaction with the customer, and

(b) Met - consider whether a suspicious transaction report (disclosure) must be made.

***Criterion 10.20***

Para 4(5) of Schedule 3 requires REs not to carry out CDD measures if they suspect ML/TF by the customer and believe that performing CDD measures would tip off that customer or person. This provision also requires REs to file an STR in such case.

*Weighting and Conclusion*

The Bailiwick meets or largely meets all criteria, except for c.10.18 being partly met. This since REs are permitted to carry out SDD in respect of Bailiwick public authorities, CISs and Appendix C businesses irrespective of whether the business relationship or occasional transaction represents a low risk. **R.10 is rated LC.**

### *Recommendation 11 – Record-keeping*

Guernsey was rated C with former R.10 under the 4th round MER of 2015.

***Criterion 11.1***

Para 14(1) of Schedule 3 stipulates that REs must keep a comprehensive record of each transaction with a customer or an introducer, including the amounts and types of currency involved in the transaction (i.e. transaction document). Furthermore, para 14(2) and 21(1) requires REs to keep all transaction documents for a minimum of five years starting from the date that both the transaction and any related transaction were completed. Commission Rule 16.9 specifies that records should be kept on all transactions (i.e. domestic and international).

***Criterion 11.2***

[182] Defined under para 21 of Schedule 3 to include financial services businesses carried out in Guernsey or in other jurisdictions considered equivalent in terms of implementation of AML/CFT obligations and supervision & lawyers and accountants in the UK or other Crown Dependencies.

Para 14(2) and 21(1) of Schedule 3 requires REs to keep relationship risk assessments and any CDD information for a minimum of five years starting from the date when the business relationship ceases, or in case of an occasional transaction when that transaction was completed.

Para 21 (1) defines the term "CDD information" to include identification data, any account files and correspondence relating to the business relationship or occasional transaction, and all records obtained through CDD, including the results of any analysis undertaken. Records of analysis undertaken includes the results of all analysis (see Commission Rule 16.6). The Handbook also goes on to require the retention of specific analysis such as records of analysis of internal disclosures into suspicions of ML/TF.

***Criterion 11.3***

Commission Rule 16.9 states that in respect of transactions, sufficient information must be recorded to permit the reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

***Criterion 11.4***

Documents, CDD information, and copies thereof, may be kept in any manner or form, provided that they are readily retrievable, and must be made available promptly to any police officer, the FIU, the GFSC or any other person, when requested by law (para 14(6) of Schedule 3). Commission Rule 16.26 also states that REs must periodically review the ease of retrieval, and condition, of paper and electronically retrievable records.

*Weighting and Conclusion*

Guernsey fully complies with requirements of R.11. **R.11 is rated C.**

### *Recommendation 12 – Politically exposed persons*

Guernsey was not re-assessed for former R.6 under the 4th Round MER of 2015, having been rated as compliant during the previous assessment conducted by the IMF in 2010.

***Criterion 12.1***

PEPs (including both domestic and foreign PEPs, and persons holding a prominent function in an international organisation) are defined in para 5(4) of Schedule 3, and section 8.5.2. of the Handbook. It is in line with the FATF Standard.

The status as a PEP, family member or close associate, and the respective EDD measures are mandatory for five years (domestic PEPs) or seven years (all other PEPs) after a person ceases to occupy a prominent public function. In such cases REs may stop considering the person as a PEP and applying EDD. This however on condition that the senior management of the RE is satisfied of having an understanding about the source of funds of the business relationship or occasional transaction, and there exists no reason to continue to treat a person as a PEP – para 5(5), (6), and (7) of Schedule 3. This concession does not apply to heads of foreign states, governments, or heads of an international organisation, or to any foreign or international organisation PEP with the power to direct the spending of significant sums, their family members and close associates – para 5(9). This risk–based approach is broadly in line with the requirements of R.12.

(a) Para 4(3)(f) of Schedule 3 requires REs to determine whether the customer or BO is a PEP, and, if so, whether he or she is a foreign or a domestic PEP, or a person who is or has been entrusted with a prominent function by an international organisation. This determination is also to be made at appropriate times on a risk sensitive basis in respect of business relationships existent prior to the entry into force of Schedule 3 (para 4(1)(b)(ii)). REs must also ensure that

their monitoring system enables them to identify when a customer or BO becomes a PEP during the course of the business relationship – Commission Rule 11.14.

(b) Para 5(1)(a) of Schedule 3 requires REs to conduct EDD in case of a business relationship or occasional transaction in which the customer or any BO is a foreign PEP. Para 5(3)(a) and (b) of Schedule 3 require the obtaining of senior management approval for (i) establishing a business relationship or undertaking an occasional transaction with domestic or foreign PEPs and for (ii) continuing an existing business relationship with foreign PEPs.

(c) According to para 5(3)(a)(iii) of Schedule 3, EDD (for all PEPs) includes the obligation to take reasonable measures to establish and understand the source of any funds and of the wealth of the customer, and the BO, where the BO is a PEP.

(d) According to para 5(3)(a)(iv) of Schedule 3, EDD (for all PEPs) includes carrying out more frequent and extensive ongoing monitoring, including increasing the number and timing of controls applied and selecting patterns of activity or transactions that need further examination.

***Criterion 12.2***

(a) Para 4(3)(f) of Schedule 3 requires REs to determine whether the customer or BO is a foreign or a domestic PEP or a person who is or has been entrusted with a prominent function by an international organisation (see c.12.1(a) for more details).

(b) Commission Rule 8.46 states that where a business relationship or occasional transaction that involves a domestic or international organisation PEP is high risk, the same EDD measures outlined in c.12.1 above must be applied.

Para 5A of Schedule 3 enables REs not to consider as domestic PEPs (and apply the respective EDD obligations), those which occupied a prominent public function but ceased to do so before the coming into force of Schedule 3 (i.e. 31 March 2019). The authorities explained that this concession was introduced following due consideration of the risks associated with domestic PEPs by the AML/CFT Advisory Committee, with the contribution of the FIU, GFSC and the LOC. This concession is not considered to be in line with the standards since c.12.2 requires the application of EDD measures to be determined by the RE on the basis of the analysis of risk posed by the specific business relationship / occasional transaction with a domestic PEP, rather than based on a country-wide assessment of risk. This deficiency is minor considering its risk-based motivation, the fact that there are no indications of elevated domestic corruption risks in Guernsey[183] and the time lapse to date.

***Criterion 12.3***

Definition of PEP in paragraph 5(4)(c) and (d) of Schedule 3 includes family members or close associates. The minor shortcoming identified under c.12.2 impacts this criterion.

***Criterion 12.4***

FIs issuing life or investment linked insurance policies must determine whether any beneficiary of such a policy, or the beneficiary's BO (in case of a legal person or arrangement) is a PEP at the time that the beneficiary is identified or designated (i.e. either at the point of issuing the policy if the beneficiary is named or at the time of payout) – Commission Rule 7.144. This in addition to determining whether the customer or its BO are PEPs.

Where such FIs determine that the BO, any beneficiary, or the beneficiary's BO is a PEP, the firm must carry out the EDD measures set out under c.12.1-12.3 (Commission Rule 7.145). These

[183] See analysis on proceeds of domestic criminality under the NRA 2023 – pg. 22/23

measures include the conduct of enhanced on-going monitoring. This does not entirely correspond to conducting enhanced scrutiny of the whole business relationship with the policy holder prior to payout, in case of higher-risks. In accordance with Commission Rule 7.148 in cases of high-risk REs must consider making a suspicious transaction report.

*Weighting and Conclusion*

Guernsey meets criterion c.12.1, and largely meets all the other criteria. The remaining deficiencies are minor ones. **R.12 is rated LC.**

### *Recommendation 13 – Correspondent banking*

Guernsey was not re-assessed for former R.8 under the 4th Round MER of 2015.

***Criterion 13.1***

Para 5(1)(b) of Schedule 3 requires FIs to conduct EDD in respect to correspondent banking relationship, or similar relationships (including those established for securities transactions and funds transfers), whether carried out for the respondent firm or for its customers (Commission Rule 8.88). The EDD measures set out under para 5(3) of Schedule 3 and Section 8.6 of the Handbook, include the following:

(a) obtain additional information about the customer (which would include the respondent institution) - para 5(3)(v). Commission Rule 8.88(a) and (b) moreover stipulate that REs must gather sufficient information about a respondent institution to understand fully the nature of its business, and to determine from publicly available information its reputation and the quality of supervision, including whether it was subject to a ML/FT investigation or regulatory action.

(b) assess the respondent institution's AML/CFT policies, procedures and controls and ascertain that they are adequate, appropriate and effective - Commission Rule 8.88(c);

(c) obtain senior management approval for establishing a business relationship – para 5(3)(a)(i) and Commission Rule 8.88(d).

(d) clearly understand and document the respective AML/CFT responsibilities of each institution.

***Criterion 13.2***

In case of 'payable-through accounts', the FI must also take steps in order to satisfy itself that:

(a) the customer (the respondent institution) has complied with all CDD measures set out in Schedule 3 and the Handbook, on customers with direct access to the accounts of the correspondent institution; and

(b) the respondent institution is able to provide relevant CDD information upon request to the correspondent institution. See Commission Rule 8.89.

***Criterion 13.3***

Para 8(2) of the Schedule 3 prohibits REs from entering into, or continuing, a correspondent banking relationship with a shell bank, and requires REs to take appropriate measures to ensure that it does not enter into, or continue, a correspondent banking relationship where the respondent bank is known to permit its accounts to be used by a shell bank.

*Weighting and Conclusion*

Guernsey fulfils all the criteria under this recommendation. **R.13 is rated C**

### *Recommendation 14 – Money or value transfer services*

Under the 4th Round MER of 2015, Guernsey was not re-assessed for compliance with SR. VI.

***Criterion 14.1***

MVTS may be provided by money service businesses which require a license in terms of para 16(1) of the LCF Law. Money service business as set out under Part A of Schedule 1 to the LCF Law covers (i) the provision of money or value transmission services, currency exchange and cheque cashing – para 4, and (ii) facilitating or transmitting money or value through an informal money or value transfer system or network – para 6. Moreover, Part A of Schedule 1 covers other financial firm businesses requiring a license in terms of para 16(1) of the LCF Law. These include: (i) issuing, redeeming, managing or administering means of payment (covering credit, charge and debit cards, cheques, traveller's cheques, money orders, bankers' drafts, and electronic money); (ii) money broking, and (iii) otherwise investing, administering or managing funds or money on behalf of other persons; (paras 7, 13, 14 and 20).

In terms of para 20(2) other FIs (namely Banks, Credit Businesses, Investment Firms, CISs, long term insurers, insurance intermediaries and managers) and fiduciaries may also provide financial firm businesses (including MVTS) without the need to obtain a license under Part III of the LCF Law. Such FIs must be licensed under the various supervisory laws (see R.26 and R.28).

Moreover, according to para 2(1) of Schedule 4 of the PCL (hereinafter "Schedule 4"), all MVTS providers must be registered with the GFSC. The registration application shall indicate the type of activities provided or undertaken, including any money or value transfer services being provided (para 3).

***Criterion 14.2***

Persons who provide money service business without a license (see c.14.1) shall be guilty of an offence and liable on conviction on indictment, to imprisonment not exceeding a term of two years or a fine or both, or not more than six months imprisonment, £10,000 fine or both (upon summary conviction). The provision of other financial or fiduciary activities without a license is also sanctioned criminally (see c.26.2)

Any person who contravenes any requirement of Schedule 4 (including the obligation to register – see c.14.1) shall be guilty of an offence and liable on conviction, to imprisonment not exceeding a term of five years or a fine or both (upon indictment), or not more than six months imprisonment, £10,000 fine or both (upon summary conviction) – para 7 of Schedule 4.

In terms of para 1 of the Enforcement Powers Law the GFSC is empowered to detect and investigate contraventions of the various supervisory laws including the obligation to obtain a license and/or be registered to provide MVTS. Moreover, the GFSC undertakes various measures to police the perimeter and ensure that persons are not carrying on by way of business any unauthorised activities (refer to IO3 analysis for further details).

***Criterion 14.3***

Para 16(1) of Schedule 3 designates the GFSC as the AML/CFT supervisory authority for REs, among which MVTS providers (see introduction to R.10).

***Criterion 14.4***

Para 17 of Schedule 3 requires MVTS providers to maintain a current list of agents for such services. This list shall be made available on demand to the GFSC, and supervisory authorities in other countries where the MVTS provider and its agents operate.

***Criterion 14.5***

Para 15(1)(g) of Schedule 3 demands that MVTS providers ensure that the conduct of any agent that it uses is subject to requirements to forestall, prevent and detect ML/TF consistent with those set by the FATF. Commission Rule 2.62 requires MVTS that make use of agents to: (i) apply measures similar to those envisaged for group entities (see R.18). These include the requirement to ensure that agents in any country outside the Bailiwick comply with AML/CFT obligations, and (ii) to include agents under its AML/CFT programme and monitor them for compliance therewith.

*Weighting and Conclusion*

The Bailiwick meets all criteria under R.14. **R.14 is rated C.**

### *Recommendation 15 – New technologies*

In the 4th round MER, Guernsey was not re-assessed for compliance with former R.8.

***Criterion 15.1***

*Country level:*

The Bailiwick's Anti-Financial Crime Advisory Committee is responsible for co-ordinating action to assess ML, TF, and proliferation financing risk. The constitution and roles of the Committee are governed by specific terms of reference. There are however no specific provisions or terms of reference requiring the Committee to identify and assess the ML/TF risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies.

Under the 2020 NRA Guernsey analysed the ML risks of emerging products as medium-lower and very much lower for TF risks. The main emerging products analysed included transaction and exchange of virtual assets, initial coin offerings, and e-money. The revised 2023 NRA re-assessed the ML/TF risks associated with VAs and VASPs, having meanwhile been regulated in Guernsey, however, did not re-evaluate the ML/TF risks associated with emerging products. Moreover, neither NRAs analysed the ML/TF risks associated with the use of new business practices, technologies or delivery mechanisms to provide existing products.

*FI level:*

Para 3(1) of Schedule 3 stipulates that REs must carry out and document a suitable and sufficient ML/TF business risk assessment. According to para 3(3)(c), REs must conduct appropriate business risk assessments involving products, services, transactions and delivery channels (as appropriate), and in particular covering ML/TF risks related to the development of new products, new business practices, and the use of new or developing technologies for both new and pre-existing products. Section 3.11 of the Handbook defines new business practices as new ways in which the firm's products or services are offered, including new ways in which customers may interact with the firm (i.e. new delivery mechanisms).

***Criterion 15.2***

(a) The analysis of risks mentioned in c.15.1 must be undertaken prior to making available new products and adopting new practices and technologies (para 3(3)(c) of Schedule 3.

(b) Para 3(6) requires REs to have in place policies, procedures and controls approved by its board that are appropriate and effective, having regard to the assessed risk, to enable it to mitigate and manage identified and relevant risks.

***Criterion 15.3***

(a) ML/TF risks associated with the use of VAs were analysed in the 2020 NRA and highlighted that: (i) VA transactions and exchange in virtual assets and (ii) initial coin offerings were the most vulnerable to ML. It also remarked that the risk of their use by anyone in Guernsey or through services provided from Guernsey was very much lower for TF purposes. The analysis points out that at the time there were no known VA exchanges and there had been no applications for initial coin offerings and subsequent trading.

The 2023 NRA re-analysed the risks associated with VAs and VASPs taking into account developments following the entry into force of the licensing regime for VASPs in July 2023. The analysis highlights that there was only one licensed VASP and a potentially low take up of VASP licenses expected. The analysis also points out that the risk of potential misuse of VASPs licensed in Guernsey is limited given that they are not allowed to service retail customers, but only institutional and wholesale counterparties (see section 10.2(i) of the Lending, Credit and Finance Rules and Guidance).

Moreover, the authorities explained that the 2023 NRA analysis was underpinned by: (i) a commissioned analysis which examined the estimated cryptocurrency usage (i.e. $0.45 billion) involving Guernsey subjects between September 2021 - September 2022, and (ii) a survey issued to all REs to ascertain which REs managed, administered, transferred or held in custody VAs under their existing licenses. The latter survey led to the identification of only five TCSPs and one investment manager handling VAs. None of the licensed banks indicated that they managed, administered, transferred or held in custody VAs. Further analysis on the level of controls in place at the small number of REs which handled VAs was also undertaken to analyse their effectiveness.

The analysis of ML/TF risks associated with VASPs and VAs, is commendable. However, considering the indicative considerable value of VA activity involving Guernsey subjects (i.e. $0.45 billion equivalent to circa $5,300 per capita - consider the population of residents – 64,421, and registered legal persons - 20,822) a more in depth analysis of the risks emerging from the misuse of VA activities and the adequacy of existent control measures is expected.

(b) The Guernsey authorities have taken a number of measures to prevent VAs and VASPs from being misused for ML/TF purposes. Based on para 17 of the LCF Law, VASPs are subject to licensing and supervision by the GFSC. VASPs have also been included among REs according to Schedule 3, therefore subject to AML/CFT obligations. The authorities have also prohibited VASP licensees from providing services to retail customers.

Considering the gaps in risk understanding the AT could not fully conclude whether the measures undertaken suffice to prevent or mitigate all ML/TF risks associated with VAs.

(c) As REs, VASPs are subject to the requirements of identifying, assessing, mitigating, managing and monitoring their risks and of undertaking business-wide risk assessments set out under Schedule 3 and explained under c.1.10 and c.1.11.

***Criterion 15.4***

(a) Para 17 of the LCF Law prohibits persons from providing or holding themselves out as providing, by way of business, in or from within Guernsey, any VASP services unless they are licensed by the GFSC. The term "person" includes individuals, companies and other legal persons, and unincorporated bodies (para 90). Furthermore para 17(2) stipulates that any Bailiwick body (i.e. Guernsey, Alderney or Sark Companies, legal persons registered or incorporated in Guernsey, and unincorporated bodies having their principal place of business in Guernsey, Alderney or Sark) shall not carry on or hold itself out as carrying on VASP services without a license. This applies irrespective of where the Bailwick body provides or seeks to offer such services. The definition of virtual assets and VASP services (para 17(1) and (4)) are in line with the standards.

(b) Paragraph 23(2) of the LCF Law empowers the GFSC to refuse a licence unless satisfied that the minimum criteria for licensing are fulfilled for the applicant, and any person who is or is to be the holder of an approved supervised role or vetted supervised role at the applicant. The term "supervised role" is defined under para 41 of the LCF Law to include a director, controller, partner, general partner, member, MLRO, MLCO, compliance officer, significant shareholder (holding between 5% and 14.99% in the licensed body or a parent body) or manager.

The minimum criteria for licensing are set out under Schedule 4 to the LCF Law. These include requirements for licensees, and holders of a supervised role, to be fit and proper by taking into account, among others, (i) the person's probity, competence, experience and soundness of judgment for fulfilling that role, (ii) whether the interest of the public of Guernsey may be jeopardised by that license or role being granted, (iii) whether there exists any evidence that the person committed any offence or contravened the provisions of regulatory laws. The imposition of these criteria is conducive to prevent criminals, as well as their associates, from being involved in the management, ownership or control of VASPs as envisaged under this sub-criterion.

***Criterion 15.5***

Any person who operates as a VASP without a license is guilty of an offence and is liable on conviction, to imprisonment for a term not exceeding two years, or a fine (subject to the courts' discretion), or both (in case of conviction on indictment), or imprisonment of up to six months imprisonment, a £10,000 fine, or both (in case of summary conviction) – see para 17(3) and 73(2) of the LCF Law.

In terms of para 1 of the Enforcement Powers Law, the GFSC is empowered to detect and investigate contraventions of the various supervisory laws including the obligation to obtain a license to provide VASP services under the LCF Law. The GFSC actively polices the perimeter to identify persons undertaking VA activities without the requisite license. These activities draw on information obtained in the course of its supervisory functions, including authorisations and enforcement, and engagement with external stakeholders (including the FIU and law enforcement) and industry. In conjunction with the launch of the licensing regime for VASPs the GFSC also undertook various awareness raising initiatives within the Bailiwick, including with the legal sector, which is most likely to be consulted to set up a VASP business and license.

***Criterion 15.6***

(a) VASPs are REs subject to AML/CFT obligations under Schedule 3 (para 27(2) of Schedule 1). According to para 16(1) of Schedule 3, the GFSC is the AML/CFT supervisory authority. VASPs are subject to the risk-based supervision framework applicable to all REs as set out under c.26.5. The concerns relating to the frequency of examinations for medium-high risk REs are not considered to impact this sub-criterion given that there is only one licensed VASP in the Bailiwick.

(b) Paras 49B and 53 of the PCL empower the GFSC to conduct onsite inspections of VASPs, and to require the provision of documents and information necessary for onsite-inspections and for performing any of its functions (i.e. including general AML/CFT supervision beyond on-sites). Non-compliance with such requests is sanctionable as a criminal offence under paragraph 49B(7) of the PCL and paragraph 53(10) of the LCF Law.

Under para 24 of the LCF Law, the GFSC, when granting a license or at any time thereafter, may impose such conditions in respect of the license as it thinks fit. VASPs are subject to the same criminal and administrative sanctions for breaches of AML/CFT obligations as explained under R.35, and which are considered proportionate, effective and dissuasive. Moreover para 39 of the LCF Law grants the GFSC the power to issue directions to VASPs, including in suspected cases of contravention of a prohibition, condition or any obligation. Based on para 24(6) of the LCF Law

and paras 28 and 29 of the Enforcement Powers Law, the GFSC can also suspend or revoke a VASP's license, where any of the minimum license criteria (defined under Schedule 4 of the LCF Law to include adherence to all applicable laws) are not respected.

***Criterion 15.7***

The GFSC has provided specific guidance for VASPs (Chapter 18 of the Handbook) to assist them in meeting their AML/CFT and VA transfers obligations. The sector specific guidance also provides information on customer, product, service, and transaction risks associated with the VA Sector to guide VASPs in conducting their ML/TF risk assessments.

The Bailiwick's only licensed VASP became operational in February 2024. To date it has not submitted any SARs, nor been subject to any supervisory engagement, however, has already reported to the GFSC on its operations. Provision of feedback in respect of SARs and/or supervisory findings would be dealt with in the same manner as for other REs (see R.34).

***Criterion 15.8***

The administrative and criminal sanctions applicable for REs and senior management as explained under R.35 are likewise applicable to VASPs.

***Criterion 15.9***

VASPs are REs subject to AML/CFT obligations (see c.15.6(a)). The analysis for R.10 to 21, and the respective applicable deficiencies apply. All VASPs under the FATF Standards are covered (see c.15.4(a)).

(a) Under para 21(1) of Schedule 3, an "occasional transaction" for which CDD must be conducted in case of VASPs means any transaction involving more than £1,000, including transactions carried out in a single operation or two or more linked operations.

(b) (i) According to para 15C(1) of Schedule 3, an originating VASP must, in respect of any VA transfer (including domestic and cross-border – para. 15F): (i) obtain and hold required and accurate originator information and required beneficiary information, (ii) ensure that such information accompanies the VA transfer to the beneficiary VASP immediately and securely and (iii) make the information available on request to the GFSC and other appropriate authorities as soon as practicable. VA transfers cannot be executed if such conditions are not met.

The required originator information is set out under Commission Rule 18.24 and shall include: name, distributed ledger address (when carried out through a DLT network or similar network) and VA account number (if a VA account exists), originator's account number (if transfer is not registered on any similar technology network) or in the absence of any of the latter a unique transaction identifier. This covers transfers to wallets held by other VASPs and private wallets. It also includes one of either the originator's address, national identity number, customer identification number or date and place of birth. Beneficiary information shall include the name of the beneficiary, distributed ledger address and VA account number (where such an account exists), beneficiary's account number or in the absence of the latter a unique transaction identifier (Commission Rule 18.29). These mirror the information envisaged under c.16.1.

In case of an occasional transaction involving less than £1,000, the originating VASP shall at least obtain and hold the following information: the name of the originator and beneficiary and the VA wallet address of each or a unique transaction identifier (Commission Rule 18.34).

Handbook Commission Rule 18.28 stipulates that the originating VASP must verify the accuracy of the name of the originator, and the originator's address, national identity number, customer identification number or date and place of birth. For transfers under £1,000 such verification is

not required unless funds are received anonymously or there are suspicions of ML/TF (Commission Rule 18.34).

(ii) Under para 15C(2) of Schedule 3, a beneficiary VASP must, in respect of any VA transfer, obtain and hold required and accurate beneficiary information and required originator information, and make the information available on request to the GFSC and other appropriate authorities as soon as is reasonably practicable. The originator and beneficiary mirror those listed under paragraph (i) above (Commission Rule 18.39). Commission Rule 18.41 requires the beneficiary VASP to verify the beneficiary information obtained. For transfers under £1,000 the beneficiary VASP is not required to verify the originator information unless received anonymously or there are suspicions of ML/TF (Commission Rule 18.44).

iii) The requirements envisaged under R.16: (i) not to execute VASP transfers without the accompanying information for originating VASPs; (ii) to monitor and identify transfers without the accompanying information for the beneficiary and intermediary VASPs and to have risk-based policies to determine when to reject, suspend or refuse transfers and take appropriate follow-up action (para. 15C(3) and 15D of Schedule 3); (iii) record keeping obligations for all VASP transfers (para. 15G), and (iv) in respect of batch transfers (para. 15E) are likewise applicable.

In respect of the application of TFS obligations, as stated in c.15.6, VASPs are REs and therefore the TFS analysis under R.6 and R.7 applies to them including the respective deficiencies.

(iv) Para 15G(b) of Schedule 3 explicitly states that obligations for VASPs apply to any other RE when acting in respect of a VA transfer on behalf of a customer as they apply to originating VASPs, beneficiary VASPs or intermediary VASPs.

***Criterion 15.10***

As stated in c.15.6, VASPs are REs and thus the TFS analysis under R.6 and R.7 likewise applies to them.

***Criterion 15.11***

The analysis under R.37 – R.40 is also valid under this criterion. No shortcomings are identified under these recommendations.

*Weighting and Conclusion*

Guernsey meets or mostly meets all criteria under this recommendation. The remaining deficiencies considered to be most significant are those in respect of c.15.1 and c.15.3. These relate to gaps in the understanding of: (i) ML/TF risks associated with the use of new business practices, technologies or delivery mechanisms to provide existing products, and (ii) ML/TF risks and the adequacy of counter measures in view of the considerable value of VA transactions linked to Guernsey subjects. **R.15 is rated LC.**

### *Recommendation 16 – Wire transfers*

In the 4th round MER of 2015, Guernsey was not re-assessed for compliance with former SR. VII.

***Criterion 16.1***

The Transfer of Funds Ordinances[184] give effect, with some modifications, to Regulation (EU) 2015/847 in Guernsey, Alderney and Sark. Modifications are set out under Schedule 1 to the Ordinances (paragraph 1 of the Ordinances).

Articles 4(1) and (2) of the modified Regulation (EU) 2015/847 implements the FATF requirement regarding all cross-border wire transfers to always be accompanied by the required and accurate originator (payer) information, as well as by the required beneficiary (payee) information. As set out under c.16.5 transfers of funds where the entire payment chain involves PSPs located in the British Islands[185] are considered domestic transfers.

The required payer and payee information set out under articles 4(1) and (2) corresponds to the information required under c.16.1. In accordance with Article 4(4) the PSP of the payer shall verify the accuracy of the payer information. This shall be deemed to have taken place if the the payer has a business relationship with the PSP already subject to identification and verification requirements (Article 4(5) of the modified regulation (EU) 2015/847).

In accordance with article 5(1) of the modified Regulation (EU) 2015/847, where all PSPs involved in the payment chain are established in the British Islands transfers of funds shall be accompanied by at least the payment account number of both the payer and the payee or the unique transaction identifier.

Furthermore, in terms of article 6(2) of the modified Regulation (EU) 2015/847, cross-border transfers of an amount under €1,000, are not to be accompanied by the payer and payee information envisaged under c.16.1, but by lesser information as set out under c.16.3.

***Criterion 16.2***

Under Article 6 of the modified Regulation (EU) 2015/847 a batch file wire transfer from a single originator to PSPs established outside the British Islands must contain all originator and beneficiary information required under c.16.1 that is fully traceable. In such a case the obligations explained under c.16.1. would not be applicable to individual transfers. Individual transfers shall include the payment account number of the payer or a unique transaction identifier (Article 6(1) – modified Regulation (EU) 2015/847).

***Criterion 16.3***

Under Article 6(2) of the modified Regulation (EU) 2015/847, cross-border wire transfers under €1,000 are exempt from the requirements explained under c.16.1 and are instead required to be accompanied by the originator and beneficiary information set out in c.16.3.

***Criterion 16.4***

Based on Article 6(2) of modified Regulation (EU) 2015/847, information on the originator set out in c.16.3 need not to be verified unless there is suspicion of ML/TF, or the funds to be transferred were received in cash or in anonymous electronic money.

***Criterion 16.5 and 16.6***

Based on para 1(c) of the First Schedule of the Transfer of Funds Ordinances modifying Regulation (EU) 2015/847, wire transfers within Guernsey and the British Islands are considered to be domestic transfers.

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[184] Transfer of Funds (Guernsey) Ordinance, Transfer of Funds (Alderney) Ordinance & Transfer of Funds (Stark) Ordinance, are identical and applicable in Guernsey, Alderney and Sark respectively.
[185] The United Kingdom, the Channel Islands and the Isle of Man.

Article 5(1) of Regulation (EU) 2015/847 stipulates that such transfers shall be accompanied by at least the payment account number of both the originator and the beneficiary, or by the unique transaction identifier. Additionally, in case when PSP of beneficiary, intermediary PSP, a police officer, the FIU, GFSC or other authorities request additional information, article 5(2) of the modified Regulation (EU) 2015/847 obliges the PSP of the originator to provide such information, or the information set out under c.16.1 in case of transfers of €1,000 or more, within three working days.

Moreover para 14(6)(b)(ii) of Schedule 3 requires documents and CDD information held by a RE to be made available promptly to any police officer, the FIU, the GFSC or any other person, where such documents or CDD information are requested.

***Criterion 16.7***

Under article 16 of Regulation (EU) 2015/847 (modified by para 17 of the First Schedule of the Transfers of Funds Ordinances) the PSP of the originator is required to retain all records of any information received on the originator and beneficiary of a transfer of funds for at least five years from the date of the transfer of funds.

***Criterion 16.8***

Under article 4(6) of the modified Regulation (EU) 2015/847, the PSP of the originator is prohibited from executing any transfer of funds before ensuring full compliance with its obligations concerning transfers of funds set out in c.16.1 – 16.7.

***Criterion 16.9***

Article 10 of the modified Regulation (EU) 2015/847 obliges intermediary PSPs to ensure that all the information received on the originator and the beneficiary that accompanies a transfer of funds is retained with the transfer.

***Criterion 16.10***

There is no exemption under Regulation (EU) 2015/847 concerning technical limitations preventing the implementation of information requirements. Therefore, intermediary PSPs must ensure that all the information received on the originator and the beneficiary that accompanies a transfer of funds is retained with the transfer.

***Criterion 16.11***

Under article 11(2) of Regulation (EU) 2015/847 (modified by paragraph 12 of the First Schedule of the Transfer of Funds Ordinances) an intermediary PSP shall have effective measures, and procedures which are consistent with straight-through processing, including, where appropriate ex-post monitoring or real-time monitoring, in order to detect missing payer and payee information.

The missing information required to be detected is defined by cross-reference to articles 4 and 5 of the modified Regulation (EU) 2015/847 (see c.16.1.).

***Criterion 16.12***

Article 12 of the Regulation (EU) 2015/847 (modified by para 13 of the First Schedule of the Transfer of Funds Ordinance) requires the intermediary PSP to establish effective risk-based policies and procedures for determining whether to execute, reject or suspend a transfer of funds lacking the required originator or beneficiary information and for taking the appropriate follow up action.

Following that, where a PSP repeatedly fails to provide the required information on the originator or beneficiary, the intermediary PSP shall take steps, which may initially include the issuing of warnings and setting of deadlines, before either rejecting any future transfers of funds from that PSP or restricting or terminating its business relationship with that PSP.

***Criterion 16.13***

Under article 7 of Regulation (EU) 2015/847 (modified by para 9 of the First Schedule of the Transfer of Funds Ordinance) the PSP of the beneficiary is required to implement effective measures and procedures, including, where appropriate, ex-post monitoring or real-time monitoring in order to detect missing originator or beneficiary information.

The missing information required to be detected is defined by cross-reference to articles 4 and 5 of the modified Regulation (EU) 2015/847.

***Criterion 16.14***

Under article 7(3) of the Regulation (EU) 2015/847 (modified by para 9 of the First Schedule of the Transfer of Funds Ordinance) the PSP of the beneficiary shall verify the identity of the beneficiary, including the accuracy of information provided for transfers of EUR 1,000 or more, also in accordance with Schedule 3.

Records must be retained for a period of at least five years in accordance with article 16 of Regulation (EU) 2015/847 (modified by para 17 of the First Schedule of the Transfers of Funds Ordinances).

***Criterion 16.15***

Article 8 of the modified Regulation (EU) 2015/847 requires the PSP of the beneficiary to implement effective risk-based policies and procedures for determining whether to reject a transfer; or execute or suspend a transfer lacking complete payer and payee information and for taking appropriate follow-up action.

***Criterion 16.16***

In accordance with article 2(1) of the modified Regulation (EU) 2015/847, the regulation is binding for all PSPs covered under Article 1(1) of EU Directive 2007/64/EU which includes MVTS providers.

In terms of para 15(1)(g) of Schedule 3, MVTSs are required to ensure that the conduct of any of the agents it uses (hence wherever these are situated) is in line with the FATF Standards.

***Criterion 16.17***

a) Articles 9 and 13 of the modified Regulation (EU) 2015/847 requires the PSP of the beneficiary as well as the intermediary PSP to take into account missing or incomplete information on the originator or beneficiary as a factor when assessing whether a transfer of funds, or any related transaction, is suspicious and whether it is to be reported to the FIU.

b) In terms of the same articles, where MVTS providers control both the sending and receiving end of the transfer, they are required to file an STR in any country affected by the suspicious wire transfer.

***Criterion 16.18***

REs processing wire transfers are subject to The Sanctions Law, which includes the implementation of UK regimes and gives full force and effect to UK enactments covering the UNSCRs relating to the suppression of terrorism and terrorist financing. Under para 2 of the

Transfer of Funds Ordinances a PSP shall comply with any requirements to provide information or documents under the Terrorist Asset-Freezing Law, the Al-Qaida Ordinance, and the Afghanistan Ordinance.

*Weighting and Conclusion*

The AML/CFT legal framework of Guernsey is fully compliant with all criteria under this recommendation. C.16.10 is not applicable. **R.16 is rated C.**

### *Recommendation 17 – Reliance on third parties*

In the 4th round MER of 2015, Guernsey was not re-assessed against former R. 9.

***Criterion 17.1***

Reliance on third parties (i.e. introducers) for CDD purposes is permitted in terms of para 10 of Schedule 3. Reliance is permitted in respect of CDD measures envisaged under para 4(3)(a-e) mirroring those under paragraphs (a-c) of R.10. Under para 10(3) of Schedule 3 a RE remains responsible for complying with the relevant CDD provisions when it relies upon a third party.

(a) Para 10(1) of Schedule 3 requires a written confirmation from the third party of execution of identity and other CDD matters (i.e. CDD requirements (a)-(c) under R.10), when reliance occurs. The Handbook under Cap 10.4 states that the RE placing reliance is still required to hold sufficient identifying information about its customer and BO. This clarifies that the "written confirmation of identity and other CDD matters" is not merely a confirmation that CDD measures have been undertaken and information is held by the introducer. This is re-affirmed by the template certificate, which may be used by REs for introduced business (Appendix F to the Handbook), which includes information on the identity of introduced customers, their BOs and information on the nature of the activity and intended nature of the business relationship, which the introducer is to provide.

(b) Reliance is permissible subject to the copies of customer and BO identification data and other relevant identification documentation being made available by the third party to the RE immediately upon request, and that the third party keeps such identification data and documents – para 10(1). Moreover, Commission Rule 10.14 stipulates that the RE placing reliance must take appropriate steps to ensure that the introducer will supply immediately upon request, all identification documents and other documents collected for CDD measures.

(c) Under para 10(2) of Schedule 3 a RE may only rely on a third-party ("introducer") which is an Appendix C business or an overseas branch or group entity thereof. An Appendix C Business is defined under para 21 to include financial services businesses supervised by the GFSC or a similar business in a foreign country, or a lawyer or accountant in the British Islands which is subject to AML/CFT requirements consistent with the FATF Recommendations. The third-party must be supervised for compliance with those requirements by the GFSC or a relevant supervisory authority. Likewise, para 10(2)(b) permits reliance on overseas branches and group entities that would be subject to AML/CFT requirements and supervision.

***Criterion 17.2***

An Appendix C Business is a business carried on from a country or territory listed in Appendix C to the Handbook. Para 16(2) of Schedule 3 includes a general obligation for the GFSC to take into account information related to ML/TF risks of specific countries and territories when monitoring and enforcing compliance. The GFSC explained that in reviewing and updating the Appendix C list

of territories (at a minimum three times a year) they take into consideration not only the FATF and other FSRB publications but also other information on country risk that is available.

***Criterion 17.3***

Under para 10(2)(b)(i) of Schedule 3 a specified business may rely on a third-party that is part of the same financial group provided that the group lead is located in a specified jurisdiction.

(a) Under sub-para 10(2)(b)(ii) a RE may only rely on a third-party from the same financial group if the conduct of the third-party is subject to requirements to forestall, prevent and detect ML/TF (including the application of any appropriate additional measures to effectively handle the risk of ML/TF) that are consistent with those in the FATF Recommendations in respect of such a business (particularly Recommendations 10, 11, and 12) and the third-party has implemented a programme to combat ML/TF that is consistent with the requirements of Recommendation 18.

b) Under para 10(2)(b)(iii) of Schedule 3 a RE may only rely on a third-party from the same financial group if the conduct of both the third-party, and of the group entities of which both the third-party and the receiving RE are members, is supervised or monitored for compliance with the AML/CFT requirements by the GFSC or a relevant supervisory authority.

c) The third-party must be subject to appropriate additional requirements to effectively handle the risk of ML/TF (see para (a)). There is, however, no explicit requirement to ensure that higher country risk is adequately mitigated by a financial group's AML/CFT policies.

*Weighting and Conclusion*

The Bailiwick meets the requirements of c.17.1 and c.17.2. It largely meets those under c.17.3, with only minor gaps being identified. **R.17 is rated LC.**

### *Recommendation 18 – Internal controls and foreign branches and subsidiaries*

In the 4th round MER, Guernsey was not re-assessed for compliance with former R. 15.

***Criterion 18.1***

Under para 2 of Schedule 3 REs must have in place effective policies, procedures and controls to identify, assess, mitigate, manage, review and monitor ML/ TF risks in a manner consistent with the relevant enactments and the NRA. Additionally, para 3(6)(a) and (b) of Schedule 3 requires REs to have in place appropriate and effective policies, procedures and controls, approved by its Board of Directors (or senior management if it is not a body corporate – para 21(2)). These must regard the assessed risk to enable the RE to manage and mitigate risks identified in its business risk assessments, customer risk assessments, and the risks relevant to its business identified in the NRA. The RE must regularly review and monitor their implementation.

Business risk assessments undertaken, on which these policies and procedures must be based, must be appropriate to the nature, size and complexity of the REs' business. Thus the REs' policies and procedures should have regard to the size of the business as required by this criterion.

(a) REs are required to monitor the implementation of the policies, controls, and procedures - para 3(6)(b). In terms of Commission Rule 2.33 the REs' board must consider the appropriateness and effectiveness of its compliance arrangements. REs (of more than one individual) must appoint a person of at least a managerial level as the MLRO, whose roles include assess and ensuring the appropriateness and effectiveness of AML/CFT policies and procedures (para 15(1)(a) of Schedule 3 and Handbook Section 2.8.1).

(b) Para 13(1) specifies that REs must have appropriate and effective procedures for hiring employees and admitting partners to ensure high standards of probity and competence.

(c) Para 13(2) and (3) stipulate that REs shall ensure that relevant employees and partners receive comprehensive ongoing training the frequency of which has regard to the ML/TF risks. This shall include more focus on employees/partners with particularly relevant responsibilities.

(d) Under para 15(1)(ba) a RE must, where appropriate having regard to the size and nature of the business, establish an independent audit function for the purpose of evaluating the adequacy and effectiveness of the AML/CFT policies, procedures and controls adopted.

***Criterion 18.2***

Under para 15(1)(e) of Schedule 3 a RE must ensure that any of its branches and majority owned or controlled subsidiaries (hereinafter "subsidiaries") situated outside the Bailiwick comply with the requirements of Schedule 3, or the AML/CFT laws the foreign country. Handbook Guidance 2.56 states that the AML/CFT programmes should incorporate the measures under Schedule 3 and should be appropriate to the business of the subsidiaries and be effectively implemented at the level of those entities. The requirements of para 15(1)(e) do not extend to subsidiaries located in the Bailiwick. The authorities explained that Banks have no local subsidiaries, however other FIs (such as investment firms) do have. These subsidiaries are required to be licensed or registered themselves and are subject to the AML/CFT obligations under Schedule 3 but are not subject to group-wide programmes and measures foreseen under a-c below. There is only a small number of subsidiaries of investment firms licensed under the POI (i.e. 13) sharing common board members MLROs/MLCOs with the parent firms. This limits the materiality of this gap.

(a) Para 15(1)(f) of Schedule 3 stipulates that a RE must ensure that it and its subsidiaries effectively implement policies, procedures and controls for sharing information (including but not limited to customer, account and transaction information) between themselves for the purposes of carrying CDD, forestalling, preventing and detecting ML/TF and for the purposes of sharing suspicions relating to ML/TF that have been formed and reported to the FIU.

(b) see explanation under para (a). The provisions of para 15(1)(f) cover the sharing of ML/TF suspicions reported to the FIU, but also other information useful for forestalling, preventing, and detecting ML/TF. This would also cover information and analysis of transactions and activities which appear unusual.

(c) Para 15(1)(f) requires the RE to ensure that such policies, procedures and controls, referred to in c.18.2 (a) and (b), protect the confidentiality of mentioned information.

***Criterion 18.3***

Under para 15(1)(e)(ii) of Schedule 3 a RE must ensure that any of its foreign branch offices, or foreign subsidiaries, comply with Schedule 3 and any requirements under the law applicable in that country which are consistent with the FATF Recommendations.

Where the requirements of the host country differ, a RE must ensure that the highest standard requirements, by reference to the FATF Recommendations, are complied with. If the law of the host country or territory does not allow the implementation of requirements under Schedule 3, the RE must notify the GFSC accordingly, and the GFSC may apply additional AML/CFT measures, limit or restrict business (as set out under c.27.4). Commission Rule 2.61 stipulates that in countries that insufficiently apply the FATF Standards this situation is likely to occur and in such cases they must take appropriate steps to deal with any specific ML/TF risks.

*Weighting and Conclusion*

The AML/CFT legal framework of Guernsey complies with the requirements of c.18.1 and c.18.3 and largely conforms with those under c.18.2. **R.18 is rated LC**

### *Recommendation 19 – Higher-risk countries*

In the 4th round MER, Guernsey was not re-assessed for compliance with former R. 21.

***Criterion 19.1***

Para 5(1)(c) of Schedule 3 requires REs to conduct EDD in case of a business relationship or occasional transaction where the customer or BO has a relevant connection with a country or territory that: (i) provides funding or support for terrorist activities, or does not apply (or insufficiently applies) the FATF Recommendations, or (ii) is a country otherwise identified by the FATF as a country for which EDD is appropriate. EDD is also required if a RE considers a business relationship to be high risk, taking into account any notices, instructions or warnings issued by the GFSC and the NRA. A relevant connection includes residence or business address in a country and cases where the source of funding is generated in a country (para 5(10)).

The definition of customer covers any type of person or legal arrangement, including other FIs.

***Criterion 19.2***

The Policy & Resources Committee may, in consultation with the GFSC and the AGCC, issue directions to relevant persons (i.e. financial services business and prescribed businesses), requiring the application of EDD measures or other countermeasures. These directions may be issued when called for by the FATF, or when the Committee believes that there are significant ML/TF/PF risks linked to particular country or territory, government thereof or persons therein. These powers are set out under Schedule 11 of the Terrorism and Crime Law.

***Criterion 19.3***

Commission Rule 8.94 requires the specified business to have policies, procedures and controls in place to enable it to determine those countries where the FATF has called for EDD to be applied. The GFSC publishes a list of the jurisdictions subject to call for action by the FATF, on its website and by updating Appendix H of the Handbook. The GFSC also maintains a list of countries identified by relevant external sources as presenting a higher risk of ML/TF, including countries and territories under increased monitoring by the FATF (Appendix I of the Handbook).

Moreover, the GFSC publishes on its website[186] dedicated instruction notices on specific countries, which are included in the FATF lists, providing more detailed and concrete actions to be undertaken when dealing with customers from such countries. These instruction notices are also circulated via regulatory news feeds to subscribed REs and persons.

*Weighting and Conclusion*

Guernsey meets all the requirements under this recommendation. **R.19 is rated C.**

### *Recommendation 20 – Reporting of suspicious transaction*

In the 2015 Assessment Report, Rec. 13 was rated as Compliant.

***Criterion 20.1***

[186] https://www.gfsc.gg/commission/financial-crime/notices-instructions-warnings

The legislation dealing with reporting obligations remains the Disclosure Law (DL) in respect of ML, and the Terrorism Law (TL) in respect of TF. Financial services businesses (FIs) are required to report to a prescribed police officer or another FIU officer any knowledge, suspicion or reasonable grounds for knowledge or suspicion that have been acquired in the course of their business in respect of ML, TF or property being or being derived from terrorist property or proceeds of any criminal conduct (Sect. 1 (financial services businesses) & 2 (nominated officers in financial services businesses) of DL and Sect. 15 & 15A of TL).

The DL and TL introduced a positive obligation on timing of reporting for the disclosure of suspicion to be made "as soon as possible" (Sect. 1(1) & 2(1) of DL and Sect. 15(1) & 15A (1) of TL).

It is an offence if a person (the MLRO, a nominated officer or any employee of the firm) fails to make a required disclosure as soon as possible after the information or other matter comes to him (Sect. 1(4) & 2(4) of DL and Sect. 15 (4) & 15A (4) of TL). But there are exemptions to the disclosure obligations if the person has a "*reasonable excuse*" for not having made a report, is a legal advisor under legal privilege (which is in line with the FATF Standards) or if the person concerned did not have actual knowledge or suspicion and had not received training from his or her employer as required under Schedule 3 of the Proceeds of Crime Law (Sect. 1(6), 1(7), 2(6) & 2(7) of DL and Sect. 15(6), 15(7), 15A(6) & 15A(7) of TL). Assessors were satisfied that these exemptions don't diminish the requirement for SARs to be filed promptly once suspicion is formed. Moreover, failure to provide training is itself a criminal offence, thus the cases in which the lack of training defence could apply are likely to be rare in practice.

***Criterion 20.2***

There is no reporting threshold for SARs in the DL nor the TL. The definitions of ML, proceeds of criminal conduct, TF and terrorist property in the legislation apply regardless of the value of the property involved. Moreover, Chapter 13 (Paragraph 16, Section 13.3) of the Handbook provides that each suspicion of ML or TF must be reported regardless of the value of the transaction.

The obligation to report is related to an "activity", without the need of a transaction having to necessarily occur. The reporting obligation arises if a person is suspected of engaging in ML or TF offences and attempts to do so under the DL, TL and the FSB Handbook. Chapter 13 of the Handbook (Section 13.4) clearly establishing that attempted transactions fall within the scope of the reporting obligations. The FIU has issued specific guidance on attempted transactions, providing examples and indicators of such.

Section 11.12 of the AML/CFT Guidance issued by the AGCC (eCasinos) equally states that all suspicious transactions and activity, included attempted ones, are to be reported regardless of the value of the transaction.

*Weighting and Conclusion*

**Recommendation 20 is rated compliant**.

### *Recommendation 21 – Tipping-off and confidentiality*

In the 4th round MER of 2015, Guernsey was not re-assessed for compliance with former R. 14.

***Criterion 21.1***

Para 1(13), and 2(8) of the Disclosure Law stipulate that a disclosure made in good faith to a nominated officer of a FI or to a prescribed police officer or FIU officer does not contravene confidentiality obligations or other disclosure restrictions imposed by statute, contract or

otherwise. This provision covers disclosures related to ML or proceeds of crime, while para 15(13) and 15A(8) of the Terrorism and Crime Law include equivalent provisions for TF suspicions. The way suspicion and reasonable grounds to suspect are framed, under the respective laws and Chapter 13 of the Handbook, include also situations where the precise underlying crime is not known and when it is not known whether illegal activity actually occurred. Thus, the exemptions from confidentiality likewise apply in such scenarios.

Moreover disclosure obligations and respective exemptions from confidentiality are applicable to any person (i.e. directors, officers and employees) as the law covers disclosures that are made in the course of the business of which a person carries out a function (paid or otherwise) – see para 1(10) of the Disclosure Law and para 15A(10) of the Terrorism and Crime Law. Although the laws do not explicitly provide protection from criminal and civil liability for disclosures in good faith, the fact that no breach of confidentiality rules could arise, has the same legal effect.

***Criterion 21.2***

Para 4 of the Disclosure Law criminalises the disclosure to any other person of information that a SAR has been or will be made to a prescribed police officer or another FIU officer, or a nominated officer or any other information or other matter concerning such STR. This provision covers ML while paragraphs 40(3) and (4) of the Terrorism and Crime Law specify similar provisions for TF.

Para 4A(1) and (2) of the Disclosure Law, and 40A(1) and (2) of the Terrorism and Crime Law stipulate that a tipping off offence would not subsist where disclosures are made to personnel of the same financial services business or similar business forming part of the same group.

*Weighting and Conclusion*

**R.21 is rated C.**

### *Recommendation 22 – DNFBPs: Customer due diligence*

In the 4th round MER of 2015, Guernsey was rated LC with former R.12. Deficiencies included the non-application of EDD for certain high-risk categories relevant to some TCSPs and prescribed businesses, and others that cascaded from former R.5.

The AML/CFT preventive measures (including CDD) set out under Schedule 3 apply to financial services or prescribed businesses defined under Schedules 1 and 2 (para 1 and 21 of Schedule 3). TCSPs fall under the category of financial services businesses while most other DNFBPs are categorised as prescribed businesses. Traders in high value goods (including DPMSs) and eCasinos are not covered as prescribed businesses, and hence not subject to Schedule 3. DPMSs are subject to use of cash prohibitions while eGambling licencees are subject to AML/CFT obligations set out in the Alderney eGambling Ordinance (the "Ordinance"). There are no AML/CFT obligations applicable to Hotel Casinos, however no land-based casinos licenses were issued.

***Criterion 22.1***

(a) ***Casinos*** - In accordance with the Gambling (Guernsey) Law (para 1), gambling in Guernsey is unlawful unless permitted by specific Ordinances. In Guernsey the Hotel Casino Concession (Guernsey) Law (para 1), permits gambling in hotel premises. No such licenses have been issued. Other Ordinances authorize the provision of certain gaming services in Guernsey such as betting, lotteries and raffles. None of these permit the provision of casino-type games. Similar prohibitions exist under the Gambling (Alderney) Law and Gambling (Sark) Law.

In Alderney the provision of e-gambling is permitted under the Alderney eGambling Ordinance. There are three categories of eGambling licenses: category 1, category 2, and temporary gambling license. The Category 1 eGambling licence (see para 3(1) of the Alderney eGambling Regulations) enables the holder to organise or promote eGambling transactions, and to engage in financial transactions with a customer. An eGambling transaction is defined as a transaction involving any form of betting, gaming, wagering and participation in any lottery, that is carried out remotely or through telecommunication means with an eGambling licensee (para. 30 of the Ordinance). This is wide enough to cover casino type of games provided remotely. Category 1 eGambling licensees are subject to the CDD and other AML/CFT obligations envisaged under Schedule 4 to the Ordinance (para.1 of Schedule 4).

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 licencee. This includes striking the bet, housing and recording the outcome of the random element or gambling transaction, and operating the system of hardware and software upon which the gambling transaction is conducted (see para 5 of the Alderney eGambling Regulations). Category 2 eGambling licensees are not permitted to engage in a financial transaction with the customer, and hence out of scope of the FATF Standards.

A Temporary eGambling licence permits a foreign company licensee to act both as a Category 1 and Category 2 eGambling licensee for a limited period (i.e. not more than 30 continuous days or 60 days within 6 months - para 12 of the eGambling Regulations) and for specific purposes. Such foreign licensees must comply with the AML/CFT rules under Schedule 4 to the Ordinance, any rule and guidance issued by the AGCC and also appoint a MLRO (see para 8 of the Regulations).

Thus, casinos games may only be provided in Hotels in Guernsey, and by Category 1 and Temporary eGambling Licensees (hereinafter "eCasinos") in Alderney. eCasinos are subject to CDD and other AML/CFT obligations, while no land-based casinos in Hotels have been authorised.

Customers must be registered to be able to gamble (para. 226 of the Regulations). eCasinos must carry out CDD measures in the same scenarios envisaged under c.10.2, including before registration (para 3(1) of Schedule 4 to the Ordinance) and when a customer deposits €3,000 or more, or makes deposits that over the period of 24 hours reach or exceed € 3,000 (para 3(2)). The strict and exclusive interpretation of several operations that appear to be linked as those undertaken within a time limit of 24 hours is not in line with the FATF requirements. This gap may be overridden by the fact that all CDD measures have to be undertaken at registration stage, however the obligations under para 3(1) and 3(2) are conflicting. Para 12(1) of Schedule 4 requires eCasinos to keep a comprehensive record of each customer transaction. Moreover for each transaction a record of the corresponding customer, BO and other details must be retained (para 13.10 of the AGCC Guidance). This is tantamount to requiring eCasinos to ensure that they are able to link CDD informaiton on a customer with the transactions he undertakes.

The CDD measures under Schedule 4, to a large extent mirror those under Schedule 3 to the PCL, with some differences. The CDD measures for eCasinos fully meet the requirements of c.10.1-10.7, c.10.10, c.10.11, c.10.14, c.10.15, c.10.17, c.10.19, and c.10.20. Criteria c.10.12 and c.10.13 are exclusively applicable to FIs providing life insurance products and hence do not apply to eCasinos. C.10.18 is not applicable for eCasinos since there are no provisions permitting SDD.

The following deficiencies were noted in respect of the remaining criteria:

Application of c.10.8 (Mostly Met) – there is no requirement to understand the nature of the customer's business in case of legal persons or arrangements.

Application of c.10.9 (Partly Met) – para 3(2) and 15(1) of Schedule 4 require customers that are legal persons and arrangements to be identified and to have their identity verified using reliable and independent sources. There are however no provisions setting out what identification information should be obtained to assess whether all the information set out under c.10.9(a-c) must be obtained. The AGCC's AML/CFT Guidance do not prescribe how an eCasino should identify and verify legal persons / arrangements, however the AGCC requires eCasinos to specify their identification procedures for legal persons as set out in the AGCC's Internal Control System guidelines (sec. 3.2.1)) and the AGCC only approves an ICS which fully sets appropriate measures.

The impact of these deficiencies related to legal persons and arrangements are limited given that the large majority of eCasinos' customers are natural persons (at the end of December 2023 only 0.0015% of customers were legal persons). The majority of these are professional gamblers who set up legal persons through which to undertake their gambling activity.

Application of c.10.16 (Met) – There are no specific requirements regulating the applciation of CDD for existent customers when Schedule 4 to the Ordinance came into force. The AGCC however explained that the introduction of Schedule 4 was not a substantive change but rather an exercise of shifting legal provisions from the Regulations to the Ordinance. The AGCC also highlighted that upon the introduction of Schedule 4 all eCasinos were required to submit for approval revised ICSs, which were subsequently applicable for all customers.

(b) ***Real Estate Agents*** **-** In accordance with para 1(1) of Schedule 3, real estate agents are REs subject to AML/CFT obligations (as analysed in R.10) when they are involved in transactions for a client concerning the buying and selling of real estate. However, in the following cases real estate agents are exempt from AML/CFT obligations (para1(2) of Schedule 3): (i) where their turnover does not exceed £50,000 per annum, (ii) they do not hold deposits, (iii) the vendor and purchaser reside in Guernsey and (iv) the funds received by the real estate agent are drawn on a bank operating in Guernsey. As set out under c.1.6. these exemptions are in line with the standard.

(c) ***DPMSs*** - Under para 1 of The Criminal Justice (Proceeds of Crime) (Restriction on Cash Transactions) (Bailiwick of Guernsey) Regulations, it is a criminal offence for dealers in precious metals, stones and jewellery to engage in cash transactions in excess of £10,000 or equivalent amount in another currency. Therefore, DPMSs cannot legally cross the threshold for cash transactions that would render them REs under the FATF Standards and will not be further analysed under R.22 and R. 23.

(d) ***Lawyers, Notaries and Accountants*** **-** Under para 5 of Schedule 2 and under para 1(1) of Schedule 3, lawyers, notaries, other independent legal professionals and accountants are REs subject to AML/CFT obligations (as analysed in R.10) when conducting the activities specified under c.22.1(d). Auditors, insolvency practitioners and tax advisors are also REs. The role of notaries in Guernsey is to authenticate documents and certify matters of fact, and they do not undertake any of the activities under c.22.1(d). They are hence out of scope of the analysis.

In terms of para 1(2) of Schedule 3 these DNFBPs are exempt from AML/CFT obligations where their annual turnover does not exceed £50,000, they do not carry out occasional transactions, they service only resident customers and the funds they receive are drawn on a bank operating in Guernsey. As set out under c.1.6 these exemptions are in line with the standards.

(e) ***TCSPs*** - TCSPs are REs subject to AML/CFT obligations (as analysed in R.10) - see para 26 of Schedule 1, para 6 of Schedule 2 and para 1(1) and para 21 of Schedule 3. Based on para 2 of the Fiduciaries Law, all the activities specified under c.22.1(e) are covered. Acting as a director or partner of a supervised entity in Guernsey or other IOSCO member country, or a company listed

on a recognised stock exchange is exempt from licensing and hence AML/CFT obligations, even when done by way of business (see para 3(1)(d), (e), and (af).

These exemptions are not in line with the FATF standards which require that the provision by way of business of directorship, or similar services to be subject to AML/CFT obligations irrespective of the type of legal person being serviced. These exemptions are however not deemed to be material considering that they relate to services provided to legal persons: (i) (i) that are subject to licensing, ongoing scrutiny and transparency requirements (i.e. entities licensed in the Bailiwick and listed companies), or (iii) are supervised entities subject to AML/CFT obligations under Schedule 3.

The exemption from AML/CFT obligations for professional directors of banks, insurance or investment service providers supervised outside of Guernsey, (regardless of the level of compliance with AML/CFT preventive measures and supervision in that jurisdiction and which could include entities supervised by authorities in FATF grey listed countries) is not in nature a minor deficiency. However, the authorities explained that the number of persons using this exemption is very small and does not arise in a standalone context.

***Criterion 22.2***

**eCasinos** – Para 12 of Schedule 4 to the eGambling Ordinance stipulates record-keeping obligations for eCasinos. To a large extent these mirror those under Schedule 3 which are fully compliant with R.11. In respect of c.11.3 compliance is ensured via the interpretation provided under para. 13.9 of the AGCC Guidance.

**Other DNFBPs** - As analysed in c.22.1, all other covered DNFBPs are REs for which the assessment of R.11 fully applies. However, some services provided by TCSPs are not subject to AML/CFT obligations including record-keeping (see c.22.1(e)) for analysis of materiality of these exemptions).

***Criterion 22.3***

***eCasinos*** - Para 4 of Schedule 4 to the eGambling Ordinance sets out EDD measures in the case of PEPs for eCasinos.

Application of c.12.1 – The requirements mirror those analysed under c.12.1 for FIs. See para. 3(2)(f) and 4(1)(a), (2)-(9) of Schedule 4 to the Ordinance. While there is no explicit requirement to determine whether a customer, or a BO of a customer becomes a PEP whilst already registered, eCasinos are bound to obtain senior management approval to continue a relationship with an existent client who becomes a PEP, and hence indirectly required to identify such change in status for existent customers.

Application of c.12.2 – Similarly to other FIs, eCasinos are required to abide by the requirements of c.12.2(a) – see para. 3(2)(f) of Schedule 4 to the Ordinance. In respect of c.12.2(b) AGCC Guidance[187] para 8.22 states that where a customer relationship, involving a domestic PEP or international organisation PEP, is high risk, the operator must apply EDD measures in accordance with Para 4(3)(a) or 4(3)(b) of Schedule 4 and chapter 8 of this guidance (i.e. paras 8.3 – 8.7).

Application of c.12.3 - The PEP definition under 4(3) of Schedule 4 includes family members and close associates and hence the identification and EDD measures for foreign PEPs are also extended to their family members and close associates.

[187] Where it adopts mandatory language it is considered to constitute enforceable means in terms of section 22(4) of the eGambling Ordinance and para 13(g) of Schedule 4 thereto.

Para 8.26 of the AGCC guidance stipulates that were a customer or BO is an immediate family member or a close associate of a domestic PEP or international organisation PEP the operator should treat that person in accordance with the requirements set out in Schedule 4. While not explicitly clear this is expected to extend the application of EDD requirements to family members and close associates.

C.12.4. is not applicable to casinos.

***Other DNFBPs*** - As analysed in c.22.1, other covered DNFBPs are REs for which the assessment of R.12 and respective minor deficiencies apply. However, some services provided by TCSPs are not subject to AML/CFT obligations including PEP requirements (see c.22.1(e) for analysis of materiality of these exemptions).

***Criterion 22.4***

***eCasinos*** - Para 2(4)(c), and 2(7) of Schedule 4 to the eGambling Ordinance and AGCC Guidance para. 4.31 cover fully all the requirements of R.15 relevant for eCasinos, adopting wording which mirrors that under requirements for FIs explained in c.15.1.

***Other DNFBPs*** - As analysed in c.22.1, all other covered DNFBPs, are REs, for which the assessment of c.15.1 and c.15.2 including identified minor deficiencies fully applies. However, some services provided by TCSPs are not subject to AML/CFT obligations including new technology requirements (see c.22.1(e) for analysis of materiality of these exemptions).

Moreover, natural persons providing directorship services for not more than six companies are exempt from the obligations of para. 3 of Schedule 3 and hence not bound to adhere to c.15.1 and c.15.2 requirements. This gap is considered to be a minor one considering that the extent of use of innovation and new technologies in the case of individual directors is limited to the use of remote customer onboarding technologies.

***Criterion 22.5***

**eCasinos –** eCasinos are not permitted to rely on third party REs for CDD purposes. In terms of the AGCC Guidance para. 2.36 – 2.40, they may outsource their AML/CFT obligations to third party service providers, subject to various oversight controls. In such cases the eCasino remains ultimately responsible for compliance with AML/CFT obligations. These outsourcing arrangements are out of scope of R.17 (see para. 1 of INR.17) and hence are not being analysed.

***Other DNFBPs*** - As analysed in c.22.1, all other covered DNFBPs are REs for which the assessment of R.17 and the identified minor deficiencies apply. Certain services provided by TCSPs are exempt from AML/CFT obligations (see c.22.1(e) for an analysis of the materiality of these exemptions. The Schedule 3 provisions (see R.17) permitting reliance are not applicable to CSPs that provide directorship services for not more than six companies.

*Weighting and Conclusion*

Guernsey largely meets all criteria under this recommendation. Exemptions from CDD and other AML/CFT obligations for certain services provided by TCSPs, although of minor materiality, impact compliance with this Recommendation. Some minor gaps have also been identified with respect to the requirements of c.22.1 and c.22.3 – c.22.5. **R.22 is rated LC.**

### *Recommendation 23 – DNFBPs: Other measures*

Guernsey was not re-assessed for compliance with former R.16 under the 4th round MER.

Refer to the introduction to R.22 and c.22.1 for an explanation of coverage (and gaps therein) of DNFBPs for compliance with AML/CFT obligations which likewise apply to R.23. The gaps in coverage of certain TCSPs (see c.22.1(e)) impact the fulfilment of this recommendation.

***Criterion 23.1***

Under para 3 of the Disclosure Law and section 12 of the Terrorism Law, there are reporting obligations applicable to all persons undertaking non-financial business (i.e. any business which is not considered a financial business – see para. 17 of the Disclosure Law) including all DNFBPs. These are identical to those for financial businesses covering the requirements of R.20.

In terms of the same para 3(6) and 12(6) mentioned above, a person is exempt from liability for failure to report where that person is a professional legal adviser and the information or other matter came to him in privileged circumstances, which is in line with the permitted exemptions due to legal privilege under the FATF Standards.

***Criterion 23.2***

***eCasinos -*** Schedule 4 to the eGambling Ordinance includes the following provisions covering all the requirements of R.18 relevant for eCasinos, which are to a large extent (except as otherwise explained hereunder) similar in wording to those applicable to FIs under Schedule 3:

c.18.1 (a) – para (1)(1), 2(7)(a) and (b), and 13(a) of the Ordinance, as well as AGCC Guidance para 2.28 and 2.56; c.18.1(b) – para. 11(1)(a) of the Ordinance; c.18.1(c) – para 11(1)(b) and (c) of the Ordinance; and c.18.1(d) – para 13(e)(ii) and (iii) of the Ordinance.

C.18.2 (a) and (b) – para. 14(2) and (3) of the Ordinance and AGCC Guidance 2.43. The provisions of para 14(3) require eCasinos and subsidiaries to implement policies, procedures and controls on information sharing for the purpose of carrying out CDD and forestalling, preventing and detecting ML/TF. This enables the sharing of information related to ML/TF suspicions, unusual activities and any respective analysis; c.18.2(c) – para. 14(3) of the Ordinance.

C.18.3 – para. 14(3) and 14(4) of the Ordinance, and AGCC Guidance para. 2.47

As analysed in c.22.1, other covered DNFBPs are REs, for which the assessment of R.18 applies. With respect to the deficiency set out under c.18.2 there are various TCSPs (primary licensees) which have local subsidiaries (secondary licensees). There are no provisions requiring TCSPs (primary licensees) to implement group-wide programmes as per c.18.2 applicable to local subsidiaries, however secondary and primary licensees must have common directors, MLRO and MLCOs, which indirectly brings them under the same compliance control framework. In terms of Rule 1A.2 of the Fiduciary Rules and Guidance secondary licensees must also be associated with a primary licensee and may only provide fiduciary services to clients of the primary licensee. The authorities explained that other DNFPBs do not have local subsidiaries.

In respect to individuals providing professional directorships services for not more than six companies, the provisions of para. 15 of Schedule 3 (giving effect to the R.18 requirements) do not apply. This is not considered to be a deficiency given that R.18 requirements are applicable to entities sharing common ownership or control, and not to individual sole-practitioners.

***Criterion 23.3***

***eCasinos -*** Schedule 4 to the eGambling Ordinance includes the following provisions covering all the requirements of R.19 relevant for eCasinos, which are to a large extent (except as otherwise explained hereunder) similar in wording to those applicable to FIs under Schedule 3:

c.19.1 – para 4(1)(b) and (d) of the Ordinance. Moreover, a registered customer includes all types of persons (see cross-reference to para 227 of the Alderney Gambling Regulations.

c.19.2 – The power of the Policy & Resources Committee to issue directions requiring the application of EDD measures or other countermeasures explained under c.19.2, apply to relevant persons which does not include eCasinos. See definitions under para 14 of the Terrorism and Crime Law and section 1(1) of Schedule 3.

The AGCC explained that in terms of para. 13(g) of the eGambling Ordinance, eCasinos must have regard to and meet the requirements of any relevant AML/CFT countermeasure issued by the Commission. The AGCC explained that while this provision does not empower it to issue countermeasures in respect of higher risk third-countries independently of a call by the FATF, which is the prerogative of the Policy & Resource Committee, it enables it to extend countermeasures issued by the Committee also to eCasinos.

c.19.3 – AGCC Guidance 8.42 requires eCasinos to have policies, procedures and controls in place to identify countries where the FATF has called for EDD to be applied. The AGCC publishes Business from Sensitive Sources Notices on its website which include jurisdictions subject to a call for action by the FATF, and other countries identified by external sources as presenting higher risks of ML/TF, including countries and territories under increased monitoring by the FATF. The AGCC explained that these Notices are also circulated via email with every supervised eCasino drawing their attention to it and any changes thereto.

As analysed in c.22.1, other covered DNFBPs are REs for which the assessment of R.19 applies.

***Criterion 23.4***

Under section 3(10) and (11) of the Disclosure Law and section 12 of the Terrorism Law, there are disclosure safeguards applicable to all persons conducting non-financial businesses including DNFBPs, which are similar in wording to those applicable for FIs explained under, and fully compliant with R.21. The tipping-off obligations for FIs apply in the same manner to DNFBPs.

Analysis in R.21 therefore applies also to the other covered DNFBPs.

*Weighting and Conclusion*

Guernsey largely meets all criteria under this recommendation. The exemptions from CDD and other AML/CFT obligations for certain services provided by TCSPs (see c.22.1(e)) impact compliance with c.23.2 - c.23.4. **R.23 is rated LC.**

### *Recommendation 24 – Transparency and beneficial ownership of legal persons*

In the previous evaluation, the Bailiwick was rated as LC with former Recommendation 33. Deficiencies related to (i) the accuracy, completeness, and up-to-datedness of BO information of legal persons not administered by licensed TCSPs and (ii) the availability of BO information on investment companies where reliance is placed on intermediaries.

Legal persons can be established in the Bailiwick either in Guernsey or in Alderney. The kind of legal persons that can be established in Guernsey are the following:

(i) *Companies* – Cellular or non-cellular companies under the Companies (Guernsey) Law.

(ii) *Limited Partnerships (LPs)* - Under the Limited Partnerships Law. They have general and limited partners. A limited partnership may have legal personality if the general partners so elect at the point of registration. This is an irrevocable decision.

(iii) *Limited Liability Partnerships (LLPs)* - Under the Limited Liability Partnerships Law.

(iv) *Foundations* - can be established under the Foundations Law.

LPs (without legal personality) are considered by the AT to be legal persons and assessed under R24. See sec. 1.4.5 for further information.

In Alderney only non-cellular companies under the Companies Law can be established.

***Criterion 24.1***

(a) The laws listed above describe the different types, forms and basic features of all legal persons. Information is also available on the Guernsey and Alderney Registry websites – Guernsey Registry Home Page – Guernsey Registry and Company Registry – Alderney Court (courtofalderney.gg).

(b) The processes for the creation of legal persons and for obtaining and recording basic information are set out in the same laws. The legal provisions for obtaining and recording BO information are set out under the Beneficial Ownership of Legal Persons (Guernsey) and (Alderney) Laws. The laws are publicly accessible – Home (guernseylegalresources.gg).

The Guernsey and Alderney Registry websites also provide information on: (i) the process and requirements for the creation of legal persons, and (ii) the requirements for obtaining and recording basic and BO information.

***Criterion 24.2***

The Bailiwick conducted various national and authority level risk assessments for all legal persons. These include the 2020 and 2023 NRA, the 2024 sector-specific ML/TF/PF risk assessment of legal persons and arrangements, the 2023 FIU Strategic analysis, which fed into the 2023 NRA. The Guernsey Registry also has a risk system for all registered legal persons.

The 2020 NRA has dedicated sections on ML/TF risks for legal persons. Separate ratings for both ML and TF risks are assigned to legal persons involved in international activity and to those with a purely domestic focus. The analysis assesses the main use, purpose, and extent of use of the different legal persons. The 2020 and 2023 NRAs also analyse the general ML/TF modalities (see sections 4 and 7 - use of complex and multi-jurisdictional structures, sham loans, and misuse of entities to conceal assets) and how legal entities are mainly exposed to ML from foreign proceeds namely bribery, corruption, tax evasion, and to a limited extent OCG related crimes.

The 2024 sector-specific risk assessment analyses in more detail the main threats and vulnerabilities of legal persons. It confirms the findings of both NRAs and contains a detailed analysis of how risk is influenced by the activities of legal persons, the location of their activity and/or assets held, the nature of BOs and directors, and their location, among others.

The TF risk is deemed to be much lower than ML taking into account the main use of legal persons or arrangements within asset holding structures. The TF assessment is based on connections of BOs and involved parties to TF high risk countries, considered to be minimal, and an analysis of the nature and location of the activities of legal persons and arrangements. In respect of TF modalities, the NRAs highlight that Guernsey is mainly exposed to the risk of movement of funds as a transit jurisdiction. The risk assessments, however, do not seek to analyse the extent to which this involves legal entities and what types of entities.

There are some other aspects of the ML/TF risk analysis and understanding that need to be enhanced, including a more detailed analysis of: (i) risks associated with complex and multi-layered structures, (ii) risks posed by legal persons not banked in the Bailiwick and (iii) an analysis of the adequacy of controls in place to mitigate the abuse of legal persons and arrangements.

***Criterion 24.3***

Guernsey legal persons are subject to registration, and only come into existence, upon the issuance of certificate of registration.

The following information and documentation must be submitted with an application for incorporation:

**Companies**: An application to the Registrar of Companies together with the Memorandum of Incorporation which, amongst other details, sets out the name and type of the company. A statement of the first director/s of the company and registered office in Guernsey shall also accompany the application (sec. 17(1) and 20(1) of the Companies (Guernsey) Law and sec. 2, 4(1) and 9 of the Companies (Alderney) Law.

Copies of the certificate of incorporation, the memorandum and articles, name, type of company, its registered address and directors shall be registered in the Registry (sec. 20(5) of the Companies (Guernsey) Law and sec 13(4) of the Companies (Alderney) Law).

The company's basic regulating powers are communicated to the Registrar (and registered) through the M&As (sec. 16(1) of the Companies (Guernsey) Law and sec. 7(1) of the Companies (Alderney) Law). This also applies to incorporated cells of ICCs having separate legal personality.

**LPs** - An incorporation statement, and a declaration of the name of the LP, its registered office, names and addresses of all general partners[188], and the governance provisions of the partnership agreement must be filed with the Registrar of LPs (sec. 8(2)(b) and (d)) – LP Law). These are registered in the Registry, along with a copy of the certificate of registration (sec. 7(2)). LPs without legal personality are not required to register the particulars of the partnership agreement but must keep a copy of the agreement at their registered office. The governance provisions correspond to the basic powers of the partnership as set out in the guidance issued by the Registrar. (i.e. Particulars of Governance Provisions of the Members' Agreement for LPs).

**LLPs** - The registration process is like that of LPs, with the difference that: (a) filing takes place with the Registrar of LLPs, and (b) the names of members are appended to the statement of incorporation - (see sec. 8(3), 8(4A), and 8(9) of the LLP Law). The governance provisions in the partnership agreement set out the basic regulating powers as determined by guidance issued by the Registrar (i.e. Particulars of Governance Provisions of the Members' Agreement for LLPs).

**Foundations** - In terms of para 7(3) of the First Schedule to the Foundations Law, the application to the Registrar for Foundations shall be accompanied by the Charter, names and addresses of the proposed councillors and guardians, registered office and particulars of governance provisions of the Constitution. The Constitution is made up of both the Charter and the Rules.

All records held by the Registrars are publicly accessible (see sec. 496(3) of the Companies (Guernsey) Law, sec. 168(1) of the Companies (Alderney) Law, sec. 7(3) of the LP Law, sec. 6(3) of the LLP Law and para. 4(3) of Schedule 1 to the Foundations Law). Basic information on Guernsey legal entities are available free of charge and without any need for subscription[189] on the Guernsey Registry website which consolidates the registries for Guernsey Companies, LPs, LLPs and Foundations. Additional information may then be purchased through online subscription.

[188] In case of LPs the general partners are responsible for managing the partnership. Limited partners shall not participate in the conduct or management of the business of the LP (sec. 12(1) – LP Law).
[189] Guernsey Registry - https://portal.guernseyregistry.com/

In Alderney a certificate of incumbency may be requested, which includes basic information on companies (e.g. name, number, date of registration, registered office, director/s and others).

***Criterion 24.4***

**Guernsey & Alderney Companies** - Companies must keep basic information (set out in c.24.3) at their registered office in Guernsey or Alderney. Incorporated cells have the same registered office address as the Guernsey ICC. The Registrar shall be notified of the registered office at registration and, thereafter when it changes - see sec. 30 of the Companies (Guernsey) Law and sec. 32 and 71 of the Companies (Alderney) Law.

Companies (and incorporated cells of ICCs) must keep a register of members at their registered office. For companies with shareholding the register must include the shares held by each member, the categories of shares (including, the share class and associated voting rights), the amount paid on shares, and for guarantee members, the guaranteed amount by each member. In the case of Guernsey PCCs, the register shall distinguish between members of its cells and of its core. See sec. 123 of the Companies (Guernsey) Law and sec. 71 of the Companies (Alderney) Law,

**LPs –** LPs shall keep at their registered office the basic information set out under c.24.3, and also records of the name and address of each general and limited partner. In case of limited partners the LP has to keep a record of their capital account, including the amounts and dates of their contributions, amounts to be contributed, and amounts and dates of any payments representing a return on their contribution. The registered office address must be notified to the Registrar at registration stage and upon any changes thereto. Sec. 8, 10, 15(1)(1A) of the LP Law.

**LLPs** - A LLP has to maintain all basic information at its registered office. The LLP is required in terms of schedule 4 of the LLP Law to retain a record of the name and address of each member (and further identity information), the date when each member was registered as and ceased to be a member, and the capital contribution by each member. The registered office must be notified to the Registrar at registration, and upon changes thereto – See sec. 8, 9 and 21 of the LLP Law.

**Foundations** - Foundations must retain the records of the foundation at their registered office, which must be in Guernsey and notified to the Registrar prior to the foundation's registration and in case of any changes thereto. (sec. 22, 52 and para 2, 7 and 10 of Schedule 1 – Foundations Law). The records include all the basic information under c.24.3.

***Criterion 24.5***

Legal persons are obliged to ensure that basic and shareholder (or equivalent) information is accurate and kept updated. Any change is to be recorded when it occurs - see sec. 30(1B) of the Companies (Guernsey) Law, Sec. 32(1B) of the Companies (Alderney) Law, Sec. 15(1A) of the LP Law, Sec. 21(1A) of the LLP Law, and Sec. 22(1B) of the Foundations Law. The different laws set out the timeframes (21-30 days) for communicating to the Registrar the changes to basic information referred to in c.24.3. All notification infringements are subject to sanctions as set out under c.24.13.

Legal persons must submit an annual validation/return to the relevant registry, to validate the registered basic information (see. c.24.3) and provide details of changes that occurred during the year (sec. 234 – Companies (Guernsey) Law, sec. 37 – Companies (Alderney) Law, reg. 3 of the LPs (Fees, Annual Validations and Miscellaneous Provisions) Regulations, sec. 22 of the LLP Law, reg. 1 and 2 of the Foundations (Annual Renewal) Regulations. This is accompanied by a declaration that the information submitted and all records it is required to keep are correct and current, and that it notified the register about changes.

The Registrars are responsible to ascertain and verify from time to time the accuracy of registered information and maintained by the legal person. They are empowered to request information and carry out on-site inspections. The functions and powers of the Registrar of Companies for Guernsey are set out in sec. 499(1)(a)(i) and (ii) as well as Sec. 508A to 508C. Similar provisions are found in the laws governing other legal persons.

The application of CDD measures by REs (see R.10) is another way how basic information on legal persons is maintained accurate, current and up to date.

***Criterion 24.6***

There are various mechanisms to ensure that BO information is available and retrievable. These include: (i) obligations on resident agents to determine the BOs of any legal person they service, (ii) BO registers in Guernsey and Alderney, (iii) CDD obligations on FIs and DNFBPs, and (iv) information collected by the GFSC through its licensing and monitoring activity. The BO definition is in line with the Standards (see BO Definition Regulations for Guernsey and Alderney).

*BO information held by Resident Agents*

Legal persons must have a resident agent who is (i) a resident individual (being a director, general partner, member, councillor or guardian of the entity); or (ii) a CSP licensed by the GFSC (see sec. 484 - Companies (Guernsey) Law, Sec. 152B - Companies (Alderney) Law, Sec. 32HB - LP Law, Schedule 2 (Para 1) - LLP Law, and Schedule 1A (Para 1) - Foundations Law.

CISs being legal persons, supervised companies, companies listed on a recognised stock exchange (already subject to transparency requirements), and LPs without legal personality are not required to have a resident agent. BO information for CISs and supervised entities is however available through a GFSC licensed administrator servicing the CIS or the GFSC itself. The registers verify that legal persons are indeed exempt from the resident agent requirement.

The resident agent must identify and verify the BOs, and disclose the details to the BO Registrar before filing of the incorporation application. The resident agent must also attest that he verified the said information (see Sec. 486 - Companies (Guernsey) Law, Sec. 152D - Companies (Alderney) Law, Sec. 32HD - LP Law, Para 3 of Schedule 2 - LLP Law, Para 3 of Schedule 1A - Foundations Law, para 9 & 7 - BO (Guernsey) Law and BO (Alderney) Law).

BOs must notify the resident agent within 21 days that they are the BOs or if information changes (see Sec. 15 and Sec. 16 - BO (Guernsey) Law and Sec. 12 and Sec. 13 - BO (Alderney) Law. The resident agent must update its records within 7 days of receiving new or updated BO information.

Resident agents must notify as soon as reasonably practicable[190] (except BOs who informed the register in the first place) BO changes to: (i) any person known or believed based on reasonable grounds[191] to be a BO or (ii) existing BOs (see Sec. 9 and 11 of the BO (Guernsey) Law and Sec. 6 and 8 of the BO (Alderney) Law). The addressee has one month to reply and the resident agent must then update his records within seven days if a change actually occurs. Such notice may also be served on any person believed to have information on the beneficial ownership of the legal person. This mechanism serves to obtain information to ensure that BO records are kept updated. Any changes in the records of BOs must be notified to the BO Registrar within 14 days by the resident agent (Sec. 12(1) and (2) of the BO (Guernsey) Law and Sec. 9(1) and (2) of the BO

[190] The authorities explained that 'reasonably practicable' connotes urgency and requires the registered agent to act as soon as it becomes aware of a change in BO.

[191] The authorities explained that the registered agent has to continuously monitor to ensure that he identifies any reasonable indicators of BO changes that should trigger the notification obligations.

(Alderney) Law. TCSP resident agents as RE are moreover required to ensure that CDD and BO information is kept up to date (see. c.22.1).

*BO information held by Legal Persons*

Legal persons hold updated BO information through the resident agents, who have to obtain BO information prior to incorporation/registration and must notify the legal person and, upon request, the legal person's directors or equivalent, with any changes in BO data. See Sec. 486(1)I - Companies (Guernsey) Law, Sec. 12(3) - BO (Guernsey) Law, Sec. 152D(1)(c) - Companies (Alderney) Law and Sec. 9(3) - BO (Alderney) Law. Moreover, BO data must be kept at the registered office or another place in the Bailiwick notified to the registrar (sec.10(2) - BO Guernsey Law and sec.7(2) - BO Alderney Law.

LPs without legal personality must obtain and hold adequate, accurate and current information on the identity of any partner.

*Beneficial Ownership Register*

The Registrars are required to establish and maintain a BO register for all companies, LPs endowed with legal personality, LLPs and foundations (see para 1 and 2 - BO (Guernsey) Law and para 1 and 34 - BO (Alderney) Law). The BO information is sourced from resident agents. The BO Registers were fully populated by end February 2018, and accessible to all competent authorities (see para. 2 of Schedule 2 of the BO (Guernsey) Law and para.2 of the Schedule to the BO (Alderney) Law).

In respect of relevant legal persons that are not regulated, the Registrars also have the power to conduct on-site visits and obtain information to ensure the accuracy of BO information held by legal persons (see sec. 3 and para. 4A of Schedule 2 - BO (Guernsey) Law, and para. 4A of the Schedule to the BO (Alderney) Law.

*Other means*

As part of CDD requirements FIs and DNFBPs must identify and verify BOs of customers that are legal persons, and keep the information updated and readily retrievable (see c.10.8-c.10.10). All companies, LPs, LLPs, and foundations have to be incorporated via TCSPs (who present the incorporation application) and are bound to attest to the accuracy and veracity of the legal person's BO. The Registry's system is configured in a manner that it only accepts registration applications from TCSPs.

The GFSC and AGCC hold BO information for licensed legal persons. This is obtained at licensing stage and on an ongoing basis whenever there are changes. The said information is available to other authorities. While legally it is unclear whether BOs (having significant shareholding without attached voting rights) are subject to scrutiny by the GFSC, the GFSC evidenced through case studies that it covers beneficial ownership holistically (see c.26.3 and sec. 6.2.1).

The Revenue Service also maintains considerable information on shareholders and BOs of legal persons, through: (i) tax declarations, (ii) submissions by companies holding high risk IP assets or not meeting economical substance requirements in Guernsey, and (iii) CRS and FATCA reporting. The Revenue Service can make the said information available to competent authorities including the Registries, GFSC, the FIU, LEAs and the customs authorities.

The one stock exchange licensed in the Bailiwick, requires listed companies to disclose the identity of persons who directly or indirectly hold or control 3% or more of the legal person's shares (see sec. 2.15.16 and 4.3 of the listing rules - equity-markets-listing-rules-january-2022-int.pdf (tisegroup.com).

The country has a variety of mechanisms to ensure the availability of BO information for legal persons, which combined together achieve this aim.

***Criterion 24.7***

There are various mechanisms to ensure that BO information is accurate and up-to-date (see c.24.6).

***Criterion 24.8***

(a) Most legal persons must have a resident agent. CISs, supervised companies, listed companies and LPs without legal personality are exempt. (see c.24.6). Resident agents are obliged to provide information and/or documentation (including BO information) and other information which the legal person is required to keep at its registered office (see c.24.3 and c.24.4) to competent authorities upon request. The resident agent may also be required to attend a specified place for the purpose of answering questions Where the resident agent does not have the information and/or documentation himself, but he is aware of who may have it, the resident agent must notify such person and request the information and/or documentation. (see sec. 490(1), (5) and (10) - Companies (Guernsey) Law, sec. 152H(1), (5) and (10) - Companies (Alderney) Law, sec. 32HH(1), (5) and (10) - LP Law, sec. 7(1), (5) and (10) - LLP Law, and sec. 5(1), (5) and (10) - Foundations Law. Resident agents must justify their position if they are unable to provide any information and/or documents to the said competent authority. A resident agent or any other person who fails to comply with the notice or who provides false information commits a criminal offence and is subject to a civil penalty.

CISs authorised or registered with the GFSC must have a person licensed under the POI Law appointed to carry out and record CDD on investors, including basic and BO information (Sec. 4.8 and Sec. 17.7 of the AML/CFT Handbook). Competent authorities have the power to access the said information. The GFSC is moreover empowered to disclose it for specified purposes (including on public interest grounds and to enable or assist the performance of several competent authorities' functions (para 14(6)(b) of Schedule 3 - PCL and para 49 POI Law).

For supervised companies the GFSC may obtain basic and BO information from individual directors carrying out supervised roles. Depending on the licensable activity, one or more directors must be resident in the Bailiwick. BO information of listed companies is available through the one licensed stock exchange in Guernsey (see c.24.6).

LPs not endowed with legal personality must have an unregulated officer (one of the general partners) who is obliged to hold basic and BO information - see Schedule 10, and para 51(1) to the PCL. There is however no requirement for such person to be a resident person or a DNFBP, and there are no other comparable measures in place.

***Criterion 24.9***

*Resident Agents and Persons involved in the dissolution of legal persons*

Liquidators and the last resident agent must retain BO information for five years from the date of dissolution, termination or striking off (see Sec. 14 and 40 - BO (Guernsey) Law and Sec. 11 and 37 - BO (Alderney) Law). Persons involved in the dissolution of a legal person are bound to retain BO information in line with the record retention obligations of Schedule 3 to the PCL. General partners of LPs are required to keep information on other general partners and persons exercising control for five years after the dissolution or termination of the partnership (para 3 of schedule 10 – PCL).

*BO Registers*

BO Registrars must maintain BO information on the register for at least five years from the dissolution, termination or striking off of a legal person (see sec. 40 and para 9 of Schedule 2 - BO (Guernsey) Law, and sec. 33 and para 9 of the Schedule - BO (Alderney) Law.

*FIs and DNFBPs*

FIs and DNFBPs shall keep BO information for five years from when a business relationship ceases, or an occasional transaction is carried out (see c.11.2 and c.22.2).

***Criterion 24.10***

*Basic and Shareholder Information*

Some basic information (see c.24.3), is publicly available through the respective registers. In addition, the Registrars are responsible for cooperating and assisting competent authorities including by disclosing information (see sec. 499(1)(c) - Companies (Guernsey) Law, Sec. 152L(1)(b) - Companies (Alderney) Law, Sec. 32I(1)(b) - LP Law, para 2 of Schedule 1 - LLP Law and para 3 of Schedule 1 - Foundations Law. The Registrars also have information gathering powers which can be exercised to procure the necessary information.

Basic and BO information may be obtained by competent authorities from resident agents on request (see c.24.8). LEAs may obtain basic, shareholder and BO information from all legal entities, resident agents and any other person through their information gathering powers (see c.31.1). The FIU may also obtain information from REs, third parties or a relevant person, within 7 days (see c.29.3). Furthermore, the AGCC, GFSC, the Registry of Companies (*qua* Administrator) and the Customs Service have the power to obtain, basic, shareholder and BO information required to pursue their functions (see c.27.3, c.28.1(c) and c.32.4). Basic and BO information for LPs without legal personality may be obtained through the Registrar, the Revenue Service or general partners.

*Beneficial Ownership Information*

The BO Registers are directly accessible to all competent authorities (see c.24.6). The powers to access basic and shareholder information, set out in the paragraphs above, apply to BO information.

***Criterion 24.11***

Legal persons are prohibited from issuing bearer securities - Sec. 37A(1) - BO(Guernsey) Law and Sec. 31A - BO (Alderney) Law. Bearer securities include shares, warrants and other instruments which ownership or rights are determined by possession of a physical certificate or similar (Sec. 37A(2)). This prohibition applies also to legal persons re-domiciled in Guernsey from other jurisdictions – see Sec. 77(e) - Guernsey Company Law.

***Criterion 24.12***

(a) The first proposed resident agent of a legal person shall ascertain the identity of any nominee. The nominee and nominator (including licensed fiduciaries) must disclose their status to the resident agent. The resident agent must also identity and verify the nominator (where applicable) and disclosed them to the BO Registrar. These statements must be served on the legal person and, upon request, its first directors. Reg 1 of the BO (Nominee Relationships) (Guernsey) Regs and Paras 1 and 3 - BO (Nominee Relationships) (Alderney) Ordinance.

The resident agent must keep this information updated and notify the Registrar with updates.

Nominee directors are unknown under the Bailiwick laws as anyone appointed as a director is bound by the full extent of directors' duties.

(b) It is a criminal offence to provide nominee services, including acting as or providing nominee shareholders or directors to a company, partnership or unincorporated body, in or from the Bailiwick without a fiduciary licence from the GFSC (see c.28.4(b)). TCSPs are bound by CDD obligations, including identifying the customers and BOs which one understands to be the nominator. In addition, any licensed nominee is bound to review the said information from time to time, keep it up-to-date, and make it available to competent authorities (see c.24.6 – c.24.8).

***Criterion 24.13***

Guernsey has several measures to sanction contraventions of applicable obligations:

*Basic and shareholder information*

The registration of legal persons only takes place upon the submission of the required basic information to the respective registrar (see c.24.3). The provision of false or misleading information, including at this stage, is a criminal offence subject to an unlimited fine (or a fine of up to £10,000 in the case of summary conviction) and/or imprisonment for up to two years in Guernsey and a fine of £5,000 and/or imprisonment of up to 3 months in Alderney (see sec. 509/513 - Companies (Guernsey) Law, sec. 155/156 - Companies (Alderney) Law, sec. 34/40 of LP Law, sec. 92/93 - LLP Law and sec. 47/48 - Foundations Law. Where a breach is attributable to a TCSP, this information is considered as part of the TCSP's fitness and properness.

A failure by a legal person to: (i) keep at its registered office basic and shareholder information as per c.24.4, (ii) to keep such information updated and (iii) in the case of companies, to provide the Registrar with altered M&As (including the basic information), within a stipulated time-frame, is a criminal offence and subject to a fine of £2,000 for companies and £10,000 for other legal persons. In addition, a civil penalty of £700 may also be imposed on the legal person in question. The Registrar may, also issue a private reprimand or a public statement in case of 'material particular' breaches (i.e. non-trivial or insignificant breaches, gross or persistent failings or conduct, or anything having materially negative implications for the public or the jurisdiction). See sec. 30(1C), 41(1), 42(2) and 518A-518B - Companies (Guernsey) Law, sec. 27A(2), 29(4), 32(1C), 71(2) and 155D-E - Companies (Alderney) Law, sec. 15(1B) and 33B-33D - LP Law, sec. 2(2)(1), 21(1B), para 2 of Schedule 1 and para 1(5) of Schedule 4 - LLP Law, and sec. 2(2A) and 3(3)(j) - Foundations Law. Each breach is subject to individual sanctioning, even in the case of repeated breaches of the same obligation.

Failure to submit an annual validation or return (see c.24.5), is subject to a pecuniary fine or a civil penalty. Different ranges apply, depending on whether the legal person is administered by a TCSP (GBP 450 to GBP 1,800) or not (GBP 250 to GBP1,000). This may also lead to a strike off in conjunction to the fine (see Sec. 237 - Companies (Guernsey) Law, Sec. 37(5) - Companies (Alderney) Law, Sec. 7 - LPs (Fees, Annual Validations and Miscellaneous Provisions) Regulations, Sec. 25 - LLP Law and para 3 of Schedule 1 - Foundations Law. Such failures are also subject to criminal fines of up to GBP10,000.

The Registrar may strike off defaulting companies in case of persistent or gross contraventions (sec. 519 - Companies (Guernsey) Law and sec. 107 - Companies (Alderney) Law.

*Beneficial Ownership Information*

BO Registrars may sanction resident agents for failures to comply with BO information obligations (see c.24.6). These include civil penalties of up to GBP 20,000, disqualification orders, private reprimands, and public statements. These failures by resident agents (i.e. BO information gathering, retention and registration), and the provision of false or misleading information to the Registrar, are criminal offences liable to an unlimited fine and up to 2 years imprisonment (see

sec. 18, 25 to 28 - BO Guernsey Law and sec. 15, 19 to 22 - BO Alderney Law). BOs may also be sanctioned where they fail to provide information to the resident agent. Failures to have a resident agent in place is subject to civil and criminal penalties. The Registrar also has the power to strike-off a legal person in such cases.

The Registrars of legal persons may restrict shareholders' rights (or equivalent for other legal persons), a BO fails to comply with any obligation or duty under the BO Laws or has provided false, deceptive or misleading information (see sec. 489 - Guernsey Companies Law, sec. 152G - Alderney Companies Law, sec. 32HE - LPs Law, para 6 of Schedule 2 - LLP Law and para 4 of Schedule 1A - Foundations Law.

Providing false or misleading information to competent authorities, or failure to reply to requests for BO information is a criminal offence. In the case of the FIU, LEAs, and GFSC the punishment consists in a fine of up to GBP 10,000 (or unlimited fine – GFSC or FIU on indictment) and/or imprisonment for up to six months, two years (GFSC) or five years (FIU on indictment).

The range of civil and criminal penalties, as well as the enforcement measures available to the Registries, taken together, provide a sufficient range of tools to ensure that effective and dissuasive action proportionate to the nature of the case is taken.

*Other sanctions*

Failures by REs to comply with AML/CFT obligations (including BO related ones) are also subject to sanctions. These are considered to be effective, dissuasive and proportionate (see R.35).

***Criterion 24.14***

(a) The Registers are public for certain basic information (see c.24.3). Information may be sourced electronically or by request to the Registrar. The Registrars shall cooperate with foreign counterparts for the purposes of the investigation, prevention or detection of crime or criminal proceeds. This includes the sharing or gathering of information which the respective Registrar may lawfully disclose or obtain. See sec. 500A - Companies (Guernsey) Law, sec. 152Q - Alderney Companies Law, sec. 32N - LPs Law, para 2(2)(d) of Schedule 1 - LLP Law and para 3 of Schedule 1 - Foundations Law. The Statement of Support for International Cooperation commits competent authorities to provide international cooperation in a rapid manner.

(b) Shareholders' information may be obtained upon request from the Registrar in the same manner as stated under c.24.14(a). Information on general partners may be obtained from the Revenue Services (see c.40.1).

(c) BO Registrars must cooperate with foreign counterparts for the purposes of the investigation, prevention or detection of crime or of any criminal proceedings. This may take the form of sharing or gathering information which the Registrar may lawfully disclose or obtain. See sec. 6A of Schedule 2 - BO Law and para 6A of the Schedule - Alderney BO Law. As set out under para (a) international cooperation should be provided in a rapid manner.

For all competent authorities, the analysis under R.37 and R.40 likewise applies to the exchange of basic, shareholder and BO information on Bailiwick legal persons.

***Criterion 24.15***

The Statement of Support for International Cooperation sets out the obligations of competent authorities in this regard. All competent authorities have a contractual undertaking under this Statement to retain information on the quality of assistance they receive from their foreign counterparts on requests for basic and BO information.

*Weighting and Conclusion*

The Bailiwick undertook various ML/TF risk assessments for legal persons incorporated under its laws. There are measures to ensure that basic and BO information is, up-to-date, accurate and accessible to competent authorities, including effective, dissuasive, and proportionate sanctions. Minor shortcomings remain with respect to the availability of some basic information for LPs without legal personality. The risk assessment for legal persons also needs to be enhanced on some aspects. **R.24 is rated LC.**

### *Recommendation 25 – Transparency and beneficial ownership of legal arrangements*

In the previous round, the Bailiwick was rated LC with former R.34. There were however insufficient measures to ensure that accurate, complete, and current BO information was available for trusts and GPs that were not administered by a licensed TCSP, and for legal arrangements that were CISs where reliance could be placed on intermediaries.

Trusts are the only Guernsey law legal arrangements considered for the purposes of R.25. LPs without legal personality and GPs, which likewise have no distinct legal personality, are not considered by the AT to be trust-like arrangements. LPs without legal personality are considered under R.24 (see section 1.4.5).

***Criterion 25.1***

(a) Art. 25 of the Trusts (Guernsey) Law imposes an obligation on all trustees of Guernsey Law trusts to keep accurate accounts and records of the trustee's trusteeship, which is interpreted to include information on the settlor, co-trustees, protector, beneficiaries or class of beneficiaries, and persons exercising ultimate effective control over the trust.

Schedules 3 and 10 to the PCL set out the CDD obligations of regulated trustees (Schedule 3 – see R.22) and those of unregulated trustees (Schedule 10) with regards to relevant trusts.

A regulated trustee is any person authorised by the GFSC to provide trustee services by way of business (i.e. professional trustees – c.24.8). Unregulated trustee refers to any person who acts as a trustee for a Guernsey Law trust but is not required to hold a license (i.e. non-professional trustee) - see para 51(1) of the PCL.

Regulated trustees are REs and subject to CDD measures, including BO identification measures, and keeping such information up-to-date on a risk-sensitive basis - see c.22.1(e) / c. 10.7, c.10.11.

The BO definition under para 22(8) of Schedule 3 for trusts and other legal arrangements covers all the persons set out under this sub-criterion.

Unregulated trustees must also obtain and hold accurate, adequate and up-to-date BO information in line with this sub-criterion - sec. 2 of Schedule 10. The said Schedule provides that where it is not reasonably practicable to identify each member of a class of beneficiaries (in view of size), the trustee should obtain and hold sufficient information on the class to be able whether an individual is or is not a member of that class (para 2(4)). At the time of payout or when the beneficiaries would intend to exercise his right, they would be subject to identification and verification as other beneficiaries.

In the event that the regulated trustee is unable to abide by its obligations, it is not to enter into the business relationship or undertake an occasional transaction (see c.10.19).

(b) Regulated and unregulated trustees must have information on the identity of any regulated agents and service providers to the relevant trust - para 15I(1) of Schedule 3 and para 2(5) of Schedule 10 to the PCL. Para 21(1) of Schedule 3 and para 8(1) of Schedule 10 set out that

whoever is providing 'investment advisory or management services, managerial services, accountancy services, tax advisory services, legal services, trust services, partnership services or corporate services in relation to a relevant trust qualifies as a service provider.

(c) Regulated trustees are REs and subject to record-keeping obligations that are fully compliant with this sub-criterion (see c.22.2 and c.11.2). This extends also to records on service providers considered to be part of CDD information (see Commission Rule 7.169).

***Criterion 25.2***

This requirement is in place for both regulated and unregulated trustees - see para 11 (setting out CDD on-going monitoring requirements for all REs– see c.22.1 / c.10.7) and para 15I(2) of Schedule 3 of the PCL and in para 2(6) of Schedule 10 of the same law.

***Criterion 25.3***

Para 15H and J of Schedule 3 and para 4 of Schedule 10 require regulated and unregulated trustees respectively to disclose their trustee status when entering into a business relationship or carrying out an occasional transaction with a RE. This obligation is also applicable when regulated or unregulated Guernsey trustees act in respect of foreign trusts.

***Criterion 25.4***

Under para 15K, a regulated trustee can disclose any information relative to the trust to a competent authority (see para 21(1) covering all the competent authorities). Regulated trustees can also disclose BO information, and information on trust assets to be held or managed by a RE, when entering into a business relationship or when carrying out an occasional transaction with that RE. Para 5 of Schedule 10 reflects the above with regards to unregulated trustees.

The principle of confidentiality (see R.9), foresees exemptions to this principle when an entity is compelled by law to provide information. As set out under c.25.5 and c.25.7 trustees must give access to relevant information on trusts they administer.

***Criterion 25.5***

LEAs are empowered to obtain information from any person which includes the information foreseen under this criterion – see c.31.1(a). Such information has to be made available within 7 days, unless a Bailiff believes that a shorter or longer period would be more appropriate.

Equally the FIU can exercise its powers to obtain information from a RE, a third party or a relevant person. FIU requests for information must be replied within 7 days, which period may be shortened in the case of urgency but may also be extended at the discretion of the FIU. (see c.29.3)

The GFSC may access information held by third parties which is necessary to pursue its functions – see c.27.3. This covers information held by both regulated and unregulated trustees. Under Sec. 26 of the Fiduciaries Law, the GFSC has information gathering powers for licensees (including trustees) and for those exempt from licensing (including unlicensed trustees). The AGCC and the Customs Service also have powers to obtain information to pursue their functions (see c.28.1(c), and c.32.4)

***Criterion 25.6***

(a) The analysis to R.37 and R.40 (i.e. MLA and other forms of international cooperation) likewise applies to the provision of information on trusts for international cooperation purposes. Under Sec. 26 of the Fiduciaries Law (see c.25.5), the disclosure of information to the GFSC is permitted where this is necessary to assist the GFSC in the exercise of its functions including the exchange of information with counterpart authorities.

(b) and (c) The ability of competent authorities to exchange domestically available information with, and to use investigative powers to obtain information on behalf of, foreign counterparts is discussed under c.37.1, c.37.8, c.40.1, c.40.8, c.40.11, c.40.13, c.40.15, c.40.17 and c.40.18, which criteria are compliant. These powers are applicable to information on trusts and BO information.

***Criterion 25.7***

In terms of para 20 of Schedule 3 (applicable to regulated trustees) and para 7 of Schedule 10, a failure to comply with any obligation under Schedule 3 or 10 constitutes a criminal offence punishable by imprisonment not exceeding a term of 5 years, an unlimited fine or both. The punishment is reduced to a term of imprisonment not exceeding 6 months or a fine not exceeding £10,000 or both in the case of a summary conviction.

With respect to regulated trustees the GFSC can take several enforcement measures to enforce the provisions of *inter alia* the Fiduciaries Law (see R.35). Given that the minimum criteria for licensing under the Fiduciaries Law include adherence to applicable Laws (including the PCL), any failure to comply thereto would trigger the GFSC's powers under the Enforcement Powers Law. In terms of these enforcement measures the GFSC's can: (i) suspend or revoke a regulated trustee's licence, (ii) issue private reprimands, and (iii) make public statements.

The GFSC may also impose administrative sanctions, up to a maximum of GBP 4 million in the case of non-personal fiduciary licensee. Where a fine is higher than GBP300,000, the GFSC has to determine whether it exceeds 10% of the turnover of the licensee concerned and cap it at the said amount if it does. For personal fiduciary licensees the penalty may not exceed GBP400,000. See R.35 for further details on sanctions. The envisaged sanctions are considered to be proportionate, effective and dissuasive.

***Criterion 25.8***

As set out under c.25.5 the GFSC may obtain information from any regulated or unregulated trustee. Failure to reply is a breach the said law and trigger the application of the enforcement powers thereunder. In addition, under Sec. 26(10) of the Fiduciaries Law, failure to reply to a request for information constitutes an offence. In the case of unregulated trustees, any such failure may be subject to either a financial penalty or a criminal sanction.

Failure to reply to a request for information from the FIU and LEAs is a criminal offence punishable with a fine of up to GBP10,000 and/or imprisonment of up to 6 months. In the case of the FIU, any such offence would be punishable on indictment with an unlimited fine and/or 5 years' imprisonment. Providing false or misleading information is equally a criminal offence.

*Weighting and Conclusion*

The Bailiwick fully complies with R.25. **R.25 is rated C.**

### *Recommendation 26 – Regulation and supervision of financial institutions*

In the previous evaluation, Guernsey was rated as Compliant with former Rec. 23

***Criterion 26.1***

The GFSC is the AML/CFT supervisory authority for specified businesses (para 16(1) Schedule 3). Specified businesses include financial services business (i.e. FIs & TCSPs) and prescribed businesses (DNFBPs) other than eCasinos and high-value dealers (see intro to R.10 & R.22).

***Criterion 26.2***

*Core Principles FIs*

With regards to Core Principles FIs, the requirement for a licence arises from the following:

- Sec. 1(1) and 6 of the Banking Supervision Law which prohibits unlicensed deposit-taking and makes the said activity subject to licensing. The requirements to be met for a bank license are such that no institution would qualify as a shell bank in terms of the FATF Glossary. Particularly relevant are the requirement to have at least two Bailiwick residents of appropriate standing and experience and sufficiently independent of each other to direct the business of the bank, and risk management functions fulfilled by a sufficient number of individuals employed in the Bailiwick.

- Sec 1(1) and 6 of the Insurance Business Law which prohibits the carrying out of the business of long-term insurance business without a licence issued in terms of sec. 6 of the said law;

- Sec. 1(1) and 2(1) of the Insurance Managers and Insurance Intermediaries Law provides a prohibition against the carrying out of unlicensed activities for insurance managers and insurance intermediaries, requiring them to be licensed in terms of sec. 4; and

- Sec. 1 and 3 of the POI Law which prohibits the carrying out of so-called restricted services which comprise investment services carried out vis-à-vis a list of securities.

Sec, 1(2) of the Banking Supervision Law and Sec. 2 of the POI Law, provide for partial or full exemptions from the provision of the law including licensing. This power may be exercised by the Policy & Resources Committee however it has never been used.

There is no general requirement for CISs established in Guernsey to be licensed or otherwise authorised. However, Bailiwick investment firms licensed under the POI Law may not service a CIS, unless that CIS is authorised or registered in Guernsey under the POI Law (see para 7 of the POI Law). The authorities also explained that in practice a CIS has to engage a Bailiwick service provider (designated administrator) at the point of formation and to perform ongoing administrative functions, and such services must be provided by a licensed administrator. All CISs in Guernsey have a POI licensed designated administrator.

*Other FIs*

The LCF Law regulates the activities of non-Core FIs which it classifies as (i) credit business; or (ii) financial firm business. These activities may only be carried through a license (sec. 2 and 16). The activities of MVTS and those of money or currency exchange services are financial firm businesses subject to licensing by the GFSC under this Law (see explanation under c.14.1).

***Criterion 26.3***

The GFSC's licensing process is the same for all FIs, with differences in the treatment of supervised roles (i.e. whether prior authorisation or mere notification to the GFSC is required). Minimum licensing criteria are set out for these roles in Schedule 2 to the Banking Supervision Law; Schedule 4 to the POI Law; Schedule 7 to the Insurance Business Law; Schedule 4 to the Insurance Managers and Insurance Intermediaries Law; and Schedule 4 of the LCF Law.

Amongst the conditions to be met by anyone taking on a supervised role to be considered as fit and proper are: (a) probity, competence, experience and soundness of judgement for fulfilling that position; and (b) whether the interests of the public or the reputation of the Bailiwick as a financial centre are, or likely to be, jeopardised by the individual holding the said position. In assessing compliance with these requirements, regard may be had to the previous conduct and activities of the person in question and, in particular, to any evidence that he has:

(a) committed any offence, and in particular offences involving fraud, dishonesty or violence;

(b) contravened the supervisory laws, any AML/CFT enactment (including rules, codes, guidance, principles, policies and instructions issued by the GFSC), or other enactments appearing to the GFSC to be designed for protecting members of the public against financial loss;

(c) engaged in any business practices - (i) appearing to be deceitful, oppressive, or improper, or (ii) which reflect discredit on that person's method, or suitability to conduct business; or

(d) engaged in or been associated with any other business practices, conduct or behaviour which casts doubt on their competence and soundness of judgement.

The said information is collected through a Personal Questionnaire that applicants for any supervised role being an approved or vetted role have to complete. The information is then verified and complemented by additional information collected by the GFSC's Authorisations Division from other sources. This enables the GFSC to: check that the individual is not listed as, or linked to, a designated person in relation to a UN, UK, Bailiwick or international sanctions list; verify whether the individual has been prosecuted, or convicted for a predicate offence in Guernsey or elsewhere; and check whether the person has been the subject of a regulatory investigation or sanction for AML/CFT regulatory failures in another jurisdiction.

Such sources include third party screening tools, FIN-NET and the Shared Intelligence System operated by the UK FCA which is a mechanism for UK and Crown Dependency regulatory bodies, designated professional bodies and recognised investment exchanges to collect and share material (including non-public law enforcement information) which assists in identifying potential criminal association, against which applicants can be checked.

The due diligence process also includes reviews of the jurisdictions where the individual resided, was employed, undertook business or acted as a controller or director. Enquiries are also undertaken with the GFSC's intelligence team which is the focal point for receiving intelligence from international and national AML/CFT intelligence sources, such as the Bailiwick's FIU.

Supervised roles include approved supervised roles, vetted supervised roles, or notified supervised roles. For approved supervised roles the GFSC's prior express approval is necessary. Vetted supervised roles are tacitly approved if the GFSC does not otherwise inform the individual concerned within 60 days from the receipt of the necessary information. For notified supervised roles it is sufficient to notify the GFSC within 14 days or taking on the role. The process followed is identical under all supervisory laws, and the same vetting requirements apply to authorised and vetted supervised roles. The only difference are the timescales available to the GFSC to conduct the review.

The GFSC indicated that it always provides a response before the 60-day deadline so no automatic approvals are given in relation to vetted supervised roles.

The roles covered under these terms are defined under Article 12(1-3) of the Banking Supervision Law, Article 16A(1-3) of the Insurance Business Law, Article 11A(1-3) of the Insurance Managers and Intermediaries Law, Article 39(1-3) of the POI Law, and Article 41(1-3) of the LCF Law.

*Holders and Beneficial Owners*

The specific supervised roles classified as approved, vetted or notified differ between industries. In the case of banks, insurance companies and FIs licensed under the LCF Law, a controller (shareholder or indirect controller) is an approved supervisory role. The said role must be expressly cleared by the GFSC. A shareholder controller is anyone who alone or with associates exercises 15% or more of the voting rights within the FI or within any of its holding companies. An indirect controller is anyone on whose instructions directors within the FI usually act, or who has any holding (direct/indirect) giving him significant influence over the management of the FI.

On the other hand, the GFSC's approval to a controller is tacit in the case of insurance managers and insurance intermediaries, since they are considered as vetted supervised roles. As stated above, in practice, no automatic approvals are given in relation to vetted supervised roles.

Significant shareholders (i.e. shareholders of between 5% - 14.99% of the voting rights) are approved supervised roles in the case of banks and notified supervised roles in the case of all other FIs. Shareholders of a significant interest with no voting rights (i.e. holders of non-voting shares) or with less than 5% voting rights are not considered supervised roles, and hence are not subject to fit and proper requirements. This applies to all FIs. As set out under IO3 these are however in practice subject to fit and properness scrutiny.

*Management Functions*

Directors and other key senior managerial roles (i.e. managing directors and CEOs) are vetted supervisory roles for banks, investment services, insurance intermediaries and insurance managers. They are approved supervisory roles in the case of insurance companies and FIs under the LCF Law. MLROs, MLCOs and compliance officers, are vetted supervised roles, except in the case of FIs under LCF Law where they are considered as approved supervised roles.

The definition of fit and proper excludes criminal associates from becoming involved in the management of an FI.

Whenever a person becomes or ceases to hold a supervised role, the licensee is bound to notify the GFSC. In the case of approved and vetted supervised roles the GFSC may object to the proposed appointment. It may also object to any approved or vetted supervised role holder who no longer remains fit and proper (see sec. 25 of the Enforcement Powers Law).

Acting in breach of the notification requirements or failing to notify within 14 days that you ceased to hold a supervised role is a criminal offence (sec. 16 of the Banking Supervision Law, sec. 38 of the Insurance Managers and Intermediaries Law, sec. 42 of the POI Law, and sec. 45 of the LCF Law. These criminal offences are punishable by a fine of up to GBP20,000 (summary convictions) or an unlimited fine subject to the court's discretion (convictions on indictment).

In addition, the GFSC may suspend or revoke a license where any of the licensing criteria (including fit and proper requirements for supervised roles) are not fulfilled (see sec. 28 and 29 of the Enforcement Powers Law). The GFSC may also (i) limit the transfer of, payment of dividends or the exercise of voting rights associated with the shares held; and (ii) seek the transfer of such shares to third parties, or restrict the exercise of shareholding rights – sec. 27.

***Criterion 26.4***

*Core Principles Institutions*

(a) Met - The GFSC is the AML/CFT supervisor for all core FIs (see c.26.1). The functions are set out under the Financial Services Commission Law and in the respective sector-specific laws. Its licensing functions and powers have been considered under c.26.3 above. As such the analysis referred to therein is also applicable hereto.

The Bailiwick has not been subject to an IMF FSAP since 2010, however commissioned two independent assessments in 2017 and 2018 to assess its adherence to the Core Principles. These assessments concluded that the supervisory framework met or was closely aligned to the core principles. The assessments also reflect that the core principles on consolidated group supervision are not applicable to Guernsey as it does not serve as the home jurisdiction to any bank or insurance group.

In terms of para 16(2) of Schedule 3 the GFSC, when conducting AML/CFT supervision, must consider the ML/TF risks associated with countries or territories and the level of cooperation the authorities therein afford, and the NRA. The NRA includes information and conclusions on sector specific vulnerabilities based on types of customers, geographical connections and types of services / products offered. The GFSC's PRISM Principles and Practice document moreover sets out in detail how entity specific ML/TF risk is to be determined taking into account inherent risk and internal control aspects to derive an RE's residual risk.

There were no FIs licensed in Guernsey that had branches or subsidiaries operating in or outside Guernsey.

(b) Met - The same supervisory framework is applicable to non-Core FIs, including MVTSs, as is applied to Core FIs. Thus, the analysis under para (a) likewise applies.

***Criterion 26.5***

(a) Mostly Met - The GFSC's supervisory programme is determined by the residual ML/TF risk score calculated for each RE through the PRISM system. The said system takes into account information from various sources to determine the inherent risk score of each RE and also the level of effectiveness of their controls, on the basis of which the residual risk score is determined. The key source of information is a self-assessment questionnaire (Financial Crime Risk Return – FCRR) that each RE has to complete on an annual basis with additional information then sourced from the GFSC itself and other sources, both public and confidential.

The final residual risk score is subject to an acceptance process which allows for manual overrides to consider other qualitative factors (e.g. supervisory experiences and adverse media). This assessment is carried out on an annual basis. The said system is also dynamic, allowing the GFSC to revise the score on the basis of trigger events. (see 6.2.2 – IO3 for further information).

The GFSC also explained that each RE would be classified, on the basis of its residual risk, as low, medium-low, medium-high and high. It is this classification that ultimately would determine the frequency and intensity of the GFSC's supervisory engagement with the individual RE.

The GFSC's PRISM Principles and Practice document sets out how the frequency and intensity (in terms of type of inspections) of supervisory engagement is to be defined on the basis of the financial crime risk classification. Furthermore, the GFSC's Financial Crime Inspection Guidance provides guidance on how the scope and intensity of an examination is to be determined. The AT has reservations whether the frequency of AML/CFT supervision for medium-high risk REs of 4 years is appropriate and risk-based (see IO3 sec. 6.2.3).

(b) Met - The GFSC is bound to consider the NRA conclusions for AML/CFT supervision (see 26.4).

(c) Met - The PRISM Principles and Practice document sets out how each RE's ML/TF risks are to be determined taking into account the entity's characteristics, such as the sector it operates in, its ownership profile and whether it is subject to group consolidated supervision by a foreign supervisory authority.

The GFSC also explained that in carrying out AML/CFT supervision it also considers how the REs exercise their risk-based discretion when applying AML/CFT obligations. This is also clearly set out in the GFSC's Financial Crime Inspection Guidance.

***Criterion 26.6***

The GFSC reviews the risk profile of each RE annually. The PRISM risk results are analysed by the GFSC's Financial Crime Division and Risk Unit before being presented and adopted by the GFSC's Executive Committee. Individual risk profiles can be revised should there be major events that

impact the RE's ML/TF risk. This is set out in the GFSC's Prism Principles (see sec. 3.3. "Manual Financial Crime Risk Overrides" and sec. 3.4 – "Annual Financial Crime Parameters Review".

*Weighting and Conclusion*

The Bailiwick fully complies with c.26.1, c.26.2, c.26.4 and c26.6. and largely complies with the remaining criteria. The remaining technical shortcomings are the fact that holders of a significant interest without attached voting rights (or minimal rights) are not subject to fit and proper requirements (c.26.3), while the frequency of AML/CFT supervision for medium-high risk REs of 4 years is not appropriate and risk-based (c.26.5). **R.26 is rated LC.**

### *Recommendation 27 – Powers of supervisors*

In the previous evaluation, the Bailiwick was rated as Compliant with former Rec. 29.

***Criterion 27.1***

The GFSC is the authority responsible for AML/CFT supervision of FIs. This is set out in sec. 16 of Schedule 3, and its supervisory powers are set out in Article 49B of the PCL.

***Criterion 27.2***

Art 49B of the PCL empowers the GFSC's officers or agents to enter (on request) any business premises in the Bailiwick for the purpose of carrying out their inspection. Any such request would then trigger the resulting supervisory powers to allow the GFSC's officers, servants or agents to carry out their function with regards to access to information held by the FI in question.

Failure to comply with any such request is a criminal offence. If entry is refused, if it is believed that a request will not be complied with, or that documents will be removed or tampered with, or if an inspection would be prejudiced by such request, the GFSC can seek the issuance of a warrant for forced entry together with the assistance of LEAs (see article 49C).

The Financial Services Business Law is moreover applicable for all statutory functions assigned to the GFSC, including those under the PCL and the Transfer of Funds Regulations. Thus, the GFSC may exercise all its powers under the former law and under the Enforcement Powers Law. With regards to the on-site supervisory powers under the said laws, the Financial Services Commission (Site Visits) Ordinance allows the GFSC to calibrate its on-site visits according to the particular circumstances being faced. Thus, it is possible to carry out on-site examinations with the FI's agreement, or without the FI's agreement but within a 48-hour prior notice. In addition, the GFSC can also carry out examinations without agreement or prior notice where it suspects that the FI is removing, tampering with, falsifying or destroying documents (see art. 1-3 of the Ordinance).

***Criterion 27.3***

Sec. 49B(2) of the PCL empowers the GFSC to require specified businesses (i.e. all FIs – see c.26.1), while carrying out on-site inspections, to produce documents and copies in legible form. Sec. 49B(2) also allows the GFSC to require specified businesses to answer questions during an inspection for the purpose of verifying compliance with AML/CFT rules, instructions and guidance (i.e. Schedules 3,4 and 5 and linked guidance). Obstructing the GFSC or failing to comply with such requests is an offence punishable on summary conviction to imprisonment for a maximum term of 6 months or a fine of up to GBP 10,000 or both. On conviction on indictment the maximum penalty is two years imprisonment, a fine or both.

The GFSC may also obtain from FIs any information and documents that is reasonably required for the conduct of its functions under the various laws including the countering of financial crime and TF (see sec. 2(2)(d) and 21D of the Financial Services Commission Law, sec. 7 of the

Enforcement (Powers) Law, sec. 28 of the Banking Supervision Law, sec. 33 of the POI Law, sec. 68 of the Insurance Business Law, sec. 45 of the Insurance Managers and Insurance Intermediaries Law and sec. 53 of the LCF Law). It is an offence under these laws for an FI not to provide information and documents reasonably requested by the GFSC. In terms of these laws there is no limitation as to the circumstances when the GFSC may request information, and hence such power may be used for both on-site and off-site inspections.

Sec 49C of the PCL and sec 12 of the Enforcement Powers Law empower the Bailiff to grant warrants for a Police officer, together with any other person named in the warrant (such as a representative of the GFSC) to use such force as is reasonably necessary to enter premises, search them and require questions to be answered. Such warrant would be granted where, among others, a specified business has failed to comply with a notice or other requirement issued by the GFSC under para 49B or where there are grounds to suspect that documents may be removed, tampered with, or destroyed if a sec. 49B notice would be served by the GFSC.

***Criterion 27.4***

The sanctioning powers of the GFSC have been thoroughly considered under R.35 and considered to be effective, dissuasive and proportionate. These include powers to impose both pecuniary penalties as well as other measures relative to one's licence. Reference is therefore made to the analysis under Rec. 35.

*Weighting and Conclusion*

Guernsey meets all the criteria under R.27. **R.27 is rated C**

### *Recommendation 28 – Regulation and supervision of DNFBPs*

In the previous evaluation, the Bailiwick was rated as LC with former R.24. Police record checks were not conducted systematically on key individuals seeking an eGambling license, while the GFSC needed to increase the frequency of its onsite inspections for TCSPs.

***Criterion 28.1***

Gambling activity in the Bailiwick is governed by three laws: The Gambling (Guernsey) Law, the Gambling (Alderney) Law, and the Gambling (Sark) Law. All these laws prohibit gambling (see Sec. 1 of the Gambling (Guernsey) Law, Sec. 5 of the Gambling (Alderney) Law and Sec. 1 of the Gambling (Sark) Law), unless expressly permitted by a specific Ordinance. Such ordinances were adopted in Guernsey and in Alderney (see c.22.1(a)).

(a) *Land-based Casinos* – Land-based casinos may only operate in Guernsey and based on a concession under the Hotel Casino Concession (Guernsey) Law. No concessions have been issued.

*Remote Casinos (eCasinos)* – Only Alderney allows for the establishment of eCasinos under the Alderney eGambling Ordinance. There are three categories of eCasino licences. Casino-games to customers may be provided only by Category 1 or Temporary Licensees (see c.22.1(a)).

Under the Gambling (Guernsey) Law, and an Ordinance issued thereunder, Guernsey recognises licences issued by the AGCC and considers as legal and permissible gambling activities with Alderney licensed entities (Sec. 1 and Sec. 2 of the said Ordinance).

(b) *Land-based Casinos* – No land-based casinos may operate in the Bailiwick.

*Remote Casinos (eCasinos)* – A gambling licence may be granted by the AGCC only where the applicant and its associates are fit and proper (sec. 5(2) of the Alderney Gaming Ordinance).

An associate would comprise both: (i) an executive associate - the executive officer of a company, partner or trustee, and (ii) a business associate – whoever either effects the gambling transaction on behalf of the eCasino or organizes or promotes a gambling transaction on behalf of the said associate. The term associate also includes a person associated with the ownership and management of the operations of the eCasino.

*Shareholders and Beneficial Owners*

As part of the licensing process, the AGCC vets all: (i) shareholders holding 3% or more of the applicant's issued share capital and group investors holding 3% or more of any parent company, and (ii) BOs of the applicant company having a significant or controlling interest. Refer to art 61 and Schedule 1 of the Alderney Gaming Regulations, and art 265(1A) of the BO Definitions (Alderney) Regulations for the BO definition.

The vetting process is repeated whenever any change in shareholding or beneficial ownership takes place after licensing. Changes in shareholding do not require prior approval of the AGCC, since it is an *a posteriori* notification process (within 7 days) that would trigger the assessment by the AGCC (see sec. 4(h) of the Alderney Gaming Regulations). Whenever an on-site inspection is carried out (conducted on an annual-basis – see IO3) a corporate structure is requested to identify any changes that went undetected. The AGCC may suspend or revoke an associate's certificate where he is no longer fit and proper - para 12(1) of the eGambling Ordinance.

*Management functions*

Key Individuals i.e. a person who is an associate, someone who occupies or acts in a managerial position, someone who carries out managerial functions or someone in a position to control or exercise significant influence over the licensee's operations (see art. 136 of the Regulations), are required to apply for a certificate by the AGCC. The application form (Schedule 9) requires the provision of extensive information including on the key individual's character and any criminal wrongdoing. In terms of para 5(2) key individuals must be fit and proper including on an on-going basis (see para 162(1) of the eGambling Regulations).

The basis of the checks are the application forms attached to the eGambling Regulations that have to be completed. The information provided is then vetted through independent checks, including open-source and due diligence providers' information. Enhanced checks may be carried out in the case of high-risk applicants. Information may also be sought from counterpart authorities where the applicant has or had licensing history in another jurisdiction. The AGCC carries also criminal record check, including through the FIU.

A Temporary Licence is subject to the same conditions and obligations as in the case of a Category I licence as Chapter V of the Alderney eGambling Regulations apply to all forms of licences.

(c) *Land-based Casinos* – No land-based casinos may operate in the Bailiwick.

*Remote Casinos* - The AGCC may at any time monitor any aspect of the operations of an eGambling licensee or associate certificate holder sec. 249 of the Alderney Gambling Regulations. This is sufficiently wide to also empower monitoring for AML/CFT compliance. The AGCC may conduct inspections of eCasino's operations, and obtain the necessary information or material for the purposes of conducting its monitoring functions [Sec. 249(2)(a) and 251].

In addition the AGCC obtains and approves the licencee's Business Risk Assessment and an outline of the licensee's AML/CFT processes, procedures and controls. This information is envisaged in the application form – see Schedule 1 to the eGambling Regulations. This analysis applies to both Category 1 licences as well as Temporary licences.

***Criterion 28.2***

The GFSC is the designated authority to ensure that DNFBPs other than casinos and high-value dealers adhere to their AML/CFT obligations (see explanation in c.26.1). These DNFBPs except for TCSPs (defined as financial businesses) are qualified as prescribed businesses under Schedule 3 and are bound to abide by the obligations arising therefrom. As set out under c.22.1(e) some TCSPs are not covered for AML/CFT obligations. These exemptions are however not considered material (see c. 22.1(e)).

DPMSs cannot undertake cash transactions for an amount in excess of GBP10,000 (see c.22.1(c)). Thus, DPMSs may not qualify as DNFBPs for AML/CFT obligations purposes in Guernsey.

***Criterion 28.3***

The GFSC applies the same systems for AML/CFT supervision of DNFBPs (other than casinos) as for FIs. As such the analysis for c.26.4 applies to this criterion.

***Criterion 28.4***

(a) Para 49B of the PCL enabling the conduct of on-site examinations, the power to compel the production of information and documents for the purposes of such examinations and sanctions are likewise applicable to TCSPs and prescribed businesses (para 18 of Schedule 3).

The GFSC may also compel the production of information and documents to fulfil its functions, including for AML/CFT supervision in general. Refer to the Financial Services Commission Law (para 2), para 26 the Fiduciaries Law and sec. 5 of the Prescribed Businesses Law, covering all DNFBPs (other than casinos). The power to compel the production of information is subject to legal professional privilege interpreted in line with the standards (Sec. 13.18).

(b) Different authorities have market entry responsibilities for DNFBPs:

**TCSPs -** Sec. 6 of the Fiduciaries Law provides that a licence must not be granted to carry out regulated activity unless the minimum licensing criteria set in Schedule 1 are met. The vetting process is the same as referred to under c 26.3. The deficiency applicable to FIs set out under c.26.3 likewise applies to TCSPs. A licence may be a full fiduciary licence granted to companies or partnerships to carry out one or more of the services regulated by the said law, or a personal fiduciary licence held by individuals and restricted to acting as a director, co-trustee, protector, or as executor or administrator of estates.

There are also registration requirements for individuals (i.e. registered directors) who act as directors but, due to the limited number of posts they hold (i.e. six), are exempt from licensing under the Fiduciaries Law - see Schedule 5 to the PCL. The GFSC has powers to refuse a such a registration (paragraph 2(5A) – Schedule 5) if, amongst other, an individual is or has been insolvent or disqualified from acting as a director. Where the GFSC identifies any concerns with the criminal probity of prospective or current registered directors, it may refuse or withdraw the exemption forcing the individual to obtain a fiduciary license subject to anti-criminality checks (see para 2(5A)(b) of Schedule 5 and para. 32 of the Enforcement Law). PTCs acting by way of business are likewise subject to licensing (see c.1.6).

The exemptions from licensing for directors/partners (acting by way of business) on supervised entities in other IOSCO member countries impact this criterion. This is however of low materiality (see c.22.1(e)). Similar exemptions for directors/partners, acting by way of business, on Guernsey supervised entities, or Guernsey/foreign recognised stock exchanges does not impact this

criterion. Such directors/partners are vetted for criminal probity as part of the licensing or listing of the respective company[192].

**Prescribed Businesses – (Real Estate Agents, Accountants, Legal Professionals) -** The Guernsey Registrar of Companies is the Administrator of Estate Agents, Accountants and non-locally qualified legal professionals under Schedules 6, 7 and 8 to the PCL. The Administrator is responsible for applying anti-criminality checks for these DNFBPs to prevent unfit persons from beneficially owning, owning or managing them. Anti-criminality checks for Guernsey qualified lawyers (known as Advocates) are the responsibility of HM Greffier.

Before registering with the GFSC as a prescribed business these individuals/entities must notify the Administrator and/or HM Greffier. They must also complete an application form and submit Personal Questionnaire ("PQ") forms for directors, partners, BOs, MLROs and MLCOs. These submissions are vetted to ensure that there is suitable AML/CFT expertise within the business.

**Bailiwick of Guernsey Qualified Lawyers** – Schedule 9 to the PCL enhanced the pre-existing vetting and oversight measures for Advocates under the Bar Ordinance. Under these measures, a person aspiring to be called to the Guernsey Bar, on successful completion of the necessary exams, pupillage and residency requirements, must apply to His Majesty's Procureur (Attorney General), as head of the Guernsey Bar, and submitted by HM Procureur to the Royal Court (sec. 6 of the Bar Ordinance). All aspirants must complete a PQ. Details of any prior convictions, insolvency and professional conduct complaints in any jurisdiction must be disclosed. If the HM Procureur is not satisfied that an aspirant is fit and proper, the application is not submitted to the Royal Court. No person can be admitted without the consent of HM Procureur.

Under sec. 14 of the Guernsey Bar Law (the "Bar Law") the HM Greffier is required to maintain a register of all Advocates containing: names, firms and/or institutions advocates are employed/involved in, professional qualifications, criminal convictions and details of any professional misconduct complaints. The provision of false information to HM Greffier is a criminal offence under the Bar Law. Advocates must notify the HM Greffier within 28 days of any change in information contained in the Register of Advocates (including convictions). Failure to do so is an offence, punishable by imprisonment of up to 2 years, or a fine (the amount of which is at the Court's discretion), or both.

Under Schedule 9 to the PCL, HM Greffier is to refer concerns regarding an advocate's fitness to the Batonnier of the Guernsey Bar. The Chambre de Discipline of the Bar is to hear any complaint concerning a member of the Guernsey Bar, including professional misconduct complaints or complaints alleging breaches of the PCL. These complaints explicitly cover matters to do with fitness and propriety. The Batonnier and the President of the Chambre consider whether a received complaint should be referred to the Registrar of the Chambre for investigation and, if appropriate, the matter is considered by the Chambre. The Chambre, may at the conclusion of proceedings, issue private reprimands; public rebukes; fines up to GBP 2,000; order training; suspend up to 3 months; refer the matter to the Royal Court for consideration of fining the Advocate a sum exceeding GBP 2,000 or disbarring the Advocate (sec. 27 of the Bar Law).

The Rules of Professional Conduct for Advocates provide that Advocates can only enter into professional partnerships with other Advocates. As such the managing partner and/or BOs of any law firm would be subject to the screening measures referred to above.

[192] equity-markets-listing-rules-january-2022-int.pdf (tisegroup.com)

**Accountants, Real Estate Agents and Non-Locally Qualified Lawyers -** Criminal probity and suitability requirements are applicable to these prescribed businesses, their legal owners, BOs and management officials in terms of: (i) Real Estate Agents – para 4(1), 4((4), 4(5) and 23 of Schedule 6, (ii) Accountants - para 1(5), 4(1), 4((4), 4(5) and 24 of Schedule 7, and (iii) non-local legal professionals or businesses - para 1(5), 4(1), 4((4), 4(5) and 26 of Schedule 8.

These schedules place notification obligations on managers, legal owners, BOs, MLROs and MLCOs to notify the Administrator with a completed questionnaire (relating to the minimum standards test) and demonstrate they are fit and proper to be involved in a prescribed business. This includes providing information on unspent previous criminal convictions (convictions handed in prior to 5 to 10 years); engagement in improper business practices, or other behaviour putting in doubt their suitability to carry on prescribed business or their soundness of judgement.

To assess fitness and properness, the Registrar must regard the person's probity, integrity, honesty and soundness of judgement. The Bailiwick opines that this would cater for association with criminals but it is unclear whether this is actually the case. It is an offence for a person involved in a prescribed business to provide false or misleading information to the Administrator.

Accountants and non-locally qualified lawyers involved in accountancy and law firms who are not undertaking accountancy and legal services from within the Bailiwick, are exempted from notifying the Administrator provided they are subject to fitness and properness requirements by a foreign jurisdiction which the Policy & Resources Committee considers to have appropriate minimum entry standards. This reflects situations where a Bailiwick accountancy/legal firm is part of a wider structure which has numerous partners in a range of jurisdictions.

The Administrator has wide-ranging powers, including doing anything necessary or expedient for to fulfil its functions. The Administrator is empowered to seek and receive information from any person and to communicate and co-operate with any person it thinks fit. The Administrator may also issue civil penalties up to GBP 20,000, private reprimands, public statements, impose conditions on a person's conduct and has a power to make an application to the Court to prohibit a person from being involved in estate agents, accountancy or non-local legal services businesses.

**DPMS** –There are market entry requirement for dealers in bullion, however no registration or market entry requirements applicable to other DPMSs.

(c) The sanctions applicable for breaches of Schedule 3 of the PCL and considered under R.35 equally apply to DNFBPs other than eCasinos. In addition, the powers exercisable by the GFSC under the Enforcement Powers Law would be equally exercisable vis-à-vis any TCSP.

The Prescribed Businesses Law confers onto the GFSC equivalent powers to those under the Enforcement Powers Law. One difference is that the discretionary penalty the GFSC may impose in the case of a prescribed business is capped at GBP 200,000.

In addition to the above, the powers allowed to the Administrator in relation to prescribed business and to relevant authorities and bodies in the case of Guernsey Qualified Lawyers could also be relied upon to sanction AML/CFT compliance failures. Amongst the criteria that are to be considered to determine whether one is fit and proper to carry out or be involved in a prescribed business is that the individual must not have unspent convictions and that he is not to reflect negatively on the conduct of business.

***Criterion 28.5***

(a) and (b) Mostly Met - DNFBPs (other than eCasinos) - In the case of DNFBPs other than casinos, the GFSC makes use of the same system and process to risk assess the DNFBPs in question as in the case of FIs. In this regard reference should therefore be made to the analysis under c.26.5,

including the issues flagged within the said analysis. In case of TCSPs the AT believes that there is room for the collection of more granular risk data to improve the understanding of specific inherent risk factors (see 6.2.2).

eCasinos - The AGCC has a manual process in place to risk assess eCasinos. The risk assessment and risk rating process involves the consideration of data obtained through an annual AML/CFT Template that looks at both the risks that the specific operator is exposed to as well as the controls put in place to mitigate the same. Other relevant returns and information also feed into to the risk assessment process (see section 6.2.2 - IO3).

The AGCC carries out AML/CFT on-site inspections for high-risk eCasino annually, which is in line with the accepted supervisory standard. Considering that the availability of sufficient resources and the limited number of live eCasinos (i.e.18 in 2023) standard and low risk eCasinos are also visited on an annual basis for AML/CFT purposes, while for general gaming laws' compliance every two and four years respectively. Moreover, the concept of the relationship manager ensures constant liaison between the AGCC and all sector entities. AML/CFT on-site examinations are risk aligned in terms of intensity and scope.

*Weighting and Conclusion*

The Bailiwick meets or largely meets all criteria with only minor shortcomings remaining. **R.28 is rated LC**

### *Recommendation 29 - Financial intelligence units*

In the 4th round MER, Guernsey was rated largely compliant with the requirements of R.26, for deficiencies in relation to lack of legal safeguards for operational 'functioning', insufficient information in public reports released and the lack of legal provisions for requesting additional information without an initial STR. Effectiveness issues were considered as part of the previous assessment but under this round are no longer included in this technical compliance assessment but are assessed separately under IO.6. Since the last evaluation, the FATF standards in this area were strengthened. Also, The Bailiwick of Guernsey Financial Intelligence Unit (FIU) was established under the provisions of the Economic and Financial Crime Bureau (EFCB) and Financial Intelligence Unit (Bailiwick of Guernsey) Law, which came into force on 20/10/2022 (formerly, the FIU operated as the Financial Intelligence Service -FIS-, a specialist division within the Guernsey Border Agency, whose role and functions were set out in the Disclosure Law).

***Criterion 29.1***

The Bailiwick of Guernsey Financial Intelligence Unit (FIU) is a law enforcement-style FIU established under the umbrella of the EFCB, established in June 2021 by the Committee for Home Affairs and approved by the States of Guernsey (Part III of the EFCB/FIU Law – prior to 2021 the FIU operated as the Financial Intelligence Service (FIS), within the Guernsey Border Agency). The Director of the EFCB has the power to appoint the Head of the FIU to exercise its functions and ensure that he has the necessary authority and financial, human, technical and other resources to enable the FIU, which is operationally independent, to discharge its functions effectively, especially the receipt, analysis and dissemination of SARs and other information relevant to economic and financial crime within the Bailiwick and elsewhere (Part III Sect. 4(1) & 4(2) of the EFCB/FIU Law). The form and manner of disclosure is set out in The Disclosure Regulations, 2007.

***Criterion 29.2***

The Bailiwick of Guernsey FIU serves as the central national authority for the receipt of disclosures filed by reporting entities, including:

(a) SARs related to ML, associate predicate offences, proliferation and PF are filed by FIs and DNFBPs to the FIU (Sect. 1 to 3B of the DL). Similarly, TF SARs are also submitted to the FIU (Sect. 12, 15 and 15A of TL).

SARs must be submitted via the online reporting facility available on the website of the FIU (THEMIS). In exceptional circumstances, a SAR may be filed in a paper format, with the prior consent of the Head of FIU or his/her deputy using the form set out in the Schedule to these Regulations. (Regulation 1 of the Disclosure Regulations, 2007 and Regulation 1 of the Terrorism and Crime Regulations, 2007).

(b) Section 4(1)(ii) of Part III of the EFCB/FIU law states that the FIU receives, analyses and disseminates any "other information relevant to economic and financial crime". Guernsey does not require the reporting of cash transactions, wire transfer and or any additional types of threshold-based activity apart from the cross-border cash declarations, where cash declaration forms (CDFs) have been introduced which outline the information that must be provided to the authorities, and all are sent to the FIU, on the basis of Section 8(2) of the EFCB/FIU Law 2022 used as a gateway for information contained in CDFs by customs to the FIU. In practice the relevant procedures are governed by a joint Customs/FIU Cash Declarations Policy (for more details see R.32).

***Criterion 29.3***

In relation to obtaining and accessing information:

(a) The FIU has the ability to obtain additional information from reporting entities to perform its core functions through the following powers:

- Power to obtain additional information from Reporting Entities that have filed a STR (Regulation 2 of the Disclosure Regulations, 2007 for ML and Regulation 2 of the Terrorism and Crime Regulations, 2007 for TF).
- Power to obtain additional information from third parties following the receipt of a STR where the FIU has reasonable cause to believe that the third party possesses relevant information for the enquiries of the FIU (Regulation 2A of the Disclosure Regulations, 2007 for ML and Regulation 2A of the Terrorism and Crime Regulations, 2007 for TF).
- Power to obtain information from relevant persons following a report made to the FIU (that would mean, besides a SAR, a request made by a foreign FIU, a police officer, any foreign administrative or law enforcement office combating financial crime, the GFSC (or foreign counterpart), the AGCC, and other domestic competent authorities) if the FIU reasonably believes that the person (i.e. the relevant person) possesses information relating to the report and that the information is necessary or expedient for the proper discharge by the FIU of its functions (Regulation 1 of the Disclosure (Information) Regulations, 2019 in relation to reports made pursuant to section 11A of the Disclosure Law and Regulation 1 of the Terrorism (Information) Regulations, 2019 in relation to reports made pursuant to section 15D of the Terrorism Law). The introduction of this power in 2019 aims to address an issue raised in the last evaluation report.

The FIU may serve, in each instance, a notice on the reporting entity requiring them to produce the information requested under any of the powers explained above within 7 days, with

possibility to extend this period and also reduce it to a reasonable lesser period in urgent cases (Regulation 2 and 2A of the Disclosure Regulations, 2007 and Regulations 2, 3 and 4 of Disclosure (Information) Regulations, 2019; and Regulations 2 and 2A of the Terrorism and Crime Regulations, 2007 and Regulations 2, 3 and 4 of the Terrorism (Information) Regulations, 2019). This is a coercive power and failure to comply with the notice in the specified time is a criminal offence (unless the person has a reasonable excuse for not disclosing the additional information or obtained the information under legal privilege circumstances). There is no legal time limit for extensions.

(b) The Bailiwick of Guernsey FIU has direct and indirect access to a wide range of financial, administrative and law enforcement information to help it undertake its functions, including: Counter Terrorism (CT) Network located at Bailiwick Law Enforcement in respect of a STR linked to terrorism of TF, Refinitiv World-Check Risk Intelligence, Guernsey Beneficial Ownership Register, Revenue Service information, NICHE (BLE database), Police National Computer (PNC), MLA information held by the Attorney General Equifax and Experian (credit check agency), the database of the Department of Vehicle Licensing Service In Guernsey, Passport data maintained by the Immigration Service, GEMS – Customs freight movements, Guernsey Company Register – central database for all Guernsey registered Legal Persons and Charities/NPOs (on a separate database), Alderney Company Register, Cadastre Register of Property Ownership, Travel (i.e. Airline and shipping passenger movements, private aircraft movements, private vessel movements), Aircraft/vessel registration, JARD (Joint Asset Recovery Database), Open sources (World-Check One, UK Company Register, Open Corporates, ICIJ Offshore Leaks Database, BAILII, GFSC and other national regulators websites, sanction lists, social media platforms, etc.). It has indirect access to checks with Interpol and Europol. It may also seek information held by FINNET, CARIN, etc.

The FIU also has access to domestic financial and administrative information held by competent authorities, in particular, the GFSC (Section 21(2)(b) of the GFSC Law), the AGCC (Para. 12(2)(c) of Schedule 1 of the eGambling Law), Revenue Service (Section 9(2) of the Disclosure Law), other government departments (section 6 of the Disclosure Law), the Attorney General (Section 2 of the Fraud Investigation Law), the Registrar of Charities and NPOs (Para.2, Schedule 2 of the Charities Ordinance and Para.14 of the Schedule to the Sark NPO Law) and the Policy & Resources Committee (Section 10A of the Disclosure Law). The FIU has also concluded MOUs for the exchange of information with the GFSC, AGCC and the Revenue Service.

***Criterion 29.4***

In relation to analysis undertaken by the Bailiwick of Guernsey FIU:

(a) The FIU has a dedicated team of officers conducting operational analysis, based mainly based on SARs information received via THEMIS, in order to identify specific targets, e.g. natural or legal persons, assets, or criminal networks and associations, and to determine links between those targets and possible proceeds of crime, ML, predicate offences, TF or PF so as to add value to information received and generate useful intelligence for dissemination. The FIU has an Operational Analysis Handbook which provides practical guidance to ensure operational consistency. The EFCB/FIU Law, 2022 defines the FIU's duties which include the "analysis" function (Part III Sect. 4 (1) (a) of the said Law).

(b) The FIU currently has a team of two Strategic Analysts managed by a Senior Strategic Analyst[193] and collaborates with the EFCB, GFSC, Bailiwick Law Enforcement (BLE), AGCC, Policy

[193] FIU Organisational Chart - https://guernseyfiu.gov.gg/CHttpHandler.ashx?id=174575&p=0

& Resources Committee (P&R), Guernsey Registry, the Revenue Service and the Law Officers Chambers (LOC) in order to identify local trends associated with ML, TF and PF risks, and also to assess and contribute to the mitigation of emerging threats or risks. The FIU Analysts undertake reviews of the key risks identified, particularly to identify any changes in patterns and trends or new risks. These trends/recommendations are communicated by the FIU to other authorities, reporting entities and other key stakeholders via meetings, reports, training materials and guidance documents. The EFCB/FIU Law, 2022 defines the FIU's duties which include the "analysis" function (Part III Sect. 4 (1) (a) of the said Law).

***Criterion 29.5***

Part III Sect. 4 (1)(a) of the EFCB and FIU Law states that the FIU is responsible for the receipt, analysis and dissemination of SARs and other information relevant to economic and financial crime within the Bailiwick and elsewhere.

Authorities advised that, in practice, all SARs received by the FIU are provided to the relevant regulator: all non-eCasinos SARs are disseminated by the FIU to the GFSC's Intelligence team via external access to THEMIS and copies of all eCasinos SARs are received by the AGCC (Para. 10(2) of Schedule 4 of the Alderney eGambling Ordinance). Domestically, apart from the regulatory authorities above, the FIU primarily disseminates intelligence to the following authorities: EFCB Case Development Unit (using a predefined case referral document for both criminal and civil matters), Revenue Service (for domestic tax related matters) and Guernsey Registry (Guernsey legal persons or arrangements and charities and NPOs. Internationally, the FIU disseminates intelligence to other Egmont member FIUs, LEAs, and other competent authorities. The FIU may also disseminate intelligence to the IACCC as an associate member and the JIMLIT (under an agreed MoU).

Financial information is shared with national and international authorities via one of three secure and protected methods: Egmont Secure Web in respect of FIU-to-FIU disseminations, Police National Network in respect of LEA-to-LEA disseminations and EGRESS[194] secure email for any other disseminations.

***Criterion 29.6***

The Bailiwick of Guernsey FIU protects information in the following ways:

(a) Information held by the FIU is subject to a wide range of physical, IT, procedural and legal protections and the FIU also adheres to the Egmont guidelines and principles for information exchange between FIUs. Moreover, the FIU has implemented a number of internal policies and procedures to ensure that the confidential information it obtains is secure at all times. These policies include: a compromised persons/conflict of interest policy; anti-bribery and corruption guidance; gifts and hospitality policy; data retention, handling and storage policy; and a dissemination of information policy.

(b) The FIU staff are security cleared and vetted at a UK 'SC' level to enable them to process information classified as 'Secret' under the UK Security Policy Framework (SPF), or at Disclosure Vetting ('DV') level to deal with 'Top Secret' classified information. Moreover, one of the functions of the Head of the is to ensure that the FIU is staffed by persons who maintain high professional standards, including standards concerning confidentiality, are of high integrity and appropriately skilled and trained, and have the appropriate security clearance levels for handling and

[194] an encrypted e-mail system provided by the States of Guernsey

disseminating sensitive and confidential information (Part III, Section 4(7)(a)(i) of the EFCB/FIU Law of 2022).

(c) The FIU is located in secured, controlled and restricted premises (video surveillance, alarm, restricted access to FIU facilities). The FIU uses secured and encrypted IT Network and messaging systems to store financial information and to exchange emails, with restricted access to IT drives and STR data, so is the physical access to the data centres strictly limited to authorized personnel.

***Criterion 29.7***

In relation to operational independence and autonomy:

(a) The FIU is independent in the discharge of its operational functions (Sect. 4 (1)(b) of the EFCB/FIU Law). The Head of the FIU is appointed by the Director of the EFCB to exercise his/her functions (Sect. 4(2)(a) and 4(7) of the same Law) and this appointment shall be made in consultation in consultation with the States Committee for Home Affairs.

Although the Director of the EFCB may, after consulting with the Head of the FIU, provide guidance of a general character concerning the strategic direction of the FIU, this guidance is without prejudice to the operational autonomy and independence of the FIU in the discharge of its functions (Sect. 6 of the EFCB/FIU Law).

(b) The FIU is able to and does engage with both domestic and foreign counterparts on the exchange of information (Sect. 7(7)(a)(ii) of the EFCB/FIU Law). The FIU had signed several protocols of cooperation/MoUs with domestic and international counterparts.

(c) At the time of the 2014 evaluation, the FIU was located within the existing structure of another authority, BLE, staffed by Police and Customs officers. The FIU is now outside BLE and into a new structure within the States of Guernsey premises, in which the Head of the FIU is responsible for discharging the FIU's functions (Section 4 of the EFCB/FIU Law), which are unique to the FIU and separate from the functions of the EFCB or any other authority.

(d) For financial resources: The FIU is funded by the States of Guernsey. Its budget is agreed annually in advance between the Head of the FIU and the Director of the EFCB (Sect. 4(5) of the EFCB/FIU Law) and maintained separately by the Head of FIU with assistance from a finance officer from the States of Guernsey. The Head of the FIU can seek additional funding, if necessary, through a request to the EFCB Director or 'any appropriate third party' (Sect. 4 (5)(c) of the previously mentioned Law). In the event of disagreement about resources, the Committee for Home Affairs can determine the budget (Sect. 4(6) of the same Law). Moreover, the Head of the FIU has control of the annual budget (Sect. 4 (2)(b)(i) of the EFCB/FIU Law). There have been no instances whereby the Head of FIU has sought any additional funding which has been refused by the Director of the EFCB or the Committee for Home Affairs.

For human resources: The Head of the FIU has the authority to employ senior managers and other staff, or to engage third parties as necessary to meet operational needs (Sect. 4 (2)(b)(ii) of the EFCB/ FIU Law).

Moreover, the FIU's resources are ringfenced. Its financial, technical, human and other resources may not be used, deployed or otherwise drawn upon by the Director of the EFCB or any other person outside the FIU (Sect. 5 of the EFCB/FIU Law).

***Criterion 29.8***

The Bailiwick of Guernsey FIU was a founding member of the Egmont Group and granted full membership in 1997.

*Weighting and Conclusion*

Guernsey has introduced new powers to address deficiencies identified in the last assessment cycle including the lack of legal provisions for requesting additional information without an initial STR (c.29.3). Similarly, a new law has been introduced to ensure the FIU's operational functioning, (c.29.7). Moreover, the FIU have specific rules in place on the security or confidentiality of information based on several internal policies and procedures (c.29.6). The FIU has dedicated teams to perform operational and strategic analysis. **R.29 is rated C.**

### *Recommendation 30 – Responsibilities of law enforcement and investigative authorities*

In the previous round, the Bailiwick was not assessed under the then applicable R.27 (where EC 27.1 corresponds to the current c.30.1).

***Criterion 30.1***

The Economic and Financial Crime Bureau (EFCB) a new law enforcement body established in 2021 is responsible for detecting and investigating any offence committed within the Bailiwick that generates, or is intended to generate, a financial or economic benefit, resource or loss for any person, including ML,TF and proliferation financing (section 2[1][a] and 3[a] of the EFCB/FIU Law).

The Bailiwick Law Enforcement (abbreviated as BLE, a collective term that includes the Police and the Guernsey Border Agency) may identify domestic related ML linked to local and cross border criminality, and in these instances refer these cases to EFCB for investigation. TF investigations are to be led by the EFCB but in practice it will do so in collaboration with BLE (which leads on countering terrorism) and in consultation with the Law Officers Chambers.

An MoU between the EFCB, BLE, and the FIU sets out the commitment of the enforcement authorities in respect of *inter alia* operational cooperation and information sharing to combat ML and TF.

In addition, the Attorney General is given specific investigatory powers by the Fraud Investigation Law as discussed below under c.31.1 (a) and (c).

***Criterion 30.2***

Procedures are in place between BLE (Police) and the EFCB that facilitates the referral of BLE cases on domestic proceeds-generating crimes to the EFCB for the purpose of financial investigation (aimed at identifying recoverable proceeds) where appropriate and subject to the capacity within the team. Similarly, procedures are in place for Bailiwick Law Enforcement to refer cases to the EFCB for consideration of a parallel financial investigation is required (aimed at identifying and pursuing associated ML).

***Criterion 30.3***

Acting expeditiously to identify or initiate freezing or seizure of property that is, or may become, subject to confiscation or is suspected of being the proceeds of crime is the responsibility of the EFCB under section 2 (1)(c) of the EFCB/FIU Law and other underlying legislation. The Guernsey authorities advised that in practice, the EFCB discharges these functions in virtually all cases since June 2021, though in more straightforward matters BLE may also discharge them. In this respect, as the legal provisions governing asset tracing etc. are equally available to the EFCB and BLE, there is no need for any delegation of powers or functions and the allocation of cases between the two authorities is governed by the MoU referred to above.

***Criterion 30.4***

There are no such authorities with responsibility for financial investigations in the Bailiwick.

***Criterion 30.5***

There is no dedicated anti-corruption enforcement authority in the Bailiwick. (Corruption offences fall within the definition of "economic and financial crime" under section 3 of the EFCB/FIU Law and thus belong under the competence of the EFCB.)

*Weighting and Conclusion*

**R.30 is rated C**

### *Recommendation 31 - Powers of law enforcement and investigative authorities*

The corresponding Recommendations being applicable at that time (R.28 and some of the Additional Elements under R.27) were not assessed in the previous round of evaluation.

***Criterion 31.1***

A range of investigatory measures are available to police officers (and, by virtue of the EFCB/FIU Law, also to members of the EFCB) under the Proceeds of Crime Law, the Drug Trafficking Law, the Terrorism Law, the Civil Forfeiture Law and the Police Powers Law. There are additional investigatory powers available to the Attorney General in relation to fraud cases under the Fraud Investigation Law.

a) Section 45 POCL, section 63 DTL, section 36 and Schedule 5 paragraphs 4 to 7 of the TL and section 20 of the Civil Forfeiture Law deal with production orders, which require any (natural or legal) person to deliver up or provide access to specified material.

There are further investigatory powers that can be used to obtain records in section 1 of the Fraud Investigation Law where there is a suspected offence involving serious or complex fraud. The Attorney General may without a court order require the person under investigation or any other person whom there is reason to believe has relevant information to produce specified documents and may also seek a warrant from the court authorizing search and seizure (see below).

b) and d) Search of persons is permitted under Parts I and V of the Police Powers Law ("Powers to Stop and Search" and "Questioning and Treatment of Persons…") and section 2 of the Civil Forfeiture Law. Search of premises and seizure and obtaining of evidence is permitted under section 46 POCL, section 64 DTL, section 36 and Schedule 5 paragraphs 1 to 3 of the TL, section 1 of the Civil Forfeiture Law, Part II ("Powers of Entry, Search and Seizure") of the Police Powers Law and section 1 of the Fraud Investigation Law.

c) A variety of powers is given to different authorities to take witness statements under Bailiwick law. First, there is a power to question people on arrest in line with part V of the Police Powers Law and their statements can be used in evidence against them. This power can be used for the purposes of investigations and prosecutions of money laundering and terrorist financing offences, predicate offences and related actions. Under paragraph 6 of Schedule 5 to the TL, the court may order any person to provide an explanation of material which has been produced in response to a production order or which has been seized by the police under a warrant of entry, search and seizure. Under section 41 of the Civil Forfeiture Law, the court may order a person believed to have information relevant to a civil forfeiture investigation to answer questions or provide information.

By section 1(2) of the Fraud Investigation Law, the Attorney General may require any person who is believed to relevant information to an investigation into serious or complex fraud attend to answer questions or otherwise furnish information relevant to the investigation, and also has the

power to disclose such statements to any person or body for the purposes of investigation or prosecution.

***Criterion 31.2***

Under the Regulation of Investigatory Powers Law (RIPL), the EFCB and the police may employ a range of covert investigative techniques in investigations into ML, TF and predicate offences. The use of the techniques is dependent on the consent of the Attorney General (save for the investigation of electronic data protected by encryption, which requires written permission from a person holding judicial office).

a) Part II of the RIPL ("Surveillance and Covert Investigations") permits surveillance, the use of covert human intelligence sources and interference with property.

b) Intercepting communications is addressed by Part I Chapter I of the RIPL ("Interception").

c) Accessing computer systems is addressed by Part I Chapter II of the RIPL ("Acquisition and Disclosure of Communications Data") with additional provisions about the investigation of electronic data protected by encryption at Part III.

d) Controlled deliveries are specifically provided for in a Standard Operating Procedure within the EFCB Handbook, accompanied by further documents that govern management, practical application and other considerations for controlled deliveries by Customs and BLE. Controlled delivery has actually been applied in the Bailiwick with regularity, particularly in drug related investigations.

***Criterion 31.3***

a) Under section 48A POCL, section 67A DTL, section 37 and Schedule 6 of the TL and section 28 of the Civil Forfeiture Law, the court may make customer information orders, which require financial services businesses to provide, in the deadline set by the court, specified information related to the assets and identity etc. of a particular customer.

Similarly, the court may also make account monitoring orders under section 48H POCL, section 67H DTL, section 39 and Schedule 7 of the TL and section 35 of the Civil Forfeiture Law, which require financial services businesses to provide information about any dealings relating to the account or group of accounts named in the order.

In addition, information about persons holding or controlling bank accounts can also be obtained by the FIU in a timely manner by use of its powers to obtain information on behalf of the EFCB and the police under regulations made under the Disclosure Law and the Terrorism Law (see R.29).

b) Applications for all of the court orders referred to above can be made ex parte and without prior notice to the owner of assets or any party (as it is specifically provided in the sections listed above e.g., in paragraph 8 of section 48A POCL or paragraph 8 of section 67H DTL). Similarly, the use of the FIU's information gathering powers do not require prior notification to the owner of assets or any other person.

***Criterion 31.4***

The authorities advised that it is not necessary under Bailiwick law for there to be a specific power enabling the investigatory authorities to ask the FIU for any relevant information it holds but, on the other hand, neither is there anything in Bailiwick law to prevent them from doing so.

The dissemination within the Bailiwick of information relevant to economic and financial crime is expressly within the functions of the FIU under section 4(1) of the EFCB/FIU Law, and it has

the necessary legal power to do this under section 8 of the Disclosure Law (as applied by section 8 / Schedule 2 of the EFCB/FIU Law).

*Weighting and Conclusion*

**R.31 is rated C**

### *Recommendation 32 – Cash Couriers*

The Bailiwick was not assessed under the then applicable SR. IX in the 4th round of evaluation.

***Criterion 32.1***

The physical cross-border transportation of currency and BNIs by travellers is dealt with by a declaration system under the Cash Controls Law, which is administered by the Customs Service under the Customs Law. Cross-border transportation of currency and BNIs by mail or cargo is dealt with by declaration systems under the Post Office Ordinance and the Customs Law.

While the domestic legislation relevant for R.32 simply refers to "cash", this term is defined under section 10(1) of the Cash Controls Law broad enough to encompass both currency and BNIs to the same extent as these terms are defined in the Glossary to the FATF Methodology.

***Criterion 32.2***

It is an offence for an individual to carry cash of an amount in excess of £10,000 into or out of the Bailiwick, unless the cash is carried into or out of a designated port or customs service airport, the individual completes a cash control declaration upon arrival or departure, and all the information given in the cash control declaration is true – see section 1(1) of the Cash Controls Law.

Under section 1(2) it is an offence for an individual to enter into an agreement or arrangement by which cash in excess of £10,000 is split and carried by two or more individuals in order to avoid making cash control declaration. The cash control declaration requires an individual to provide specific information with regard to the cash declared if it is more than £10,000, including its provenance and intended use.

Declarations in respect of cross border movements of currency or BNIs by way of mail or cargo are covered by the general declaration requirements at sections 5 and 6 of the Post Office Ordinance and the manifest declaration requirements at sections 14, 27 and 28 of the Customs Law. These provisions apply to declarations as to the value of "goods" which term applies to cash and BNIs (see below under c.32.4). There is no value threshold in the Customs Law or for parcels in the Post Office Ordinance, while a £50 threshold applies for postal packets in the latter Ordinance under subsections (c) and (d) of sections 5 and 6.

***Criterion 32.3***

(There is a declaration system in place, as discussed above.)

***Criterion 32.4***

Under section 6 (2) of the Cash Controls Law, currency and BNIs in excess of £10,000 are deemed to be "goods" for the purposes of the Customs Law and therefore information and evidence may be required from the carrier about currency or BNIs in excess of £10,000 (including any that are undeclared or falsely declared) under section 33 of the Customs Law, including information regarding origin and intended use of the currency/BNI.

Information relating to goods sent as cargo is covered by Sections14(6), 28(2), 33 and 69A of the Customs Law, and there is a power to obtain information in respect of goods sent by mail at section 10 of the Post Office Ordinance (in which context the term "goods" and "information" has the same scope as discussed above).

***Criterion 32.5***

Making a false declaration is an offence punishable by an unlimited fine and/or a term of imprisonment of up to 2 years (or, on summary conviction, to a fine not exceeding £ 20.000 or three times the value of the cash, whichever is the greater, and/or to imprisonment of up to 3 months) and all or part of the cash is liable to forfeiture - see section 7 of the Cash Controls Law, section 12A of the Post Office Ordinance and section 75 of the Customs Law (with identical sanctions). These sanctions are sufficiently dissuasive and proportionate.

***Criterion 32.6***

All online declarations made under the Cash Controls Law go directly to the FIU and any paper declarations are forwarded to the FIU (either online or on paper).

Mail or cargo declarations in relation to currency or BNIs are referred to the FIU if they give rise to any suspicion. This procedure is outlined in the information and financial exchange cooperation MOU between FIU and the Customs Service (Joint Policy between FIU and Customs Service in respect of cash declarations).

***Criterion 32.7***

Immigration, including the investigation of any immigration related infractions, is dealt with by the Customs Service, that is, the same body responsible for the administration of the Cash Controls Law, so information and activity in these two areas can be effectively coordinated. This also applies to the police, as both the Police and the Customs Service form part of Bailiwick Law Enforcement (see under R.30).

Co-ordination with other authorities is enabled by the disclosure of information provisions in section 5 of the Cash Controls Law and section 54A of the Customs Law and also under the provisions set out under R.2. There is also an MoU between the Customs Service and the FIU in relation to movements of cash.

***Criterion 32.8***

a) Under sections 6 and 7 of the Civil Forfeiture Law, currency and BNIs with a value in excess of £1000 that is suspected to be the proceeds of unlawful conduct or intended for use in unlawful conduct may be seized by a police officer or customs officer for an initial period of 48 hours. Thereafter this period may be extended by court order for a period of up to two years. The definition of unlawful conduct at section 61 covers ML and all predicate offences. The AT needs to note, however, that these powers are now available without any value threshold according to the new Forfeiture of Assets in Civil Proceedings Law (FOAL) that entered in force the last day of the onsite visit (26.04.2024).

Sections 6 and 7 of the Civil Forfeiture apply to TF in the same way as ML and predicate offences because TF comes within the definition of unlawful conduct. In addition, the TL contains specific provisions enabling the seizure and detention of cash that is intended to be used for the purposes of terrorism. Under section 19 and part 2 of Schedule 3, cash (which is defined by reference to the definition in the Cash Controls Law) may be seized for an initial period of 48 hours, extendable by court order for a period of up to two years. There is no minimum threshold.

b) The seizure power under the Civil Forfeiture Law described under (a) also applies to currency and BNIs that are the subject of a suspected breach of the declaration requirements, as such a breach constitutes a criminal offence and is thus within the definition of "unlawful conduct".

In addition, under section 6(2) of the Cash Controls Law, currency and BNIs in excess of £10,000 are deemed to be goods under the Customs Law (see c.32.4) and a false declaration renders them liable to forfeiture under section 75 and 22(e) of the Customs Law, which engages open-ended powers of seizure and detention under section 56 of the same Law.

Incorrectly described currency or BNIs sent as cargo are liable to forfeiture under the very same sections of the Customs Law, while incorrectly described currency or BNIs sent by mail, which are liable to forfeiture under section 12 of the Post Office Ordinance and under Section 12B(2) are also deemed to be liable to forfeiture under section 22(e) of the Customs Law.

***Criterion 32.9***

Co-operation by the Customs Service (the authority that administers the Cash Controls Law) with their foreign counterparts is specifically provided for under section 54B of the Customs Law. In addition, the power of other authorities in relation to MLA and other forms of co-operation apply to the currency and BNI declaration system in accordance with R.36 to R.40.

a) Under section 4 of the Cash Controls Law, all information concerning declarations must be retained for six years. The data in respect of all declarations made under the Customs Law is retained for 3 years pursuant to section 15(6) of the Customs Law. However, Guernsey Border Agency retention policy is to retain declarations for 6 years.

b) The position described under (a) applies to false declarations. In cases where currency or BNIs have been forfeited because of a false declaration under the Post Office Ordinance, data is retained for 3 years upon the same legal basis as indicated above.

c) The requirements outlined above apply to information relating to cases of suspected ML or TF as well. In addition, if the suspicion has generated an investigation or the making of an STR to the FIU, data will be kept for 6 years. In all cases where there has been a summary prosecution, data is retained for 20 years, and in all cases of prosecution on indictment data is retained for 30 years pursuant to the of Law Officers internal policy.

***Criterion 32.10***

Information arising from cross border declarations is handled in the same way as to all other intelligence material. Intelligence obtained by the FIU is sanitised in accordance with the principles of the UK National Intelligence Model, and disseminated subject to specific handling codes to ensure it is used appropriately. The FIU Dissemination of Information Policy outlines the principles that must be adhered to in relation to the exchange of information (intelligence) relating to the cross-border movement of currency and BNIs which was reported not to restrict trade payments or the freedom of capital movements in any way.

***Criterion 32.11***

a) In cases where the currency or BNIs being transported are the proceeds of crime or are intended to be used to commit ML, TF or a predicate offence, the ML and TF offences (including any ancillary offences) described under R.3 and R.5 will apply as appropriate. The respective criminal sanctions are indicated under c.3.9 and c.5.6 where they have been found dissuasive and proportionate.

b) Where a person has been convicted of any of the offences referred to in (a), the currency or BNIs will be subject to confiscation as the proceeds of crime or as an instrumentality of crime in the same way as any other property held by or linked to the person.

In lack of a criminal prosecution, the currency or BNIs may be liable to forfeiture under the Civil Forfeiture Law or the TL. Those seized under the Civil Forfeiture Law must be the subject of a forfeiture order unless it can be shown that they do not comprise the proceeds of unlawful conduct or are not intended for use in unlawful conduct, while those seized under the TL are liable to forfeiture if they comprise terrorist property (see R.4 for more details).

In addition, any currency or BNIs that have not been declared or have been falsely declared or described are liable to forfeiture without the need to prove a link to ML, TF or a predicate offence (see under c.32.8. above).

*Weighting and Conclusion*

**R.32 is rated C**

### *Recommendation 33 – Statistics*

Guernsey was rated Compliant with the former R.32 in the 4th Round evaluation.

***Criterion 33.1***

(a) The FIU maintains comprehensive statistics, on electronic data bases, on STRs received and disseminated which are published in the FIU's annual reports available on its website[195]. These statistics contain further detailed breakdowns, including per reporting sector, jurisdictions involved and suspected predicate offence.

(b) The EFCB and the Police maintain statistics, on electronic databases, in relation to ML/TF investigations and the Attorney General's chambers those on prosecutions and convictions, which include details about the type of ML or TF activity, predicate offences, investigative actions taken, the outcomes of prosecutions and the sentences imposed following a conviction and shared with competent authorities and the Committee for Home Affairs periodically.

(c) Statistics on property frozen, seized and confiscated are maintained on electronic data bases by the EFCB and the Attorney General's chambers, and by the FIU and the Customs Service in relation to cash seizures. These statistics include details of the type of property, its value and the predicate offence which generated it. These statistics are shared with competent authorities and the Committee for Home Affairs periodically.

(d) The Attorney General's chamber maintains statistics on MLA requests on an electronic data base. They include details such as the nature of the assistance requested, the jurisdictions involved, the underlying criminality and the sectors involved. These statistics are shared with competent authorities and the Committee for Home Affairs periodically. Moreover, statistics on international cooperation are published in the FIU's annual reports.

The P&R Committee agreed, on 26th April 2024, that all above mentioned authorities have been maintaining statistics in sub-criteria a), b), c) and d) for years (and will continue to do so), in accordance with recommendation 33.

*Weighting and Conclusion*

[195] Annual Reports - Financial Investigation Unit (gov.gg)

**R.33 is rated C**

### *Recommendation 34 – Guidance and feedback*

Guernsey was rated Largely Compliant with these requirements in the 4th Round evaluation, in particular due to the need of additional guidance by AGCC on AML requirements particularly CDD measures.

***Criterion 34.1***

The GFSC has legal authority to make rules, instructions, and guidance (Para. 49AA(6) of the Proceeds of Crime Law) for all specified businesses[196] in the Bailiwick, which must have regard to any relevant rules and guidance in the Handbook on Countering Financial Crime (AML/CFT/CPF) and any relevant notice or instruction issued by the GFSC when assessing the risk of a business relationship, determines its risk appetite and puts in place appropriate measures to mitigate the risks (Para. 3(7) of Schedule 3 under the same Law). The courts must also consider any rules and guidance in the Handbook and any notice or instruction issues by the GFSC when determining whether a requirement of the law has been contravened (Para.20(2) of Schedule 3 of the Proceeds of Crime Law). The AGCC is responsible for doing likewise for e-casinos (Para. 22(3)(b) of the eGambling Ordinance and regulation 4(l) of eGambling Regulations).

The GFSC has updated[197] its Handbook[198] which consists of rules and guidance issued to assist specified businesses apply AML/CFT requirements, to provide guidance on how they may be implemented in practice, to indicate good practices and help design/implementation of ML/TF risk mitigation controls. The GFSC also issues periodically sectorial guidance and results of thematic reviews[199] (e.g. risk assessment and mitigation, CDD, SAR reporting, PEP, TFS, BO…). All these documents are available on its website. Moreover, following publication of the report on the effectiveness of specified businesses' controls for reporting suspicion, the GFSC and FIU hosted a joint workshop in November 2021 for these businesses on reporting suspicion.

The AGCC has issued Internal Control System Guidelines (ICS) Guidelines[200] to assist eCasinos when outlining their processes AML/CFT procedures & controls including a dedicated section on AML/CFT obligations, and AML/CFT Guidance[201] for the eGambling sector to meet their AML/CFT obligations, including the implementation of risk-based approach, business risk assessments, application of CDD/EDD, transaction monitoring, sanctions implementation, reporting of suspicions, employee screening and training and record-keeping. Another Guidance for eGambling businesses on Countering Financial Crime, Terrorist Financing and Proliferation Financing was published by the AGCC in March 2024.

In addition, the AGCC, in collaboration with the FIU, holds a yearly training event for this sector - which are mandatory for new e-casinos in their first year of operations and are open to all e-gambling entities- and discusses aspects of the ICS and AML/CFT Guidance at that event (in conjunction with the FIU), as well as delivering training on certain aspects, including STR reporting and risk assessments.

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[196] FIs and DNFBPs (except e-casinos)
[197] Last update on 25 April, 2024.
[198] Handbook on Countering Financial Crime and Terrorist Financing — GFSC
[199] Legislation & Guidance — Commission — GFSC
[200] Last update in March 2024. Available on: https://www.gamblingcontrol.org/applications-guidance/ics-guidelines
[201] Updated on March 2024. Available on: https://www.gamblingcontrol.org/regulation-framework/instructions-notices-and-guidelines

The FIU provides, in its website[202], guidance regarding SAR reporting, consent regime, requests for additional information and attempted transactions, as well as typologies reports, aimed at reporting entities in general. The FIU also provides a range of outreach to reporting entities (see IO.6), including joint training initiatives with the other authorities. The FIU has also produce a number of e-learning modules on key topics including SAR quality, the consent regime, TF and PF, which is available to the private sector and all competent authorities.

Moreover, the FIU implemented an automatic feedback mechanism via THEMIS on quality of SARs submitted by REs and also provides feedback during workshops and continuous interactions with the MLROs. As for the supervisors, the GFSC publishes the results of thematic reviews, conducts annual presentations and workshops with for the industry and has bilateral interactions with the firms during onsite inspections, as well as on request of either the GFSC or the entity. And the AGCC uses "Relationship Manager" structure to provide consistent and direct support and feedback to e-casinos.

*Weighting and Conclusion*

**R.34 is rated C.**

### *Recommendation 35 – Sanctions*

In the previous Mutual Evaluation the Bailiwick was rated as PC with former R. 17 on the basis that the discretionary financial penalties (up to a maximum of £200,000) for legal persons available to the GFSC were not dissuasive and proportionate.

***Criterion 35.1***

*Sanctions - AML/CFT preventive measures (R.9 – R.23)*

There are a wide range of sanctions for breaches of AML/CFT requirements under R. 9 to R. 23.

(i) *All FIs/DNFBPs (other than e-casinos)* - FIs and DNFBPs other than eCasinos are subject to criminal sanctions for breaches of AML/CFT obligations (para 20 of Schedule 3 to the PCL). Criminal sanctions include imprisonment for a maximum term of six months, a fine not exceeding £10,000 or both (on summary conviction). In the case of conviction on indictment the sanction is a maximum of five years imprisonment, an unlimited fine or both. The authorities explained that the courts have full discretion to determine the quantum of fines and proportionality is ensured via general sentencing guidelines and the rule of precedence. Reporting and tipping off obligations are only subject to criminal sanctions under sec. 1(4), 2(4), 4 and 5 of the DL and 15(4), 15A(4), 15B and 40(7) of the TL identical to those for other AML/CFT obligations (see R.20 and R.21).

Contraventions of any of the Transfer of Funds Ordinances (see R.16) would equally result in the commission of an offence and similar punishments (see sec. 6 and sec. 8 of the Ordinances).

The GFSC has administrative sanctioning powers under the Enforcement Powers Law and other sector-specific laws, exercisable for AML/CFT breaches committed by licensed FIs or TCSPs. This since compliance with Schedule 3 constitutes part of the minimum licensing criteria.

The GFSC may use various measures simultaneously (see sec. 23(4) the Enforcement Powers Law replicated in the sector specific laws). In addition to these measures, all of which may not always be relevant from an AML/CFT perspective, there are other more specific measures: (i) private

[202] FIU Guidance - Financial Investigation Unit (gov.gg)

reprimands (sec. 36), (ii) public statements (sec. 38), (iii) discretionary financial penalties (sec. 39), with or without publication, and (iv) suspension or revocation of licences (sec. 28-30). The maximum administrative penalty that the GFSC can impose is GBP 4 million. If the fine is to be higher than GBP300,000, the GFSC has to cap the penalty at 10% of the turnover of the licensee.

The GFSC is also entitled to exercise similar enforcement powers under the Prescribed Businesses Law for DNFBPs other than casinos and TCSPs. The main difference being that the maximum penalty is GBP 200,000. This capping for administrative penalties under the current framework limits the proportionality, effectiveness, and dissuasiveness of sanctions particularly in respect of breaches that are systemic or serious or which may lead to significant profits. However administrative penalties are one of the sanctioning measures that may be used. Other proportionate, effective, and dissuasive sanctions are available (see analysis under this criterion).

The authorities responsible for authorising Guernsey lawyers may also suspend or disbar advocates on the back of AML/CFT breaches (see c.28.4(c)). In the case of other DNFBPs individuals involved in their management may be disqualified for a renewable period of 15 years.

(ii) eCasinos – Contraventions of the Gambling laws is a criminal offence that is liable to a fine (determined by Court), or to imprisonment for a term not exceeding two years, or to both (sec. 13 - Gambling (Alderney) Law). This applies to AML/CFT breaches set out under Schedule 4 to the Alderney Gambling Ordinance (see. R.22).

The Alderney eGambling Ordinance also establishes a criminal offence for so-called 'money laundering offences' (sec. 24(5)). These include breaches of the AML/CFT obligations under Schedule 4 of the Ordinance (sec. 233(2) - Alderney eGambling Regulations) and are punishable by a fine and/or by a term of imprisonment of not more than five years.

The AGCC is also granted administrative powers under sec. 12 of the eGambling. These powers are exercisable for contraventions of the Ordinance (hence including Schedule 4 - AML/CFT obligations), regulations made thereunder or a licence condition; or the activity is being carried out in a manner inconsistent with the licence objective (see sec. 12(1)). One of the general licensing conditions includes continued adherence to the AML/CFT obligations under Schedule 4 (see sec. 4(o)- eGambling Regulations).

The said powers include: (i) orders to rectify; (ii) written cautions; (iii) financial penalties of GBP250,000 or 10% of turnover, whichever is the greater; and (iv) suspension or revocation of licenses. In terms of Sec. 12(4), the AGCC is empowered to impose one or more measures on a licensee, however licence revocations cannot be accompanied by a financial penalty. These sanctions are effective and dissuasive and ensure proportionality.

*Sanctions - TFS obligations (R.6)*

Breaches of R.6 TFS obligations emanating from the Sanctions Law or of the Terrorist Asset Freezing Law constitute criminal offences, subject to dissuasive, effective and proportionate sanctions -see analysis under c.6.5(a-c), and considered to be.

*Sanctions - NPOs (R.8)*

Sanctions applicable for NPOs are assessed under c.8.4(b) and considered to mostly meet that criterion.

***Criterion 35.2***

*Sanctions - AML/CFT preventive measures (R.9 – R.23)*

Under sec. 49E of the PCL, where a body corporate commits an offence and it can be proven to have been committed with the consent, connivance, or due to negligence of, any director, manager, secretary, similar officer, or person purporting to act in such capacity, he as well as the body corporate are guilty of the offence and may be proceeded against and punished accordingly. The same criminal sanction as set out under 49B would apply (see c.35.1). Equivalent provisions are found under sec. 9 of the Transfer of Funds Ordinances.

For eCasinos, equivalent provisions are set out under sec 14 of the Gambling (Alderney) Law and sec 25 of the Alderney eGambling Ordinance. The same sanctions as envisaged for the eCasinos would apply to directors and senior management of eCasinos (see c.35.1).

The supervisory authorities (GFSC and AGCC) also have administrative powers which they can exercise for directors and managers of FIs and DNFBPs, also in view of AML/CFT issues (see explanation under c.35.1). The GFSC can issue public statements (sec 38 – Enforcement Powers Law) and impose discretionary penalties (sec 39) on so-called 'relevant officers', which includes any officer of the licensee in question (sec 38(3)). The sanctions that may be imposed on relevant officers are capped at GBP 400,000. In addition, the GFSC may also, issue prohibition orders against individuals to restrict or bar them from holding any position within a licensed entity. Such an order can be issued due to the individual not being considered as fit and proper in terms of the minimum criteria for licensing.

With regards to any business that falls under the Prescribed Businesses Law, the powers of the respective authorities listed under c.35.1 are equally applicable in the case of directors or managing partners.

The AGCC can also impose administrative sanctions on key individuals (covering senior managing officials see sec 136(1) of the Regulations), when they are complicit in the commission of breaches including AML/CFT breaches set under Schedule 4 (see. art 12(1) of the Alderney eGambling Ordinance). Sanctions may include written cautions, suspensions and revocations of their certificate and financial penalties. Financial penalties for individuals are capped at GBP 250,000 (see sec. 163, 165, 166 and 171 of the Alderney eGambling Regulations).

*Sanctions – TFS Obligations (R.6)*

With regards to TFS, under Sec. 21 of the Sanctions Law an offence committed by a body corporate that is however attributable to the consent, connivance or negligence of any director, manager, secretary or other similar officer, or a person purporting to act in such capacity, can result in the punishment for the said offence being imposed on the said officer/s. A similar offence is provided for under Sec. 28 of the Terrorist Financing Law. Such sanctions are considered to be proportionate, dissuasive and effective.

*Weighting and Conclusion*

The Bailiwick largely meets c.35.1 and meets c.35.2. The one pending shortcoming relates to the sanctions envisaged for NPOs. **R.35 is rated LC.**

### *Recommendation 36 – International instruments*

The then applicable R.35 was rated C in the 2015 MER of the Bailiwick.

***Criterion 36.1***

As discussed already in the 4th round Moneyval MER, the Bailiwick cannot itself become a party to international conventions and therefore the UK government acts for it in international matters

and will extend its ratification of international conventions to the Bailiwick. This has happened in respect of all four Conventions covered in Recommendation 36, as follows:

• Ratification of the Vienna Convention was extended to the Bailiwick on 9 April 2002.

• Ratification of the Palermo Convention was extended to the Bailiwick on 17 December 2014.

• Ratification of the Merida Convention was extended to the Bailiwick on 9 November 2009.

• Ratification of the Terrorist Financing Convention was extended to the Bailiwick on 25 September 2008.

***Criterion 36.2***

The Conventions listed above are fully implemented in the Bailiwick of Guernsey. The 2015 MER includes a detailed analysis[203] on the implementation of the Vienna Convention, the Palermo Convention and the Terrorist Financing Convention which has since remained valid.

In addition to that, the Guernsey authorities demonstrated in the present round of assessment that the relevant provisions of the Merida Convention are likewise implemented in the Bailiwick.

*Weighting and Conclusion*

**R.36 is rated C.**

### *Recommendation 37 - Mutual legal assistance*

The Bailiwick of Guernsey was rated C with the then applicable R.36 in the 4th round assessment.

***Criterion 37.1***

As at the last evaluation, the Attorney General is the central authority for providing MLA, and the principal legislation in this area remains the International Cooperation Law, the POCL, the DTL, the TL, the Fraud Investigation Law and the Civil Forfeiture Law the investigatory powers in which laws equally apply to domestic and overseas investigations and proceedings without any additional conditions attached for MLA requests. These powers are equally available in relation to ML, associated predicate offences and TF.

The various forms of providing MLA as described in detail in the 2015 MER are still available:

- Production, search and seizure of information, documents, or evidence: the legal framework has been amended since the last evaluation[204] to enable the Attorney General to obtain documentary evidence by issuing a production notice in support of MLA requests in any type of criminal case, instead of the court-based process being in place at that time (see section 4 of the International Cooperation Law).
- Under the new section 4C of the same Law, the Attorney General may obtain an order to secure electronic data which is likely to be required for the purposes of criminal investigations or proceedings in other jurisdictions.
- Transmission to the requesting state is provided for at section 8 of the Disclosure Law, which permits the Attorney General or a police (also Customs or FIU) officer to disclose to any person any information obtained under any enactment or in connection with the carrying out of any of their functions, for purposes that include the prevention, detection, investigation or prosecution of criminal offences in the Bailiwick or elsewhere.

[203] See page 247-248 paragraphs 1315 to 1324
[204] For any other related provisions see page 252 paragraphs 1342 to 1347

- Taking of evidence or statements from persons, service of judicial documents, facilitating the voluntary appearance of witnesses: no relevant changes have taken place[205]

The timely provision of the widest possible range of MLA is ensured by a prioritisation mechanism set out in the MLA Manual[206] and detailed in the Law Officers' MLA Prioritisation Policy[207] which gives priority to foreign request representing a higher risk in line with the NRA categories, or other specific factors of importance and urgency.

***Criterion 37.2***

As explained above, the Attorney General is the central authority for the transmission and execution of requests. The written processes for the timely prioritisation and execution of MLA requests are included in the MLA Manual covering all aspects of the provision of MLA.

Officers of the EFCB assist the Attorney General with the execution of MLA requests, and the process for this is dealt with in a MoU (April 2023) between the Attorney General and the Director of the EFCB. An electronic CMS is in place that enables the progress on requests to be monitored.

***Criterion 37.3***

Under the legal framework, there are no prohibitions or conditions attached to the provision of MLA. As noted already in the 2015 MER, there are no binding guidelines, policy statements or statutory provisions setting out grounds for refusal of foreign MLA requests.

A limited number of conditions or restrictions are imposed in practice, but these are in line with international norms. (For example, MLA will not be provided in connection with an offence that is subject to the death penalty and the other jurisdiction gives no undertaking that such a sentence will not be imposed, or in cases where it can be demonstrated that the request is politically motivated.)

***Criterion 37.4***

a) As at the time of the previous assessment, the relevant legislation does not contain any provision to exclude fiscal matters and therefore the Bailiwick does not refuse to provide MLA in such cases. In fact, assistance had already at that time been regularly provided, in a number of cases involving fiscal matters (tax fraud offences) to HM Revenue and Customs (UK) and to similar bodies in other jurisdictions.

b) As confirmed already in the 2015 MER, there is no Bailiwick legislation to impose secrecy or confidentiality requirements on either financial institutions or DNFBPs so the provision of MLA cannot be refused on such grounds.

   While the common law principle of confidentiality applies to those entities, this does not affect the provision of MLA, as under the common law material disclosed pursuant to statute is not covered by common law confidentiality. This is not only confirmed by case law referenced in the 2015 MER but also by specific provisions of the legislation governing the obtaining of evidence or information that explicitly override duties of confidentiality (except for items and information subject to legal privilege) and can likewise be applied when providing MLA (the list of provisions as listed in the 2015 MER has remained valid and has since been completed with further additions such as section 49AA POCL.)

[205] See page 253 paragraphs 1348 to 1349, 1352, and 1353 of the 2015 MER, respectively
[206] Manual on the Provision of Mutual Legal Assistance (October 2023)
[207] Law Officers Policy and Procedure for Risk Based Approach to Making and Responding to Requests for Mutual Legal Assistance (October 2023)

***Criterion 37.5***

Mutual legal assistance requests and the information contained in them are treated as confidential as it is required by the MLA manual referred to under c.37.2. They are only disclosed to the EFCB and FIU on a confidential basis, to enable the EFCB to execute them on behalf of the Attorney General and to detect possible domestic criminality or criminal assets located in the Bailiwick, or to establish if the FIU is in possession of information that may be relevant to the request.

***Criterion 37.6***

Dual criminality is not required for the exercise of powers under the International Cooperation Law that do not affect property or liberty, such as the service of documents and the taking of evidence.

***Criterion 37.7***

Dual criminality is required for the exercise of the search and seizure powers under section 7 of the International Cooperation Law, which provision is however conduct-based and does not require foreign offences to be named, categorised or worded in the same way as domestic offences. All that is required is that the conduct underlying the offence would comprise a criminal offence punishable with imprisonment if it occurred in the Bailiwick, with certain further, similarly conduct-based conditions in the POCL, DTL and TL as underlying legislation, as outlined in the 2015 MER[208].

The definitions of civil forfeiture investigation and unlawful conduct at sections 18 and 61 of the Civil Forfeiture Law respectively mean that dual criminality is required but this test, again, is conduct-based as above.

***Criterion 37.8***

The powers and investigative techniques described under Recommendation 31 are not confined to investigations within the Bailiwick.

a) The specific powers in the POCL, the DTL, the TL and the Fraud Investigation Law in relation to the production, search and seizure of information, documents or evidence described under Recommendation 31.1 (a) to (d) may be used to provide MLA and the same is true of the power to take statements under the Fraud Investigation Law and the TL.

   The Guernsey authorities confirmed that such powers have often been used in practice in relation to MLA requests. In addition, the broad powers at section 8 of the Disclosure Law allow any information already in the possession of the Attorney General or the law enforcement authorities to be disclosed directly to a foreign counterpart.

b) The special investigative techniques in the Regulation of Investigatory Powers Law described under Recommendation 31.2 may be used to assist other jurisdictions and the authorities confirmed that it has happened in practice.

*Weighting and Conclusion*

**R.37 is rated C.**

[208] See page 256 paragraph 1367

### *Recommendation 38 – Mutual legal assistance: freezing and confiscation*

#### *Criterion 38.1*

As at the last evaluation, the legislation enabling the identification, freezing, seizing and confiscation of property in response to a MLA request is the International Co-operation Law, the POCL, the DTL, the TL together with secondary legislation (ordinances) made under these laws. The legislation refers to "designated countries" but, as it was already noted in the 2015 MER, all countries are now considered to be designated for the application of the POCL, DTL, and TL, as a result of which the designation requirements under these enactments have no effect.

Requests for assistance in identifying any sort of property under c.38.1 in the Bailiwick can be dealt with by a production notice issued by the Attorney General under the International Co-operation Law as outlined under R.37. The information-gathering powers referred to in c.37.8 can also be used for this purpose. Preliminary exchange of intelligence at FIU level aimed at identifying property subject to freezing, seizure or confiscation may be done by the FIU using its powers to obtain information (see under R.40). As regards freezing, seizure and confiscation, see below for a more detailed analysis.

a) & b) The process for freezing or seizing laundered property or proceeds of crime at the request of another jurisdiction is to apply for a restraint or charging order in the same way as in a domestic case as described under R.4. Applications on behalf of other jurisdictions is specifically covered by secondary legislation made under section 35 of both the POCL and the DTL, and under section 18 and Schedule 2 to the TL. This secondary legislation comprises the Proceeds of Crime Law (Enforcement of Overseas Confiscation Orders) Ordinance, the Drug Trafficking (Designated Countries and Territories) Ordinance and the Terrorism and Crime (Enforcement of External Orders) Ordinance, with an effect to modify the relevant domestic powers in those laws as necessary so that these powers can be applied at the request of other jurisdictions.

In TF cases, restraint and charging orders can be dealt with by the Ordinance made under the POCL (TF being an indictable conduct) in addition to which there are specific terrorism related provisions at Schedule 2 to the TL whereby orders in respect of the restraint of assets relating to terrorism (i.e. not only proceeds of TF) made elsewhere in the British Isles can be enforced in the Bailiwick, and paragraph 10 of Schedule 2 permits the enforcement of external (i.e. non-British) restraint orders in line with the modifications in the Terrorism and Crime (Enforcement of External Orders) Ordinance.

The process for confiscating laundered property at the request of another jurisdiction is to register an overseas confiscation order (i.e. a confiscation order made by a court in another jurisdiction) in the Bailiwick courts and this enables the enforcement of that order against property in the Bailiwick in the same way as a domestic confiscation order (see under R.4). The Ordinances referred to above provide for the necessary modifications to put in place a regime for enforcing overseas confiscation orders that mirrors the regime for domestic confiscation orders. (Overseas confiscation orders in terrorism cases can be dealt with under both the POCL and TL regimes as above).

c) and d) The process for freezing or seizing instrumentalities used in, or intended for use in ML, TF or predicate offences at the request of another jurisdiction is to apply for a restraint order under secondary legislation made under section 8 of the International Co-operation Law and section 49 of the Drug Trafficking Law.

The secondary legislation under the International Co-operation Law is the International Cooperation (Enforcement of Overseas Orders) Ordinance. This applies if the Attorney General

receives a request for the restraint of property in order to facilitate the enforcement of an external forfeiture order made by a foreign court for the forfeiture and destruction or other disposal of anything in respect of which an offence has been committed or which was used or intended for use in connection with the commission of such an offence This covers any indictable offence (including TF) but not drug trafficking (see section 8[5] of the International Cooperation Law). Under sections 2 and 3 of the said Ordinance, the court may make a restraint order in relation to any property specified in the request on the application of the Attorney General.

The secondary legislation under the DTL is the Drug Trafficking Law (Enforcement of External Forfeiture Orders) Ordinance under section 1 of which an external forfeiture order is defined in relation to an offence involving drug trafficking in the same terms as the definition at section 8 of the International Co-operation Law in relation to other offences. Section 2 provides for the making of restraint orders on the same basis as in the International Cooperation (Enforcement of Overseas Orders) Ordinance.

The process for the confiscation of instrumentalities is by the registration of an external forfeiture order in the Bailiwick courts on the application of the Attorney General. This is governed by sections 13 to15 and section 7 of the two Ordinances mentioned above, respectively.

e) As regards property of corresponding value, restraint orders obtained under the Proceeds of Crime Law (Enforcement of Overseas Confiscation Orders) Ordinance and the Drug Trafficking (Designated Countries and Territories) Ordinance can apply to any property in the same way as a domestic restraint order. Similarly, an overseas confiscation order registered under either of those Ordinances can be enforced against any realisable property in the same way as a domestic confiscation order (see R.4 above).

***Criterion 38.2***

Throughout the period subject to review, assistance could be provided to "designated countries" on the basis of non-conviction based proceedings under the Civil Forfeiture Law. Under section 10, orders authorizing the detention of cash or freezing of funds in bank accounts could be made if civil forfeiture proceedings in relation to such assets were underway in a designated jurisdiction or if consideration was being given to such proceedings. Under section 49, overseas forfeiture orders might be registered in the Royal Court on the application of the Attorney General and might be enforced in the same way as a domestic order. An "overseas forfeiture order" for this purpose was an order in a designated country under non-conviction based proceedings for the forfeiture of monies found to be the proceeds of unlawful conduct or intended for use in unlawful conduct.

However, the new Civil Forfeiture Law (2023)[209] which entered into force on 26 April 2024 that is, on the last day of the onsite visit, abolished the limitations stipulated by the previous legislation in terms of designation requirements or limit on the types of asset that can be forfeited in civil proceedings.

In addition, the forfeiture powers under the TL referred to under c.38.1(a) apply without the need for a conviction.

[209] The Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023

***Criterion 38.3***

a) Co-ordination of seizure and confiscation actions with other countries is pursued at the level of police (LEA) cooperation and underpinned by provisions in the EFCB's criminal confiscation policy and the Operational Handbook of the FIU. The necessary information sharing powers to permit coordination arrangements are available under section 8 of the Disclosure Law (which also applies to the EFCB and the FIU). The Guernsey authorities confirmed that such arrangements have occurred regularly in practice (not only in the assessed period).

b) The mechanisms described under c.4.4 cover the management and disposal of property frozen, seized or confiscated on behalf of other jurisdictions.

***Criterion 38.4***

Asset sharing is within the discretion of the Attorney General and the approach to be applied is set out in the Attorney General's Asset Sharing and Repatriation Policy. The Guernsey authorities confirmed that asset sharing regularly takes place in practice, under terms agreed on a case-by-case basis.

*Weighting and Conclusion*

**R.38 is rated C.**

### *Recommendation 39 – Extradition*

***Criterion 39.1***

In the 4th round evaluation, R. 39 (Extradition) was not assessed as it had previously been rated C in the 2011 IMF assessment. At that time, extradition was dealt with under UK legislation that had been extended to the Bailiwick[210]. Since then, the Extradition Law[211] has been introduced and this now governs the execution of extradition requests with due deadlines providing for the timeliness of the proceedings at each step.

Under the Extradition Law, foreign extradition requests must be made to the Attorney General. If the Attorney General certifies to the court that a request is validly made (section 6) there is an extradition hearing (section 16 et al.) at which the court determines whether the material provided in support of the request is sufficient to justify the person standing trial (i.e. being charged) or serving a sentence as the case may be, and whether there is any obstacle to executing the request for extradition (see c.39.1[c] below). Countries designated under Part 1 of Schedule 1 ("designated territory of the first category") only need to provide information, not evidence, for the purposes of an extradition hearing, but those designated in Part 2 ("second category") need to submit evidence (sections 7[4] and 26[1]).

Depending on the court's decision, the case is then sent back to the Attorney General, who must order the person's extradition unless this is prohibited because of the application of the death penalty, the absence of speciality arrangements or because the person has previously been extradited to the Bailiwick from another jurisdiction and no consent was given to re-extradition (section 35).

a) Extradition offences as defined at sections 2(2) and 3(2) of the Extradition Law include conducts which would be punishable in the requesting jurisdiction and in the Bailiwick

[210] For a historical background, see page 247 paragraph 1318 of the 2015 MER

[211] Extradition (Bailiwick of Guernsey) Law, 2019

with a term of imprisonment or another form of detention for a term of 12 months, which applies both to ML and TF (see R.3 and R.5).

b) The Attorney General has an electronic CMS in place for dealing with extradition requests and has processes for their prioritisation and timely execution.

c) The Extradition Law does not permit extradition if it is barred by circumstances listed in section 17 including double jeopardy, extraneous considerations (i.e. potential discriminatory purposes), the passage of time, or forum (if the extradition "would not be in the interests of justice").

Further conditions apply in the subsequent stage of the proceedings also (see section 35) as discussed under c.39.1 above. All these conditions appear to be in accordance with international norms and are not unreasonable or unduly restrictive.

As noted under c.39.4 no conditions apply for the execution of warrants from the UK, Jersey, or the Isle of Man.

***Criterion 39.2***

In the applicable legislation, there is no prohibition on the extradition of the Bailiwick's own nationals.

***Criterion 39.3***

Under the Extradition Law, double criminality is required by the definition of "extradition offence" which is conduct based (see sections 2[2] and 3[2]) hence the way that offences are categorised or denominated is essentially irrelevant.

***Criterion 39.4***

The legislation does not provide for a generally applicable simplified extradition mechanism except the one available for requests from the UK under UK legislation that applies in the Bailiwick, and for requests from Jersey and the Isle of Man.

Under section 13 of the Indictable Offences Act of the United Kingdom[212], a warrant against a person for any indictable offence issued in England or Wales (and, pursuant to section 4 of the Indictable Offences Amendment Act, also in Scotland and Northern Ireland) who is (suspected to be) in the Bailiwick may be endorsed by an officer in the Bailiwick who has the authority to issue a corresponding warrant. Section 13 also provides that this is sufficient authority for the warrant to be executed in the Bailiwick and for the person concerned to be conveyed to the place where the warrant was issued. Similarly, under section 2 of the Extradition Ordinance[213], the Bailiff (senior judge) may endorse a warrant issued in Jersey or the Isle of Man in respect of a person who is (suspected to be ) in the Bailiwick. It also means that there are no conditions on the execution of warrants from the UK, Jersey or the Isle of Man.

Considering however that, as noted above, foreign extradition requests are to be submitted to and processed by the Attorney General as the "appropriate authority" in the sense of Footnote 89 to c.39.4 in the FATF Methodology (as opposed to submitting requests through diplomatic channels) as well as the simplified requirements regarding designated territories of the first category as discussed in c.39.1 this criterion can also be deemed as being met.

[212] Indictable Offences Act, 1848

[213] Extradition (Crown Dependencies) (Bailiwick of Guernsey) Ordinance, 2023

*Weighting and Conclusion*

**R.39 is rated C.**

### *Recommendation 40 – Other forms of international cooperation*

The Bailiwick was rated LC for R.40 and the respective criteria of the then applicable SR.V in the previous MER. The downgrading factor in both cases was that assistance of the FIS was limited to the cases where there had been an STR in Guernsey on the subject of the request.

***Criterion 40.1***

As at the time of the previous assessment, the Bailiwick legal framework enables all competent authorities rapidly to exchange information with other jurisdictions, spontaneously, upon request and, in some circumstances in tax matters, automatically.

These provisions enable a wide range of international co-operation on the basis of functions or purposes, and there is no specification or other restriction on the way in which that co-operation should take place.

This commitment to international co-operation has also been enshrined in a Statement of Support for International Cooperation (the Statement of Support) that has been agreed by the competent authorities and endorsed by the political authorities.

***Criterion 40.2***

(a) All competent authorities have a lawful basis for providing cooperation. As regards the FIU, the GFSC and the law enforcement authorities, these are discussed more in detail in the respective criteria below.

As regards the Customs Service, the legal basis is provided under section 54B and 54A of the Customs Law, in addition to the power to disclose information at section 8 of the Disclosure Law (see below).

Paragraph 12 of Schedule 1 of the Gambling (Alderney) Law permits the AGCC to obtain information and transmit to other persons or bodies, which provisions enable the AGCC to exchange information with foreign counterparts. The AGCC has also entered into MoUs with various eGambling regulators at their request which provide a legal gateway to information sharing over and above the legislative framework.

Registrar of NPOs in Guernsey and Alderney, under section 4A of the Charities Ordinance, has a duty to take appropriate steps to cooperate with foreign counterparts, including the disclosure of information. This is underpinned by the power to disclose information under paragraph 2(2) of Schedule 2. Similar powers are included in paragraph 14(2) of the Schedule to the Sark Charities and NPOs Registration Law.

The Registrars of legal persons and beneficial ownership all have a duty to take appropriate steps to cooperate with foreign counterparts, including the disclosure of information – see section 500A of the Guernsey Companies Law, section 32N of the Limited Partnerships Law, Schedule 1 paragraph 2(2)(d) of the LLP Law, Schedule 1 paragraph 3(3) (c) of the Foundations Law, section 6A of the Guernsey Beneficial Ownership Law, section 152Q of the Alderney Companies Law and section 6A of the Alderney Beneficial Ownership Law. These duties are underpinned, in all these pieces of legislation, by the power to disclose information.

Under Schedule 6 paragraph 2(1), Schedule 7 paragraph 2(1), and Schedule 8 paragraph 2(1) respectively of the POCL, the functions of the Administrator of estate agents, accountants and

non-locally qualified legal professionals include communicating and cooperating with foreign counterparts, including the disclosure of information. HM Greffier has an equivalent function under Schedule 9 paragraph 1(1) of the Proceeds of Crime Law in relation to advocates, These functions are underpinned by a power to disclose information at paragraph 18 of each of Schedules 6 to 8 and Schedule 9 paragraph 7.

The Policy & Resources Committee may disclose information to the government of any country or territory under section 21 of the Terrorist Asset Freezing Law in relation to United Nations Security Council resolutions that concern terrorism and other UNSCRs implemented under the Sanctions Law.

Under section 205(2) of the Income Tax Law, the functions of the Director of the Revenue Service include obtaining and exchanging information with foreign counterparts for the purposes of an approved international tax agreement, international tax measure or for the purposes of the Economic Substance Requirements. Under section 205B(1)(e) such a disclosure is permitted and does not, therefore, breach the strict non-disclosure requirements of section 205A.

(b) The use of the most efficient means to cooperate is a requirement under paragraph 2(a) of the Statement of Support.

(c) Clear and secure gateways, mechanisms or channels that will facilitate and allow for the transmission and execution of requests are a requirement under paragraph 2(c) of the Statement of Support. Encrypted e-mail systems to facilitate fast and secure exchanges of information are available to all of the competent authorities. For law enforcement, the FIU, the Registrars, the Administrators and HM Greffier, the Policy & Resources Committee and the Revenue Service, this is the encryption system provided by the States of Guernsey (Egress). In addition, the law enforcement agencies and the FIU have access to UK PNN encrypted e-mail and a dedicated encrypted e-mail to the UK Security Services,and the FIU also uses the Egmont Secure web.

The GFSC also uses Egress or, where asked by the requesting authority, the equally secure encrypted email system of the requesting authority. For the Revenue Service, in addition to using Egress Switch encrypted e-mail, it is also possible to use Winzip encryption where the counterpart tax administration requests the Revenue Service to do so (but when doing so a strong password is mandated in the Revenue Service policies and procedures). For the Automatic Exchange of Information Frameworks (such as, the Common Reporting System and Country by Country Reporting) the Revenue Service are mandated to use the OECD Common Transmission System (being a push/pull end to end encryption system). The CTS is also utilized for the spontaneous exchange of information in respect of the Economic Substance Requirements.

(d) and (e) Clear processes for the prioritisation and execution of requests as well as for safeguarding the information received by the competent authorities are a requirement under paragraph 2(d) of the Statement of Support. All of the competent authorities have written processes in place to govern the prioritisation and execution of requests.

***Criterion 40.3***

There is no requirement under Bailiwick law for the competent authorities to have signed bilateral or multilateral agreements or arrangements in order to be able to co-operate (except in relation to international tax agreements in some circumstances).

The competent authorities negotiate and sign such agreements or arrangements in a timely way if they are required or desired by an external party. There are several such agreements or arrangements in place going back many years and this is also a requirement under paragraph 3 of the Statement of Support.

***Criterion 40.4***

The provision on request of timely feedback to requested competent authorities is a specific requirement under paragraph 4 of the Statement of Support and is permissible under the legal provisions referred to above.

***Criterion 40.5***

There are no unreasonable or unduly restrictive conditions on the provision or exchange of information or assistance in the legal framework, and paragraph 5 of the Statement of Support requires that no such conditions are applied by the competent authorities.

(a) The legal framework does not require a request to be refused on the grounds that it involves fiscal matters and refusal on these grounds is contrary to paragraph 5(a) of the Statement of Support.

(b) There is no Bailiwick legislation that imposes secrecy or confidentiality requirements on financial institutions or DNFBPs. While they are subject to a common law duty of confidentiality, this does not prevent the competent authorities from obtaining information from them in support of a request for international co-operation, and the legal framework does not require international co-operation requests to be refused on those grounds. In addition, such refusal would be contrary to paragraph 5(b) of the Statement of Support.

(c) The legal framework does not require a request to be refused on the grounds of an ongoing domestic inquiry, investigation or proceeding and refusal on these grounds is contrary to paragraph 5(c) of the Statement of Support.

(d) The legal provisions referred to above are based on the functions of the requesting authority or the purpose for which co-operation is requested, not on the nature or status of the requesting authority. Furthermore, refusal on the grounds of nature or status is contrary to paragraph 5(c) of the Statement of Support.

***Criterion 40.6***

It is a requirement under paragraph 6 of the Statement of Support that the competent authorities maintain controls and safeguards to ensure that information exchanged by them is used only for the purpose for, and by the authorities, for which the information was sought or provided, unless prior authorisation has been given by the requested authority.

***Criterion 40.7***

It is a requirement under paragraph 7 of the Statement of Support that the competent authorities maintain appropriate confidentiality for any request for co-operation and the information exchanged, consistent with both parties' obligations concerning privacy and data protection. Paragraph 7 also requires competent authorities at a minimum to specify that the information received by the competent authorities should be subject to the same safeguards as those applied to information from domestic sources.

There is nothing in the legal framework to prevent the competent authorities from refusing to provide information if the requesting competent authority cannot protect the information effectively, and this is expressly permitted under paragraph 7 of the Statement of Support.

***Criterion 40.8***

The competent authorities are required to conduct inquiries on behalf of foreign counterparts in accordance with their legal powers under paragraph 8 of the Statement of Support, and there is nothing in the legal framework to prevent them from using their information gathering or

investigatory powers to conduct enquiries or obtain information on behalf of foreign counterparts. This is also specifically provided for in legal provisions applicable to the FIU and the GFSC (see below).

*Exchange of Information between FIUs*

***Criterion 40.9***

The FIU co-operates with its foreign counterparts via the Egmont Group of FIUs using provisions under Sect. 8 of the Disclosure Law and Sect.8 and Schedule 2 of the EFCB/FIU Law and Section 4(7)(a)(ii)(B) of the EFCB/FIU Law stating that the Head of the FIU is required to take such steps as the Head of the FIU *may think fit* to ensure that the FIU discharges its functions effectively and in a way that takes into account, and is proportionate to, the risks to the Bailiwick from criminal conduct and unlawful conduct, and is in accordance with the principles and guidance issued by the Egmont Group of Financial Intelligence Units. Moreover, the FIU committed to provide the widest range of co-operation on ML, predicate offences and TF (The Statement of support for international cooperation[214]) and does so regardless of whether its counterpart FIU is administrative, law enforcement, judicial or other in nature.

***Criterion 40.10***

Upon request, the FIU to provides feedback to its foreign counterparts from which they have received assistance, on the use and usefulness of the information obtained (The Statement of support for international cooperation, 2023). Similarly, the FIU regularly seeks feedback on outcomes resulting from information provided to its foreign counterparts.

***Criterion 40.11***

Based on provisions under Sect. 8 of the Disclosure Law and Sect.8 and Schedule 2 of the EFCB/FIU Law, The FIU is able to exchange:

*(Met)* (a) information which it can access or obtain directly or indirectly; and

*(Met)* (b) other information which it can obtain or access, directly or indirectly, at the domestic level. Moreover, the power to exchange information does not require reciprocity.

*Exchange of information between financial supervisors*

***Criterion 40.12***

The Financial Services Commission Law and the Financial Services Business (Enforcement Powers) Law contain provisions allowing the GFSC to cooperate with their foreign counterparts, and this regardless of their nature or status. Section 21A of the Financial Services Commission (Bailiwick of Guernsey) Law provides the GFSC with a general legal basis to cooperate with foreign counterpart financial supervisors and/or to cooperate with any authority for the purposes of the investigation, prevention or detection of crime or to instigate or pursue any criminal proceedings. The said provision provides the GFSC with a legal basis for wider forms of cooperation, beyond the exchange of information. The GFSC has also signed 35 bilateral MOUs and is a party to the IOSCO and IASA multilateral MOUs, all of which provide the GFSC with a further legal basis to exchange information with counterpart authorities in the securities and insurance areas.

[214] Agreed by the authorities and endorsed at government level in October 2023.

Sections 11 and Section 64 of the Financial Services Business (Enforcement Powers) Law also enable the GFSC to exercise its statutory powers at the request of a foreign counterpart to enable or assist the foreign counterpart to perform its supervisory functions.

***Criterion 40.13***

Section 20(f) of the Financial Services Business (Enforcement Powers) Law allows the GFSC to exchange information obtained by it with foreign counterpart authorities. Relevant supervisory authority is defined as including any counterpart authority of the GFSC that exercises similar functions. Equivalent provisions are found under sector-specific laws covering the different sectors that are subject to supervision by the GFSC**.**

The GFSC may also exercise its information gathering powers under various sector-specific laws (see c.27.3) to assist a foreign relevant supervisory authority. Any such powers may be exercised by the GFSC in the carrying out of its functions. This includes the international cooperation functions foreseen under section 21A of the Financial Services Commission (Bailiwick of Guernsey) Law (see c.40.12), deemed to be statutory functions as per article 2(3) of the same law.

***Criterion 40.14***

The powers outlined above would allow the GFSC to exchange any of the information referred to under paragraph (a) to (c) of this criterion.

***Criterion 40.15***

The GFSC has wide cooperation powers which may be extended to also allow it to carry out inquiries on behalf of counterpart authorities (see c.40.12). Moreover, the provisions of section 11 of the Financial Services Business (Enforcement Powers) Law enables the GFSC to use any of its powers at law (including inspections and inquiry powers – see c.27.2 and c.27.3) at the request of a relevant supervisory authority (i.e. any foreign authority exercising similar functions to those of the GFSC – see Schedule 1).

The wide international cooperation powers afforded to the GFSC in terms of para 21A of the Financial Services Commission (Bailiwick of Guernsey) Law (see c.40.12), as well as para 11(4) of the Financial Services Business (Enforcement Powers) enable representatives of foreign counterparts to attend and take part in any interview.

***Criterion 40.16***

In accordance with sec 21(1) and (2) of the Enforcement Powers Law, information obtained from a relevant supervisory authority (including foreign counterpart authorities – see c.40.15), can only be used for the purposes it was disclosed for unless the GFSC obtains the prior authorisation of that counterpart authority (Sec. 21(2)(a)-(c)).

Should disclosure of the said information be required in the course of proceedings in front of the Royal Court, sec. 22(b)(i) of the same law directs the court to provide the GFSC with sufficient time to consult with the foreign counterpart authority. The authorities confirmed that this also applies before the court can make a production order under the criminal justice framework.

Equivalent provisions are to be found under the different sector-specific laws.

***Criterion 40.17***

As at the time of the 2015 MER, the exchange of domestically available information by the police is permitted by section 8 of the Disclosure Law, in which context reference to a police officer also includes a custom officer (section 17) as well as the Director of the EFCB (section 2[1][d] of the EFCB and FIU Law). Section 8 of the Disclosure Law thus covers all police, customs and EFCB

cooperation the extent of which has not changed since the last evaluation. In addition, section 44 POCL permits disclosure of information for the purposes of the investigation of crime outside the Bailiwick. The scope of the respective legal provisions have not substantially changed since the 2015 MER where they are analysed in detail. [215]

***Criterion 40.18***

The various investigatory powers identified under R.30 are not limited to domestic cases and may be used by the Bailiwick law enforcement authorities to conduct inquiries on behalf of foreign counterparts, subject to the same standards of justification and proportionality as are applied to a local inquiry, similarly to the time of the previous assessment.

***Criterion 40.19***

Under section 2(1) of the EFCB and FIU Law, the functions of the Director of the EFCB specifically cover working collaboratively with investigatory bodes outside the Bailiwick, including as part of a joint investigative team. As regards the Police and the Customs, there is nothing in the respective legal framework to prevent them from forming joint investigative teams with other countries, which has so far only happened in practice with the authorities in the UK and Jersey.

**Criterion 40.20**

The legal provisions permitting the disclosure of information referred to above and those governing the disclosure of information between domestic authorities (see R.2) are wide enough to permit indirect exchange of information with non- counterparts, as they were at the time of the previous assessment. This is a requirement under paragraph 10 of the Statement of Support, which also requires a competent authority which requests information indirectly always to make clear the purpose of the request and on whose behalf the request is made.

*Weighting and Conclusion*

The Bailiwick fully complies with R.40. **R.40 is rated C**

[215] See page 267 paragraphs 1411 to 1423

## Summary of Technical Compliance – Deficiencies

## ANNEX TABLE 1. COMPLIANCE WITH FATF RECOMMENDATIONS

| Recommendations | Rating | Factor(s) underlying the rating |
|---|---|---|
| 1. Assessing risks & applying a risk-based approach | **LC** | • There are gaps in the risk assessment of VA and VASPs (c.1.1).<br>• The exemptions in relation to acting as a director or partner of specific types of entities (Section 3(1)(d), (e) and (af) of the Fiduciaries Law) are not in line with the Standards (c.1.6). |
| 2. National cooperation and coordination | **C** | • |
| 3. Money laundering offences | **C** | |
| 4. Confiscation and provisional measures | **C** | • |
| 5. Terrorist financing offence | **C** | • |
| 6. Targeted financial sanctions related to terrorism & TF | **LC** | • The freezing obligation is narrowed to situation where a person knows or has reasonable doubts to suspect that is dealing with funds related to a designated person (c.6.5(a)).<br>• Prohibitions to making funds, financial services and economic resources to designated persons are only applicable when a person suspects that is making them available and obtains a financial benefit. (c.6.5(c)). |
| 7. Targeted financial sanctions related to proliferation | **LC** | • The application of asset freezing is limited to situations where there is knowledge or reasonable suspicion that funds, financial services and economic resources being made available to designated persons (c.7.2(a)).<br>• Funds, financial services and economic resources are only considered made available when a person suspects that is making them available and if there is the obtention or potential obtention of a financial benefit (c.7.2(c)). |
| 8. Non-profit organisations | **LC** | • There has not been an identification of the subset of NPOs that fall within the FATF definition before making the requirement to register applicable to internationally active NPOs and domestic NPOs exceeding certain thresholds (c.8.1(a)).<br>• For all NPOs, not all types of penalties are applicable to all types of offences under the Charities Ordinance and the Charities Regulations (exclusion of criminal liability of managing officials for most of the Ordinance obligations and all the Regulations obligations; and administrative penalties not encompassing all NPOs obligations). The amounts of administrative penalties are not dissuasive (c.8.4(b)).<br>• For Sark NPOs, dissuasiveness of certain sanctions (failure to register, administrative penalties) is lower than other available criminal and civil sanctions (c.8.4(b)).<br>• Co-operation, coordination and information-sharing between AML/CFT authorities do not specifically address the TF-related circumstances of points (1) to (3) of c.8.5(d) or are partly established through high-level statements in policy documents (c.8.5(d)). |

| Recommendations | Rating | Factor(s) underlying the rating |
|---|---|---|
| 9. Financial institution secrecy laws | **C** | |
| 10. Customer due diligence | **LC** | • In case of occasional transactions (wire transfers) the CDD measures set out in c.10.4 and c.10.5 are not required - **(c.10.2(c))**<br>• The requirement to obtain a confirmation that a legal person (customer) has not been, and is not being, dissolved, struck off, wound up or terminated is not mandatory - **(c.10.9(a))**<br>• REs are not required to obtain information on the legal form of the trust or trust-like relationship, and are required to obtain proof of existence only in case of high-risks - **(c.10.9(a))**<br>• REs are exempt from verifying the identity of trustees licensed by the GFSC **- (c.10.9(b) and (c))**<br>• REs are not required to identify the BOs of Guernsey regulated entities when holding a controlling interest in a corporate client, or when they are trustees, settlors, protectors or enforcers of a trust - **(c.10.10(a) and c.10.11(a&b))**<br>• REs may delay the verification of identity for trust beneficiaries in all non-high-risk-relationships - **(c.10.11(a)(ii))**<br>• REs are permitted to carry out SDD in respect of Bailiwick public authorities, CISs and Appendix C businesses irrespective of whether the business relationship or occasional transaction represents a low risk - **(c.10.18)** |
| 11. Record keeping | **C** | |
| 12. Politically exposed persons | **LC** | • FIs are permitted not to consider as domestic PEPs (and hence not to apply EDD) persons who occupied prominent public functions before March 2019 and irrespective of the business relationship / occasional transaction risk - **(c.12.2(b), c.12.3)**<br>• FIs issuing life or investment linked insurance policies are not specifically required to conduct enhanced scrutiny of the whole business relationship with the policy holder prior to payout, in case of higher-risks relationships with policy BOs and beneficiaries that are PEPs - **(c.12.4).** |
| 13. Correspondent banking | **C** | |
| 14. Money or value transfer services | **C** | |
| 15. New technologies | **LC** | • The Bailiwick has not analysed the ML/TF risks associated with the use of new business practices, technologies or delivery mechanisms to provide existing products - **(c.15.1)**.<br>• There are no specific provisions or terms of reference requiring the Committee to identify and assess the ML/TF risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies - **(c.15.1)**<br>• A more in-depth analysis of the risks emerging from the misuse of VA activities and the adequacy of existent control measures is needed - **(c.15.3(a) and (b))**<br>• Deficiencies under R.6 and R.7 impact compliance with criterion **c.15.9(b)(iii) and c.15.10** |
| 16. Wire transfers | **C** | |
| 17. Reliance on third parties | **LC** | • There is no explicit requirement to ensure that higher country risk is adequately mitigated by a financial group's AML/CFT policies – **c.17.3(c)** |
| 18. Internal controls and foreign branches and subsidiaries | **LC** | • REs are not required to ensure that branches and majority owned or controlled subsidiaries situated in the Bailiwick comply with the requirements of Schedule 3 - **c.18.2** |

| Recommendations | Rating | Factor(s) underlying the rating |
|---|---|---|
| 19. Higher-risk countries | **C** | |
| 20. Reporting of suspicious transaction | **C** | |
| 21. Tipping-off and confidentiality | **C** | |
| 22. DNFBPs: Customer due diligence | **LC** | • In the case of eCasinos, linked operations are exclusively limited to those undertaken within 24 hours and not in line with the FATF requirements - **c.22.1(a)**<br>• There is no requirement for eCasinos to understand the nature of the customer's business in case of legal persons or arrangements - **c.22.1(a)**<br>• There are no provisions setting out what identification information should be obtained for legal persons and arrangements– **c.22.1(a)**<br>• Acting by way of business as a director or partner of a supervised entity in Guernsey or in other IOSCO member country, or a company listed on a recognised stock exchange is exempt from AML/CFT obligations - **c.22.1(e), c.22.2 – c.22.5**<br>• Minor deficiencies under R.12 and c.15.1 apply to DNFBPs (other than eCasinos) – **c.22.3 and c.22.4**<br>• Natural persons providing directorship services for not more than six companies are exempt from new technology requirements under c.15.1 and c.15.2 – **c.22.4** |
| 23. DNFBPs: Other measures | **LC** | • The exemptions from AML/CFT obligations for certain TCSP services (see c.22.1(e)) impact compliance with **c.23.2-c.23.4** |
| 24. Transparency and beneficial ownership of legal persons | **LC** | • The ML/TF risk analysis for legal persons needs to be enhanced with a more detailed analysis of: (i) risks associated with complex and multi-layered structures, (ii) risks posed by legal persons not banked in the Bailiwick, (iii) an analysis of the adequacy of controls in place, and (iv) the extent of TF risks through movement of funds to which different types of legal entities are exposed – **c.24.2**<br>• LPs (without legal personality) are not required to register their basic regulating powers – **c.24.3**<br>• Information on the basic regulating powers of LPs (without legal personality) is not publicly available **– c.24.3**<br>• LPs without legal personality are not obliged to appoint a resident person or DNFBP, or to put in place comparable measures – **c.24.8** |
| 25. Transparency and beneficial ownership of legal arrangements | **C** | |
| 26. Regulation and supervision of financial institutions | **LC** | • Shareholders of a significant interest with no voting rights (i.e. holders of non-voting shares) or with less than 5% voting rights are not subject to fit and proper requirements – **c.26.3**<br>• The frequency of AML/CFT supervision for medium-high risk REs of 4 years is not appropriate and risk-based – **c.26.5(a)** |
| 27. Powers of supervisors | **C** | |
| 28. Regulation and supervision of DNFBPs | **LC** | • The exemptions from AML/CFT obligations for certain TCSP services (see c.22.1(e)) impact compliance with **c.28.2**<br>• The shortcoming identified under c.26.3 is likewise applicable to TCSPs – **c.28.4(b)**<br>• The exemptions from licensing for directors/partners (acting by way of business) on supervised entities in other IOSCO member countries impact **c.28.4(b)**<br>• It is unclear whether the Administrator can bar criminal associates from being accountants, real estate agents or non-locally qualified lawyers – **c.24.8(b)** |

| Recommendations | Rating | Factor(s) underlying the rating |
|---|---|---|
| | | • There are no registration or market entry requirements for DPMSs other than dealers in bullion – **c.24.8(b)**<br>• More granular risk data is necessary to improve the understanding of inherent risks for individual TCSPs – **c.28.5(a)** |
| 29. Financial intelligence units | **C** | • |
| 30. Responsibilities of law enforcement and investigative authorities | **C** | • |
| 31. Powers of law enforcement and investigative authorities | **C** | • |
| 32. Cash couriers | **C** | • |
| 33. Statistics | **C** | |
| 34. Guidance and feedback | **C** | |
| 35. Sanctions | **LC** | • Deficiencies in sanctions for NPOs set out under c.8.4(b) impact **c.35.1** |
| 36. International instruments | **C** | |
| 37. Mutual legal assistance | **C** | |
| 38. Mutual legal assistance: freezing and confiscation | **C** | |
| 39. Extradition | **C** | |
| 40. Other forms of international cooperation | **C** | |

# GLOSSARY OF ACRONYMS[216]

| | DEFINITION |
|---|---|
| AML/CFT | Anti-Money Laundering / Countering the Financing of Terrorism (also used for Combating the financing of terrorism) |
| AFAC | Anti-Financial Crime Advisory Committee |
| AGCC | Alderney Gambling Control Commission |
| BNI | Bearer-Negotiable Instrument |
| BLE | Bailiwick Law Enforcement |
| CDD | Customer Due Diligence |
| DNFBP | Designated Non-Financial Business or Profession |
| ECU | Economic Crime Unit |
| EFCB | Economic and Financial Crime Bureau |
| ELAs | Executive legal assistants |
| FATF | Financial Action Task Force |
| FIU | Financial Intelligence Unit |
| GEMS | Electronic manifesting system |
| GFSC | Guernsey Financial Services Commission |
| GIMLIT | Public Private Partnership |
| IO | Immediate Outcome |
| LOC | Law Officers' Chambers |
| MOU | Memorandum of Understanding |
| MVTS | Money or Value Transfer Service(s) |
| NPO | Non-Profit Organisation |
| NRA | National Risk Assessment |
| P&R Committee | Policy and Resources Committee |
| PEP | Politically Exposed Person |
| QIFF | Quad Island Forum of FI |
| RBA | Risk-Based Approach |
| SRB | Self-Regulating Bodies |
| STR | Suspicious Transaction Report |
| TCSP | Trust and Company Service Provider |
| VA | Virtual Asset |
| VASP | Virtual Asset Service Provider |

216 Acronyms already defined in the FATF 40 Recommendations are not included into this Glossary.

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Anti-money laundering and counter-terrorist financing measures -

# Guernsey

## Fifth Round Mutual Evaluation Report

This report provides a summary of AML/CFT measures in place in Guernsey as at the date of the on-site visit (15-26 April 2024). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Guernsey AML/CFT system and provides recommendations on how the system could be strengthened.