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Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

GUERNSEY

15 September 2015

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LIST OF ACRONYMS USED

ACL	Companies (Alderney) Law, 1994
AGCC	Alderney Gambling Control Commission
AML/CFT	Anti-money laundering/combating the financing of terrorism
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Combating the Financing of Terrorism
CTR	Cash Transaction Reports
DL	Disclosure (Bailiwick of Guernsey) Law, 2007
DPMS	Dealers in Precious Metals and Stones
DTL	Drug Trafficking (Bailiwick of Guernsey) Law 2000
DNFBP	Designated Non-Financial Businesses and Professions
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
FATF	Financial Action Task Force
FIS	Financial Intelligence Service
FIU	Financial Intelligence Unit
FSB	Financial Services Business
FSB Handbook	Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing
FSB Regulations	Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007
FSC Law	Financial Services Commission (Bailiwick of Guernsey)Law, 2007
GCL	Companies (Guernsey) Law 2008
GBA	Guernsey Border Agency
GBA FI Unit	Guernsey Border Agency Financial Investigation Unit
GFSC	Guernsey Financial Services Commission
GPO	General Prosecutor's Office

IMF	International Monetary Fund
ICC	Incorporated Cell Company
IT	Information Technology
LEA	Law Enforcement Agency
LLP	Limited Liability Partnership
MFA	Ministry of Foreign Affairs
ML	Money Laundering
MLA	Mutual Legal Assistance
MLRO	Money Laundering Reporting Officers
MOU	Memorandum of Understanding
NPO	Non-profit organisation
NRFSB	Non-Regulated Financial Services Businesses
PB	Prescribed Businesses
PB Handbook	Handbook for Prescribed Businesses on Countering Financial Crime and Terrorist Financing
PB Law	Prescribed Businesses (Bailiwick of Guernsey) Law, 2008
PB Regulations	Criminal Justice (Proceeds of Crime) (Legal Professionals Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008
PCC	Protected Cell Company
PCSG	Policy Council of the States of Guernsey
PEP	Politically Exposed Person
POCL	Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999
PTC	Private Trust Company
SAR	Suspicious Activity Report
SRO	Self-Regulatory Organisation
STR	Suspicious Transaction Report
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TCSP	Trust and Company Service Providers

TF	Terrorist Financing
TL	Terrorism and Crime (Bailiwick of Guernsey) Law 2002
UK	United Kingdom
UN	United Nations
UNR	United Nations report
UNSCC	United Nations Security Council Committee
UNSCR	United Nations Security Council Resolution

I. PREFACE

1. This is the fourth report in MONEYVAL's fourth round of mutual evaluations, following up the recommendations made in the last assessment report prepared by the International Monetary Fund (IMF). This evaluation follows the current version of the 2004 AML/CFT Methodology, but does not necessarily cover all the 40+9 FATF Recommendations and Special Recommendations. MONEYVAL concluded that the 4th round should be shorter and more focused and primarily follow up the major recommendations made in the last assessment report prepared by the IMF. The evaluation team, in line with procedural decisions taken by MONEYVAL, have examined the current effectiveness of implementation of all key and core and some other important FATF recommendations (i.e. Recommendations 1, 3, 4, 5, 10, 13, 17, 23, 26, 29, 30, 31, 32, 35, 36 and 40, and SRI, SRII, SRIII, SRIV and SRV), whatever the rating achieved in the previous assessment.

2. Additionally, the examiners have reassessed the compliance with and effectiveness of implementation of all those other FATF recommendations where the rating was NC or PC in the previous assessment. In addition Recommendations 33 and 34 were reassessed. Furthermore, the report also covers in a separate annex issues related to the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter the "The Third EU Directive") and Directive 2006/70/EC (the "implementing Directive"). **No ratings have been assigned to the assessment of these issues.**

3. The evaluation was based on the laws, regulations and other materials supplied by the Bailiwick of Guernsey, and information obtained by the evaluation team during its on-site visit to Guernsey from 5 to 11 October 2014, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in Guernsey. A list of the bodies met is set out in Annex I to the mutual evaluation report.

4. The evaluation was conducted by an assessment team, which consisted of members of the MONEYVAL Secretariat and MONEYVAL experts in criminal law, law enforcement and regulatory issues and comprised: Mr Lajos Korona (public prosecutor of the Metropolitan Prosecutor's Office Budapest, Hungary) who participated as legal evaluator, Mr Philipp Röser (Executive Officer, Legal and International Affairs, Financial Market Authority, Liechtenstein and Financial Scientific Expert to MONEYVAL) and Mr Radoslaw Obczynski (chief specialist, AML/CFT Unit, Banking, Payment Institutions and Cooperative Savings and Credit Unions Inspections' Department, Polish Financial Supervision Authority) who participated as financial evaluators, Mr Vladimir Nechaev (Deputy General Director, International Training and Methodology Centre for Financial Monitoring, Russian Federation)[1] who participated as a law enforcement evaluator, Mr John Ringguth, (Executive Secretary to MONEYVAL) and Mr John Baker, Ms Irina Talianu and Ms Astghik Karamanukyan, members of the MONEYVAL Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

5. The structure of this report broadly follows the structure of MONEYVAL and FATF reports in the 3rd round, and is split into the following sections:

1. General information

[1] After the on-site visit Vladimir Nechaev was nominated as an Executive Secretary of the Eurasian Group on Combating Money Laundering and Terrorist Financing.

2. Legal system and related institutional measures
3. Preventive measures - financial institutions
4. Preventive measures – designated non-financial businesses and professions
5. Legal persons and arrangements and non-profit organisations
6. National and international cooperation
7. Statistics and resources

Annex (implementation of EU standards).

Appendices (relevant new laws and regulations)

6. This 4th round report should be read in conjunction with the IMF report (as published by the IMF on its web-site in January 2011)[2]. FATF Recommendations that have been considered in this report have been assigned a rating. For those ratings that have not been considered the rating from the IMF report continues to apply.

7. Where there have been no material changes from the position as described in the IMF report, the text of the IMF report remains appropriate and information provided in that assessment has not been repeated in this report. This applies firstly to general and background information. It also applies in respect of the 'description and analysis' section discussing individual FATF Recommendations that are being reassessed in this report and the effectiveness of implementation. Again, only new developments and significant changes are covered by this report. The 'recommendations and comments' in respect of individual Recommendations that have been re-assessed in this report are entirely new and reflect the position of the evaluators on the effectiveness of implementation of the particular Recommendation currently, taking into account all relevant information in respect of the essential and additional criteria which was available to this team of examiners.

8. The ratings that have been reassessed in this report reflect the position as at the on-site visit in 2014 or shortly thereafter.

9. References to Guernsey in this report should be taken to mean the Bailiwick of Guernsey unless otherwise stated.

[2] https://www.imf.org/external/pubs/ft/scr/2011/cr1112.pdf

II. EXECUTIVE SUMMARY

1. Background Information

1. This report summarises the major anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in the United Kingdom Crown Dependency of Guernsey ("Guernsey" or "the Bailiwick") at the time of the 4th round on-site visit (5 to 11 October 2014) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th cycle of evaluations is a follow-up round, in which Core and Key (and some other important) FATF Recommendations have been re-assessed, as well as all those for which Guernsey received partially compliant (PC) ratings in the last assessment report prepared by the International Monetary Fund (IMF). In addition Recommendations 33 and 34 were reassessed. This report is not, therefore, a full assessment against the FATF 40 Recommendations 2003 and 9 Special Recommendations 2004, but is intended to update readers on major issues in the AML/CFT system of Guernsey.

2. Key findings

2. **Guernsey is a major international finance centre with a mature legal and regulatory system.** The finance sector is the largest single contributor to GDP of the Bailiwick. While deposits taken by the banking sector have almost halved since its highest peak in 2008, the funds under management and administration by the collective investment fund sector have more than doubled during the same period and stood at GBP 220 billion at the end of 2014. Hence, Guernsey is globally one of the largest fund domiciles (especially private equity). Another significant amount of assets is managed and administered by the fiduciary sector. Guernsey is also the fourth largest captive insurance domicile in the world with premium written in excess of GBP 4.8 billion.

3. **Though the legislative structure to prosecute ML cases remained as complex as it was at the time of the previous assessment it reflects the international standards and does not appear to have presented problems in practice.** While the statistics show an undeniable increase in the number of ML investigations, prosecutions and convictions in the last four years, the figures are still disproportionately low.

4. **The legal framework governing confiscation and provisional measures is comprehensive.** The overall number of restraint and confiscation orders and particularly those made in relation to ML or other forms of economic crimes involving the financial industry is still relatively low.

5. **The financing of terrorism offence now applies to the funding of terrorist organizations and individual terrorists in all cases.**

6. **Concerns remain with regard to the immediate communication of UN/EU designations to the obliged entities and about the practical applicability of criminal procedural rules to seize/freeze assets in the interim period between an UN and an EU freezing designation.**

7. **The FIS is a unit within the Financial Investigation Unit of the Guernsey Border Agency.** Although the authorities are explicit in interpretation that the FIS has an adequate level of operational independence, no legal safeguards have been introduced in this regard.

8. **The Bailiwick has substantially strengthened the AML/CFT preventive measures to which its financial institutions are subject.** While the relevant Regulations and Rules generally provide a sound basis for determining the situations requiring enhanced due diligence and the methods for performing it, these requirements are not extended on a mandatory basis to non-resident customers, private banking, or legal persons and arrangements that are personal asset holding vehicles. A further concern is that the rules regarding simplified or reduced CDD provide for the discretion to refrain entirely from any of the mandatory CDD measures. The requirements for the DNFBPs for preventive measures are similar to those for financial services

businesses. In addition to the technical shortcomings identified above, the risk classifications applied by obliged entities do not always sufficiently take into account that the accumulation of risks (which appear to be relevant for a significant portion of the customer base of some financial institutions and DNFBPS) present overarching ML/TF risks. Furthermore, the CDD measures applied to certain customers do not appear adequate to mitigate their inherent risks.

9. **The evaluation team remains concerned that due to the size and nature of the financial sector in the Bailiwick of Guernsey, the available maximum financial penalty for AML/CFT breaches for legal persons is not considered sufficiently dissuasive and proportionate.** Furthermore, the use of financial penalties for legal persons cannot act as an effective deterrent for non-compliance.

10. **The reporting level by financial institutions appears to be adequate.** No explicit requirement to report attempted transactions is prescribed in the legislation although the reporting obligation refers to suspicious activity reports to ensure that reports can be made in situations where no actual transaction is involved.

11. **Information on beneficial ownership of legal persons and legal arrangements is obtainable in the Bailiwick where licensed TCSPs are involved in the formation, management or administration of these entities. However, their involvement is not mandatory with few exceptions.** Insufficient measures are in place where no licensed TCSP is involved. According to the authorities' estimates, the number of these legal persons amounts to 25% of all Bailiwick legal persons. No such estimates exist with respect to legal arrangements. Insufficient measures are also in place where financial institutions are allowed to undertake CDD on the intermediary (e.g. foreign bank acting on the account of the ultimate investor) rather than on the beneficial owner and underlying principal(s) for whom the intermediary is acting. This is of relevance in the area of authorised or registered open-ended or closed-ended investment companies or legal arrangements that are authorised or registered collective investment schemes. It is also a concern, that in the absence of a registration, reporting or a resident agent requirement, the Guernsey authorities have no precise indication of the total number of trusts and general partnerships governed under Guernsey law, which inhibits a proper risk assessment of this area.

12. **The Bailiwick has in place a range of measures to facilitate various forms of international cooperation.** Some issues were identified with respect to FIS power to request information only in cases when there was an initial STR. That might be important in view of the international character of business in Guernsey.

13. **Cooperation and coordination between competent authorities on a domestic level appears to be conducted in an effective manner.**

3. Legal Systems and Related Institutional Measures

14. As at the time of the previous evaluation, the ML offence was criminalised by three different pieces of legislation, namely, the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999 (POCL) the Drug Trafficking (Bailiwick of Guernsey) Law 2000 (DTL) and the Terrorism and Crime (Bailiwick of Guernsey) Law 2002 (TL) which equally apply to the whole Bailiwick. The scope of the different ML offences regarding the respective predicate crimes has not changed since the previous assessment. The POCL and the DTL operate in parallel, where the respective legal provisions are formulated in a generally identical manner in both Laws and therefore the scope and effect of the parallel provisions is the same in most of the cases.

15. The legislative structure to prosecute ML cases remained as complex as it was at the time of the previous assessment. Notwithstanding that, the current legal framework is fully in line with all the respective international standards and does not appear to have presented problems in practice. However, although the disparity between the number of investigations and that of prosecutions and convictions has reduced, some discrepancy in the statistics has remained. It was noted that in approximately half of the cases where the investigation did not result in a

prosecution for ML, proceedings for other forms of criminality were pursued including drug trafficking cases, fraud, breaches of housing legislation, theft, and breach of the cash controls legislation; and some of these cases have reportedly resulted in significant confiscation orders. It is considered that, while the statistics show an undeniable increase in the number of ML investigations, prosecutions and convictions beyond drug-related ML criminality in the last four years, the figures are still disproportionately low both in terms of the property laundered and the restrained or confiscated assets, when compared with the dimensions and complexity of the financial sector and the volume of assets managed by or channelled through the industry also with regard to the use of complex corporate structures.

16. The offences by which FT is criminalised can be found in the TL. Since the previous assessment, the purposive element of the FT offences in the TL ("purposes of terrorism") has been redefined so that it extends to the provision of support for any purpose to any individual or entity involved in terrorism. As a result, the funding of terrorist organisations and individual terrorists in all cases is now covered by the FT offences in the TL. The main FT offence ("fund raising") covers the collection and provision of funds (money or other property) for the purposes of terrorism. While the provision of funds is expressly covered, the collection of funds is addressed through the criminalisation of its two components, that is the solicitation of money and other property (inviting another to provide) and the receipt of the same. The perpetrator must either intend that the property should be used, or know or have reasonable cause to suspect, that it may be used for the purposes of terrorism, which brings the offence in line with the material elements of the FT offence in the Terrorist Financing Convention. The main FT offence is supplemented by two other offences of criminalising the possession of funds with a view to their use for terrorist purposes, and the actual use of funds for the same purpose as well as the participation (entering and becoming concerned) in arrangements as a result of which funds are (to be) made available to another for the purposes of terrorism. The mental element for the possession of funds and for the participation in fund-raising arrangements is the same that applies for the main FT offence. There were no FT investigations, prosecutions or convictions in the period under review.

17. Guernsey already had a comprehensive regime of criminal confiscation and provisional measures at the time of the previous assessment. No significant changes have taken place. The law provides for confiscation of proceeds of crime and instrumentalities in general as well as a regime of provisional measures including restraint and charging orders both before and after proceedings have commenced.

18. The statistics on confiscation orders and related provisional measures demonstrate an increase in both in terms of the number of cases and the amounts restrained or confiscated. However, the overall number of restraint and confiscation orders and particularly those made in relation to ML or other forms of economic crimes involving the financial industry is still relatively low.

19. With regard to the freezing of assets of designated persons and entities new legislation was adopted in 2011 to give direct effect in Guernsey law to designations made by the European Union under Regulations that implement United Nations Security Council Resolutions (UNSCRs) 1267 and 1373. Apart from this legislative development, a number of measures have been taken to facilitate the effective implementation of the new legal framework including the establishment of a dedicated Sanctions Committee in 2010 to coordinate and ensure effective compliance with the UNSCRs and other sanctions measures.

20. The current regime of administrative freezing can only cover assets that belong to persons or entities that have already been designated by an EU Implementing Regulation but cannot be applied before such a designation is made. There does, therefore, remain a concern that for the time period between the UN and the EU designation, only the rules of criminal procedural law could be used to freeze or seize the assets of the designated person or entity. However, the rules of criminal procedure cannot be applied without initiating a formal criminal procedure, which requires a criminal offence subject to the jurisdiction of the Bailiwick. Also, during the on-site

visit, the assessment team was advised of a number of instances where representatives of the financial industry which were branches of companies overseas had been notified of the latest updates to these lists through their respective communication channels within the group of companies before receiving any official notification from the Policy Council via THEMIS or otherwise. In such cases, the delay was not reported to be significant but in urgent cases even hours count and the Bailiwick regime does not seem to be fully adapted to immediate action.

21. To date, no terrorist assets have been frozen in the Bailiwick in respect of any persons under the legislation implementing UNSCR 1267 and UNSCR 1373.

22. The functions of the Financial Intelligence Unit are entrusted to the Financial Intelligence Service (FIS) which is a division within the Financial Investigation Unit of the Guernsey Border Agency. Amendments authorising the FIS to request additional information from third parties if there was an initial disclosure were introduced in August 2014.

23. Although the authorities are explicit in interpretation that the FIS has an adequate level of operational independence, no legal safeguards have been introduced in this regard. The evaluators were not aware of any indication that the operational independence of the FIS had been breached so far. However the lack of legal provisions or any statute of the FIS, including provisions on its structure and resources, together with its comparatively low status in the hierarchy of the GBA, raise concerns over its operational independence.

24. At the time of the on-site visit, the last annual report on the GBA website was for the year 2011. No more reports were available. Furthermore, the FIS data included into the report only covered data on the numbers of STRs, with no information on trends or typologies.

25. All STRs are subject to analysis to establish the criminality, risk and priority. The FIS is the authority to postpone the execution of suspicious transactions.

26. With regard to dissemination of information, the FIS frequently receives positive feedback from other jurisdictions about the way in which the intelligence it provides has been used. However, while the FIS exchanges information freely, spontaneously and upon request with foreign FIUs, regardless of their status, it is necessary for the FIS to have received an initial disclosure in order to be able to request information from third parties (using otherwise round-about ways). This has the potential to limit the possibilities for cooperation.

4. Preventive Measures – financial institutions

27. The Financial Services Businesses Regulations (FSB Regulations) impose basic requirements on financial services businesses (FSBs) to prevent money laundering and terrorist financing. These obligations include corporate governance, risk assessment, CDD, monitoring of transactions and activity, the reporting of suspicion, employee screening, training, and record keeping. Breaches are subject to criminal sanctions, including imprisonment not exceeding a term of five years or a fine or both.

28. The CDD requirements are broadly in line with the FATF requirements. However, the requirements for the application of enhanced CDD are not extended on a mandatory basis to non-resident customers, private banking, or legal persons and arrangements that are personal asset holding vehicles. Furthermore, the FSB Regulations and the FSB Handbook provide for the discretion to refrain entirely from the application of certain CDD measures in defined circumstances, whereas simplified CDD in terms of the FATF Recommendations only allows for adjusting the amount or type of each or all of the CDD measures in a way that is commensurate to the low risk identified.

29. The financial institutions met during the on-site visit clearly demonstrated that they are highly knowledgeable in respect of their AML/CFT obligations. The major concern with regard to effectiveness was that customer risk assessments do not sufficiently take into account that the accumulation of risks can present overarching ML/TF risks. Furthermore, the CDD measures applied to certain customers appeared not always sufficient to adequately mitigate their inherent

risks. For example, as for customers that are trusts the assessors noted that financial institutions do not always request sight of the entire trust deed and (if applicable) letter of wishes, including subsequent deeds of amendments. Also, documentary evidence with respect to the source of funds and wealth for high risk customers is requested rather infrequently.

30. Although there is no law of financial institution secrecy in the Bailiwick, there is a Common Law principle of confidentiality that applies to financial institutions. Nonetheless, financial institutions did not report any concerns that they might be in breach of the Common Law principle of confidentiality by disclosing information to the FIS when filing a SAR. Although the sharing of information between financial institutions, where this is required by R.7 and R.9, is not clearly exempted from the Common Law principle of confidentiality this has not given rise to any problems in practice.

31. The record keeping requirements are in line with the FATF standards. No issues came to the evaluators' attention with regard to the ability of financial institutions as to timely delivery of records when required by the Guernsey Financial Services Commission (GFSC), the FIS, or the law enforcement agencies.

32. The reporting obligations require financial services businesses and prescribed businesses to report to the FIS any knowledge, suspicion or reasonable grounds for knowledge or suspicion in respect of money laundering or terrorist financing that has been acquired in the course of their business. At the time of the previous evaluation the reporting obligations were framed as criminal offences for failure to report. The requirement has been amended so that the reporting obligations are now framed as positive duties to report which are subject to criminal sanctions for breach, and they expressly now also extend to suspicion that certain property is or is derived from the proceeds of criminal conduct or terrorist property, as the case may be. However, the reporting of attempted transactions is not explicitly mandated in law or regulation; this has not in practice given rise to any problems from reporting entities.

33. The number of reports submitted has largely remained consistent and is broadly in line with reporting levels in comparable jurisdictions.

34. The GFSC is the designated supervisor for all financial services businesses and receives its general powers of supervision and sanctioning through the Financial Services Commission Law. In addition, the Proceeds of Crime Law provides for the GFSC to make rules, give instructions and issue guidance for the purposes of the FSB Regulations and sets out the powers of the GFSC to conduct on-site inspections, and to obtain information and documents during such inspections.

35. The licensing powers are adequate to prevent criminals and their associates from holding positions or responsibility in, or otherwise controlling, financial institutions.

36. It was the view of the evaluators that the GFSC has adequate powers and resources. GFSC Staff are experienced and are subject to a comprehensive training programme. The GFSC operates a risk based approach to supervision based on a model called PRISM. Each licensed financial services business is allocated an impact rating based on various metrics including one for financial crime. The on-site visit plan is drafted as a result of risk rating assigned by the PRISM programme, although the GFSC can use discretion in planning additional ad-hoc visits. As a result of on-site visits sanctions were levied, or supervisory actions have been taken.

37. The GFSC has a comprehensive range of sanctions that it can apply including fines and suspending and revoking licences. However, taking into account the nature and scale of business undertaken by financial institutions, it is considered that, with a maximum fine of £200,000 available, the financial sanctions are not dissuasive and proportionate for legal entities. Furthermore the use of financial penalties for legal persons cannot act as an effective deterrent to non-compliance and cases of non-reporting of STRs are rarely fined or in any other way sanctioned.

38. Under the Registration of Non-Regulated Financial Services Businesses Law a financial services business carrying on or holding itself out as carrying on business in or from within the Bailiwick must be registered by the GFSC. The same law provides some exemptions from the registration requirements. The evaluators were satisfied with the adequacy of the process to determine exemptions.

5. Preventive Measures – Designated Non-Financial Businesses and Professions

39. In Guernsey, designated non-financial businesses and professions (DNFPBs) include the legal profession, accountants, real estate agents, dealers in precious metals and stones (DPMS). These businesses are designated as Prescribed Businesses (PB) and are subject to the Prescribed Business Regulations and PB Handbook. Trust and Company Service Providers (TCSP) and bullion dealers are subject to the same requirements as financial institutions (i.e. FSB Regulations and Handbook). Guernsey does not have land based casinos but an eGambling industry is present in Alderney. ECasinos are subject to preventive measures as outlined by the Alderney Gambling Law and eGambling Regulations.

40. The Prescribed Business Regulations and PB Handbook requirements include obligations to conduct customer due diligence, monitor transactions, keep records, develop policies and procedures, screen employees, establish an audit function and train employees. Like the FSB Handbook, the PB Handbook sets out both, rules and guidance. The FSB and PB Handbook rules set out how the GFSC requires financial services businesses including TCSPS and bullion dealers as well as PBs to meet the requirements set out in the regulations.

41. Persons acting in an individual capacity as a director of not more than six companies are not subject to the Fiduciaries Law and, as such are not licensed. Nevertheless, the activity is still subject to the AML/CFT requirements under the Proceeds of Crime Law. However, these individuals appear not to be effectively supervised and as a consequence not monitored to establish if they are effectively complying with the AML/CFT requirements.

42. The requirements for preventive measures applicable to DNFBPs are very similar to those for financial institutions (for TCSPs they are the same). As such the concerns relating to the omission of certain high-risk categories for the application of enhanced due diligence measures and the concerns regarding the application of simplified due diligence measures also apply to the DNFBP sector. The effectiveness concerns largely reflect those identified for financial institutions. It is noted that the fiduciary services provided in Guernsey (i.e. primarily trust and company formation, management and administration) are still one of the key driver of business flows into the Guernsey financial sector. This sector is key from an AML/CFT perspective as the fiduciaries form, manage and administer the legal persons and arrangements that account for a significant share of the customer base of some Guernsey financial institutions. In their capacity as trustees, foundations councils or company directors, they frequently represent these customers vis-à-vis the financial institutions that are servicing these legal persons and arrangements. While the assessors recognize that many financial institutions have direct contact with the underlying principal and/or ultimate beneficial owners, many financial institutions appear still to be dependent on the information obtained by the representatives of the fiduciary sector when it comes to scrutinising transactions undertaken throughout the course of the business relationship as part of the on-going due diligence. This is due to the fact that contact with the underlying principal and/or beneficial owner is often maintained and managed by the fiduciaries rather than by the financial institutions. As a consequence, the TCSP sector often still has a direct impact on the quality of CDD measures applied by other financial businesses.

43. It is therefore reassuring, that fiduciaries demonstrated a very good understanding of their AML/CFT obligations and a mature approach to applying customer due diligence measures arising from their longstanding and continuous involvement in the formation and administration of legal entitles and arrangements. Based on internal AML/CFT policies reviewed by the evaluators, there are however concerns that some fiduciaries are prepared to accept a significant

amount of risk rather than rejecting a business relationship. The assessors welcome that the GFSC attaches increasing importance to the drafting of clearly defined risk appetite statements by fiduciaries and other financial sectors that allow for an appropriate assessment of firms' risk management resources.

6. Legal Persons and Arrangements & Non-Profit Organisations

Legal persons

44. The range of legal persons available in the Bailiwick has been extended by the introduction of the Foundations (Guernsey) Law 2012[3] and the Limited Liability Partnerships (Guernsey) Law 2013.

45. Basic information (company name, incorporation details, status, address, list of directors) for all Bailiwick legal persons is submitted by each individual legal person to the Guernsey and Alderney Registries and registered accordingly. Registered information is largely publicly available. Basic regulating powers are not publicly available for Guernsey LLPs and Guernsey Foundations. Information provided to the Registries is subject to an annual validation process. Legal persons are required to report any changes in respect of registered information to the Registry.

46. The register of all shareholders or members is recorded by each individual legal person and kept at its registered office.[4] For all legal persons (except for limited partnerships), information on their shareholders or members (which might be legal persons or nominee shareholders) can be accessed by third parties. Legal persons have to confirm to the Registry that the register of shareholders or members, which has to be kept at the registered office, is current as at the end of the year to which the annual validation relates.

47. The beneficial ownership information of legal persons in the Bailiwick is obtainable where TCSPs are involved in the formation, management or administration of legal persons. Licensed TCSPs are subject to the AML/CFT requirements, including the obligation to identify and verify the beneficial owner of the respective company. It has to be stressed however, that their involvement is not mandatory after the incorporation stage.

48. Insufficient measures are in place where no licensed TCSP is involved (according to the authorities' estimates, the number of these legal persons amount to 25% of all Bailiwick legal persons). Insufficient measures are also in place where financial institutions are allowed to undertake CDD on the intermediary (e.g. foreign bank acting on the account of the ultimate investor) rather than on the beneficial owner and underlying principal(s) for whom the intermediary is acting. This is of relevance in the area of authorised or registered open-ended or closed-ended investment companies.

49. The authorities have timely access to registration details and basic ownership information available at the relevant Registries and the registers of shareholders or members held at the registered office of legal persons. Most information is electronically available. Any additional information that is not publicly available may be disclosed by the Registrar to the other authorities on request, without the need for a court order.

Legal arrangements

[3] Pursuant to the Foundations (Guernsey) Law 2012, a foundation may only be established by being entered on the registry of foundations, and once established has legal personality separate from its founder. An application for registration may only be made by a TCSP, who must file with the Registrar the foundation's charter, together with additional information including the names and addresses of the proposed councillors, the name and address of the proposed guardian and resident agent if any, and the address of the registered office in Guernsey.

[4] In the absence of shareholders or members, this requirement is not applicable to Foundations.

50. As for legal persons, the availability of beneficial ownership information appears to be obtainable where a licensed TCSP is involved in the formation, management or administration of a legal arrangement. Like for legal persons, the involvement of a TCSP is not mandatory after the incorporation stage. Insufficient measures are in place where no licensed TCSP is involved.

51. As for legal persons, the availability of beneficial ownership information appears to be warranted where a licensed TCSP is involved in the formation, management or administration of a legal arrangement. The involvement of a TCSP is not mandatory. Insufficient measures are in place where no licensed TCSP is involved.

52. Trusts are governed by the Trusts (Guernsey) Law, 2007. There is no trust legislation in Alderney and Sark. Thus it is only possible to set up trusts there under customary law. Although formal documents are not essential for the establishment of a trust, in practice, where trusts are created within the professional and fiduciary sectors this is invariably done in writing to provide certainty, as the risk to a law firm or TCSP of creating a trust other than in writing would be unacceptable.

53. Guernsey trusts are not subject to a system of registration and there is no requirement to file information with government authorities. The general information-gathering powers of the authorities under the supervisory and criminal justice frameworks in respect of legal persons apply equally in respect of all legal arrangements.

54. It is a major concern, that in the absence of a registration, reporting or a resident agent requirement, Guernsey authorities have no precise knowledge of the total number of trusts and general partnerships governed under Guernsey law, which inhibits a proper risk assessment of this area.

55. Given that the number of trusts and general partnerships with no link to a licensed TCSP cannot be ascertained, the number of legal arrangements for which beneficial ownership information is insufficient or unavailable, remains unknown.

56. As for legal persons, insufficient measures are also in place where financial institutions are allowed to undertake CDD on the intermediary (e.g. foreign bank acting on the account of the ultimate investor) rather than on the beneficial owner and underlying principal(s) for whom the intermediary is acting. This is of relevance for legal arrangements that are authorised or registered collective investment schemes

57. Non-profit organisations (NPOs) are required to register but only NPOs which have gross assets and funds of £10,000 or more, or a gross annual income of £5,000 or more, must apply to be placed on the Register and their registration must be renewed annually. Manumitted NPOs are still generally exempted from the registration requirements. Furthermore, there is no publicly available information on manumitted NPOs.

58. The Advisory Committee as a whole has continued to consider the effectiveness of the NPO framework routinely at its meetings and a dedicated working group has been established to examine all aspects of the oversight of charities and NPOs. Two consultation documents have been issued; one relating to the proposed extension of the registration framework to manumitted organisations; and the other relating to some proposed minor changes to the existing framework.

59. The Guernsey and Alderney Registrar of NPOs periodically reviews information on NPOs in order to identify those that require greater scrutiny. As the Charities and NPOs Registration Law permits the onward transmission of information to the law enforcement agencies, details of all applications that are considered high-risk or where adverse intelligence has been established are passed to the FIS. The FIS then reviews these details against law enforcement databases, and provides the Registry with any known relevant convictions or intelligence, including financial intelligence. The Registrar will then use this information to confirm the risk classification of any NPO, or confirm whether to proceed or suspend a registration/application. Although

administrative sanctions are in place for non-compliance with registration requirements, these are considered not to be effective or dissuasive.

7. National and International Co-operation

60. The formal national committee structure is headed by the AML/CFT Advisory Committee (or Financial Crime Advisory Committee), which is made up of senior representatives of different authorities and has a high-level, strategic role. Since the previous evaluation, the Sanctions Committee and the Anti–Bribery and Corruption Committee have been created to ensure that the Bailiwick has a properly coordinated response to emerging areas of particular international concern. Cooperation and coordination at an operational level is achieved by both formal and supplementary meetings. The law enforcement agencies work closely with members of the prosecution team in the Attorney General's Chambers in the preparation of particular cases, and the economic crime prosecutor has been actively involved in assisting the FIU in the review and preparation of cases on both a specific and a more general basis. There are also regular meetings to review cases between the GBA and the members of the Attorney General's chambers who work on mutual legal assistance. In addition, there are regular meetings between the FIS and the GFSC at the Enforcement Case Review Committee. Overall, the systems in place for cooperation and coordination of the legal framework are considered to be effective and the systems in place for the review of the effectiveness of the Bailiwick's AML/CFT systems are considered to operate well.

61. The Bailiwick, as a dependency of the British Crown, cannot itself sign or ratify international Conventions on its own. As it is the government of the UK that acts, by longstanding constitutional convention, for the Bailiwick in any international matters, it is also the UK that can extend its ratification of international Conventions to the Bailiwick. The UK's ratification of the Vienna Convention and the FT Convention had already been extended to the Bailiwick at the time of the last evaluation. This was not the case in respect of the Palermo Convention due to some outstanding issues that needed to be addressed in discussion with the UK. The Palermo Convention has subsequently been extended to Guernsey. The date of entry into force of the Convention for the Bailiwick was December 17 2014.

62. There is no single piece of legislation to generally regulate the provision of mutual legal assistance (MLA) by the Bailiwick of Guernsey and therefore reliance is placed on the provision of a number of laws relevant in the field of criminal procedure. The wide range of investigatory powers under these Laws is not limited to domestic investigations and they may thus be, and are regularly used to provide MLA as appropriate. There is also secondary legislation in place (meaning a range of ordinances issued upon authorization by the aforementioned laws) specifically to permit the restraint and confiscation of assets and instrumentalities in criminal cases at the request of other jurisdictions. Overall, Guernsey's legal framework for MLA was found to be comprehensive and addressing all criteria under the FATF standard at the time of the previous assessment, which is generally true for the present round of evaluation too. The provision of MLA is not subject to any unreasonable, disproportionate or unduly restrictive conditions and the statistics demonstrate the Bailiwick's capability and activity in this field.

63. The Bailiwick has in place a range of measures to facilitate various forms of international cooperation. The legal framework does not require reciprocity or MOUs before assistance can be provided (the Income Tax Law requires that there be an international agreement or arrangement governing the exchange of tax information in place). However, the practice is to sign MOUs if they are required or desired by a requesting state or an international instrument. The only area of concern is the limitation for the FIS to request information only in cases when there was an initial STR; this means that if the request refers to a subject in relation to whom there were no STRs the FIS has to find round-about ways to obtain information. This is considered of particular importance in view of the international character of business in Guernsey.

8. Resources and statistics

64. Guernsey provided full and comprehensive statistics on matters relating to the criminalisation of money laundering, the financing of terrorism, the operation of the FIU (including receipt and dissemination of STRs), the supervision of financial institutions and DNFBP, as well as on national and international cooperation. It would appear that these statistics are routinely used to monitor the effectiveness of the AML/CFT systems in operation in Guernsey.

65. All of the law enforcement and supervisory agencies appear to be adequately staffed with experienced and well-trained staff members.

III. Mutual Evaluation Report

1. GENERAL

1.1 General Information on the United Kingdom Crown Dependency of Guernsey

1. The United Kingdom Crown Dependency of Guernsey ("Guernsey" or "the Bailiwick") is located in the English Channel, in the gulf of St. Malo off the north-west coast of France. The major ethnic groups comprise people of British and Norman descent. The total population of the Bailiwick of Guernsey is 62,732. The Bailiwick of Guernsey comprises the three separate jurisdictions of Guernsey, Alderney and Sark. The islands of Herm, Jethou and Lihou are part of Guernsey and the island of Brecqhou is part of Sark.

2. Although geographically the islands form part of the British Isles, politically they do not form part of the United Kingdom. Guernsey is a self-governing Crown Dependency. The United Kingdom is responsible for Guernsey's international affairs and defence. The Bailiwick's right to raise its own taxes is a long recognized constitutional principle.

3. The Bailiwick is not represented in the UK Parliament. Acts of Parliament do not apply in the Bailiwick unless extended by Order in Council at the request of the island authorities. The extension to Guernsey of an Act of the Parliament by Order in Council is occasionally requested, but the usual practice is for the States of Deliberation', which is legislatively independent from the United Kingdom with full competence to legislate for the Island's insular affairs, to enact its own legislation.

4. Guernsey's parliament is called 'The States of Deliberation'. The States of Deliberation consists of a Presiding Officer, who is ex officio the Bailiff (or in his absence the Deputy Bailiff, as Deputy Presiding Officer), the two Law Officers of the Crown: Her Majesty's Procureur (Attorney-General) and Her Majesty's Comptroller (Solicitor-General), 45 democratically elected Guernsey members (People's Deputies) and two elected Alderney representatives. There are no political parties in Guernsey. The States of Deliberation elect the senior political office holder who is called the Chief Minister and chairs a Policy Council made up of the Deputies, called 'Ministers', who chair the 10 administrative committees, called 'Departments'.

5. Alderney is self-governing, its constitutional legislation being the Government of Alderney Law. The island is governed by the States of Alderney, which consists of a President and 10 States members, all elected by universal suffrage. Under a 1948 agreement Guernsey has responsibility for certain services in Alderney which extends, inter alia, to the airfield and breakwater, immigration, police, social services, health and education. The States of Alderney is responsible for initiating domestic legislation and the States of Deliberation (the Guernsey assembly) has the power to enact criminal legislation in Alderney.

6. The government of Sark is administered by the Chief Pleas of Sark. The Chief Pleas is Sark's legislative body. It consists of 28 elected members (Conseillers). As with Alderney, Guernsey's States of Deliberation has power to legislate for Sark in criminal matters without the agreement of Chief Pleas, but on any other matter with the agreement of the Chief Pleas.

International relations

7. Guernsey, in partnership with Jersey, established the Channel Islands Brussels Office in 2011.

8. Guernsey's relationship with the EU is governed by Protocol 3 to the 1973 Treaty of Accession when the UK joined the European Economic Community (EEC). The effect of the protocol is that the Bailiwick is within the Common Customs Area and the Common External Tariff (i.e. it enjoys access to EU countries of physical exports without tariff barriers). Other EU rules do not apply to the Bailiwick.

Economy

9. Guernsey uses the British pound, although it produces its own notes and coins. The notes and coins issued by the Bank of England or by Jersey authorised body, can be used in the Bailiwick.

10. Total GDP for 2013 in Guernsey was estimated at £2,186 million. Finance is the mainstay of the economy; of the approximately 31,000 people employed in the Island, around 6500 (21%) are employed in the finance sector itself, which at 37.3% is the largest contributor to GDP.

11. Non-Guernsey income (and Guernsey bank interest) accruing to trusts that have no Guernsey beneficiary is not subject to Guernsey income tax and there is a zero rate for corporate entities. There is no withholding tax on dividends paid, no capital gains tax, no death duties or inheritance taxes or VAT.

System of legal acts

12. Laws are the equivalent of a UK Act of Parliament or a French loi. A draft Law passed by the States can have no legal effect until formally approved by Her Majesty.

13. Ordinances (made by one or more of the Bailiwick parliaments) and Statutory instruments (regulations, orders or rules) are secondary legislation and do not require the approval of the Queen in Council; unless there is some provision to the contrary they come into effect once they have been approved by the States. Ordinances are of two categories - they are made either under the authority of an enabling Law or under inherent customary powers.

14. Some Laws or Ordinances give a States Department the power to make regulations, orders or rules which have the force of law. These are called Statutory Instruments. They deal with matters of detail relating to the operation of a Law (or Ordinance).

15. Decisions of the UK Supreme Court are not binding on Guernsey courts, but again insofar as the Guernsey courts follow English decisions on the common law, decisions of the UK Supreme Court carry considerable weight.

Transparency, good governance, ethics and measures against corruption

16. The UN Convention against Corruption is extended to Guernsey.

17. The Anti-Bribery and Corruption Committee was created in 2011 to reflect increased international focus in this area.

18. Guernsey has signed 57 Tax Information Exchange Agreements (TIEAs) to date including with 21 EU countries and 16 G20 countries.

19. To date Guernsey has signed 13 Double Taxation Agreements (DTAs) with the UK, Singapore, Malta, the Isle of Man, Jersey, Hong Kong, Monaco, Qatar, Luxembourg, Mauritius, Cyprus, Liechtenstein and the Seychelles.

1.2 General Situation of Money Laundering and Financing of Terrorism

Money laundering

20. The Bailiwick is an international finance centre with no significant acquisitive domestic criminality other than drug trafficking, as demonstrated by the crime statistics under Table 1. As indicated by the authorities, the principal money laundering risks to the jurisdiction concern the proceeds of foreign predicate offences and of domestic drug-related offences.

21. According to Guernsey authorities the provision of trust and company services and the private banking sector are considered to be the sectors with the greatest vulnerability to the laundering of foreign predicate offences because of the combination of: the cross border nature of the business; the geographical diversity of the customers; the perceived attractiveness of company and trust structures for money laundering purposes; the fact that wealth management structures with the use of trusts and companies in several jurisdictions can be more complex than business relationships in other sectors; the number and content of STRs; and the sectors covered by mutual legal assistance requests. Money laundering is most likely to occur in the form of

layering or integration to maximise investment performance and to spread risk in the same way as legitimate investors. An analysis of STRs and mutual legal assistance requests conducted by the authorities indicates that the most likely predicate offences to be involved in this type of laundering are fraud, including tax evasion, and corruption.

22. Domestic drug traffickers typically do not use sophisticated financial arrangements or structures. The community banking sector is considered to have the greatest vulnerability to the laundering of the proceeds of domestic drug trafficking, which commonly involves the placement of cash into current accounts by a series of small payments in an attempt to avoid arousing suspicion.

23. As reported by the authorities during the last few years there has been an increase in the number of STRs and mutual legal requests made in relation to online gambling. The risks associated with the regulated online gambling sector have been reviewed by the Alderney Gambling Control Commission (AGCC), and are considered to be low to medium.

24. A review of the grounds of suspicion for STRs for a period of 4 years indicated that the highest current trends for reporting were in relation to tax fraud, which constitutes 40% of the STRs filed.

25. Table 1 provides statistics on domestic predicate offences:

Table 1

	2010		2011		2012		2013		Jan – Jun 2014	
	Cases	**Persons**	**Cases**	**Persons**	**Cases**	**Persons**	**Cases**	**Persons**	**Cases**	**Persons**
Sexual exploitation, including sexual exploitation of children	1	1	9	9	1	1	5	5	1	8
Illicit trafficking in narcotic drugs and psychotropic substances	7	7	1	1	7	8	5	5	3	41
Illicit arms trafficking	-	-	1	1	-	-	-	-	-	-
Fraud	2	1	15	1	1	1	6	7	4	6
Counterfeiting and piracy of products	-	-	-	-	-	-	1	-	-	-
Murder, grievous bodily injury	8	6	7	9	5	6	1	1	2	2
Robbery or	6	8	1	1	2	2	-	-	1	1

theft										

26. Although the number of ML investigations, prosecutions and convictions increased during the period mentioned above, the overall level remains low and there is a discrepancy between the numbers of investigated ML cases and final convictions.

27. To date, there have been 4 convictions involving autonomous laundering, 2 related to proceeds of frauds committed abroad and 2 related to drug trafficking. This does not seem to be proportionate to the Guernsey's exposure to ML threats.

Financing of Terrorism

28. As at the last evaluation, there have been no identified cases of terrorist activity or terrorist financing within the Bailiwick.

29. Since 2010 14 STRs related to TF were reported to the Guernsey FIU. However the submitted STRs have not resulted in a case being opened or a notification being sent to law enforcement agencies. No international requests for assistance relating to terrorist financing have been recorded during the last four years. There have been no prosecutions or convictions in the period 2010-2014 related to TF.

30. The authorities consider the risk of TF to be low for the following reasons.

31. The Bailiwick comprises a number of politically stable small island communities with very low domestic crime rates and ethnically homogenous populations. It has no historical, geographical or business links to parts of the world that are considered to present a high risk of terrorist activity. Neither does it operate an independent foreign policy. There are no military or other installations such as major power stations that could be attractive for terrorist attacks. For these reasons the risk of the Bailiwick being a target for terrorist activity is extremely low.

32. However the size and structure of the financial sector in the Bailiwick might unavoidably attract funds of various sources including those that belong to designated persons or entities and thus there is a potential vulnerability to the terrorist financing threat despite the lack of concrete cases. The lack of intelligence received and freezing orders, however, appears to be consistent with the opinion of the local authorities that the risk of TF has always been and remained remarkably low in the Bailiwick which can also be demonstrated by the absence of any MLA requests and the low numbers of STRs in relation to terrorist financing in the last four years.

1.3 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBP)

Financial Sector

33. Guernsey has a mature legal and regulatory system, which has been enhanced over the years by the introduction of modern legislation covering all important aspects of the finance industry. Guernsey's tax neutrality, its long history of financial and political stability, good banking and professional infrastructure, GMT time zone and proximity to the UK and Europe, have ensured that Guernsey remains a leading international financial centre.

34. The finance sector itself, is the largest single contributor to GDP of the Bailiwick. It is generally considered that Guernsey has four distinct parts of its finance industry: Banking, Fiduciary, Insurance and Investment Funds. There are a multiplicity of variations within each sector with different business models, clients, and target markets. However those four sectors remain the core of Guernsey's financial services business.

35. While deposits taken by the banking sector have almost halved since its highest peak in 2008, the funds under management and administration by the collective investment fund sector has more than doubled during the same time period. The size of the fiduciary and insurance sector

has been largely stagnant during the past six years.

Table 2: Types of financial institutions in the Bailiwick as at December 31, 2014:

Type of institution and activities regulated for AML/CFT	Financial activities	Number regulated/ registered	Size of sector
Banks: Deposit taking and lending	Acceptance of deposits Lending Transfer of money Issuing and managing means of payment Financial guarantees and commitments Money and currency changing	31	Deposits – £83.7 billion
Insurers, insurance managers and insurance intermediaries:	Underwriting and placement of life insurance and other investment related insurance Underwriting and placement of non-life insurance	797 insurers[5] 20 insurance managers 46 insurance intermediaries	Gross assets – £23.66 billion Gross written premiums – £4.94 billion
Investment firms and funds	Individual and collective portfolio management, investment advice and broking Participating in securities issues and provision of services relating to such issues	622 licensed institutions 812 Guernsey collective investment schemes 1 stock exchange	Assets under management or administration in Guernsey funds – £220 billion[6] Gross assets under management with asset managers and stockbrokers - £80 billion
Registered non-regulated financial service businesses: Lending, financial leasing and other non- Core Principle activities	Non-bank lending and leasing Money and currency changing, transfer of money (see also MSB below) Issuing and managing means of payment Providing financial guarantees or commitments Trading in money market instruments, foreign exchange, exchange, interest rate or index instruments or negotiable instruments Participating in securities issues Providing advice on capital structures, industrial	36 5 4 7 1 4 Total	no figures available

[5] Including companies, PCCs (and cells) and ICCs (and cells).

[6] In addition at 31 December 2014 there were 236 non-Guernsey investment schemes with combined assets under management of £44bn, to which Guernsey investment firms provided management, administration or custody services

	strategy, mergers or purchase of undertakings Money broking and money changing Portfolio management services Safe custody services and safekeeping or administration of cash or liquid securities Accepting repayable funds, other than deposits Investing, administering or managing funds or money Dealing in bullion or postage stamps	1 53 2 1 9 5 7 1	
Money service businesses	Money and currency changing Transfer of money	27 (22 included in figures for banks and 5 included in registered non-regulated financial services businesses)	no figures available

Banks

36. There are no domestically owned banks in Guernsey – all Guernsey banks are subsidiaries or branches of banks from other jurisdictions. They represent a range of countries with concentrations of banks with head offices in the UK and Switzerland. Other banks are from for example Bahrain, Belgium, Bermuda, Canada, Cyprus, France, Germany, Netherlands, South Africa and the USA. The banking sector in Guernsey – as in the other Crown Dependencies – has materially reduced over the past 6 years, primarily due to higher liquidity requirements in home jurisdictions such as the UK against short term funding and due to globally low interest rates (which primarily affected the "fiduciary deposits" from Switzerland). Total deposits have almost halved from £157 billion at its highest peak in 2008 to £83.7 billion in 2014. There is no data available on their total assets under management (i.e. the total value of assets managed or administered for their customers and themselves). The GFSC authorities state that the assets managed by the Guernsey banking sector are included in the figure of the net asset value of total funds under management and administration (at almost £219.4 billion at the end of 2014) and the gross assets under management in the area of asset management and stockbroking (£79.5 billion). The financial crisis has accelerated a shift from retail deposit-taking towards private banking for high net worth individuals and tax-neutral services to international companies.

Table 3

Banks	***No***	***Percentage of total***	***Deposits in £ millions***	***Financial Activity***	***AML/CFT and Prudential Supervisor***
International Private Banks	23	82.2%	66,274	Take deposits from high net worth individuals, trust and fiduciary companies and the liquid uninvested balances of fund administration companies	***GFSC***
Community Banks	7	16.8%	13,618	Provide current accounts, overdrafts, saving deposits, mortgages and term lending to Guernsey residents and local	

				businesses.	
Deposit takers	1	1.0%	776	Raise funding from retail savers and institutional customers with liquid funds and as well as gather deposits from expatriate savers around the world.	
Total	**31**	**100%**	**80,668**		

37. There are 23 international private banks that take deposits from high net worth individuals, trust and fiduciary companies and the liquid uninvested balances of fund administration companies. These international private banks account for approximately 82% of all deposits with Guernsey banks. They also provide treasury services (specialised money market and foreign exchange services) as well as custody services (asset management has been a mainstay of Guernsey's banking sector). These services are provided to all other financial services sectors on the Island (Fiduciary, Insurance and Investment Funds).

38. The banking sector is liability driven and not a big credit centre. Nevertheless, the Bailiwick is a major supplier of liquidity to other parts of groups – this is sometimes described as up streaming. Lending is primarily Lombard lending secured against securities portfolios, cash backed lending or secured property lending. There is no proprietary trading and position taking. Hence, there are only very small dealing rooms, catering for private client instructions and employment of group liquidity portfolios.

39. There are also 7 community banks (principally U.K. clearing banks), which provide current accounts, overdrafts, saving deposits, mortgages and term lending to Bailiwick residents and local businesses. Another deposit-taking bank raises funding from retail savers and institutional customers with liquid funds and gathers deposits from expatriate savers around the world.

Insurance Sector

Table 4

Insurance Business	***No***	***Financial Activity***	***AML/CFT and Prudential Supervisor***
International Insurance Business	344 (including 69 PCCs[7] and 7 ICCs)	Writing captive and commercial insurance, or international life and employee benefits.	***GFSC***
Domestic Insurance Business	8	Writing local insurance risks. Writing business within an EU Member State.[8]	
Insurance Intermediaries (insurance brokers and insurance agents)	39	Advising others on their insurance requirements for direct or indirect reward.	
Total	**391**		

40. The majority of the international insurance companies have been established by UK based groups but 135 were established by non-UK based groups from a wide range of jurisdictions.

7 These PCCs comprised 414 cells.

8 Insurers who have a physical presence in the Bailiwick (owing to the existence of a branch office or through the presence of insurance agents in the Bailiwick).

41. The Bailiwick is the leading captive insurance domicile in Europe in terms of numbers of captives and is fourth in the world based on premiums, with premium written in excess of $5bn. The primary purpose of a captive is to insure the exposures of the parent company and its subsidiaries. Such captives are known as pure captives and these account for the majority of the Bailiwick's captive market. There are also a number of small commercial insurers writing niche general insurance products for the international market (predominantly the UK).

42. Specialist insurance management companies manage most of the international insurers. The GFSC requires such insurance managers to be licensed.

43. As at 31 December 2013, of the 344 licensed international insurers there were 36 life and employee benefits insurers, including 8 PCCs and 12 ICCs licensed in respect of life business, operating in the Bailiwick. These provide insurance for non-residents, for example expatriate workers in overseas territories, many of them on short-term assignments, which mean that their careers might embrace employment in several overseas countries. The main products offered in the Bailiwick include pensions, group life and other group employee benefit plans for companies and single premium and other portfolio bonds.

Investment Sector

44. The most important sub-sector of the investment sector is the collective investment funds business, which has been the driver of significant growth in the Guernsey finance industry over the past decade. Guernsey is now the largest fund domicile in the Crown Dependencies. As the end of 2014, the total value of funds under management stood at almost £219.4 billion

45. The geographical spread of clients is diverse. In the collective investment fund sector, the trend over the past decade has been towards establishing funds for high net worth individuals and institutions. Guernsey is one of the most important fund domiciles for private equity, which accounts for about £80bn of funds business. Other asset classes include funds of hedge funds as well as property and infrastructure.

46. The majority of funds both by number and value are closed-ended funds[9] (636 closed-ended investment schemes (of which 66 were umbrella schemes resulting in a total of 1234 pools of assets). A Guernsey closed-ended fund is not required to appoint a local custodian or a local manager or adviser. Unlike a closed-ended fund, every open-ended fund generally must appoint a Guernsey licensed custodian to hold its assets on trust. Both open-ended and closed-ended funds are required to appoint a locally licensed administrator.

47. Amongst the open-ended schemes, so-called "Class B" schemes have proved to be the most popular because of their flexibility, and are utilised for various purposes, including hedge funds. The rules that govern Class B schemes are designed to be relatively flexible, with reliance placed on disclosure. The GFSC may derogate from any of the requirements of the Class B scheme rules if satisfied that investor protection will not be compromised.

48. The POI Law further distinguishes between two categories of Guernsey fund: authorised collective investment schemes; and registered collective investment schemes. Both open-ended and closed-ended funds may be either authorised or registered schemes under the POI Law and funds may take the form of companies, limited partnerships, unit trusts or other entities. The most significant advantage that registered schemes have over authorised schemes is the fast-track three day approval process for the fund. There are no restrictions on who can invest in a registered fund and they are unlikely to be used as retail funds.

[9] Guernsey makes a fundamental distinction between open-ended funds and closed-ended funds. Open ended collective investment schemes are investment vehicles which offer for sale without limitation, or have outstanding securities which investors are entitled to redeem on demand, subject to any applicable notice period. A closed ended investment scheme is a scheme under which the investors are not entitled under the terms of the scheme to have their units redeemed or repurchased by, or out of funds provided by the scheme, or to sell their units on an investment exchange, at a price related to the value of the property to which they relate.

49. Authorised funds remain subject to the lengthier, traditional approval process. The relevant rules are not prescriptive concerning the features of the fund (for example, in relation to investment powers) but require full disclosure of all material matters and ongoing notification of specific events.

Table 5

Type (as of 31 December 2014)	Total number of investment schemes	Total pools of assets (including cells of umbrellas schemes[10])	Registered holders of shares/units/ partnership interests	Gross asset values (bn)
Total of open-ended schemes	176	1293	128,514	£39,7 bn
of which authorised schemes	164			
of which registered schemes	12			
of which qualified investor funds[11]	32			
Total of closed-ended schemes	636	1234	84,803	£135,8 bn
of which authorised schemes	435			
of which registered schemes	201			
of which qualified investor funds[3]	151			
Total of Non-Guernsey schemes	236	573	84,780	£44,6 bn
of which qualified investor funds	28			

50. Other activities provided by the investment sector include discretionary and non-discretionary asset management, stock broking, investment advice as well as investment performance monitoring. Clients of these licensees include local residents, overseas residents and local and overseas institutions and professional firms.

Non-Regulated Financial Services Businesses

51. The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 and the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (Amendment) Ordinance, 2008 came into force on 30 July 2008.

52. The law creates a public register of non-regulated financial services businesses. Applications for registration must be made to the GFSC, which will maintain the register on its website. The law states that, except in circumstances where the GFSC has notice of any grounds upon which it could refuse an application for, or revoke, registration of a financial services business, the

[10] Protected cell companies are used extensively in collective investment schemes structures with nearly all umbrella or multi-class corporate structures being established as such. Legal set up costs can be saved if a PCC is used because adding a cell to an existing PCC is more cost effective than forming a new legal entity. There might also be reduced operating costs because the company secretary, board of Directors and audit fees are shared across the PCC rather than having separate boards and company secretaries each time.

[11] The QIF approval process is only available to qualifying investors who are professional investors, experienced investors and/or knowledgeable employees. An individual investor investing US$100,000 or more is automatically deemed to be a qualifying investor.

GFSC has no obligation to make any enquiries concerning an application for registration or the continued registration of any non-regulated financial services business.

53. Non-regulated financial services businesses are mainly providing lending, financial leasing, financial guarantees or commitments, participating in securities issues and related financial services and other non-Core Principle activities (see table 2 for further details).

54. Non-regulated financial services businesses are also permitted to provide money or value transmission services as well as currency exchange (bureau de change) and cheque cashing (see following paragraph).

Independent Money Service Sector

55. The independent (i.e. non-bank) money services sector in Guernsey is small. There is only one substantial bureau de change and wire transfer provider outside the banking sector. In all there are only five independent money service providers. Some hotels offer limited exchange services and fall within the exemption for registration. Other than through banks, money transmission services are provided by three agents of MoneyGram. The large independent provider offers MoneyGram and Cash2Account services. Outbound transmissions dominate, with a major portion of the business being remittances to Latvia, Poland and Madeira by nationals of those jurisdictions working in the Guernsey hospitality and building sectors.

56. The above-mentioned 5 firms are registered and supervised for AML/CFT purposes by the GFSC under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law.

Designated Non-Financial Businesses and Professions (DNFBP)

57. All the categories of DNFBPs determined as such in the FATF Recommendations are covered under the Bailiwick legislation. On the one hand, the Bailiwick DNFBP sector consists of trust and company service providers (TCSP) which are considered as financial services businesses and therefore subject to the Financial Services Businesses Regulations and Handbook. On the other hand, the DNFBP sector comprises entities referred to as prescribed businesses under the Bailiwick legislation which are listed in the Table 6. These sectors play an important role in the Guernsey economy. The fiduciary sector is a key driver of business flows into the Guernsey economy. Fiduciary business provides on-going benefits to all other sectors in the finance industry, creating demand for banking and investment advisory services. Lawyers and accountants provide support services to these activities. Guernsey has also taken a leadership role in the emerging eCasinos sector.

Table 6: Number of DNFBPs operating in Guernsey

Type of DNFBP	***No***	***Type of Activity***	***AML/CFT Supervisor***
Trust and Company Service Providers	191 (full and personal fiduciaries)	• Trust and foundation formation, management and administration; • Company and partnership formation, management and administration; • The provision of company directors and foundation officials and; • The provision of executorship services.	**GFSC**
Legal Professionals	22	• The business of lawyer, notary or other independent legal professional, when they prepare for or carry out transactions for a client in relation to the following activities: • The acquisition or disposal of an interest in or in respect of real property;	**GFSC**

		• the management of client money, securities or other assets; • The management of bank, savings or securities accounts; • The organisation of contributions for the creation, operation, management or administration of companies; or • The creation, operation, management or administration of legal persons or arrangements, and the acquisition or disposal of business entities.	
Accountants	58	• Business of auditor; • External accountant; • Insolvency practitioner or tax adviser.	**GFSC**
Real Estate Agents	29	• Acting, in the course of a business, on behalf of others in the acquisition or disposal of real property or any interest therein for the purpose of or with a view to effecting the introduction to the client of a third person who wishes to acquire or (as the case may be) dispose of such an interest; and after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or (as the case may be) the acquisition of that interest.	**GFSC**
Dealers in Precious Metals and Precious Stones	**1 (bullion dealer)**	• Buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion or buying or selling postage stamps.	**GFSC**
e-Casinos	**38**	• The Category 1 eGambling licence - offering gambling, traditional bookmaking and betting exchanges as well as traditional casino games, bingo networks and poker rooms. • The Category 2 eGambling licence -providing approved games to customers, and effecting gambling transactions on behalf of the Category 1 eGambling licence, including 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.	**AGCC**

Trust and Company Service providers

58. Guernsey was one of the first jurisdictions to introduce a licensing and supervision system in relation to trust and company service providers. The fiduciary services provided by this sector principally relate to trust and foundation formation, management and administration, company and partnership formation, management and administration, the provision of company directors and foundation officials and, to a much lesser degree, the provision of executorship services.

59. The firms providing fiduciary services in the Bailiwick are varied and range from the bank and institutionally owned trust companies to a number of independently owned trust companies. There were 151 full fiduciaries and 37 personal fiduciaries on 31 December 2014 licensed by the GFSC under the Regulation of Fiduciaries Law. Full fiduciary licences are available to companies and partnerships. A personal fiduciary licence can be held by an individual and is restricted to acting as a director, trustee (except acting as a sole trustee), protector, or as executor or administrator of estates. The settlors and beneficiaries of trusts and the beneficial owners of companies come from all over the world.

60. Trusts remain the core offering of the fiduciary sector. Succession and inheritance planning, often aimed at sidestepping forced heirship rules, is the most common reason for using

Guernsey trusts according to industry representatives, followed by asset protection. More recently foundations have been introduced as a new offering. As with trusts they are marketed for inheritance and tax planning, asset protection, philanthropy and investment fund structuring.

61. The following Table 7 provides an estimate of the originating geographical location of the fiduciary licensee's client base as a percentage of the licensee's total fiduciary turnover 2014 (based on annual reports submitted by the fiduciary sector). The GFSC maintains data on the value of assets under trusteeship and management by TCSPs. However, because of the wide range of types of assets (from easy to value cash and liquid assets, through to private company shares, commercial and private real estate, art, antiques and vehicles where the value fluctuates), in the authorities' view it is not possible to provide a meaningful overall figure.

Table 7

UK	37,2%
Europe	20,7%
Local	17,9%
Middle East	5,3%
South Africa	4,1%
USA	3,2%
Russia	2,9%
Asia	2,4%
Africa	1,6%
Australia and New Zealand	0,7%
Canada	0,5%
South America	0,5%
Bermuda, Caribbean and Latin America	0,4%
China	0,3%

Source – Fiduciary Annual Return as at 30th June 2014

Legal Professionals

62. Lawyers are regulated for AML/CFT purposes under the PB Regulations made under the Proceeds of Crime Law. Advocates of the Royal Court—are the only lawyers with general rights of audience in their courts. Guernsey law firms offer a variety of legal services, including litigation, corporate and commercial law, real estate law, will and estate planning, and representation before the courts in criminal and civil cases. Some law firms are also licensed fiduciaries and carry out trust and company services.

63. Guernsey advocates are the only people eligible to qualify as notaries. The position of notary in Guernsey is a very different position from that of notaries in civil law jurisdictions. Guernsey notaries do not prepare transaction documents or contracts, assist with contracts for the sale of land or manage conveyancing of real or personal property. The Guernsey notary therefore does not ever take in, collect, transfer or administer any client money, administer transactions or give legal advice or opinions. In essence, the main function of the notary in Guernsey is physically to authenticate documents and certify matters of fact.

64. There are no notaries registered with the GFSC as their activities do not fall within the requirements of the PB Regulations (i.e. the duties undertaken by notaries do not fall within the FATF's definition of DNFBPs). In all cases where a notary does not already know the person making an oath or signing a document he must satisfy himself as to the identity of that person. Identification is carried out by the presentation of that person's passport when attending the notary's office and the passport number recorded, often in the document which is being signed or sworn and usually with a statement as to the method of identification in the fee note. A

notary will rarely conduct work for private clients; most work is generated by persons or regulated financial services businesses known to the notary.

Accountants

65. The audit and accountancy sector is regulated for AML/CFT purposes under the PB Regulations made under the Proceeds of Crime Law. This includes work carried out by external accountants, tax advisors, auditors and insolvency.

66. Some of the audit and accountancy firms in Guernsey carry out the activities detailed in the FATF standards but a large majority do not undertake these activities, which is the reason for the comparatively small number of registrations with the GFSC. The majority of firms do not handle client monies or assets and are also not involved in any facilitation or arrangements involving their clients.

Real Estate Agent

67. The real estate market is controlled as follows: the controls work by splitting the Island's housing stock into two categories Open Market and Local Market; and the Housing Control Law governs which housing is Open Market. All Open Market housing is listed in the Housing Register. There are no controls on who can buy or own property in Guernsey, but there are controls on who can live in the Island's Local Market housing. Person not qualified as Resident or the holder of the right type of housing license (or an immediate family member of one of these), will be able to buy a Local Market property but will not be able to live in it.

68. Only the larger firms are significantly involved in open market property sales and commercial business. All Open Market housing is listed in the Housing Register, and the Housing Register can be searched on-line. Any housing not listed in the Housing Register is Local Market.

69. The Real Property (Transfer Tax, Charging and Related Provisions) (Sark) Law, 2007 (the Real Property Sark Law) requires that relevant property transactions of an ownership interest in real property and a long leasehold interest (of 20 years or more) in real property be recorded in writing and that the document recording the transaction be registered by the Court. The property register is maintained in the Sark Greffe Office. Property transactions that are not classed as relevant property transactions have no statutory requirement to be placed before the Court or registered in the island records. The way in which sales take place in Sark is not governed by any legislation; sales are normally made by private treaty although there is nothing to prevent sales by auction or by share transfer. Estate agents and advocates do not have to attend the Court.

Dealers in Precious Metals and Precious Stones

70. Dealers in precious metals and stones other than bullion dealers are prohibited from conducting cash transactions above £10,000. Bullion dealers are considered as financial institutions and are therefore subject to the FSB Regulations and Handbook.

Casinos

71. There are no land-based casinos. Land-based casinos are prevented from being established in Guernsey under the Hotel Casino Concession (Guernsey) Law, where it is illegal to operate a casino unless a concession for a hotel and casino has been granted by the States of Guernsey. The general prohibition against gambling under the Gambling (Alderney) Law and the Gambling (Sark) Law prevents casinos from being established in those islands.

72. Alderney e-casinos are permitted under the Alderney eGambling Ordinance, 2009 and eCasinos are permitted to locate their equipment in Guernsey under the eGambling (Operations in Guernsey) Ordinance. The AGCC is responsible for the regulation of eCasinos.

73. There are two categories of eGambling licence in Alderney's online gambling sector: The Category 1 eGambling licence enables the holder to conduct operations associated with the

organising or promoting of eGambling transactions, including customer registration, the management of customer funds and offering gambling. The types of gambling offered by Category 1 eGambling licensees include both traditional bookmaking and betting exchanges as well as traditional casino games, bingo networks and poker rooms. Only Category 1 eGambling licensees are eCasinos. The Category 2 eGambling licensee or certificate holder acts as the gaming platform provider, providing approved games to customers, and effecting gambling transactions on behalf of the Category 1 eGambling licence. 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.

74. As at the end of the fourth quarter of 2013, combined net profits in the online gambling sector were £30.1 million. The total number of active players (defined as a registered customer who has logged in to their account within the preceding 12 months) registered with eCasinos was approximately three million, with approximately 1.7 million being registered with the five largest eCasinos. In 2013, the number of active players registered with any one eCasino ranged from 1,000 to 500,000 active players.

1.4 Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements

75. As no major changes have been reported, the reader is referred to pages 38 to 40 of the IMF report (paragraphs 88-99) for more detail on this topic.

76. In January 2013 the Foundations Law came into force and introduced a statutory framework for the establishment and operation of foundations in Guernsey, which have legal personality. The legislation provides for the creation of a Registrar of Foundations and that office is held by the Guernsey Registrar of Companies.

77. The Limited Liability Partnerships Law came into force in May 2014. It provides that limited liability partnerships (LLP) are bodies corporate with legal personality separate from that of their members. The legislation provides for the creation of a Registrar of LLPs and that office is held by the Guernsey Registrar of Companies.

78. The legal persons that may be formed in the Bailiwick are listed in the following chart:

		Guernsey companies	Alderney companies	Limited partnerships with legal personality (Guernsey only)	LLPs (Guernsey only)	Foundations (Guernsey only)
	Number as of end 2014	17'952	434	400	12	22
A	Registration mandatory	yes	yes	yes	yes	yes
B	TCSP mandatory after incorporation[12]	no	no	no	no	yes
C	Resident agent mandatory	yes	yes	no	yes	yes[13]

79. Guernsey companies can be established as cell companies (protected cell companies (PCC) or incorporated cell companies (ICC)). As at January 2015, out of the total of 17,894 companies 431 are cellular companies, of which 161 are incorporated cell companies with a total of 253

[12] In those situations where persons are involved in the formation, management or administration of these legal persons by way of business, these persons must be licensed and supervised by the GFSC pursuant to the Regulation of Fiduciaries Law and must also comply with the AML/CFT requirements (see analysis under R. 33 for details);

[13] Unless foundation officials are Guernsey licensed fiduciaries or authorised persons.

incorporated cells. The 270 protected cell companies account for a total of 1822 protected cells. 49% of these PCCs and 60% of these ICCs are either licensed insurers or Guernsey regulated funds. The remaining 51% of PCCs and 40% of ICCs are administered by TCSPs and are often used as vehicles to hold pensions or for multiple property developments.

80. As illustrated in the table above, all Guernsey companies, limited partnerships, LLPs and foundations must be registered at the Guernsey Registry. All Alderney companies must be registered at the Alderney Registry.

81. As a result of amendments to the Companies (Alderney) Law which came into force in January 2013, all Alderney companies (other than listed companies, closed or open ended investment companies or their subsidiaries) are obliged to appoint a resident agent. Only limited partnerships with legal personality are still not required to have a resident agent.

82. The measures to prevent the unlawful use of legal persons in relation to money laundering and terrorist financing and the access by competent authorities to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons is analysed under Recommendation 33.

83. At the time of the assessment about 18,000 companies were registered in Guernsey.

84. Trusts, limited partnerships without legal personality and general partnerships are the only legal arrangements that can be created under the law of Guernsey, and there is no equivalent legislation in Alderney or Sark.

Table 8

		Trusts (Guernsey only)	Limited Partnerships without legal personality (Guernsey only	General partnerships (Guernsey only)
	Current number	not known	1229	not known
A	Registration mandatory	no	yes	No
B	TCSP mandatory after incorporation[14]	no	no	No
C	Resident agent mandatory	no	no	No

85. The measures to prevent the unlawful use of trusts and other legal arrangements in relation to money laundering and terrorist financing and the access by competent authorities to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal arrangements, and in particular the settlor, the trustee, and the beneficiaries of express trusts is analysed under Recommendation 34.

Non-profit organisations

86. At the time of the last evaluation, the only regime to govern this area was under the Charities and NPOs Registration Law[15] the requirements of which only covered NPOs (that is to say, the more significant and non-manumitted NPOs) in the island of Guernsey, Herm and Jethou. In 2011 the same legislation was amended to extend the registration obligations to NPOs located in the island of Alderney as well[16]. Since then the Guernsey and Alderney Registrar of NPOs has

[14] In those situations where persons are involved in the formation, management or administration of these legal arrangements by way of business, these persons must be licensed and supervised by the GFSC pursuant to the Regulation of Fiduciaries Law and must also comply with the AML/CFT (see analysis under R. 34 for details);

[15] Charities and Non Profit Organizations (Registration) (Guernsey) Law, 2008

[16] Charities and Non Profit Organisations (Registration) (Guernsey and Alderney) (Amendment) Law, 2010

administered the legal framework in relation to both islands. With effect from 30 June 2014, the office of Guernsey and Alderney Registrar of NPOs was transferred from the Director of Income Tax to the Guernsey Registrar of Companies. As for the island of Sark, a similar regime for NPOs was introduced in 2010 by the Sark Charities and NPOs Registration Law[17] and this regime is administered by the Sark Registrar of NPOs.

87. Under both the Guernsey-Alderney and the Sark regimes, the NPOs are defined by the aforementioned Laws as including charities and any other organisation established solely or principally for a non-financial benefit for social, fraternal, educational, cultural or religious purposes or for the carrying out of any other types of good works.

88. Guernsey and Alderney legislation on NPOs provides an exemption from the requirement to register for any charity or NPO where gross annual income is less than £5,000 or whose gross assets and funds are less than £10,000.

89. In Sark, all NPOs are required to be registered.

90. Manumitted NPOs, that is, Guernsey or Alderney organizations administered, controlled or operated by a professional trustee licensed by the GFSC under its regulatory legislation whose dealings with the NPO are carried out in the course of his regulated activities and is subject to the full requirements of the regulatory and AML/CFT frameworks, are generally exempted from the registration requirements.

1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

91. The strategy which was in place in 2010 for addressing money laundering and terrorist financing was set out in a document entitled "Bailiwick of Guernsey Financial Crime Strategy". It identified seven strategic imperatives, as follows:

1. to build knowledge and understanding about the cause and effects of financial crime on the economy of Guernsey;
2. to increase the amount of criminal proceeds recovered and increase the proportion of cases in which they are pursued;
3. to make innovative use of the criminal and civil forfeiture legislation;
4. to continue to collaborate with international partners to ensure together the effective prosecution of those responsible for financial crimes and/or recover the proceeds using criminal or civil law;
5. to build upon the risk assessment culture which identifies the threats and vulnerabilities posed by financial crime.
6. to maintain an appropriate overarching strategy to counter financial crime, involving all partners, which enable sustained confidence and growth in Guernsey's economic future; and
7. to support inter-agency working and value the contribution of partners concerned with mitigating the impact of financial crime within the Bailiwick.

92. Work is under way to create an updated strategy which will address additional areas of concern such as proliferation financing and place greater emphasis on measuring outcomes by including key performance indicators. This work, which began after the publication of the new FATF Methodology in 2013, is at an advanced stage. Initially, the intention was to create the strategy around five pillars for dealing with financial crime, namely risk, legislation, prevention, repression and cooperation. This approach was revised in 2014 in order to make it easier to incorporate the outcomes for an effective AML/CFT framework in the FATF methodology directly into the strategy.

[17] Charities and Non Profit Organisations (Registration) (Sark) Law, 2010

93. The implementation of AML/CFT policy and systems are reviewed at a jurisdiction-wide level by the Advisory Committee and the committees and working groups that report to it. In addition, individual authorities review particular aspects for which they are responsible.

94. A development in the setting and monitoring of AML/CFT policy objectives since the last evaluation is the increasingly active participation of government, and specifically the States of Guernsey Policy Council.

AML/CFT committees

95. The formal committee structure is headed by the AML/CFT Advisory Committee, which is made up of senior representatives of the different authorities and has a high-level, strategic role. Below it are a number of smaller committees and working groups which report to the Advisory Committee. Some of these were in place at the last evaluation, but others such as the Sanctions Committee and the Anti–Bribery and Corruption Committee have been created since then to ensure that the Bailiwick has a properly coordinated response to emerging areas of particular international concern. Whilst the smaller committees are essentially specialist bodies with distinct areas of responsibility, there is overlap in terms of membership and matters under consideration which facilitates a consistent approach across the jurisdiction.

96. As well as committees that involve all of the AML/CFT authorities, there are structures in place which involve only some of them in areas where there is a shared responsibility.

97. At a policy level, overall cooperation and coordination is achieved through the Bailiwick AML/CFT Advisory Committee. It is chaired by the Attorney General and its other members are the Director of Financial Crime Policy and International Regulatory Adviser to the Policy Council, the Director General of the GFSC, the Head of Law Enforcement, the Executive Director of the AGCC, the Director of Income Tax, the Guernsey and Alderney Registrar of NPOs (also present in his capacity as the Guernsey Registrar of Companies), the Sark Registrar of NPOs and the Alderney Company Registrar. Most of these representatives are supported at meetings by key members of their respective senior personnel.

98. As indicated above, a number of other committees and working groups report directly to the AML/CFT Advisory Committee. These are the Financial Crime Working Group, the Sanctions Committee and the Anti-Bribery & Corruption Committee. The Sanctions Committee also reports to the Policy Council. The Financial Crime Working Group has responsibility for sharing and discussing appropriate tactical and operational information, ensuring that collective effort is joined up; identifying financial crime risks to the Bailiwick, together with the Bailiwick's exposure to those risks; identifying and where possible resolving impediments to addressing financial crime risk at the tactical and operational levels. It is chaired by the head of the GBA FI Unit and its other members are representatives from law enforcement, the Attorney General's Chambers, the GFSC and Income Tax. The group discusses current issues and cases, trends, and mutual co-operation and the identification of money laundering risks within the Bailiwick. Terrorist financing issues are also discussed as necessary. Representatives from other bodies whose responsibilities relate to AML/CFT issues such as the AGCC are invited to attend meetings of the Financial Crime Group, and the Terrorist Financing Team within it, when issues relevant to their areas of responsibility are to be discussed.

99. The Sanctions Committee is chaired by the Director of Financial Crime Policy and International Regulatory Adviser to the Policy Council. Its other members comprise an additional Policy Council official and representatives from GBA, the Attorney General's Chambers, the GFSC and the AGCC. Its objectives are to coordinate compliance with the UN sanctions and other relevant sanctions issued by supranational or international bodies, and to ensure effective compliance with UN and other relevant sanctions.

100. The Anti-Bribery and Corruption Committee is chaired by the head of the Guernsey Border Agency Financial Investigation Unit (GBA FI Unit). Its other members comprise additional representatives from the GBA, together with representatives from the Policy Council, the

Attorney General's Chambers and the GFSC. Its objectives are to oversee and coordinate compliance with relevant anti-bribery and corruption standards or recommendations issued or recommended by supranational or international bodies or, where appropriate, by governments or committees in the British Isles, and to ensure effective compliance with relevant anti-bribery and corruption standards and measures. It aims to achieve its objectives in a similar way to the sanctions committee, namely by actively assessing the threats and risks of bribery and corruption to the Bailiwick, monitoring international developments regarding bribery and corruption, ensuring an effective response to anti-bribery and corruption standards and recommendations issued by the UN, other relevant supranational and international bodies and, where appropriate, by governments or committees in the British Isles, and ensuring that information relating to anti-bribery and corruption which has effect is widely available to the public and that persons required to comply with the legislation are made aware of it.

101. In addition, there is also a working group in place to deal with changes to the NPO regime. It is chaired by Guernsey and Alderney Registrar of NPOs and its other members are the Sark Registrar and representatives from the Policy Council, the GBA, the Attorney General's Chambers and the GFSC.

b. The institutional framework for combating money laundering and terrorist financing

102. The institutional framework remains broadly as it was at the time of the last evaluation. The reader is referred to paragraphs 108 to 122 of the IMF report for more detail on this topic.

103. The following are the main bodies and authorities involved in combating money laundering or financing of terrorism on the financial side:

Political/Policy level

104. Overall political responsibility for the AML/CFT framework remains with the States of Guernsey Policy Council. It has overall political responsibility for the Bailiwick's AML/CFT strategy, with the assistance and advice of the Advisory Committee.

The Public Prosecution Service

105. There are two Law Officers of the Crown in the Bailiwick of Guernsey. They are appointed by the Crown. The senior Law Officer is Her Majesty's Procureur (Attorney General) and the junior Law Officer, Her Majesty's Comptroller (Solicitor General).

106. All prosecutions are brought in the name of the Law Officers of the Crown, on behalf of the Crown, and the Law Officers (the Attorney General and the Solicitor General). The Attorney General is designated authority for dealing with the requests for MLA.

Criminal justice/operational level

107. The GBA and the Guernsey Police now have a single Chief Officer and the Police Commercial Fraud team has relocated to the GBA's Financial Investigation Unit. The Police Commercial Fraud Department (PCFD) is responsible for investigations in respect of domestic financial crime. When the investigation uncovers criminal proceeds, they may deal with the money laundering angle and consider laying additional charges.

Judiciary

108. The judicature of the island of Guernsey is divided into three parts, namely, the Magistrate's Court (which has limited jurisdiction), the Royal Court (which has unlimited criminal jurisdiction) and the Guernsey Court of Appeal. In Alderney, there is the Court of Alderney and in Sark the Court of the Seneschal. They have limited jurisdiction. More serious cases from these islands are tried in the Royal Court of Guernsey. Appeals lie from Alderney and Sark cases to the Royal Court of Guernsey.

Financial Intelligence Unit (FIU)

109. The Financial Intelligence Service (FIS), which is jointly staffed by Guernsey Police and Guernsey Border Agency (GBA) staff is the central point of contact for the reporting of all STRs, receiving, (and as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information:

i. Concerning suspected proceeds of crime and potential financing of terrorism, or

ii. Required by national legislation or regulation, in order to combat money laundering and terrorism financing.

GFSC

110. Day to day responsibility for the regulation of the finance sector rests with the GFSC.

111. In November 2012, the GFSC created the Anti-Money Laundering Unit (the AML Unit). In mid-2013, the GFSC underwent a further restructuring. This included the transformation in July 2013 of the AML Unit into the Financial Crime and Authorisations Division. In June 2014, the Division was formally designated as a Supervision and Policy Division of the GFSC, renamed and assumed responsibility for the AML/CFT supervision of prescribed businesses.

112. A dedicated Enforcement Division was created in the summer of 2013. The Division commenced its work in earnest at the beginning of September 2013.

113. The GFSC conducts AML/CFT supervision and regulation of DNFBPs, except for e-casinos.

AGCC

114. E-Casinos are regulated and supervised by the AGCC.

Registrars

115. The Companies Registrar in Guernsey is responsible for the registry of Guernsey companies. In Alderney, this function is performed by HM Greffier (senior court clerk).

116. A Registrar of NPOs for Sark was appointed following the introduction of the Sark Charities and Non Profit Organisations Registration Law in 2010. The office of Registrar of NPOs for Guernsey and Alderney was transferred from the Director of Income Tax to the Guernsey Registrar of Companies with effect from 30 June 2014.

c. The approach concerning risk

117. Work at a collective level has been informed since the summer of 2013 by collating and analysing statistics from the aspects of the AML/CFT framework. In addition, the risks presented by NPOs are under consideration by the NPOs working group and a separate risk assessment of legal persons and legal arrangements is being done as part of an assessment of the wider issue of beneficial ownership information.

118. Although at the time of the on-site visit no national risk assessment was conducted, the authorities provided the assessment team with an updated version of the 2010 risk assessment which includes information on NPOs and legal persons and legal arrangements, and a document comprising the reviews that have been taken of the effectiveness of mitigating measures.

119. The GFSC does not differentiate between prudential regulation and AML/CFT regulation, as AML/CFT is viewed as part of the approach to risk management, corporate governance and internal controls by each business. The GFSC adopts a risk-based approach in the exercise of its supervisory functions. The risk based-approach is applied to the GFSC's authorisation process, its ongoing supervisory activities, its on-site inspections and the Handbooks, Codes and Guidance that it has issued.

120. As part of the focus on risk, the trust and company service provider and banking sectors (as well as other financial service businesses) received a letter from the GFSC's Director of Financial Crime Supervision and Policy Division with additional guidance in relation to

understanding and mitigating risk. This supplements changes to the GFSC's Handbooks in 2013.

121. As advised by the authorities all businesses that are assessed as high impact are visited approximately once every 12 months.

122. As advised by the authorities all eCasinos are subject to at least one annual on-site inspection where compliance with all AML/CFT issues is assessed. All eCasinos considered as high risk for AML/CFT purposes by the AGCC are inspected on-site twice at a minimum every year.

d. Progress since the last mutual evaluation

123. In 2011 new legislation was adopted giving direct effect in Guernsey law to designations made by the European Union (EU) under Regulations that implement United Nations Security Council Resolutions (UNSCRs) 1267 and 1373. The Charities and Non Profit (Registration) (Sark) (Amendment) Ordinance, 2011 introduced administrative penalties which can be imposed by the Sark Registrar in relation to Sark charities and non-profit organisations (NPO) identical to those for charities and NPOs in the islands of Guernsey and Alderney.

124. In November 2012, GFSC created a dedicated unit responsible for conducting AML/CFT enforcement.

125. As described above 2 new committees were created, the Anti-Bribery and Corruption Committee and the Sanctions Committee.

126. In January 2013 the Companies (Alderney) (Amendment) Law and the Foundations (Guernsey) Law 2012 came into force. The first law introduced a requirement for Alderney companies (subject to limited exemptions for listed companies and collective investment funds) to have a resident agent who is either an individual resident in Alderney, or a corporate service provider licensed by the GFSC. The second established a statutory framework for the establishment and operation of foundations in Guernsey. The Limited Liability Partnerships Law came into force and established a statutory framework for the creation and operation of LLPs in the island of Guernsey.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1)

2.1.1 Description and analysis

Recommendation 1 (rated LC in the IMF report)

Summary of 2011 factors underlying the rating

127. The IMF Detailed assessment report criticised the effective application of the ML provisions given the size of the Bailiwick's financial sector and its status as an international financial centre.

Legal Framework

128. As at the time of the previous evaluation, the ML offence is criminalised by three different pieces of legislation, namely, the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999 (POCL) the Drug Trafficking (Bailiwick of Guernsey) Law 2000 (DTL) and the Terrorism and Crime (Bailiwick of Guernsey) Law 2002 (TL) which equally apply to the whole Bailiwick. The scope of the different ML offences regarding the respective predicate crimes has not changed since the previous assessment.

129. The ML offences in the POCL cover the concealing or transferring of, assisting another person to retain as well as the acquisition, possession or use of the proceeds of "criminal conduct". "Criminal conduct" as discussed below, refers to all indictable offences and hence the provisions of the POCL practically covers ML related to all potential predicate crimes, except for drug trafficking offences as provided in the DTL and elsewhere. The proceeds of drug trafficking are specifically provided for by equivalent ML offences in the DTL and there is a specific ML offence under the TL in respect of terrorist property including the proceeds of FT and other acts of terrorism.

130. The relationship between the three Laws is as follows. Theoretically, the regimes provided under the POCL and the DTL are similar and separated, varying only in terms of scope depending on the respective predicate crime but not with respect to the material elements. In this field, the POCL and the DTL operate in parallel, where the respective legal provisions are formulated in a generally identical manner in both Laws and therefore the scope and effect of the parallel provisions is the same in most of the cases. It was already clarified in the previous evaluation round[18] that a ML offense under the DTL would be applied only in cases that exclusively involve drug trafficking and that cases involving both drug trafficking and other criminal offences would be prosecuted under the POCL. Furthermore, the ML offences in the POCL can also be used in respect of the proceeds of drug trafficking in order to facilitate prosecution in cases where the precise nature of the predicate offence is uncertain. As for the laundering of FT and other acts of terrorism, it is primarily covered by the ML offence under the TL. Considering, however, that the FT offences under the TL all meet the criteria of "criminal conduct" in the POCL they are all potential predicate offences for ML under both regimes.

Criminalisation of money laundering (c.1.1 – Physical and material elements of the offence)

POCL and DTL

131. Pursuant to Section 38(1) POCL ("Concealing or transferring proceeds of criminal conduct") it is an offence for a person to conceal, disguise, convert, transfer or remove from the Bailiwick

[18] See paragraph 155 on page 53 of the IMF report.

any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct. Section 38(2) POCL provides for a similar offence (concealment, disguise etc.) in respect of a third party, that is, a person who knows or suspects that the property is, or in whole or in part directly or indirectly represents, the proceeds of a criminal conduct committed by another person. In the context of these offences, reference to concealing or disguising any property includes references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights in respect of it (Section 38[3]).

132. Acquisition, use and possession of proceeds are covered under Section 40 POCL ("Acquisition, possession or use of proceeds of criminal conduct") according to which it is an offence knowingly to acquire, possess, or use property which is, or in whole or in part directly or indirectly represents the proceeds of criminal conduct. As explained by Section 40(6) POCL "having possession" of any property shall be taken to be doing an act in relation to it.

133. Section 40(2) POCL, however, provides that it is a defence if the person charged acquired or used the property or had possession of it for "adequate consideration" that is, the value of the consideration was not significantly less than that of the property acquired or the person's use or possession of that property (Section 40[3]). The burden of proof for this defence lies on the defendant, and the provision of goods or services which assist another person in criminal conduct, or which the defendant knows or has reasonable grounds to believe may assist in criminal conduct, does not amount to consideration (Section 40[4]).

134. As it was pointed out in the IMF report [19] this exception goes beyond the international standard as set forth in the Vienna and Palermo Conventions. Nonetheless, in the context of the Bailiwick the assessors of the previous round found sufficient safeguards in place to ensure that they cannot be abused for ML or FT purposes. As it was previously explained by Guernsey authorities, this defence would not pose an obstacle to the application of Section 40 considering the rather low threshold of having "reasonable grounds to suspect" as quoted above and that the reference to "criminal conduct" would not require that the commission of a certain predicate offense is established (see more in details in the IMF report). Evaluators of the present round were not made aware of any divergence from this practice since the previous assessment.

135. The ML provisions discussed above are supplemented by a third offence in Section 39 of the POCL ("Assisting another person to retain the proceeds of criminal conduct") according to which it is an offence to enter into an arrangement which assists another person to retain or control the proceeds of criminal conduct, or which permits those proceeds to be used to secure funds or acquire investments for that person's benefit, knowing or suspecting that that person is or has been engaged in criminal conduct or has benefited from criminal conduct. As it was noted in the previous report[20] this ML offence is targeting contractual arrangements with the predicate offender; for example, lawyers and TCSPs.

136. Sections 57 to 59 of the DTL provide for identical ML offences in respect of the proceeds of drug trafficking that mirror those under Sections 38 to 40 of the POCL.

TL

137. Under section 11(1) of the TL it is an offence to enter into or become concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property (meaning proceeds of FT and acts of terrorism) by concealment, removal from the jurisdiction, transfer to nominees or in any other way. Under section 11(2) it is a defence for the person charged under section 11(1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

[19] See paragraph 160-161 page 54.

[20] See paragraph 162 page 54.

138. As it was discussed more in details in the IMF report [21] while this offence covers some of the material elements of the ML offences as defined in the respective international conventions, it also sets an evidentiary standard more demanding than what is required by the same conventions. It is necessary to prove, for example, the existence of an arrangement and that it facilitates the retention or control of another's terrorist property which, together with further additional prerequisites, would not permit the application of the provision to the full range of situations required by the Conventions (examples for which can be found in the IMF report as referred above). Considering however that FT and other acts of terrorism are considered as criminal conduct under the POCL such situations would be covered by and could be prosecuted under the POCL as indicated above.

The laundered property (c.1.2)

139. No changes have taken place, either in legislation or practice, regarding the scope of the property that can be subject of ML. Both the general (POCL) and drugs-related (DTL) ML offences mentioned above equally apply to any property which is, or in whole or in part directly or indirectly represents proceeds of crime/drug trafficking. In this context, "proceeds" refers to any property obtained (Section 4 POCL) or any payments or other rewards received (Section 4 DTL) by a person at any time, as a result of or in connection with criminal conduct/drug trafficking carried on by him or another person

140. The term "property" is then defined by both laws (Section 50 POCL and Section 68 DTL) to include "money and all other property, real or personal, immovable or movable, including things in action and other intangible or incorporeal property" whether situated in the Bailiwick or elsewhere. As it was explained by the Guernsey authorities in the MEQ the concepts of intangible and incorporeal property are drawn from the property law of the UK which include interests in property and legal instruments and these types of assets are regularly included in confiscation orders made by the courts when applying Section 50 POCL.

141. Terrorist property is defined by Section 7(1) TL as money or other property which is likely to be used for the purposes of terrorism, including any resources of a proscribed organization as well as proceeds of the commission of acts of terrorism or those carried out for the purposes of terrorism. As to the latter, Section 7(2) TL further provides that a reference to "proceeds of an act" includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission) while reference to an "organisation's resources" includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the organisation. The scope of "property" is defined by Section 79 TL roughly in line with Sections 50 POCL and 68 DTL discussed above.

142. In addition, the concept of "proceeds" clearly encompasses indirect proceeds of crime (or drug trafficking or terrorism) that is, any interest, dividend or other form of income or accrued value deriving directly, or indirectly, from the proceeds (see Section 2[3] POCL/DTL and Section 7[2]a TL as amended).

143. As explained in detail in the IMF report [22] whereas none of the aforementioned provisions expressly refer to legal documents or instruments evidencing title to, or interest in such assets, it had already been clarified in the previous evaluation round that the concept of "intangible" or "incorporeal" property would include interests in property and the concepts of tangible or moveable property would include legal instruments evidencing title to assets and property. Both concepts are generally accepted in the Bailiwick law and commentaries (examples referring to relevant provisions of the Trusts Law and the Property Law can be found in the IMF report as

[21] See paragraph 165 page 55.

[22] See paragraph 171 page 56.

well as reference to a court case where insurance policies were confiscated as proceeds of drug trafficking based on the same argumentation[23]).

Proving property is the proceeds of crime (c.1.2.1)

144. As it was already noted in the IMF report, none of the three relevant statutes require a conviction for the predicate offence to prove that property constitutes proceeds of that crime[24]. The relevant term the POCL applies in this respect is "proceeds of criminal conduct" where "criminal conduct" is defined as any conduct that constitutes an indictable offence under the laws of the Bailiwick or would constitute such an offence if committed in the Bailiwick (Section 1 POCL) but the law does not require the offender of this criminal conduct to have actually been indicted or convicted. The drugs-related ML offence in Section 57 DTL contains equivalent provisions in respect of "proceeds of drug trafficking" as the latter is defined by Section 1 of the same Law. The relevant term for the terrorism-related ML offence in Section 11 TL is "terrorist property" which neither requires a conviction for any offence (see Section 7 TL).

145. At the time of the previous assessment, the authorities argued that the standard of proof applicable to establish that property stems from an illegal source would be to establish beyond a reasonable doubt that the property stems from criminal conduct in general rather than from a specific predicate offense. This aspect of the ML provisions, however, had not yet been confirmed by the Royal Court due to a lack of any convictions for stand-alone ML offences and clarification on this matter was expected from judgments yet to be brought. In the meantime, a number of convictions have been achieved for autonomous (third-party) ML offences confirming that the absence of a conviction for a predicate offence would not pose an obstacle in practice, as it had already been foreseen by Guernsey authorities at the time of the previous assessment.

The scope of the predicate offence (c.1.3; Threshold approach for predicate offences (c.1.4)

146. All offences that are indictable under the law of the Bailiwick (including FT) as well as drug trafficking offences had already been considered as predicate offences at the time of the previous assessment and no changes have since taken place in this field.

147. Due to the complexity of the legal provisions by which ML is criminalized in the Bailiwick, the scope of the predicate offences is defined, first, by applying the general threshold of indictability for all criminal offences including FT but excluding drug trafficking offences (in the POCL) and second, by listing certain offences as predicates separately, such as drug trafficking (only in the DTL) or FT and acts of terrorism (alternatively in the TL) thus predicate offences are defined by using a combination of a threshold and a list approach.

148. Section 1(1) POCL provides that "criminal conducts" (the term used to denote predicate offences the proceeds of which can be subject of ML) extend to any conduct, other than drug trafficking "which constitutes a criminal offence under the laws of the Bailiwick which may be tried on indictment" or which would constitute such an offence had it been committed in the Bailiwick. An offence is indictable if it can be tried by the Royal Court on a prosecutorial indictment, in contrast to the procedure applicable to summary offences without the right to a trial before jurats (a panel of lay justices) on indictment. Offences triable both on indictment and summarily (which refers to most criminal offences in the law of the Bailiwick) are threatened with different ranges of punishment respectively (e.g. ML under Section 38 POCL can be punished, on summary conviction, to imprisonment for a term not exceeding 12 months, while on conviction on indictment, the maximum term for imprisonment is 14 years.) As previously

[23] Law Officers of the Crown vs. Naylor 2006 as quoted in paragraph 171. The insurance policy was considered as a legal instrument evidencing title to while the surrender value of the policy as an interest in proceeds of crime.

[24] See paragraph 172 page 56.

noted in the IMF report [25] and further explained by the Guernsey authorities during the on-site visit, all Bailiwick offences are triable, either exclusively or as an alternative to summary proceedings, on indictment except for those provided by the Summary Offences Law[26] (which are mainly public order offences) and certain breaches of road traffic regulations[27] which can only be tried summarily. In this context, the precondition of indictability serves as a threshold to exclude less serious offences from the range of predicates.

149. Drug-related predicates are defined by a list approach in the DTL where Section 1(1) defines "drug trafficking" as actions that amount to specified offences under the DTL, the Misuse of Drugs Law[28] or a corresponding law in another country as defined in Section 1(4) DTL and Section 31 of the Misuse of Drugs Law. The ML offence at Section 11 TL concerns the laundering of terrorist property including proceeds of FT or other acts of terrorism.

150. The combination of the three ML offences had already covered, at the time of the previous assessment, all of the 20 designated categories of offences in the Glossary to the FATF Methodology and therefore the table indicating the categories and the corresponding criminal offences in the Bailiwick law (see in Annex 2) is practically identical to the one in the IMF report [29]. Some of these are statutory offences (applicable, either initially or by extension, to all parts of the Bailiwick) while some are customary (common law) offences for which there is no actual legislation but case law applies.

Extraterritorially committed predicate offences (c.1.5); Additional element – If an act overseas which does not constitute an offence overseas but would be a predicate offence if occurred domestically leads to an offence of ML (c.1.8)

151. Similarly to the previous assessment, all ML offences are punishable without respect to whether the predicate offence was committed in the Bailiwick or in another jurisdiction.

152. The definition of "criminal conduct" in subparagraph (b) of Section 1(1) POCL encompasses conducts committed outside the Bailiwick that would constitute an indictable offence if it were to take place in the Bailiwick. The Law does not require that the conduct that occurred overseas should also constitute an offence in the country of perpetration and therefore the dual criminality test does not apply.

153. In the context of the FATF Methodology, the latter approach goes beyond the requirements of EC 1.5 and meets the criteria of Additional Element 1.8 referring to situations if an act overseas which does not constitute an offense overseas, but would be a predicate offense if occurred domestically, leads to an offense of ML.

154. As far as ML cases involving tax evasion are concerned, the Guernsey authorities explained that while the laundering of tax-related proceeds would by all means constitute a ML offence the legal basis depends on whether the relevant activity was committed in the Bailiwick or elsewhere. A domestic prosecution for tax evasion may be brought on the basis of various offences under the Income Tax Law[30] and these offences also constitute predicate offences for ML, because they are all indictable and so come within the definition of criminal conduct within the POCL. The language of these offences, however, makes them specific to breaches of the domestic taxation regime and therefore the Guernsey authorities take the view that they cannot be relied on as predicate offences for tax evasion in cases where the predicate offending

[25] See paragraph 176 page 58.

[26] The Summary Offences (Bailiwick of Guernsey) Law, 1982

[27] E.g. Sections 6 and 7 of the Road Traffic (Drink Driving) (Guernsey) Law, 1989

[28] Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 (also referred as "the 1974 Law")

[29] See on page 57.

[30] Income Tax (Guernsey) Law, 1975. The tax evasion offences can be found under Section 204(4)(e) subparagraphs (i) to (iv), Section 201(5)(a) to (b) and Section 201A(2).

involves the evasion of tax in another jurisdiction. In those cases, the respective fraud offences are relied upon to meet the criminal conduct test under the POCL. Fraud offences are set out in the Theft Law[31] as well as in the Fraud Law[32] and the range of activity captured by the various fraud offences is sufficiently wide to cover all of the different ways in which tax evasion might have been committed (whether making a false declaration, failing to make a tax declaration at all, concealing income or assets or failing to pay tax properly assessed to be due).

155. "Drug trafficking" as the predicate offence to ML offences under the DTL is defined by Section 1(1) of the said Law to cover different types of conduct committed in the Bailiwick or elsewhere. The definition extends, by reference, to drug trafficking offences originally stipulated by the Misuse of Drugs Law. If such an offence is committed abroad, it can only be considered a drug trafficking offence in the sense of the DTL if, within the country where it occurs, that conduct is contrary to a "corresponding law" pursuant to Section 31 of the Misuse of Drugs Law (meaning a law issued in the respective foreign country that provides for the control and regulation in that country of the production, supply, use, export and import of drugs). The dual criminality test thus applies for these offences but not for the other drug trafficking offences in Section 1(1) DTL that do not originate from the Misuse of Drugs Law (e.g. manufacturing or supplying a scheduled substance within the meaning of Section 38 DTL) which are subject to the same standard that applies to "criminal conducts" in the POCL (in line with Additional Element 1.8 as discussed above).

156. The definition of "terrorism" at Section 1(1) TL includes, by virtue of Section 1(4) acts carried out in another country. Furthermore, if a person does anything outside the Bailiwick that would have amounted to a FT offence under the TL had it occurred within the Bailiwick, that person is guilty of the offence by virtue of Section 62 TL (see more in details below under SR.II).

157. Conspiracy to commit offences outside the Bailiwick is expressly covered by Section 8 of the Attempts Law. Finally, as it was noted in the IMF report [33] (and now in the MEQ) there are also no jurisdictional provisions that would require any connection between the Bailiwick and the perpetrator, such as British citizenship or residence in the Bailiwick.

Laundering one's own illicit funds (c.1.6)

158. The extent to which the laundering of one's own proceeds is covered by the criminal legislation of the Bailiwick has not changed since the previous assessment. Some of the ML offences in both the POCL and DTL expressly apply to the perpetrator of the predicate offence providing that it is an offence for a person to conceal, disguise, convert, transfer or remove from the Bailiwick any property that is or represents his proceeds of criminal conduct/drug trafficking (Section 38[1] POCL and Section 57[1] DTL).

159. On the other hand, the acquisition, possession or use of one's own proceeds is only implicitly covered by the relevant legislation. Section 40 POCL and Section 59 DTL criminalize such acts in general terms, with no regard to whether the respective property is derived from the money launderer's own criminal conduct or that of another person. The evaluators nonetheless learnt that there is adequate case law to cover this issue, namely the Domaille case[34] where the defendant was convicted, among other things, for use or possession of the proceeds of his own drug trafficking contrary to Section 59 DTL.

160. The wording of the terrorism-related ML offence (Section 11 TL) does not cover situations where the terrorist or terrorist financer himself conceals or transfers terrorist property in order to conceal the source of funds or to maintain control over it as this provision clearly refers to

[31] Theft (Bailiwick of Guernsey) Law, 1983. The fraud offences can be found under Sections 15, 16, 18 and 19.
[32] Fraud (Bailiwick of Guernsey) Law, 2009. The relevant fraud offences can be found under Sections 2 and 3.
[33] See paragraph 178 page 59.
[34] Law Officers of the Crown v Domaille (2012)

perpetrators who do so for or on behalf of another person. Nevertheless, such an act of self-laundering could still be subsumed under the ML provisions of the POCL.

Ancillary offences (c.1.7)

161. Attempts to commit any of the ML offences under the POCL, DTL or TL are equally criminalized by Section 1 of the Attempts Law[35] which applies to any offence which, if it were completed, would be triable in the Bailiwick as an indictable offence, while conspiracy to commit such an offence is provided for by Sections 7 and 8 of the same Law.

162. As for the other ancillary offences mentioned in EC 1.7 the aiding, abetting, counselling or procuring the commission of any criminal offence by another person (regardless whether the offence is triable on indictment or summarily) are all covered by Section 1 of the Aiding and Abetting Law[36].

163. All these provisions apply to the ML offences set out in any of the three relevant Laws. Persons convicted of attempt or other ancillary offences under the provisions mentioned above are liable to the same penalties as could be imposed for the primary offence.

164. In addition to these general provisions, the definition of ML in subparagraphs (a) and (b) of Section 41(7) POCL expressly includes attempt and other ancillary offences in relation to any ML offences stipulated in Sections 38 to 40. Similarly, subparagraphs (e) to (g) of Section 1(3) DTL provide for the same in relation to drugs-related ML offences in Sections 57 to 59. The range and scope of ancillary offences in these Laws is identical to that in the aforementioned general legislation.

Recommendation 32 (money laundering investigation/prosecution data)

165. The assessors were provided with comprehensive and detailed statistics on the number of ML investigations, prosecutions and convictions in the assessed period in the Bailiwick. These statistics are broken down by several relevant characteristics as discussed below, to the extent that they allow for a thorough analysis and drawing appropriate conclusions.

166. Starting with the total number of ML cases in the Bailiwick, the first table shows the total number of ML investigations, prosecutions and convictions (where the figures for convictions and prosecutions include cases where the proceedings started in the preceding year).

Table 9

	Investigations		Prosecutions		Convictions	
	cases	persons	cases	persons	cases	persons
2010	9	11	2	2	0	0
2011	15	21	3	3	3	3
2012	17	24	2	4	3	4
2013	10	11	1	2	1	1
Jan-Jun 2014	2	2	1	2	1	1

167. As opposed to that, the following table contains ML investigations launched in a given year, and then the number of prosecutions and convictions, with no regard when the relevant

[35] Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law, 2006
[36] Criminal Justice (Aiding and Abetting etc.) (Bailiwick of Guernsey) Law, 2007

prosecution, confiscation etc. occurred (which in most cases was in a later year). While the numbers of investigations are final, the figures related to the subsequent stages of the respective proceedings and particularly those referring to 2013 and 2014 are still subject to changes according to the development of the respective cases.

Table 10

	Investigations		Prosecutions		Convictions (final)	
	cases	**persons**	**cases**	**persons**	**cases**	**persons**
2010	9	11	1	1	1	**1**
2011	15	21	3	4	3	**4**
2012	17	24	1	2	1	**1**
2013	10	11	1	2	1	**1**
Jan-Jun 2014	**2**	**2**	**-**	**-**	**-**	**-**

168. The figures above demonstrate a general increase in the number of ML investigations and prosecutions in the last four and a half years as contrasted to the respective figures for the preceding years as indicated in the IMF report [37]. Apart from the more than 50 ML investigations initiated in this period, there were 8 prosecutions too, which led to the conviction of 8 persons in 7 cases. According to the Guernsey authorities, the decrease in ML investigations in 2013-2014 is attributable to the decision to prioritise two extremely large, complex and resource intensive ML investigations involving activity across a number of different jurisdictions[38], which had an impact on the timeliness of investigating other, less serious ML cases.

169. Further information can be inferred from the statistics on the number and other details of ML cases unrelated to suspicious transaction reports, that is, initiated without any prior input/SARs from the FIS. In the table below, one can find the number of such ML investigations commenced by law enforcement authorities in a given year, and then the number of prosecutions and convictions in respect of those investigations, irrespective of when the relevant prosecution or conviction occurred.

Table 11

	ML/TF investigations by law enforcement carried out independently without prior SAR	Prosecutions commenced	Convictions (first instance)	Convictions (final)

[37] See paragraph 199 page 63.

[38] One has since resulted in a successful money laundering prosecution, in which 2 defendants were convicted on a number of counts of both autonomous laundering and self-laundering. This case concerned a local corporate service provider who had been assisting in laundering the proceeds of a huge securities fraud in the United States. His role was in facilitating the placement of nominee directors and shareholders which disguised the true beneficial ownership of bank accounts connected to brokerage accounts for US stock. The US fraud concerned circa $90m and the prosecution included evidence obtained from 6 different jurisdictions. After a 5 week trial he was convicted and sentenced to 7 years imprisonment.

	Cases	Natural persons	Legal persons	Cases	Natural persons	Cases	Natural persons	Cases	Natural persons
2010	7	5	2	1	1	-	-	1	1
2011	10	9	2	2	2	-	-	2	2
2012	10	9	2	-	-	-	-	-	-
2013	4	3	2	1	2	-	-	-	-
Jan-Jun 2014	2	2	-	-	-	-	-	-	-

170. The majority of the ML cases have thus been initiated by the law enforcement without the involvement of the reporting regime and the FIS. There have been more than 30 ML investigations, unrelated to SARs, launched by the first half of 2014 that led to 4 ML prosecutions against 5 persons by the first half of 2014 and 3 of these prosecutions have already resulted in convictions.

171. It can be known from other statistics provided by the Guernsey authorities that there were only 2 ML cases (one in 2010 and another one in 2011) where the criminal investigation was initiated and restraint orders were obtained on the basis of information resulting from the reporting regime and the withholding of consent by the FIS in such cases. Nonetheless, the investigation was followed by a conviction and a confiscation order in both cases. In another case the withholding of consent was followed by account monitoring orders and production orders being served during an investigation which resulted in a money laundering conviction.

172. A more profound analysis of the 8 ML convictions achieved in the relevant time period allows for drawing further conclusions.

Table 12

	Total number of ML convictions	Number of convictions for self-laundering	Number of convictions for third party laundering	Number of convictions for laundering proceeds of crime committed abroad	Number of convictions for fiscal predicate offences	Number of convictions for non-fiscal predicate offences
2011[39]	3	1	2	1	-	3
2012	4	1	3	1	1	3
2013	1	1	-	-	-	1

173. As it can be seen above, the majority of the cases (5) were related to third-party ML (laundering by a person other than the author of the offence) as opposed to those related to the laundering of own proceeds. The evaluators welcome the fact that convictions in autonomous ML cases (third party laundering case not tried together with the underlying offence) have been achieved in increasing numbers which appears adequate considering Guernsey's position as an international finance centre where the only significant domestic predicate offending is drug-related. Case practice has also proven that the absence of a conviction for a predicate offence is not an obstacle to a conviction for ML (what is more, a drug related self-laundering case was reported to have succeeded despite the absence of a conviction for a predicate offence, merely as a result of inferences drawn from the defendant's conduct).

174. The assessors noted with appreciation that foreign proceeds were the subject of laundering offences in 2 cases which proved that in practice, the predicate offending in another jurisdiction is not an obstacle to a conviction for ML. The same goes for the representation of fiscal proceeds

[39] No conviction achieved in 2010 and in the first half of 2014.

(i.e. those relating to offences in connection with taxes, duties, customs and exchange) among the cases ended up with a conviction, which confirms that, in practice, no distinction is drawn between fiscal and other types of offences. Further analysis of the convictions shows that all of the respective ML offences were related to drug trafficking and fraud offences where the aforementioned fiscal offences were involved in one of the fraud cases in 2012.

175. To date, only natural persons have been prosecuted and convicted for ML. Every case ended with a conviction to date has involved a custodial sentence which was, in some cases, an overall sentence which also covered other offences. The length of sentence involved was consistent with the sentences generally imposed for other types of financial crime, ranging from 24 to 84 months of imprisonment in average (except for one case where a 2-months prison sentence was suspended as the amounts involved had been very small). Interestingly, the courts did not apply non-custodial sentences e.g. fines in either of the cases.

Effectiveness and efficiency

176. The legislative structure to prosecute ML cases remained as complex as it was at the time of the previous assessment. The evaluators understand that the current construction, which consists of ML provisions from three different pieces of legislation, would deserve future rationalisation particularly as regards the practically identical parallel regimes in the POCL and the DTL as well as the issue of terrorism-related ML which is addressed by two, partially overlapping sets of provisions under the POCL and the TL respectively.

177. Notwithstanding that, the current legal framework is fully in line with all the respective international standards and do not appear to have presented problems in practice. As far as technical compliance with R.1 is concerned, the assessors will not thus make any critical comments or recommendations, similarly to the previous evaluation which did not result in such comments or recommendations either.

178. On the other hand, the effective application of the criminal provisions was a concern in the IMF report. At that time, the Bailiwick had a relatively low number of investigations resulting in a prosecution and eventually a ML conviction. The discrepancy between the number of investigations and that of the prosecutions and convictions was then explained by the law enforcement authorities' practice to initiate an investigation for ML, on a regular basis, in most cases involving proceeds-generating offences conduct.

179. As a result of the prosecutorial efforts foreseen in the IMF report [40] the disparity between the number of investigations and that of prosecutions and convictions was reduced but some discrepancy in the statistics has however remained. In this context, the Guernsey authorities emphasized that in approximately half of the cases where the investigation did not result in a prosecution for ML, proceedings for other forms of criminality were pursued including drug trafficking cases, fraud, breaches of housing legislation, theft, and breach of the cash controls legislation. Some of these cases have reportedly resulted in significant confiscation orders. Of the remaining cases, one has been referred to the Income Tax authorities for investigation and three concern related investigations or proceedings in other jurisdictions in which the Bailiwick authorities are assisting.

180. Having said that, the number of ML prosecutions and convictions appear to have been growing steadily since the last evaluation. There have been 8 convictions achieved in 7 cases since the previous round of assessment, which is a significant development considering that there had only been 2 convictions beforehand. Beyond the statistical figures, the evaluators also note an evolution of the prosecutorial approach beyond drugs-related ML to the pursuit of autonomous ML in more serious financial crimes. Whereas the 2 convictions before 2010 were self-laundering offences, the majority of the more recent convictions involve third-party

[40] See paragraph 202 page 64.

laundering offences and the underlying predicates proportionally represent fraud and (at least in one case) related fiscal offences beside the traditionally predominant drug offences. Court practice has been developed in achieving convictions related to foreign proceeds as well as in relation to ML charges without a conviction for the predicate offence.

181. More details of some of the most prominent convictions already mentioned in the preceding parts of this reports are provided below:

- Law Officers of the Crown v Taylor (2011) where a professional from the insurance sector was convicted for 9 counts of autonomous ML based on fraud predicates. A custodial sentence of two and half years was upheld on appeal and £68,000 was confiscated. (The first conviction in a major case of autonomous ML).
- Law Officers of the Crown v Ludden (2012) where a client wealth manager at a private bank was convicted of entering into an autonomous ML arrangement related to a tax evasion scheme being operated in the UK over a 7 year period. He was given a custodial sentence of 5 years and £550, 000 was confiscated. (The first conviction related to fiscal proceeds.)
- Law Officers of the Crown v Domaille: in 2012 a self-launderer was convicted of a number of counts of ML on the basis of inferences drawn from a series of financial transactions that he was unable to explain; he received a custodial order of 4 years for these offences. (The case is significant because it involved a conviction for ML without a conviction for the predicate offence on an inferential basis.)

182. The evaluators welcome that the courts are willing to accept inferences drawn from facts and circumstances to establish elements of the ML offences, following non-binding but persuasive English jurisprudence in this area. Other major ML cases with international dimensions requiring proactive MLA requests by the Guernsey authorities are in the prosecutorial or investigative stages, with significant assets under restraint (see statistics under R.3 below). One of the cases being investigated at the time of the on-site visit was related to autonomous ML involving an unlicensed corporate services provider who has been charged with several counts of autonomous laundering in respect of large scale proceeds of securities fraud committed in different jurisdictions by an individual who has been convicted in a foreign country but who was based in another country.[41]

183. Considering the increase in statistical figures and the development of court practice in more sophisticated autonomous ML cases, as described above, in the context of Guernsey's position as an international finance centre in the region and the significant volume of assets managed by or channelled through the financial system of the Bailiwick, the following general remarks can be made.

184. The IMF report rated the Bailiwick as "Largely Compliant" considering that while the statistics indicated a good number of ML investigations if compared to other countries with a similar GDP and population, a more profound analysis of the underlying cases demonstrated that the number of cases involving third party ML by a financial sector participant was disproportionate taking into account the size of the Bailiwick's financial sector in comparison to other economic sectors coupled with its status as international financial centre[42]. Specifically, more emphasis was required on identifying financial crime within the domestic financial sector, including in cases where the predicate offense was committed abroad.

185. Experience gained in ML cases since the last evaluation indicates that the Guernsey authorities have put dedicated effort into bringing the approach of law enforcement and prosecution more in line with the spirit of the recommendations above. With an overall increase in the number of investigations and prosecutions for ML, the evaluators also noted an increase in cases relating to predicates related to the domestic financing sector instead of the traditional domestic drug

[41] Since then the case has resulted in a successful prosecution- see footnote 39 above.
[42] See paragraph 201 page 63.

trafficking scene. Gearing the AML regime towards the domestic financial sector resulted in the occurrence of autonomous ML cases and those originally based on SARs from reporting entities among the ML cases investigated and prosecuted. Cases mentioned above involve finance sector professionals and third party laundering in respect of foreign predicates, which is all appreciated by the evaluation team.

186. As far as laundering of fiscal proceeds and particularly those of tax evasion are concerned, the aforementioned Ludden case is to be considered a definite step forward in establishing a sound basis of interpretation for future practice. According to the verdict, the money launderer (Ludden) arranged with the author of the predicate crime to obtain cash for his use by managing a bank nominee account in such a way that it would allow the author to introduce cash into the banking system which the launderer knew or suspected had not been declared to the UK authorities or elsewhere, arising from their business dealings. By creating a false audit trail he was able to deliver cash to the author upon request for the benefit of both the author and others. This was therefore a classic third-party ML scheme in which no predicate offence was ever proved as the source of the amounts deposited in the Guernsey account but the court was asked to, and did, adopt the decisions in the English cases of

(i) "Anwoir" which supported the prosecution being able to prove its case on the basis there was an irresistible inference that the deposits represented money not being declared for tax purposes in the UK; and
(ii) "R and IK" which establishes generally that tax evasion is capable of being criminal conduct.

187. By the adoption of this interpretation the court thus accepted, by application of the POCL criminality standards ("…which is a crime here and in the UK…") tax evasion as a criminal conduct for the purposes of ML. Even if, from the Guernsey perspective, fraud (and not tax evasion) was considered to be the predicate offence here, in line with the interpretation generally followed in ML cases involving proceeds of tax evasion committed in another jurisdiction.

2.1.2 Recommendations and comments

Recommendation 1

188. While the statistics show an undeniable increase in the number of ML investigations, prosecutions and convictions beyond drug-related ML criminality in the last four years, the figures are still disproportionately low (apart from a limited number of outstanding cases referred to above) both in terms of the laundered property and the restrained or confiscated assets, as opposed to the dimensions and complexity of the financial sector and the volume of assets managed by or channelled through the industry also with regard to the use of complex corporate structures. Whereas the convictions mentioned above are to be considered milestones in developing court practice and a broad interpretation of the underlying legislation for future cases, they should be followed by more and more high profile autonomous ML cases related especially to the proceeds of tax evasion and corruption committed abroad, which also requires a more effective cooperation with foreign counterpart authorities. The evaluators can therefore see more room for improvement as far as effective application of the ML criminal provisions is concerned and therefore they share the opinion of the previous assessment team in that the authorities should continue to focus their attention on identifying ML crimes within the domestic financial sector and take measures to overcome any identified obstacles in order to "protect the name of this island as a reputable, international, financial centre" (quoted from the Ludden verdict).

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating

R.1	**LC**	• Given the size of the Bailiwick's financial sector and its status as an international financial centre, the relatively limited number of cases involving third party ML by participants of the financial industry and the amounts of property laundered and confiscated, despite the increase in overall statistics, still indicates room for a more effective application of the ML provisions.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and analysis

Special Recommendation II (rated C in the IMF report)

Summary of 2011 factors underlying the rating

189. Despite some minor technical issues discussed below, the Bailiwick of Guernsey was found Compliant with all criteria of SR.II when assessed by the IMF in 2011. Nonetheless, the legal provisions by which FT is criminalized have since been amended both for simplicity's sake and to further increase compliance with the FATF standards.

Legal framework

190. Terrorist financing is dealt with under part III of the Terrorism Law.

191. Ratification of the Terrorist Financing Convention was extended to the Bailiwick on 25 September 2008.

Criminalisation of financing of terrorism (c.II.1)

192. The offences by which FT is criminalized can be found in Part III of the TL in Sections 8 to 10. At the time of the previous IMF assessment, there was another piece of legislation to provide for FT offences, namely the Terrorism (United Nations Measures) (Channel Islands) Order 2001 which covered the financing of terrorist organizations and individual terrorists[43]. In the meantime, however, the purposive element of the FT offences in the TL ("purposes of terrorism") has been redefined so that it extends to the provision of support for any purpose to any individual or entity involved in terrorism. As a result, the funding of terrorist organizations and individual terrorists in all cases is now covered by the FT offences in the TL whereas the aforementioned Order was repealed in its application to the Bailiwick in 2011[44].

193. Among the FT offences in the TL, as it is described more in details in the IMF report [45] the main FT offence ("fund raising") is provided by Section 8 that covers, in a general sense, the collection and provision of funds (money or other property) for the purposes of terrorism. While the provision of funds is expressly covered, the collection of funds is addressed through the criminalization of its two components, that is the solicitation of money and other property (inviting another to provide) and the receipt of the same. The perpetrator must either intend that the property should be used, or know or have reasonable cause to suspect, that it may be used for the purposes of terrorism which brings the offence in line with the material elements of the FT offence in Article 2 of the Terrorist Financing Convention.

194. Furthermore, the main FT offence is supplemented by two other offences in Sections 9 and 10 which go beyond the mere wording of Article 2 of the said Convention by criminalizing the possession of funds with a view to their use for terrorist purposes, the actual use of funds for the same purpose as well as the participation (entering and becoming concerned) in arrangements as a result of which funds are (to be) made available to another for the purposes of terrorism. The mental standard for the possession of funds and for the participation in fund-raising

[43] See e.g. paragraphs 210-211 page 66 of the IMF report.
[44] The said Order was replaced by the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law 2011.
[45] See paragraphs 206 to 208 page 65.

arrangements is the same that applies for the main FT offence (see above). The range of these offences is supported by the terrorism-related ML offence in Section 11 (which is not considered a "FT offence" under the FATF standards and therefore it was discussed among ML offences under Recommendation 1 above).

195. In addition the TL also uses the collective term "terrorist financing" which is defined by Section 79 and comprises, along with the aforementioned offences in Sections 8 to 10, not only the terrorism-related ML (Section 11) but also further offences provided by other pieces of legislation relating to the freezing of terrorist assets (e.g. the Terrorist Asset-Freezing Law 2011) consisting of the contraventions of the respective regulations (e.g. the offence of making funds or financial services available to designated persons in Section 9 of the said Law) which cannot be considered FT offences in the sense of SR.II. Nonetheless, this broad definition of the term "terrorist financing" is applied in the TL exclusively in the context of reporting (disclosure) obligations. Consequently, when it comes to the financing of terrorism, the present assessment (similarly to the IMF report) will only focus at the FT offences in Sections 8 to 10 TL.

196. As discussed below, a complex system of broad and flexible definitions of the respective terms and particularly that of the "purposes of terrorism" makes the aforementioned offences equally applicable to the financing of terrorist acts, terrorist organizations and individual terrorists.

Financing of Terrorist Acts (EC II.1.a.i)

197. The main purposive element of the FT offences ("purposes of terrorism") is based on the term "terrorism" which is defined at Section 1 TL in two parts, following the structure of Article 2 of the FT Convention.

198. Under Section 1(1)a "terrorism" is defined, in line with Article 2(1)a of the FT Convention, as the use or threat of action which "involves the commission of an offence, or is an act, of a type described in any of the articles of the conventions or other instruments set out in Schedule 10" which Schedule meticulously enumerates all treaty offences listed in the Annex to the FT Convention.

199. Schedule 10 does not criminalize the treaty offences themselves and neither implements to any extent the respective international treaties and protocols. It is rather a collection of the terrorist offences provided by these treaties that serves for defining the scope of Section 1(1)a. This approach provides for the direct coverage of financing related to acts that constitute any of the treaty offences regardless whether and to what extent these treaties and protocols are actually implemented and the respective offences are criminalized by the domestic law in the Bailiwick. (In practice they are, since the laws by which these treaties had been implemented in the United Kingdom were subsequently extended to the Bailiwick of Guernsey. For example, the Convention on the Physical Protection of Nuclear Material [Vienna 1979] was implemented in the UK by the Nuclear Material [Offences] Act 1983 which was extended to the Bailiwick by the Nuclear Material [Offences] Act 1983 [Guernsey] Order 1991 and so on.)

200. On the other hand, Section 1(1)b as amended by the 2014 amendment to the TL provides for the generic definition of "terrorism" in accordance with Article 2(1)b of the FT Convention. "Terrorism" is thus the use or threat of action which meets one of the following criteria (as listed by Section 1[2])

- it involves serious violence against a person,
- or serious damage to property,
- it endangers a person's life (other than that of the person committing the action)
- it creates a serious risk to the health or safety of the public or a section thereof,
- or it is designed seriously to interfere with, or seriously to disrupt an electronic system

provided that the use or threat of that action meets the following conjunctive criteria:

- it is designed to influence the government or an international organisation or to intimidate the public or a section thereof (except if the action involves the use of firearms or explosives in which case it constitutes terrorism anyway) and
- it is made for the purpose of advancing a political, religious, racial or ideological cause.

201. Before the latest amendment to the TL in 2014[46] the treaty offences in Schedule 10 were subject to the same mental standards as the conducts that constitute the generic terrorist offence. It meant that any of the offences listed in Schedule 10 could only meet the criteria of "terrorism" (so that their funding would establish a FT offence) if committed with the intent to influence the government etc. for the purpose of advancing a political, religious or other cause mentioned above. This resulted in a restrictive implementation of the FT Convention Article 2(1)a of which requires countries to criminalise the financing of treaty offences without any extra purposive element and hence it is inconsistent with the Conventions to require proof that a particular treaty offence was done for any particular purpose. This deficiency was addressed by the latest amendment to the TL which modified the definition of "terrorism" by removing the additional mental element in respect of the treaty offences in Schedule 10 thus bringing the definition more in line with the standards of the FT Convention.

202. Application of a purposive element is, however, acceptable for the offences that cover the "generic" offence (see Article 2[1]b of the FT Convention) and therefore it cannot be objected in itself that the actions listed in Section 1(2) TL can only be considered acts of "terrorism" if committed for specific purposes provided by the law. Notwithstanding that, as already noted by the assessors of the 2011 IMF evaluation[47] the purposive element required by Section 1(1)b TL to establish the commission (and thus the financing) of "terrorism" is more demanding than is permitted by the FT Convention. As discussed above, the required purpose consists of two conjunctive parts the first of which (Section 1[1]b subpara [i]) is largely in line with the wording of the Convention (considering that the notion of "influencing" [i.e. a government etc.] is broad enough to cover the term "compel to do or to abstain from doing any act") but the second part of the purposive element goes beyond the FT Convention.

203. At the time of the previous evaluation, only acts undertaken or threats made with the intention of "advancing a political, religious or ideological cause" would have constituted terrorism, which approach added an extra purposive element not set forth in the FT Convention and thus restricted the potential applicability of the FT offences (particularly in cases where there is no evidence for any political, religious or ideological motivation behind the offence that otherwise meets the criteria of a terrorist act). While the evaluators of the previous round understood that this approach had been adopted to ensure the generic definition was not used in circumstances where it was not intended, they urged the authorities to assess its advantages in the domestic context to ensure that the Bailiwick's ability to prosecute in factual settings contemplated by the Convention would not be negatively impacted.

204. As a result of this assessment, the Bailiwick's authorities decided not to abandon the extra purposive element but to widen it, by the latest amendment to the TL, to include a fourth "cause" namely the racial cause among the motives the advancing of which must be the purpose of the perpetrator so that his act or threat meets the criteria of "terrorism" under Section 1(1)b subpara (ii). Certainly, the totality of political, religious, ideological and now also the racial causes appears to be wide enough to cover, from the aspect of the mental element, the vast majority of the potential acts of terrorism and thus provide for adequate compliance with the FATF standards too. Notwithstanding that, the assessors still harbour some concerns about the potential restrictiveness of this approach in cases with no readily definable political or other motivation behind the terrorist act and therefore reiterate the recommendations made in the IMF report in this field.

[46] Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Ordinance, 2014 with effect from 30.07.2014
[47] See paragraph 216 page 66.

Financing of a Terrorist Organization (EC II.1.a.ii)

205. Financing of terrorist organizations has traditionally been criminalized in the Bailiwick by making a distinction between "proscribed organisations" i.e. those listed under Schedule 1 to the TL and, on the other hand, those that have not been "proscribed" by the State. At the time of the previous evaluation, the provisions of the TL were primarily and directly targeting the proscribed organizations with a rather implicit applicability to the others the financing of which was, however, addressed by the provisions of the Terrorism (United Nations Measures) (Channel Islands) Order also being in force at that time[48]. As it was mentioned above, the legal framework has since been amended and simplified, as a result of which the applicability of the FT offences in Sections 8 to 10 TL to the funding of terrorist organizations is provided for as follows.

206. The provision and collection of funds for terrorist organisations that are proscribed under the TL is expressly dealt with as it was at the time of the previous evaluation. Schedule 1 to the TL remains the legal basis to proscribe terrorist organizations in the Bailiwick law pursuant to Section 3(1) TL according to which an organization is "proscribed" if it is listed in the said Schedule or it operates under the same name as a listed organization (further rules governing the proscription and de-proscription of an organization as well as criminalizing membership in and non-financial support provided to such organizations can be found in Section 3). Financing of proscribed organizations is criminalized through the definition of "purposes of terrorism" in Section 1(5) TL which provides that any reference to actions taken for the purposes of terrorism "includes a reference to action taken for the benefit of a proscribed organization" and therefore all three FT offences in Sections 8 to 10 apply to the provision or collection of funds for the benefit of proscribed terrorist organizations.

207. By the repeal of the Terrorism (United Nations Measures) (Channel Islands) Order in its application to the Bailiwick, the TL remained the only legal basis to criminalize the financing of terrorist organizations regardless of whether or not they are proscribed in Schedule 1 to the TL. The latest amendment to the TL in 2014 inserted a new Section 1A into the definition of the "purposes of terrorism" extending it to the provision of support for any purpose to any person involved in terrorism (Section1A [1]).

208. In this context a "person involved in terrorism" refers to "any legal or natural person, body, group, organisation or entity, whether or not proscribed under the TL" who

(i) commits, or attempts to commit, acts of terrorism by any means, directly or indirectly, unlawfully and wilfully,

(ii) participates as an accomplice in acts of terrorism,

(iii) organises or directs others to commit acts of terrorism, or

(iv) contributes to the commission of acts of terrorism by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering an act of terrorism or with the knowledge of the intention of the group to commit an act of terrorism,

together with anybody or entity owned or controlled, directly or indirectly, by any of the persons or entities mentioned above as well as those acting on or behalf of, or at the direction of such persons or entities (Section 1A [2]).

209. This definition is identical to the definition of "terrorist organisation" in the Glossary to the 2004 FATF Methodology and hence it is broad enough to cover any possible terrorist organizations (including the proscribed ones already dealt with by Section 1[5] TL) and thus

[48] See more in details in paragraphs 218 to 220 page 67 of the IMF report.

provides an adequate legal basis for the criminalisation of the provision or collection of funds for the benefit of such organizations.

Financing of an Individual Terrorist (EC II.1.a.iii)

210. At the time of the previous assessment, there was no legislation to expressly criminalize the financing of individual terrorists and therefore reliance had to be placed on the broad interpretation of Sections 8 to 10 TL as they extended to the collection or provision of funds having a reasonable cause to suspect that the money "may be used for terrorism" (considering that one who provides funds to an individual terrorist would be assumed to have reasonable cause to suspect that the money may be used for terrorism). This argumentation was debatable particularly as regards whether the provision of living and private expenses to an individual terrorist would have also been covered. As another option, as in the case of non-proscribed terrorist organizations, the provision of funds to such individuals could be considered a criminal offense under the Terrorism (United Nations Measures) (Channel Islands) Order.

211. The repeal of the latter in its application to the Bailiwick, however, made it unavoidable to amend the TL so that it can expressly provide for the criminalization of funding individual terrorists for any purpose including living or other private expenses. This was achieved by the new Section 1A with its definition of "persons involved in terrorism" discussed more in details above which encompasses, among others, any natural person who meets any of the criteria listed in paragraph (2) and thus bringing this definition in line with that of the term "terrorist" in the Glossary to the 2004 FATF Methodology.

212. Section 1A(3) TL provides that support to a person involved in terrorism (including, as discussed above, both terrorist organisations and individual terrorists) includes the provision of financial support "for any purpose" which necessarily covers all expenditures unrelated to terrorist activities including living or other private expenses. Therefore any form of financial support for whatever purpose to an individual terrorist or a terrorist organisation is criminalized.

213. In addition, the legislation is compliant with EC II.1.c in not requiring that the funds were actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act. This is underlined by the last phrase of Section 1A(1) which provides that the provision of support to a person involved in terrorism is to be criminalised "whether or not such support is provided in relation to a specific act of terrorism". In other words, the test in Sections 8 to 10 TL is the purpose for which funds are solicited, collected, or provided, not the use to which they are subsequently put. It need 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.

Definition of Funds (EC II.1.b)

214. All the FT offences in the TL apply in respect of the collection or provision 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. This broad definition is supplemented, for the purposes of the main FT offence at Section 8 TL that this offence equally applies to money or other property that is given, lent or otherwise made available, whether or not for consideration.

215. This definition is almost in full compliance with the definition of "funds" as provided by the FT Convention apart from some minor divergences, which had adequately been discussed in the IMF report [49] and have since remained largely the same. First, the provision does not expressly refer to legal documents or instruments evidencing title to, or interest in such assets but the broad interpretation of intangible and immovable property in the Bailiwick law and commentaries, as it was discussed above under R.1 does actually extend to these types of

[49] See paragraphs 223-224 page 68.

property. Second, the definition is silent on whether it equally covers funds from a legitimate or illegitimate source but it was already clarified in the previous evaluation round that the language of Section 79 TL is not limited to property that stems from illegitimate sources and therefore this apparent technical deficiency would not impede its applicability to property from illegal as well as legitimate sources.

Attempt and Ancillary Offences (EC II.1.d and II.1.e)

216. As discussed more in details under R.1 above, Section 1 of the Attempts Law criminalizes attempt to commit any offence which, if it were completed, would be triable in the Bailiwick as an indictable offence. This applies to any of the FT offences under the TL as well.

217. Among the ancillary offences set out in Article 2(5) of the FT Convention, the offences of aiding and abetting, counselling and procuring the commission of an offence are provided by Section 1 of the Aiding and Abetting Law with an applicability to any offence. Finally, the conspiracy to commit an offense triable on indictment is covered by Sections 7 and 8 of the aforementioned Attempts Law.

Predicate offence for money laundering (c.II.2)

218. As noted above, all TF offences at Sections 8 to 10 TL are indictable by virtue of Section 17 so fall within the definition of criminal conduct in Section 1 POCL and thus constitute predicate offences for the ML provisions under that law.

219. In addition, the terrorism-related ML offence contained in Section 11 TL is applicable with respect to FT predicate offences in most cases. As discussed more in details under R.1 above, this ML offence applies in respect of "terrorist property" defined by Section 7 TL as including money or other property that is likely to be used for the purposes of terrorism. This broad definition will obviously apply in almost every case to funds collected or provided with the intention or reasonable cause to suspect that they will be used for the purposes of terrorism. The definition of "terrorist property" also includes proceeds of acts carried out for the purposes of terrorism. Considering that the FT offences prescribed in Sections 8 to 10 TL are by definition acts carried out for the purposes of terrorism, their proceeds will automatically be caught by the ML offence in Section 11.

Jurisdiction for Terrorist financing offence (c.II.3)

220. The TL and other related legislation equally provide for the criminalization of FT in a substantially international context where terrorist financing activities are rendered punishable regardless to whether they were committed within or outside the Bailiwick and whether or not the financing took place in the same country or a different country from the one in which the terrorist organisation or individual terrorist is located or the terrorist act occurred or will occur.

221. This is achieved, first of all, by the broad definition of "terrorism" in Section 1 TL mentioned above, where paragraph (4) expressly provides that within this definition

- an "action" (a terrorist act to be financed) includes action taking place outside the Bailiwick,
- a reference to any person or property is a reference to any person or property wherever situated, including those outside the Bailiwick,
- a reference to the public includes a reference to the public of a country or territory other than the Bailiwick, and
- "the government" does not only refer to the States of Guernsey and Alderney and the Chief Pleas of Sark but also to the government of any country or territory outside the Bailiwick.

222. Neither can one find any territorial restriction in the other provisions by which the scope of the FT offences is defined. That is, when it comes to proscribed or other terrorist organizations, the TL does not provide for any restriction in respect of the location of that organization or the area in which it may be operating. Equally, the term "person involved in terrorism" is not confined to persons acting or located within the Bailiwick.

223. From another aspect, Section 62 TL provides that a person may be held criminally liable for any act committed abroad that would have constituted a FT offence had it been committed in the Bailiwick. As it was discussed above under R.1 neither are there jurisdictional provisions to require any connection between the Bailiwick and the perpetrator on the basis of citizenship or residence.

The mental element of the FT (applying c.2.2 in R.2)

224. All FT offences under the TL equally require that the perpetrator either knows or intends that the funds are being used for a terrorist act or has reasonable cause to suspect that they may be used for terrorism purposes, including for the benefit of proscribed terrorist organizations. The mental element of all of the FT offences can thus be established on the basis of reasonable grounds for suspicion, which is an entirely objective test and can be based on inferences from circumstantial evidence. As it was already noted in the IMF report and now confirmed by the Guernsey authorities, while the TL is silent on whether the intentional element required for the commission of the FT offence may be inferred from objective factual circumstances, it is a fundamental principle of Bailiwick law, derived from both customary law and the common law of England and Wales, that the requisite mental element of any offence (including FT, ML or predicate crimes) may be inferred from the circumstances surrounding the offence and any other evidence before the court[50].

Liability of legal persons (applying c.2.3 & c.2.4 in R.2)

225. All of the FT offences in the TL make reference to acts committed by a "person" without differentiating between natural and legal persons. Under Section 9 of the Interpretation Law[51] a "person" includes any corporate or unincorporated body (that is, both natural and legal persons) unless the contrary intention appears (but there is no contrary intention expressed in the Terrorism Law).

226. As it was already noted in the IMF report [52] there is nothing in either the TL or the POCL or under general principles of the law in the Bailiwick to preclude parallel criminal civil or administrative proceedings against legal persons. Notwithstanding, no proceedings for FT have been initiated with respect to a legal entity.

Sanctions for FT (applying c.2.5 in R.2)

227. Similarly to the time of the previous evaluation, Section 17 TL sets out the criminal sanctions in respect of the FT offences at Sections 8 to 10 TL. Legal and natural persons if convicted on indictment are liable to an unlimited fine, and natural persons may also be sentenced to a maximum of 14 years imprisonment. On summary conviction the maximum fine is £10,000 and the maximum term of imprisonment is 6 months.

228. This range of punishment is comparable to what applies to ML offences. Terrorism-related ML offence in Section 11 TL itself falls under the scope of Section 17 but ML offences under the POCL and DTL are equally threatened with very similar criminal sanctions. Furthermore, according to the information provided to the assessment team, these criminal sanctions are almost identical to those applied by the United Kingdom, the Isle of Man, and Jersey.

229. In addition, the criminal court has the power under Section 1 of the Compensation Law[53] to order a convicted terrorist financier, whether a legal or a natural person, to pay compensation to

[50] reference was made to the court case Taylor v Law Officers of the Crown (2007-08 GLR 207).

[51] Interpretation (Guernsey) Law 1948. While the territorial scope of this Law is limited to Guernsey, its provisions expressly apply to any Bailiwick-wide criminal statute including the TL (Section 79[3]) as well as the POCL (Section 51[2]) and the DTL (Section 69[2]).

[52] See paragraph 233 page 70.

[53] Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990

a victim of any crime (which could thus be relevant in cases where a victim was able to demonstrate loss or damage attributable to any of the defendant's FT activities). Administrative sanctions by both the GFSC and the AGCC are equally available[54] but, as the authorities pointed out, criminal proceedings would take priority and there would be cooperation between the authorities to ensure that such proceedings were not prejudiced by regulatory action. Having said that, there has never been a conviction for FT in the Bailiwick and thus no sanctions have ever been imposed.

Recommendation 32 (terrorist financing investigation/prosecution data)

230. At the time of the on-site visit, there were no investigations or prosecutions for terrorist financing offences.

Effectiveness and efficiency

231. To date there have been no investigations, and therefore no prosecutions or convictions, in respect of FT offences, the effective applicability of which thus could not have been tested before the courts. The absence of FT cases is, however, consistent with the fact that there is no evidence of activity in relation to terrorist acts or funding within the Bailiwick and therefore the risk of terrorist financing is considered to be low.

232. The Guernsey authorities expressed that as at the last evaluation there is no significant risk to the jurisdiction in this area. The Bailiwick comprises a number of small island communities with very low domestic crime rates and no ethnical, religious or racial issues within the rather homogenous populations. Neither historical, nor geographical or business links tie the Bailiwick to parts of the world that are considered to present a high risk of terrorist activity. As such it is unlikely to attract those who currently constitute the principal threat of terrorist activity in Europe or elsewhere.

233. According to the authorities, this view is supported by the fact that the number of STRs and requests for assistance in relation to terrorism issues remains very low. The few STRs relating to FT that have been received since 2010 have all been analysed and in the majority of cases intelligence reports were spontaneously disseminated to other competent authorities which, however, did not lead to any follow-up requests for assistance.

2.2.2 Recommendations and comments

Special Recommendation II

234. Although SR.II was rated as "Compliant" in the previous round of assessment, it was nevertheless recommended to consider the impact of including in the FT offence the purposive element of "intention of advancing a political, religious, or ideological cause" on the Bailiwick's ability to successfully prosecute in the factual settings contemplated by the FT Convention.

235. This recommendation and other findings of the previous assessment team have since been taken into consideration. Not only the purposive element was widened so as to address all potential motives of a terrorist act but, as noted above, the legal provisions by which FT is criminalized have generally been simplified and improved, which made the legal framework even more robust. The definition of "terrorism" was amended in line with the IMF report concerning the removal of the additional mental element in respect of the "treaty offences" and the modification of the purposive element of the TF offences so that it extends to the collection and provision of funds for any purpose (thus including living and other private expenses) and to any legal or natural person, group or entity involved in terrorism (thus extending to terrorist organisations and individual terrorists).

2.2.3 Compliance with Special Recommendation II

[54] See more in details in paragraph 235 page 70 of the IMF report.

	Rating	Summary of factors underlying rating
SR.II	**C**	

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and analysis

Recommendation 3 (rated LC in the IMF report)

Summary of 2011 factors underlying the rating

236. The Bailiwick of Guernsey was rated Largely Compliant for Recommendation 3 in the IMF report. The IMF criticized that although the confiscation provisions were robust, and they were used routinely in all prosecutions where they can be applied, they had not been used in a fully effective manner because of the few cases instituted in proceeds-generating matters other than drug trafficking.

Legal framework

237. The statutory basis for the confiscation and provisional measures regime has not changed since the time of the last assessment. The description and analysis of the legal framework for the confiscation, freezing and seizure of the proceeds of crime, laundered property and instrumentalities, as it is provided in the IMF report (see references below) has thus remained valid for the purposes of the present assessment as well.

Confiscation of property (c.3.1)

238. As with the criminalization of ML (see above under R.1) it is the POCL that provides for the confiscation, restraint and realisation of proceeds derived from all indictable criminal offences, including terrorism and FT offences but excluding drug trafficking which, however, is covered by the technically equivalent provisions of the DTL that can be applied in respect of the proceeds of drug trafficking offences. In both laws, the powers of confiscation and realisation apply against a person who has been convicted of a criminal offence (as well as third persons, if applicable) while provisional measures (restraint and charging orders) are available already from the investigatory stage of the criminal proceedings.

239. In addition to that, the TL contains a separate set of provisions applicable to confiscate (here: to forfeit) property in possession or under control of persons who have been convicted of the FT offences under Sections 8 to 11 of that Law or which is the subject of an arrangement under Sections 10 and 11. Restraint provisions are also available from the beginning of the investigation.

240. Confiscation of the instrumentalities of all categories of criminal offences is dealt with in the Police Property and Forfeiture Law as well as other pieces of legislation in relation to particular categories of offences (e.g. the Misuse of Drugs Law or the Customs Law.

Confiscation of proceeds of crime (EC 3.1.1.a)

POCL

241. Rules that govern the confiscation of proceeds from criminal offences in general (but not from drug trafficking) as well as the related provisional measures can be found in Part I of the POCL where Sections 2 to 12 provide specifically for the preconditions and legal effects of a confiscation order.

242. Confiscation of proceeds is only possible in criminal cases tried by the Royal Court of Guernsey. In all criminal cases where a defendant appears before the Royal Court, the court may make a confiscation order at the written request of the Attorney General at sentencing where a person has been found guilty of a criminal offence (Section 2[2]). The court first has to

determine, on the balance of probabilities, whether the defendant has benefited from criminal conduct i.e. he has directly or indirectly acquired or obtained property or pecuniary advantage as a result of, or in connection with his or any other person's criminal conduct (Section 2[3]) and if so, it also determines the amount to be recovered (Section 2[4]) which shall be equal to the value of the defendant's proceeds of criminal conduct (Section 5[1]). In case the defendant acquired a pecuniary advantage, he is to be treated as if he had obtained instead a sum of money equal to the value of the pecuniary advantage (Section 2[3]). The court then orders the defendant to pay the amount to be recovered (Section 2[5]). Confiscation of proceeds is thus mandatory but the court may also decide, as an *alternative, not to make a confiscation order if satisfied that a victim of any relevant criminal conduct has instituted or intends to institute civil proceedings against the defendant in connection with that con*duct (Section 2[6]).

243. In determining whether the defendant has benefited and the value of his proceeds of criminal conduct, the court is required to assume that any property held by the defendant at the time of his conviction, or transferred to him within 6 years before the proceedings were instituted, was received as a result of his criminal conduct (i.e. it constitutes proceeds) and that any of his expenditures was also met out of such proceeds (Section 4[3]). The court, however, will not make such an assumption if it shows to be incorrect or if the court is satisfied that it would lead to a serious risk of injustice in the defendant's case (Section 4[4]) which practically means that unless the defendant can establish the lawful origin of the relevant property or can demonstrate a serious risk of injustice, a confiscation order will be made upon conviction and it will cover all unexplained wealth as proceeds of crime (also including property unrelated to the criminal offence for which he was actually convicted). In this context "property" includes money and all other property, real or personal, immovable or movable, including things in action and other intangible or incorporeal property (Sections 50 POCL and 68 DTL).

244. If a confiscation order is not satisfied, the court may order the defendant to be imprisoned for terms not exceeding the maximum periods specified in Section 9(2). In the same circumstances and upon the Attorney General's application, the court also has the power to make a realisation order whereby the Sheriff as receiver may take possession of any realisable property and the court may order the transfer, grant or extinction of any interest in the property (Section 29). Realisable property is defined by Section 6(2) as any property held by the defendant or by any person to whom he has made a gift in the preceding 6 years.

DTL

245. Similar confiscation provisions can be found in the respective sections of the DTL as regards proceeds of drug trafficking. As it was highlighted in the IMF report [55] the main differences are that, first, the confiscation of proceeds can take place regardless whether it was requested by the Attorney General (Section 2[1]b) and that special provisions related to the compensation of victims are absent (as drug trafficking is a victimless crime).

TL

246. Although the proceeds of FT offences are covered, as noted above, by the confiscation regime of POCL, the TL also provides for criminal forfeiture in FT cases. Pursuant to Section 18 of the law, a forfeiture order may be made where a person is convicted of any of the FT offences under Sections 8 to 10 and the terrorism-related ML offence in Section 11. (As it was explained in the IMF report [56] the term "forfeiture" is used here because the order relates to money and other property the defendant actually possesses or controls at the time of the offence, rather than relating to a sum equivalent to an illegal benefit.)

247. 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 intended should be used, knew

[55] See paragraph 246 page 73.
[56] See paragraph 249 page 73.

or had reasonable cause to suspect might be used, for the purposes of terrorism (Section 18[2] and [3]) as well as the property related to arrangements under Sections 10 and 11 (Section 18[4] and [5]). In addition, the court may order the forfeiture of any money or other property which wholly or in part and directly or indirectly is received as a payment or other reward in connection with the commission of a FT offence (Section 18[6]). These forfeiture orders, as opposed to confiscation orders under the POCL and DTL discussed above, may only be issued upon the discretion of the court and do not require any prosecutorial application.

248. Further details regarding the implementation of the aforementioned provisions can be found in Schedule 2 to the TL including that the money or other property that is subject to a forfeiture order must be paid over to the Sheriff, and that the court may make further orders in respect of the sale of property, appointment of a receiver and the dispersal of money or any proceeds of sale etc.[57]

Property that has been laundered

249. As it was noted in the IMF report [58] the laundered property is considered to be subject to confiscation in all instances (including stand-alone ML cases) because of the breadth of the property that is recoverable upon conviction, the scope of which extends to all benefits of the criminal conduct including all property that is obtained "as a result of, or in connection with" a criminal conduct committed by any person (Section 2 POCL). This provision would therefore cover situations where a stand-alone money launderer does not retain ownership of the property derived from someone else's criminal offence, that is, where funds have only passed through his bank account.

250. At the time of the previous evaluation, the issue of recovery of laundered funds in a stand-alone ML prosecution had not been tested before the court and therefore reliance was placed on UK case law based upon the same statutory language as the POCL (according to which this kind of property is treated as "benefit" as long as the defendant had operational control at any stage, even if the financial reward he is receiving is much less than the amount transferred). This interpretation has since been accepted and confirmed by case law in the Bailiwick as a result of third-party ML convictions achieved since the previous assessment (reference can be made to the Taylor and Ludden cases in this respect).

Confiscation from a third party (EC 3.1.1.b)

251. As discussed above and more in details in the IMF report[59], the confiscation regimes under the relevant laws of the Bailiwick call for the full amount of proceeds to be recovered from any property of the defendant. In this context, the POCL and the DTL require the court to assess the extent to which a defendant has benefited from criminal conduct (or drug trafficking) irrespective of whether any property that represents such a benefit is in his hands or the hands of third party.

252. Sections 6(2)b define "realisable property" as any property held by the defendant or any other person to whom the defendant has directly or indirectly made a gift caught by the respective law. A gift is caught by the law if it was made up to six years before the proceedings were instituted against the defendant, or a gift made at any time, consisting of property received by the defendant in connection with criminal conduct or representing in his hands property received in such a connection (Sections 8[1]). The concept of "gift" clearly includes sham transactions (property transferred for inadequate consideration) by virtue of Sections 8(2) according to which "the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a

[57] See more in details in paragraph 250 page 73 of the IMF report.
[58] See paragraph 251 page 73.
[59] See paragraph 254 page 74.

consideration the value of which is significantly less than the value of the consideration provided by the defendant".

253. As a result, it will not matter whether the defendant or a third-party recipient of a gift is in possession of the proceeds or property of equivalent value. In case the defendant does not voluntarily pay the amount to be recovered, the court, as discussed above, may appoint the Sheriff as a receiver to take possession of any realisable property in order to satisfy the confiscation order. Since the concept of realisable property extends to any property held by the defendant or by any person to whom he has made a gift caught by the law, the appointed receiver can also seek to recover property, if so directed by the court, from a third-party recipient unless the latter can establish his bona fide purchaser status by demonstrating to the court that the property was transferred to him for an adequate consideration (see below under EC 3.5.)

Confiscation of Instrumentalities

254. As at the time of the previous assessment, the relevant legislation that allows, in a general sense, for the confiscation of instrumentalities of a crime is the Police Property and Forfeiture Law which provides that where a person is convicted of an offence, the court may make, upon its discretion, an order for the confiscation of any property which has been lawfully seized from the defendant or which was in his possession or control when he was apprehended, if the court is satisfied that the property was used or was intended to be used by him for the purposes of committing or facilitating the commission of any offence (Section 3).

255. While this provision applies to all categories of criminal offences (including any sort of ML or FT offences) there are specific additional provisions for the confiscation of instrumentalities in respect of certain crimes (e.g. drug trafficking[60]). Equally, as noted above, Sections 18 TL provides for the forfeiture of money or other property in the possession or under the control of a defendant at the time of the offence who has been convicted of an FT offence which he intended, knew or had reasonable cause to suspect at the time of the offence would or might be used for the purposes of terrorism.

Property of corresponding value

256. As it was noted in the IMF report [61] the rather value-based than proceeds-based confiscation regime, as set forth in the POCL and DTL, does incorporate the concept of equivalent value. Confiscation orders under both laws require the payment of a sum that reflects the value of the proceeds that the convicted defendant has received. Such orders can be enforced against any assets ("realisable property") of a defendant regardless whether or not that property can be related to the respective offence and thus the confiscation regime is clearly extended to assets that correspond in value to the actual proceeds of crime.

257. Although 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 forfeited under Section 18 (see the differentiation between "confiscation" and "forfeiture" above) but as the FT offences come within the definition of criminal conduct in the POCL, such assets can be confiscated under the confiscation regime discussed above. In such a case, as it was explained in the MEQ, the required assumption of the court (by which any property the defendant possessed at the time of the offence is considered to have been received as a result of or in connection with his criminal conduct) could not be displaced either in case of funds received as payment for commission of the offence or in respect of any funds that he intended, knew or had reasonable cause to suspect would or might be used for the purposes of terrorism, even if the funds originated from a lawful source considering, that the receipt and possession of such funds is criminalized under the TL so the funds are necessarily "connected to his criminal conduct".

[60] See paragraph 260 page 75 of the IMF report.
[61] See paragraph 262 page 75.

Confiscation of Property derived from Proceeds of Crime (EC 3.1.1 applying EC 3.1)

258. By virtue of the 2010 amendments to the POCL and DTL, the concept of criminal proceeds that is, the property or pecuniary advantage (payment etc.) acquired or obtained as a result of or in connection with a criminal conduct expressly includes "any interest, dividend or other form of income or accrued value deriving directly or indirectly from that property" (Section 2[3] in both laws). At the same time, TL was equally amended in an identical manner, as a result of which the scope of proceeds of an act carried out for the purpose of terrorism (Section 7[1]a) now clearly covers the same range of derived property. (However, as it was noted in the IMF report [62], interest, income and profits had already been assessed by the courts to be part of the benefit anyway, even before the said amendment to the relevant laws was adopted.)

Provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation (c.3.2)

259. All three relevant laws provide for the same regime of provisional measures as it was described in details in the IMF report [63]. Under the POCL and the DTL, the regime of measures to preserve assets subject to eventual confiscation consists of restraint orders, realty charging orders and personalty charging orders, which are all available at each stages of the criminal procedure namely (i) when court proceedings have been instituted against a defendant (ii) where the court is satisfied that a person is going to be charged with an offence (iii) even where a criminal investigation has been started with regard to criminal conduct and, in all these cases, there are reasonable grounds to believe that the alleged offender has benefited from his criminal conduct (Sections 25 [1] to [2A]). Restraint or charging orders can only be made upon an application by the Attorney General and the court may discharge or vary a restraint or a charging order at any time, in relation to any property (Sections 25 [5] and [6]).

260. The restraint order is stipulated by Section 26 of both laws. Such a court order is to prohibit any person from dealing with any realisable property and it may equally apply to all realisable property held by a specified person as well as to realisable property transferred to a specified person after such an order has been made. Once the property is restrained, the Sheriff may be appointed by the court as a receiver to take possession of the property and to manage it (Sections 26[4]) and the laws also permit the seizure by the Sheriff or by a police officer of any realisable property to prevent its removal from the Bailiwick (Sections 26[6]).

261. Realty charging orders can be made in respect of realisable property that consists of real property within the Bailiwick. Such an order secures payment of an amount to be paid under a confiscation order or of an amount equal to the full value of the real property charged if no confiscation has yet been made (Sections 27). Similarly, a personalty charging order is to secure the payment of any amount that has been or may be ordered to be paid by the defendant under a confiscation order (Section 28). This order may apply to specified categories of realisable property as listed under Sections 28(2) such as any interest in real property in the Bailiwick or any interest in various forms of state or corporate securities, collective investment scheme units or vessels registered in the Bailiwick.

262. While the provisional measures available through the POCL can also be applied to terrorism-related criminal conducts including FT offences, the TL contains specific powers to issue a restraint order to prohibit any person from dealing with any property that is liable to forfeiture. The latter is defined by paragraph 3(1) of Schedule 2 TL as any property in respect of which a forfeiture order has been made, or any property in the possession or under the control of a person against whom proceedings for a FT offence have been instituted or who is under investigation for such an offence. Further procedural rules are similar to those described above under the POCL and the DTL including those related to the discharge or variation of a restraint

[62] See paragraph 266 page 76.
[63] See paragraph 270 page 76 and onwards.

order and the possibility for seizing any property subject to a restraint order to prevent it from being removed from the Bailiwick (paragraphs [4] and [5]).

263. As it was noted in the IMF report[64] the Police Powers and Criminal Evidence Law[65] 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 (Section 14). Criminal proceeds could fall under these categories inasmuch as the actual property items that constitute proceeds are concerned (while assets unrelated to the offence that only represent equivalent value of the proceeds can only be addressed through the POCL/DTL/TL mechanisms discussed above).

Initial application of provisional measures ex-parte or without prior notice (c.3.3)

264. The application to restrain and seize property in support of a confiscation/forfeiture order may be made on an *ex parte* basis under all three laws. Ex-parte applications without notice are expressly permitted under Section 25(5)b of both the POCL and DTL as well as by paragraph 4(1)b of Schedule 2 to the TL. Such applications are made by, or on behalf of the Attorney General to the Bailiff in chambers. Once an order is made and in effect, it must be provided to any parties affected by it.

Adequate powers to identify and trace property that is or may become subject to confiscation (c.3.4)

265. All three relevant laws (the POCL, DTL and TL) provide for a wide and practically identical range of investigatory measures available to Police officers so as to obtain information and evidence by which the proceeds of crime (including drugs proceeds and terrorist property) as well as instrumentalities can be identified, traced and located so that they can be restrained/seized with a view to their subsequent confiscation. As it was noted by the Guernsey authorities, these powers also extend to Customs officers (that is GBA officers) under the interpretation provisions of all three laws[66] and are thus available to the FIS that makes part of the GBA (and is jointly staffed by police officers too).

266. The first of such measures is the production order, which requires a certain person to deliver up or provide access to specified material "for the purposes of an investigation into whether any person has engaged in or benefited from criminal conduct or into the extent or whereabouts of the proceeds of criminal conduct". The police may, with the consent of the Attorney General, make an ex parte application for such an order to the Bailiff (Sections 45 POCL and 63 DTL, paragraph 4 to 7 Schedule 5 TL).

267. The Bailiff may also issue a warrant to enter and search specified premises and to seize material to be found there, if a previous production order has not been complied with or other conditions make it necessary to seize the particular materials instead of seeking for their production. Application for such a warrant is governed by rules similar to those mentioned above (Sections 46 POCL and 64 DTL, paragraph 1 to 3 Schedule 5 TL). Further, generally applicable powers of search and seizure can be found in Part II of the Police Powers Law[67] applicable to all serious arrestable offences (meaning all offences the commission of which involves actual or intended serious financial gain or loss to any person as well as which are likely to lead to a threat to the security and order of the public order or to cause death or serious injury to any person – Section 90).

[64] See paragraph 277 page 78.
[65] Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003
[66] See e.g. Section 51(1) POCL.
[67] Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003

268. For the same purposes, the court may also make customer information orders upon the application of the Attorney General or by a police officer (with the consent of the former) which require either all or specified financial services businesses to provide specified information related to a particular customer including his assets (existence, number and balance of his accounts etc.) (Section 48A POCL and 67A DTL, Schedule 6 TL). Another measure is the account monitoring order that requires a specific financial business to provide, for the period stated in the order but not exceeding 90 days, ongoing account information for the police (Section 48H POCL and 67H DTL, Schedule 7 TL). Substantial value to the investigation and public interest standards must be met for both of the latter orders (e.g. Section 48C POCL).

269. Both production orders and account monitoring orders were reported to have been sought and granted regularly in the time period relevant to the assessment:

Table 13

years	production orders	account monitoring orders
2011	18	8
2012	7	2
2013	13	-
2014	14	3

270. In the cases referred to above, all applications for production or account monitoring orders were successful and a high proportion of such orders were obtained in ML cases (particularly in the Falla case, where 11 production orders and 3 account monitoring orders were obtained).

271. In addition to these, as it was also noted in the IMF report [68] the Attorney General is vested with special investigatory powers without a court order in the case of investigations into serious fraud, insider dealing and market abuse (including ML cases where the relevant conduct constitutes both one or more of these offences and ML) by virtue of the Fraud Investigation Law[69], Insider Dealing Law[70] and the Protection of Investors Law[71] respectively. The Attorney General may without a court order require the person under investigation or any other person whom he has reason to believe has relevant information to answer questions or to produce specified documents, and may also seek a warrant from the court authorizing search and seizure. As it was explained by the Guernsey authorities, there are some limits on what may be requested or seized and how it may be used, but essentially fiduciary or other duties of confidence would not override a request from the Attorney General except in the case of legal professional privilege.

272. As far as legal professional privilege is concerned, however, the assessment team needs to note that the definition of "items subject to legal privilege" (both in the POCL DTL and the TL see for example Section 46A) might appear too wide as it extends to "items enclosed with or referred to in communications" (i.e. communications between a professional legal adviser and his client and to communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings which would be so protected) "and made (i) in connection with the giving of legal advice, or (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them." As a result, such items could be

[68] See paragraph 284 page 79.
[69] Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991
[70] Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996
[71] Protection of Investors (Bailiwick of Guernsey), Law, 1987

reached neither by production orders nor by search warrants under the legislation in force (see Section 45 paragraph (4)(b)(ii) and (9)(a) as well as Section 46(5)).

273. The Guernsey authorities are confident that the privilege to enclosed items is not aimed at things relevant to the commission of an offence itself or the concealment of assets (e.g. bank records) but at items such as a written analysis of legal issues or expert reports (e.g. accountancy evidence) commissioned by a defendant to assist his defence. In addition, Section 46A(4) of the POCL stipulates that the legal professional privilege exemption does not apply to items held with the intention of furthering a criminal purpose (e.g. documents created for the purposes of thwarting an investigation and/or to conceal the origin of funds).

274. Section 46A, however, is not limited to matters related to the defence of a defendant in a criminal case as reference is made to "legal proceedings" instead of "criminal proceedings". In fact, the definition of "items subject to legal privilege" appears wide enough to extend to documentary or similar evidence on facts relevant to the commission of the crime or to the actual volume, source or location of the criminal proceeds e.g. in the form of records or notes written and held by the perpetrator who claims that these are held in contemplation of and for the purposes of legal proceedings. The preparation and possession of such documentary evidence would not in itself prove the intention of furthering a criminal purpose (Section 46A[4]). Guernsey authorities added, however, that in the event of any dispute the perpetrator would have to satisfy the court that legal privilege was applicable.

275. Consequently, even if this feature of the Bailiwick legislation has not yet been reported as having caused an actual obstacle to the effective application of any investigatory measures, the assessment team harbour some concerns that the breadth of this definition could potentially impede the effective identification and tracing of property subject to confiscation.

Protection of bona fide third parties (c.3.5)

276. As it was already noted in the IMF report, all the three relevant laws (POCL, DTL and TL) contain mechanisms to protect third party rights at each stage of the confiscation/forfeiture process.

277. In the practically identical confiscation regimes under the POCL and DTL, the rights of creditors and other bona fide third parties are respected when assessing the value of realisable property by the court. Both the POCL and DTL define the amount that might be realised as the total value of property held by the defendant excluding the total amount payable in respect of any obligations having priority (Sections 6[1] and [4]). The latter includes, among others, any sum which, if the defendant's affairs had been declared to be in a state of désastre, would be included among the "preferred debts" within the meaning of Section 1 of the Preferred Debts Law[72] (debts in respect of rent of immovable property, wages and salaries to be paid by the debtor and the related tax and social insurance obligations etc.) The value of that property is defined as its market value but the value of any third party interest in any realisable property (the amount required to discharge any encumbrance on that interest) must be deducted from that, which means that the value of third-party interests will not technically be included in the realisable property (Sections 7[1]). On the other hand, however, a gift caught by the POCL and DTL (see above) is not considered a valid third-party interest and thus it will be part of the realisable property.

278. As for the procedural aspects, both laws require notice of a restraint or charging order to be given to persons affected by it, necessarily including bona fide third parties (Sections 25[5]c) who also have the right to apply for the discharge or variation of such orders (Sections 25[7]). Under Sections 29(8) the realisation powers of the POCL or DTL shall not be exercised unless a reasonable opportunity has been given for persons holding an interest in the property to make representations to the court. Both laws provide that assets remaining after the payment in full of

[72] Preferred Debts (Guernsey) Law, 1983

the confiscation order shall be distributed as the court directs among those who held property which has been realised, after giving such persons an opportunity to make representations to the court (Sections 30). In the case of realisable property held by a person to whom the defendant has made a gift caught by the law, powers of realisation shall be exercised with a view to realising no more than the value of the gift for the time being but, on the other hand, also to allowing any bona fide third parties to retain or recover the value of property held by the recipient of that gift (Sections 31 [3] and [4]).

279. In the case of forfeiture of terrorist property under the TL, a forfeiture order under Section 18 cannot be made without giving a third party who claims to be the owner or otherwise interested in the relevant property the right to be heard (Section 18[7]). Similarly to the POCL/DTL regime described above, persons affected by a restraint order issued pursuant to the TL (including bona fide third parties) have the right to be notified of such an order and to apply for the order to be discharged (Schedule 2 paragraph 4[1]c and 4[4]).

280. The Police Property and Forfeiture Law protects third parties affected by the forfeiture of instrumentalities enabling persons who claim to be entitled to any instrumentality or other property in the possession of the Police to apply to the court for return of the property (Section 1[1]).

281. In addition, as it was expressed by the host authorities, the law of the Bailiwick provides for a general right for any third party who claims to be adversely and wrongly affected by the exercise of the powers of confiscation, forfeiture, restraint or realisation to apply for a relevant administrative decision to be judicially reviewed. The legal basis for judicial review of decisions taken by the authorities is case law, beginning with the Guernsey Court of Appeal decision in Bassington v HM Procureur (1998)[73] which has since been followed and applied by the courts to review decisions taken in a wide range of circumstances.

Power to void actions (c.3.6)

282. As it was mentioned already in the IMF report [74] it is a common and customary law principle that applies in the Bailiwick that contracts can be set aside on the grounds that they are illegal or contrary to public policy, as it was raised in the case of Gaudion v Weardale Ltd. (1998) 25.GLJ.61.

283. Apart from that, the confiscation/forfeiture regimes in all three relevant laws, as discussed above, are capable to deal with most property that is the subject of contractual or other transactions, as a result of which the authorities would be prejudiced in their ability to recover property subject to confiscation. As it was explained by Guernsey authorities, such property would likely be treated both under the POCL and DTL as "realisable property" the concept of which is based on a wide definition of property (Section 50 POCL and Section 68 DTL) and, as noted above, includes any gifts made in six years prior to the commencement of the proceedings (Sections 8). On this basis, the court can effectively void the transaction in question, as it has the power to order any person holding an interest in realisable property to make a payment to the Sheriff in respect of the defendant's beneficial interest or that of the recipient of a gift caught by the law, and can by order transfer, grant or extinguish any interest in the property (Sections 29[6]). (Under the forfeiture regime of the TL, as it was pointed out by the authorities, there is no need to set aside actions of this kind as Section 18 generally applies to property under the control of the defendant, irrespective of who possesses it.)

284. As it was already noted in the IMF report [75] a transaction intended to hinder obtaining of a confiscation/forfeiture, restraint or realisation order would also itself constitute a ML or a FT

[73] This case concerned the successful challenge to a decision of the Attorney General to issue a Notice under the Fraud Investigation Law (see above).
[74] See paragraph 293 page 80.
[75] See paragraph 295 page 80.

offence or a related ancillary offence, so as to give rise to confiscation proceedings in respect of the property in question.

Additional elements (c.3.7)

Property of Organisations Primarily Criminal in Nature (Additional Element 3.7.a)

285. Similarly to the time of the previous assessment, the property of organizations criminal in nature is subject to the general rules of criminal confiscation. That is, the confiscation provisions in the POCL, DTL and the TL as well as those in the Police Property Law are equally applicable to a legal person as well as to a natural person, so they could be used either through actions against criminal organizations that are legal persons or through actions against its individual members. For organizations that are not legal persons, the property would be accessed through civil or criminal proceedings against persons that are part of the organization. In addition, the civil forfeiture provisions discussed below could also be used in respect of the property of a criminal organisation that represents the proceeds of unlawful conduct or comprises terrorist cash. (See more in details in the IMF report.)

Civil Forfeiture (Additional Element 3.7.b)

286. Civil forfeiture is available under Section 13 of the Civil Forfeiture Law in respect of cash and funds in bank accounts of £1,000 or more (see also Section 60[1]) collectively referred to as "money" by virtue of Section 12. In this context, "cash" includes notes and coins in any currency, cheques, postal orders, banker's drafts, bearer's bonds and shares, and postage stamps from any jurisdiction (Section 3).

287. The civil forfeiture regime applies to all money or other property that, in whole or in part, directly or indirectly represents the proceeds of unlawful conduct or is intended by any person for use in unlawful conduct (Section 59) where "unlawful conduct" refers to a conduct occurring anywhere in the Bailiwick which is unlawful under the criminal law of that place, and conduct occurring outside the Bailiwick which is unlawful under the criminal law in the country where it occurs and which had it occurred anywhere within the Bailiwick, would be unlawful under the criminal law of that place (Section 61) .

288. The civil forfeiture regime is underpinned by provisional measures and investigatory powers. A Police or Customs officer may without a court order seize cash which he has reasonable grounds to suspect is the proceeds of unlawful conduct or is intended for use in unlawful conduct (Section 6) while the court may order the freezing of funds in bank accounts on the same grounds (Section 10). The prosecutorial application for the freezing of funds may be made ex parte and in chambers. Cash seized under Section 6 may be detained initially for 48 hours, and funds may be frozen under Section 10 for a maximum of 4 months, but these periods are extendable by court order for a further period of no more than 4 months, and thereafter on further order for up to a maximum of 2 years in total, unless the court orders otherwise in the interests of justice. Production orders, customer information orders, account monitoring orders and disclosure orders (which require a person to answer questions, provide information and to produce specified documents) are available in civil forfeiture investigations under sections 20, 28, 35 and 41 of the law similarly to the respective measures applicable under the criminal procedures envisaged by the POCL, DTL or TL.

289. There are also specific powers of civil forfeiture in the TL relating to "terrorist cash" without any minimum threshold (Section 19) which term denotes cash that is 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 (while "cash" itself is defined in Schedule 3 to TL roughly in line with the definition of the same term in the Civil Forfeiture Law). Rules that govern the seizure and forfeiture of terrorist cash under the same Schedule effectively mirror the respective provisions in the Civil Forfeiture Law. These provisions are underpinned by the investigatory powers in Schedules 5 to 7 to the TL.

Offender to Demonstrate Lawful Origin (Additional Element 3.7.c)

290. It is a fundamental principle of the confiscation regime applicable in the Bailiwick and other common law jurisdictions that offenders who wish to escape a confiscation order on the grounds that the property in question has a lawful origin, must demonstrate the lawful origin of that property themselves under the confiscation provisions in the POCL and the DTL. As it was discussed above more in details, the confiscation regime thus has the effect of requiring a defendant to demonstrate the lawful origin of the respective property in order to displace the mandatory assumption of the court that assets held by the defendant in the six years preceding the institution of the proceedings represent the proceeds of crime.

291. The same principle applies to civil forfeiture procedure. Under the Civil Forfeiture Law, a person has to demonstrate the lawful origin of the relevant property at a forfeiture hearing (Section 13) or on appeal against a forfeiture order (Section 14).

Recommendation 32 (statistics)

292. The Guernsey authorities provided the following statistics on the performance of the confiscation and provision measures regime specifically in ML cases.

293. None of the tables below include information on property seized/confiscated on the basis of a MLA request as such statistics are provided below under R.36. All figures in the tables indicate property restrained/confiscated as proceeds of crime. Restraint orders are differentiated depending on whether the order was issued when a person had already been charged with an offence or before that, in the course of a criminal investigation where no charges had yet been brought.

Table 14

2010							
	Property restraint ***(Restraint when charged with an offence)***		**Property restraint** ***(Restraint during criminal investigation)***		**← From which: property confiscated (*Confiscation order*)**		**← From which: property recovered (paid) following conviction**
	Cases	**Amount (Euro[76])**	**Cases**	**Amount (Euro)**	**Amount (Euro)**	**Year of confiscation**	**Amount (Euro)**
ML cases	**1**	**850,067**			**83,350**	**2012**	**83,350**
			1	**988,618**	**667,450**	**2012**	**547,806**
Underlying predicate offences	1 × fraud 1 × tax evasion						

2011							
	Property restraint ***(Restraint when charged with an offence)***		**Property restraint** ***(Restraint during criminal investigation)***		**← From which: property confiscated (*Confiscation order*)**		**← From which: property recovered (paid) following conviction**
	Cases	**Amount (Euro)**	**Cases**	**Amount (Euro)**	**Amount (Euro)**	**Year of confiscation**	**Amount (Euro)**
ML cases			**1**	**8,817**	**7,003**	**2013**	**7,003**

[76] [76] £/€ rate at 1.21118 with rounding to 1€.

Underlying predicate offences	1 × money laundering

2012							
	Property restraint ***(Restraint when charged with an offence)***		**Property restraint** ***(Restraint during criminal investigation)***		**← From which: property confiscated (*Confiscation order*)**		**← From which: property recovered (paid) following conviction**
	Cases	**Amount (Euro)**	**Cases**	**Amount (Euro)**	**Amount (Euro)**	**Year of confiscation**	**Amount (Euro)**
ML cases	**1**	**3,512,422**			(Charged with ML and pending trial)		
Underlying predicate offences	1 × regulatory offences						

2013								
	Property restraint ***(Restraint when charged with an offence)***		**Property restraint** ***(Restraint during criminal investigation)***		**← From which: property confiscated (*Confiscation order*)**		**← From which: property recovered (paid) following conviction**	
	Cases	**Amount (Euro)**	**Cases**	**Amount (Euro)**	**Cases**	**Amount (Euro)**	**Cases**	**Amount (Euro)**
ML cases	**(**none**)**							

Jan-Jun 2014							
	Property restraint ***(Restraint when charged with an offence)***		**Property restraint** ***(Restraint during criminal investigation)***		**← From which: property confiscated (*Confiscation order*)**		**← From which: property recovered (paid) following conviction**
	Cases	**Amount (Euro)**	**Cases**	**Amount (Euro)**	**Amount (Euro)**	**Year of confiscation**	**Amount (Euro)**
ML cases	**1**	**96,894**			(Charged with ML and pending trial)		
Underlying predicate offences	1 × drug trafficking						

294. The following table shows the total number of confiscation orders and funds recovered in ML cases in the period subject to assessment (including cases where the restraint had been made before 2010). Confiscated and recovered amounts are given as opposed to the total benefit obtained.

Table 15

ML convictions involving confiscation	Benefit amount	Property restraint *(in genera)*	Property confiscated *(Confiscation order)*	Property recovered (paid) following conviction
	Amount (Euro)	**Amount (Euro)**	**Amount (Euro)**	**Amount (Euro)**
2010 (none)	-	-	-	-

2011 (none)	-	-	-	-
2012 (2 cases)	**291,725**	**850,067**	**83,350**	**83,350**
	1,786,422	**988,618**	**667,450**	**547,806**
2013 (3 cases)	**222,915**	-	**595**	**595**
	254,420	-	**1,817**	**1,817**
	34,919	**8,817**	**7,003**	**7,003**
Jan-Jun 2014 (none)	-	-	-	-

295. The figures demonstrate that in ML cases, provisional measures and confiscation are applied in respect of proceeds derived from a variety of predicate offences (and thus not only drug trafficking that has traditionally been the most prevalent acquisitive crime in the Bailiwick). Restraint orders were also made in preliminary stages of the proceedings, in one of the cases where a restraint order was made prior to charge, the defendant was subsequently convicted of drug-related money laundering without a conviction for the predicate case and a confiscation order was made on that basis. (Further details on these cases can be found under R.1 above.)

296. On the basis of the first set of tables above (demonstrating the performance of the provisional measures regime in ML cases per year and the outcome of the respective measures in further stages of the proceedings) it can be concluded that 41% of the assets restrained in 2010 were subsequently made the subject of a confiscation order in the respective cases and that 84% of the assets subject to confiscation were actually recovered. (The evaluators could see no room for a similar analysis for the following years as there had been no or only some low-scale ML-related restraint made in 2011 and 2013 while the cases with restraints made in 2011 and 2014 had not yet been concluded.)

297. The last table further demonstrates that most of the confiscated assets have since been successfully recovered. On the other hand, it can also be seen that the amount of confiscated assets are significantly lower than that of the criminal benefit in the respective cases which raises questions about the effectiveness of the asset recovery measures taken by the authorities.

298. The evaluators were also provided with statistics indicating the total figures for restraint and confiscation orders that have ever been applied in criminal cases in the Bailiwick including the aforementioned ML cases as well as those related to other criminal conducts. The cumulated figures are as follows:

Table 16

Year	Number of Cases (of which: ML cases)	Restrained Amount (€)	← out of which: Restraints in ML Cases
2010	7 (ML: 2)	2,005,069	1,838,685
2011	5 (ML: 1)	20,737,554	8,817
2012	6 (ML:1)	3,889,725	3,512,422
2013	2 (ML: 0)	34,833	-
2014 (Jan-Jun)	2 (ML: 1)	98,466	96,894

Table 17

Year	Number of Cases (of which: ML cases)	Confiscation Orders Amount (€)	← out of which: Confisc. in ML Cases
2010	5 (ML: 0)	339,756	-
2011	8 (ML: 0)	79,607	-
2012	7 (ML: 2)	803,375	750,800
2013	18 (ML: 3)	88,586	9,415

2014 (Jan-Jun)	3 (ML: 0)	13,573	-

299. As far as provisional measures are concerned, the evaluators note that the restraints made in ML-related cases represent the vast majority of all restrained assets (except for 2011) despite the relatively low number of ML cases as opposed to the total figures. (The 2011 figures include one non-ML related restraint over 20 million € constituting the largest restraint order made in the relevant period. The latter was a case of suspected fraud where there were related proceedings in another jurisdiction and discussions with that jurisdiction about the possible repatriation of the restrained assets were still ongoing at the time of the on-site visit.)

300. Notwithstanding the volume of ML-related restraints, the cumulated figures on confiscated assets are less convincing. There have only been 5 cases where the court confiscated proceeds in ML cases: two took place in 2012 and three in 2013 while there are no records for the other years.

301. As for the performance of the confiscation and provisional measures in general, the analysis of the respective cases (i.e. those in which a confiscation order had already been issued) showed that the ratio between, on the one hand, assets restrained and confiscated and, on the other, confiscated and recovered assets was roughly the same in ML cases and in those related to other criminal offences.

302. Apart from the fact that the system is functional and that confiscation and restraint orders are applied on a regular basis, however, the statistics above do not allow for drawing further, more definite conclusions as to the effectiveness of these measures. Nonetheless, there appears an unexplainably sudden drop in the number and amount of restraint orders in 2013 as opposed to the preceding years. For the year 2013 and the first half of 2014 the statistics only indicate 4 restraint orders, all issued in drug related cases (one with ML charges too) with amounts ranging from 1,572 € to 96,894 € as a result of a change in policy by law enforcement whereby a greater emphasis has been put on addressing drug trafficking by tackling it at source to better protect the Bailiwick Borders. This has had the effect of reducing the number of drug trafficking related money laundering cases, so as a result greater priority can be given to non-drug related financial crime, but parallel financial investigations continued to be run alongside drug trafficking investigations. As far as financial crime is concerned, as it was explained by Guernsey authorities and discussed under Recommendation 1 above, priority has been given to the 2 most significant ML cases, one of which involved a restraint order made in 2012.

303. In addition, the evaluators learnt that the authorities frequently seize and forfeit, under the Police Property and Forfeiture Law, instrumentalities that have contributed directly or materially to the commission of the respective offence. Reference was also made to vehicles (cars, vessels, jet-skis) forfeited as instrumentalities under the Customs Law. Although this feature of the confiscation regime does not seem to have had much relevance in the context of ML investigations and prosecutions, one case was nonetheless mentioned from 2011 where cash was forfeited as an instrumentality of crime on the basis that it was intended to be used to purchase drugs, in circumstances where it could not be confiscated as the proceeds of crime.

304. Finally, the Guernsey authorities provided statistics in relation to the civil forfeiture regime as follows:

Table 18

Year	Number of cases	Amount forfeited (Euro)
2010	-	-

2011	3	9,649.33
2012	-	-
2013	2	51,237.99
Jan – Jun 2014	1	11,383.11

305. As it was explained by Guernsey authorities, all the cases involving the civil forfeiture process concerned cash suspected to be the proceeds of domestic criminality, which meant in the majority of the cases (4) drug crimes while the rest (2) were related to burglary. Although these do not appear high profile crimes and the sums involved have been relatively small, the cases nevertheless demonstrate that the legal framework is functional (as it had not yet been tested at the time of the previous assessment) and the authorities are able to use it proactively as a way to recover the proceeds of crime in circumstances where the criminal confiscation process cannot be used (see below for further analysis).

Effectiveness and efficiency

306. The Bailiwick had a comprehensive regime of criminal confiscation and provisional measures already at the time of the previous assessment in which area no significant changes have since taken place. This refers to the existence and technical compliance of provisions governing the confiscation of proceeds of crime and instrumentalities in general as well as the regime of provisional measures including restraint and charging orders both before and after proceedings have commenced. The substantially value-based confiscation system facilitates addressing the benefits of criminal activity even in absence of the actual proceeds and/or their respective substitute assets as the authorities can rely on any assets of the defendant, including those he has alienated, to recover the benefits of criminal activity.

307. Examiners of the previous round found that while these provisions, including those related to the investigation, restraint and confiscation of proceeds and benefits appeared to work well in practice, the then limited number of cases did not allow for drawing larger conclusions as to their effective applicability. They pointed out that the effective use of the provisions in the preceding years, in terms of actual confiscation of assets in domestic criminal cases (i.e. those unrelated to foreign requests for MLA) had largely been limited to recovering benefits in drug trafficking matters. It was therefore recommended that the authorities increase efforts to use their robust framework in a more effective way to address criminal activity in the financial industry in addition to drug trafficking and use the confiscation provisions in such matters. In order to that, a more careful review of the activities of the financial sector was recommended so as to develop investigations and cases that are more consistent with the Bailiwick's profile as a financial centre.

308. As with the number of ML-related investigations, prosecutions and convictions in the last four years, the statistics on confiscation orders and related provisional measures demonstrate an increase in the same period, both in terms of the number of cases and the amounts restrained or confiscated. Whereas drug trafficking remains to be the most common form of proceeds-generating crime prosecuted in the Bailiwick and therefore such cases are still predominant in these statistics as well, the restraints and confiscations are no longer confined exclusively to drugs cases. The increasing representation of non-drug related criminality in the statistics appears to confirm that there has actually been a change of emphasis in the approach of the Guernsey authorities with a greater focus on confiscating the proceeds of other forms of crime, and economic crime in particular. In this respect, reference was made to new policies and procedures governing the way in which all law enforcement (Police and GBA) cases are reviewed to establish whether criminal confiscation or civil forfeiture is appropriate. In addition, the evaluators were informed about plans to establish a dedicated asset recovery team be resourced by law enforcement officers, dedicated financial investigators and supported through

a dedicated lawyer with a mandate to assist the recovery of the proceeds of crime that have been identified within the Bailiwick, which is highly favourable.

309. While the evaluators note and appreciate the aforementioned changes, they need to point out that everything that has so far been achieved in the Bailiwick can only be taken as the first steps towards a more effective confiscation regime. The overall number of restraint and confiscation orders and particularly those made in relation to ML or other forms of economic crimes involving the financial industry is still relatively low and the representation of the latter category of offences can only be considered remarkable if contrasted to their total absence at the time of the previous assessment. Whereas the overall figure for assets subject to restraint from 2010 to 2013 in domestic cases was approximately 25 million € the bulk of this sum related to a handful of cases involving outstanding restraints (where more than 20 million € was attributable to a single non-ML related case) which are perfect examples for the functionality of the system but still cannot demonstrate a convincing trend, particularly in light of the unexplainable decrease in the number of cases and amounts in (and from) the year 2013. The rate of recovery following the making of confiscation orders is very high indeed, but the same cannot be said about the ratio between the restrained and confiscated assets.

310. The effectiveness of the civil forfeiture legislation could not be assessed in the previous round as there were no cases at that time. However, there has been an increasing use of the Civil Forfeiture Law in the last four years, resulting in the forfeiture of more than 70,000 € in respect of low level criminal conducts of drug trafficking and burglary. Despite the relatively modest amounts, the functionality of the civil forfeiture regime has successfully been demonstrated although it has not yet proved its effective applicability in targeting more significant amounts of funds derived from the proceeds of serious organized or economic crime.

311. Turning to the development in case law, the occurrence of significant criminal cases involving convictions for autonomous ML by finance sector professionals is an unquestionable achievement and so is the acceptance and application of guidelines from UK case law by the court as a result of which successful restraint and confiscation orders in remarkable sums could be made in these cases. Certainly, it involved in most of the cases the application of production orders, customer identification or account monitoring orders or other measures to identify and trace property subject to confiscation. While these cases are appreciated by the evaluators as a demonstration of the overall applicability of the legislative framework and thus an appropriate response to the challenges identified by the previous assessment team in 2010, the evaluators of the present round have to pose the question whether and to what extent the current regime is capable to respond to other challenges resulting from some aspects of the rather complex company law of Guernsey and specifically the existence and increasing popularity of protected cell companies (PCC) (for details see the excursus on cellular companies in the analysis under R.33). The authorities explained that because the definition of realisable property in the legislation means that property in third party hands may be restrained or confiscated, it would not be possible to put assets beyond reach by transferring them to a cell in a cellular company although this has not yet been tested in practice.

2.3.2 Recommendations and comments

312. The confiscation and provisional measures regime is compliant with all technical aspects of R.3. Nonetheless, the results that the system has so far produced are not able to demonstrate that proceeds of serious economic or other crimes related to or committed by making use of the possibilities offered by the financial industry are adequately addressed. Taking into account the volume of assets managed or channelled through the financial sector of the Bailiwick every year and, specifically, the enormous sums involved in the relatively few ML cases so far prosecuted, it is not difficult to find an imbalance which implies that the actual volume of the proceeds laundered through the sector must be significantly higher than what has so far been identified (although it should be recognised that in some cases, significant assets which are not covered by domestic restraint and confiscation proceedings and so are not relevant for the purposes of R.3

are nonetheless restrained and confiscated at the request of other jurisdictions under the mutual legal assistance process). The lack of more prosecutions, restraints and confiscations is thus likely to be found in the low performance of the authorities in applying measures to identify and trace property subject to confiscation (even if these measures are, again, technically accurate and widely applicable). The Guernsey authorities should therefore examine and analyse why the said measures have not been able to yield more results in tracing and identifying illicit proceeds being introduced into the financial industry of the Bailiwick and what measures can be taken, either by increasing and further training of the staff, or by enhancing international cooperation. Given that the Guernsey authorities have assured the evaluators that assets held in a separate cell of a PCC would be susceptible to confiscation the examiners only make a recommendation on this whole issue in respect to lack of enforceable guidance to clarify that the administrating FSB has to identify and to take reasonable measures to verify the identities of the beneficial owners of the cells.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**LC**	**Effectiveness** •While the confiscation and provisional measures regime is technically compliant with R.3 and it is used with regularity in criminal procedures, it still has not been applied with full effectiveness in ML-related cases, given the dimensions and characteristics of the financial industry and the moderate number of cases involving proceeds-generating economic crimes (and other matters beyond drug trafficking).

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and analysis

Special Recommendation III (rated LC in the IMF report***)***

Summary of 2011 factors underlying the rating

313. The Bailiwick of Guernsey was rated Largely Compliant for Special Recommendation III in the last Detailed Assessment Report compiled by the IMF based on the following conclusions: It was not explicit in the legal framework that a designated person is not to receive prior notice of a freeze action; convictions under Section 5 of the Terrorism Order may be difficult because of a lack of clarity regarding who might fall under the category of a person who commits or attempts to commit or participates or facilitates the commission of terrorism; although guidance to financial sector and other persons on the import of the lists and in what manner; on their obligation to locate and screen for funds; and on an obligation not to make funds available that is irrespective of the STR process was enhanced in the period just after the on-site visit, it was too soon to assess the effectiveness of the new measures.

Legal framework

314. With regard to the freezing of assets of designated persons and entities pursuant to SR.III the assessment team noted with appreciation that new legislation was adopted in 2011 to give direct effect in the Bailiwick law to designations made by the European Union under Regulations that implement United Nations Security Council Resolutions (UNSCRs) 1267 and 1373.

315. The former regime, being effective in the Bailiwick of Guernsey until 2011, consisted of two Orders-in-Council made originally in the UK and then extended to the Channel Islands, namely the Al-Qaida and Taliban (United Nations Measures) (Channel Islands) Order 2002 (which implemented UNSCR 1267) and the Terrorism (United Nations Measures) (Channel Islands)

Order 2001 (for the implementation of UNSCR 1373). The legal basis for an asset freeze under this regime was an administrative freezing of funds notice issued by the Attorney General, to persons believed to be holding the assets of a designated person in the case of the UNSCR 1267 measures and persons involved in or suspected of involvement in terrorism under the UNSCR 1373 measures. Such a notice established an affirmative obligation on the holders to freeze the funds immediately and not to make them available to designated persons (or to those who fall under the sanctions regime of UNSC 1373).

316. The strength of this regime was criticised by the previous assessment team for not imposing a general obligation to freeze in the absence of a specific freezing notice, as a result of which the obligation to freeze could only come into play once actual funds had already been identified and located in the Bailiwick and a specific administrative order had been issued. The system in Guernsey thus required an intermediate step of first locating specific funds and then issuing a targeted freezing notice, in contrast to the system applied in the European Union (including the UK) where the regulations by which UNSCR 1267 and 1373 were implemented generally required all persons and institutions to freeze funds of designated persons and entities.

317. In line with this opinion, a new legal framework was introduced in 2011. As a result, UNSCR 1267 (and the successor resolutions 1988 and 1989) are now implemented by a set of Al-Qaida (Restrictive Measures) and Afghanistan (Restrictive Measures) Ordinances of 2011 which give effect to the targeted asset freezes foreseen by the EU Regulations (EC) 881/2002 and (EU) 753/2011 respectively. UNSCR 1373 is now implemented by the Terrorist Asset Freezing Law that gives direct effect to EU Regulation (EC) 2580/2001 as well as to autonomous designations made by the United Kingdom. In the current regime, the competent authority is the States of Guernsey Policy Council (and not the Attorney General) which is empowered to make its own designations apart from those on the aforementioned lists of designated entities (no domestic designation has yet been made). As opposed to the previous regime, the new legal framework gives immediate effect to targeted financial sanctions without the need for specific administrative actions within the jurisdiction.

Freezing Assets under UNSCR 1267 and its Successor Resolutions (EC III.1)

318. As noted above, UNSCR 1267 and its successor resolutions are now implemented by the Afghanistan Ordinances of 2011 and the Al–Qaida Ordinances of 2013 which were introduced using the power to give effect to EU measures on a voluntary basis under the European Communities (Implementation) Law. These Ordinances were preceded by a single set of Ordinances enacted in 2011 to give direct effect to EU Regulation (EC) 881/2002, which implemented the targeted financial sanctions imposed under UNSCR 1267 in respect of both Al–Qaida and the Taliban. Later that year, the Afghanistan Ordinances were introduced following the enactment of EU Regulation (EU) 753/2011 to implement Taliban-related designations (as a result of the UN's separation of the regimes for Al–Qaida and the Taliban by the introduction of UNSCRs 1988 and 1989 as successor Resolutions to UNSCR 1267) while the original Ordinances remained in place only to implement designations relating to Al–Qaida. Because the latter Ordinances continued to refer to both Al–Qaida and the Taliban, they were repealed in 2013 and replaced with the current Al–Qaida Ordinances which clearly refer to Al–Qaida only.

319. The Afghanistan and the Al-Qaida Ordinances are practically uniform in their scope, structure and terminology. In each case, Section 1 of the respective Ordinance provides that the relevant Regulations are given effect within Guernsey (or Alderney or Sark, as the case may be) as if that island were, mutatis mutandis, a member state of the European Union. Direct applicability of the Regulations is provided through practical modifications to facilitate its domestic implementation by declaring that all references to a Member State are to be construed as including Guernsey (or Alderney or Sark) and by naming the Policy Council as the relevant competent authority in this context (Section 2). As a result, the requirement in the EU Regulations to freeze all funds and economic resources belonging to, owned, held or controlled

by listed parties under the respective Regulation is immediately effective in the Bailiwick, as is the prohibition on making funds or economic resources available, directly or indirectly, to or for the benefit of a designated party.

320. In the context of the Ordinances, the scope of listed/designated parties thus includes all natural and legal persons, groups and entities listed in Annex I to Regulation (EC) 881/2002 (implementing UNSCR 1267 and 1989) and Annex I to Regulation (EU) 753/2011 (implementing UNSCR 1988) on the basis of designations made by the UN Security Council or the Sanctions Committee in relation to the respective UNSCRs. Both Regulations provide that whenever the UNSC or the Sanctions Committee lists a natural or legal person or other entity, the Council/Committee shall include that on the list in Annex I. In this respect, Sections 9(2) of the Afghanistan Ordinances and Sections 10(2) of the Al–Qaida Ordinances provide that any reference to the Regulation which they implement is a reference to that Regulation "as from time to time amended, repealed and re-enacted (with or without modification) extended or applied" meaning that whenever new parties are added to the lists of those subject to an asset freeze, these additions shall automatically (and, obviously, without prior notice to the listed parties involved) be effective under the Ordinances.

Freezing Assets under UNSCR 1373 (EC III.2)

321. UNSCR 1373 is now implemented by the Terrorist Asset Freezing Law which contains various asset freezing and related measures that apply to a designated person. According to Section 1 of the Law, a person may be designated in one of three ways including designations by

- the Policy Council (autonomous domestic designation) on an interim or final basis under Sections 2-4
- HM Treasury (autonomous UK designation) on an interim or final basis under the corresponding UK legislation (Terrorist Asset Freezing etc. Act 2010)
- or by the EU under Article 2.3 of Council Regulation (EC) No 2580/2001 as it may be amended from time to time. The powers of designation of all three bodies apply to the categories of persons identified in UNSCR 1373.

322. Part I of the Terrorist Asset Freezing Law is the legal framework that gives authorisation to and regulates the procedure for making domestic designations in the Bailiwick, in correspondence with the respective powers of the UK HM Treasury under the Terrorist Asset Freezing etc. Act. Pursuant to Section 2 of the Terrorist Asset Freezing Law, the Policy Council may make an interim designation (for maximum 30 days) in respect of a person whom it reasonably suspects to be or to have been involved in terrorist activity, to be owned or controlled directly or indirectly by such a person, or to be acting on behalf of or at the direction of such a person. The Policy Council must also consider that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the person. Subsequent to that, a final designation may also be made under Section 4 applying the same criteria, save that the Policy Council must have a belief (rather than a reasonable suspicion) that a person falls within one of the required categories. (Final designations are valid for maximum 12 months but are renewable.) Involvement in acts of terrorism for the purposes of both interim and final designations is defined at section 4 as the commission, preparation or instigation of acts of terrorism, conduct that facilitates or is intended to facilitate the commission, preparation or instigation of such acts, and the provision of support or assistance to persons who are known or believed by the person giving the support or assistance to be involved in such conduct.

323. To date the Policy Council has not exercised its powers of designation but it has procedures in place to do this should the need arise. These procedures require the Policy Council to consult the UK and domestic authorities before making a designation save in urgent or otherwise exceptional cases.

324. Sections 9 to 13 of the Terrorist Asset Freezing Law impose an asset freeze and prohibitions on making funds, financial services or economic resources available to, or for the benefit of a designated person. These measures are immediately effective as soon as the Policy Council or HM Treasury makes a designation or the EU amends the list maintained under Article 2.3 of Council Regulation (EC) No 2580/2001. Immediateness means that, theoretically, there should be no delay in the process, and although under Section 6 the Policy Council has an obligation to notify a person that he has been designated, this only arises once a designation has already been made and therefore no prior notice is given.

Freezing actions taken by other countries (c.III.3)

325. The authorities expressed that the Policy Council may use its powers of designation under Sections 2 and 4 of the Terrorist Asset Freezing Law to consider and give effect to actions initiated under the freezing mechanisms of other jurisdictions. This fact would also be publicised on the appropriate sanctions page on the States of Guernsey website and the freezing powers provided under the Terrorist Asset Freezing Law would likewise be applicable to the person so designated.

326. In such a case, all that is necessary is that the Policy Council reasonably suspects or believes (as the case may be) that the targeted person meets the criteria at Sections 2 or 4 mentioned above. The procedures for making designations, including the previous consultation with the UK authorities would mutatis mutandis apply but, as it was emphasised by the Guernsey authorities, there are no additional processes or procedures to be followed where a designation is made at the request of another jurisdiction and therefore it is possible to make a prompt determination of whether the relevant criteria are met. Notwithstanding that, the Guernsey authorities have not yet received, either directly or through the official UK channels, a foreign request of that kind.

Extension of c.III.3 to funds or assets controlled by designated persons (c.III.4)

327. The scope of the asset freezing regime under the various enactments is defined in broadly similar terms. In the Regulation (EC) No 881/2002 (Art. 2[1]) as implemented by the Al–Qaida Ordinances, it applies to funds (financial assets and benefits of every kind) and economic resources "belonging to, owned or held by designated parties" which is mirrored by Regulation (EU) 753/2011 (Art. 3[1]) as implemented by the Afghanistan Ordinances, with an additional reference to assets controlled by designated parties (which is missing from the former). The asset freeze in the Terrorist Asset Freezing Law likewise applies to funds or economic resources owned, held or controlled by a designated person (Section 9[1]).

328. This wording remained silent on the issue of jointly owned or controlled assets. It was however explained by the Guernsey authorities that the legislation is interpreted in a conservative manner and in the absence of any wording to exclude jointly owned or controlled assets the authorities regard them as implicitly included in the sanctions regime. Whereas this issue has not yet arisen in the context of UNSCRs 1267 or 1373, the assessors made reference, both in this round of evaluation and the previous one to jurisprudence developed in respect of similarly-worded EU Regulations implementing other targeted financial sanctions regimes (e.g. in the case of Iran and Libya) the scope of which was clearly interpreted to include jointly owned or controlled assets. In those cases, the Policy Council made it clear to concerned parties that dealings with jointly owned or controlled assets is not permitted. (This approach is underlined by information on the States of Guernsey website[77] which states that asset freezes apply to jointly owned or controlled assets.) The Guernsey authorities also made convincing reference to the approach taken in different but similar contexts by the courts, which have frequently granted restraint orders pursuant to the POCL and the DTL against property jointly

[77] http://www.gov.gg/sanctions

owned by a defendant and a third party regardless that these Laws are also silent on the issue of jointly owned or controlled property.

329. The definition of "funds" in Articles 1 of each of the relevant EU Regulations implemented by the Al–Qaida and the Afghanistan Ordinances as well as in Section 30 of the Terrorist Asset Freezing Law equally includes "interest, dividends or other income on or value accruing from or generated by assets". The guidance provided on the States of Guernsey website also confirms that asset freezes include a freeze on interest and other derived assets.

Communication to the financial sector (c.III.5)

330. At the time of the previous assessment, when specific notices were to be issued to those who held funds related to designated entities, the communication to the financial sector was limited to ensuring that the Attorney General provided the holding institution or person the notice immediately upon its issuance. The current regime is, however, based on the concept of general notices to all institutions or persons to freeze any funds related to designated entities and therefore notification of any changes to designations or other changes in respect of all sanctions measures applicable in the Bailiwick, including those under UNSCRs 1267 and 1373 is immediately provided by the FIS directly to all ML reporting officers, at the request of the Policy Council, by use of the online interface THEMIS and also by posting the notification on the GFSC website. This practice was demonstrated to the assessment team through a number of examples.

331. If the Policy Council made any designations under the Terrorist Asset Freezing Law, it would also be communicated in the same way. Generally, when new measures are introduced they are posted on the States of Guernsey and GFSC websites and the Policy Council also issues a media release.

332. In addition, the aforementioned websites of the States of Guernsey and of the GFSC provide links to the current lists under UNSCR 1267 and its successor resolutions, as well as to the consolidated list of asset freeze targets maintained by the United Kingdom HM Treasury which is kept up to date and which includes all persons designated under UNSCR 1267 or under the legislation implementing UNSCR 1373. The Guernsey authorities added that they had also publicised and encouraged financial and other businesses (e.g. in the GFSC Handbooks) to subscribe to a free financial sanctions update service offered by HM Treasury, which sends out prompt information about changes to listings and other relevant information in respect of all economic sanctions.

Guidance to financial institutions and other persons or entities (c. III.6)

333. General guidance on the effect of targeted financial sanctions and the obligations they give rise to is available on the States of Guernsey website and in the aforementioned GFSC Handbooks. Detailed high level information can also be found under the Sanctions section of the GFSC website (http://www.gfsc.gg/FCA/Pages/Sanctions.aspx) as was already the case at the time of the previous assessment. As it was stated by the Guernsey authorities that the Attorney General has also issued general guidance on the sanctions to the Guernsey Bar which includes information on asset freezes. Apart from that, the obligation to screen for the names of designated parties, to freeze assets and to refrain from making funds or economic resources available to designated persons is reiterated in every sanctions notice sent out to the Money Laundering Reporting Officers (MLRO) via THEMIS.

334. In addition, the evaluators learnt that the availability/provision of materials mentioned above is supplemented by information on asset freezes provided in presentations given to industry by members of the Sanctions Committee.

De-listing requests and unfreezing funds of de-listed persons (c.III.7)

335. In respect of designations made by other designating authorities (meaning the UN Security Council, the European Union, the UK or other third countries) these designations cannot be

amended or revoked by the Policy Council but contact points are provided on the States of Guernsey website for anyone who wishes directly to challenge or seek a review of a designation by the UN Sanctions committee, the EU or HM Treasury. Those who wish governmental assistance to do so are invited, on the same website, to contact the Policy Council which would in such cases consult the UK's Foreign and Commonwealth Office and rely on UK procedures (in line with the long-standing constitutional convention that the UK government acts for the Bailiwick in international affairs).

336. There have so far been no requests to the Policy Council for de-listing. There is nonetheless a practical procedure in place which has not much changed since the previous round of evaluation. It is not necessary for the person concerned to go through any legal process or to provide information in any particular form as it is sufficient to contact the Policy Council and to provide such information as the person considers relevant to the de-listing request, together with such other information as the Policy Council may request. Requests are thus likely to be dealt with swiftly and once the matter is referred to the British government, the United Kingdom's own procedures for de-listing will be relied upon.

337. As regards domestic designations that might be made by the Policy Council under the Terrorist Asset Freezing Law, these may be varied or revoked at any time by the Policy Council (Section 7). The States of Guernsey website (http://www.gov.gg/sanctions) advises that anyone wishing to apply for a designation to be revoked or varied should contact the Policy Council and will be informed in writing on the decision made. Since the Policy Council has not yet made any designations it neither has received any applications for variation or de-listing, but procedures are there in place should the need arise. As with the procedures for making designations, the variation or revocation procedures involve consulting the UK and domestic authorities save in urgent or otherwise exceptional cases. The Guernsey authorities expressed that these procedures are likely to lead to timely considerations of applications as there are neither procedural nor formal obstacles (that is, no judicial or other formal process is necessary, and there is no requirement for information supporting an application for variation or revocation to be in a particular form).

338. The assets of any de-listed person are to be unfrozen with immediate effect once the de-listing has taken place, without the need for any further action. Information on sanctions that is sent out through THEMIS includes updates about de-listings as well.

Unfreezing procedures of funds of persons inadvertently affected by freezing mechanisms (c.III.8)

339. Similarly to the case of handling de-listing requests, the Policy Council has procedures in place to unfreeze funds related to persons or entities inappropriately or inadvertently affected by the freezing mechanism. The procedure is published on the States of Guernsey website (see above).

340. Upon receipt of the necessary verification that an affected person or entity is not a designated person, the Policy Council would inform any financial institution or other organisation within the jurisdiction that had frozen the relevant assets of that fact, and would confirm that the assets should be unfrozen with immediate effect (as discussed above under EC III.7).

Access to frozen funds for expenses and other purposes (c.III.9/ Additional element III.15)

341. The Policy Council may issue a licence authorising access to funds as required by UNSCR 1452 by virtue of the respective provisions of the EU Regulations implemented and modified by the Al–Qaida Ordinances and the Afghanistan Ordinances. In this context, reference can be made to Article 2a (1) of Regulation (EC) 881/2002 and Article 5 of Regulation (EU) 753/2011 according to which the freezing mechanism shall not apply to funds or economic resources where the competent authority (here: the Policy Council) has determined, upon a request made by an interested natural or legal person, that these funds or resources are

- necessary to cover basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges
- intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;
- or intended exclusively for payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources.

342. The Policy Council is also empowered to authorise access to assets frozen pursuant to the Terrorist Asset Freezing Law. Section 15 provides that the prohibitions that stem from the freezing mechanism do not apply to anything done under the authority of a licence granted by the Policy Council in respect of a designated person. Such a licence granted under this section may be general or granted to a category of persons or to a particular person, must specify the acts authorised by it and may at any time be varied or revoked.

343. A specific guidance document on licence applications under these and other sanctions regimes is available on the States of Guernsey website (www.gov.gg/CHttpHandler.ashx?id=90496&p=0). This guidance indicates that licences are generally at the discretion of the Policy Council the power of which to issue a licence under the Terrorist Asset Freezing Law is unlimited (as opposed to cases where an Ordinance gives effect to an EU Regulation, and the Policy Council is unable to issue a licence beyond the prescribed licensing grounds in the Regulations). Nonetheless, the guidance declares that the Policy Council will only provide access to the frozen funds, including those frozen pursuant to UNSCR 1373 if it is necessary for one or other of certain specified reasons listed in the document, which are practically identical to the licensing grounds in the EU Regulations (and in UNSCR 1452) as outlined above.

Review of freezing decisions (c.III.10)

344. Similarly to the time of the previous assessment, the law in the Bailiwick has procedures in place for persons whose assets have been frozen as a sanction pursuant to a UNSCR to challenge the measure, by bringing an action for breach of contract or negligence as appropriate against the party responsible in the Bailiwick courts.

345. Decisions of the Policy Council (i) to make or vary an interim or final designation of a person (ii) to renew a final designation of a person, or (iii) not to vary or revoke an interim or final designation of a person under the Terrorist Asset Freezing Law are subject to court review by virtue of Section 24. Any person aggrieved by such a decision has a right of appeal to the Royal Court of Guernsey on specific grounds listed in Section 24(1) including cases if the decision was "ultra vires" or otherwise erroneous, unreasonable, made in bad faith or in lack of proportionality, etc. The same Section provides for a detailed set of procedural rules. As a result of the appeal, the Court may either set the decision of the Policy Council aside (with an option to remit the matter to the Policy Council with such directions as the Court thinks fit) or confirm the decision, in whole or in part (Section [5]).

346. A right of appeal to the Royal Court is provided against a decision not to grant access to frozen funds under Sections 3 of both the Al–Qaida and the Afghanistan Ordinances practically in line with the aforementioned Section 24 of the Terrorist Asset Freezing Law.

347. In addition, there is an "external" right of appeal (i.e. beyond the jurisdiction of the Bailiwick) against designations made by the EU or the UK respectively. Whoever wishes to challenge an asset freeze based on a designation made by the EU can do so at the European Court of Justice which, as it was pointed out by the Guernsey authorities, applies even if the EU designation was made to give effect to a UN designation as it was recently demonstrated by the Kadi case. A person wishing to challenge an asset freeze based on a designation made by the HM Treasury under the Terrorist Asset Freezing etc. Act, 2010 has a right of appeal under Section 26 of that Act (which provides similarly to Section 24 of the Terrorist Asset Freezing Law as referred to above).

Freezing, seizing and confiscation in other circumstances (applying c.3.1-3.4 and 3.6 in R.3, c.III.11)

348. As it was discussed already in the IMF report the Bailiwick law provides for the freezing, seizure and confiscation of terrorist-related funds also in the general context of criminal law. As mentioned under R.1 and SR.II above, the FT and any other related offences in the TL, the Terrorist Asset Freezing Law as well as the Al–Qaida and the Afghanistan Ordinances are indictable offences and therefore predicates for the purposes of freezing, seizure and confiscation under both the POCL (as regards proceeds) and the Police Property and Forfeiture Law (as regards instrumentalities). Terrorist related funds are also specifically covered by powers of freezing, seizure and forfeiture under the Terrorism Law and also constitute unlawful conduct for the purposes of the Civil Forfeiture Law. That is, the provisions that apply generally to (indictable) criminal offences in the Bailiwick apply equally to all terrorism-related criminal offences as outlined above.

Protection of rights of third parties (c.III.12)

349. As noted above, the rights of appeal under the Terrorist Asset Freezing Law as well as the Al–Qaida and the Afghanistan Ordinances may be invoked by any "aggrieved party" and not just by a designated person. Third parties may thus have full access to court review if they believe their rights have been infringed.

350. In a broader context, if the freezing of terrorist property is not related to a UNSCR but takes place in the course of an investigation of any terrorism-related offences under the provisions of the TL and its Schedules (in which case EC III.12 is to be examined as it applies to EC III.11and thus to R.3) the rights of bona fide third parties are protected by the following provisions:

- any person affected by a restraint order may apply for the order to be discharged (Schedule 2 paragraph 4[4]) and any person who claims that cash belonging to him has been detained under Section 19 may apply to the court for all or part of it to be released to him (Schedule 3 paragraph 9)
- compensation may also be awarded to any person (including bona fide third persons) who had an interest in the property affected by a restraint/forfeiture order in case the defendant has been acquitted (Schedule 2 paragraph 7) to owners of seized cash if no forfeiture order was made (Schedule 3 paragraph 10) also to those who has suffered loss in connection with the freezing order or its ancillary provisions (Schedule 4 paragraph 9).

Enforcing obligations under SR.III (c.III.13)

Monitoring compliance

351. Measures to monitor compliance with the legislation, rules and regulations relevant to the UN sanctions regime has been improved since the previous round of assessment. The GFSC continues to oversee compliance with the legal framework in the exercise of its supervisory responsibilities but the scope and objectives of this exercise have been changed along with the changes to the underlying implementing legislation.

352. As described by representatives of the GFSC in detail, their on-site visit methodology includes issuing a pre-visit questionnaire with questions about the policies, procedures and controls which the business has in place to mitigate the risk of taking-on of a customer who is or is controlled by a designated person as well as to ensure the timely identification of those established business relationships in which such parties or individuals are subsequently designated. There are also questions about the systems employed during due diligence reviews of new clients. Steps are taken by the teams during the on-site visit to test the controls which the business has identified in the questionnaire. This includes making enquiries with respect to the use of automated systems, the frequency of possible match identifications or "hits", how those are managed and the approach taken to assess those possible matches.

353. The supervision teams also require that a test be undertaken of automated systems and manual controls when they are on-site in order to verify that they are fit for purpose. They look for confirmation that the business has reviewed notices disseminated from the GFSC and other authorities and that their controls are effective in the identification of listed parties. Businesses are provided with a selection of names of individuals who have been identified as designated persons on a sanctions list as at the time of the visit. They are then required to put the names in to their system and to provide the on-site team with a report of the outcome. This allows the teams to verify that both the calibration and scope of sources monitored by the automated system are appropriate and effective.

354. In addition, oversight of compliance is supported by a reporting obligation in the Terrorist Asset Freezing Law as well as the Al–Qaida and the Afghanistan Ordinances. This requires financial services businesses to inform the Policy Council as soon as practicable if they know or have reasonable cause to suspect, that a person is a designated person or has breached any of the prohibitions in the legislation, together with the information or other matter on which the knowledge or reasonable cause for suspicion is based. There is also an obligation to state the nature and amount or quantity of any funds or economic resources held by them for the customer at the time when they first had the necessary knowledge or suspicion.

Sanctions

355. Failure to comply with the requirements of the Al–Qaida and the Afghanistan Ordinances (and eventually with that of the respective EU Regulations) is a criminal offence under Sections 1(2) of each of the Ordinances. The offence can be committed by anyone who infringes, or causes or permits any infringement of, any prohibition in, or requirement of, the respective EU Regulation. Similarly, Sections 9 to 13 of the Terrorist Asset Freezing Law provide for a range of criminal offences of the same kind, criminalising the contravention of prohibitions related to:

- dealing with funds owned etc. by a designated entity (Section 9)
- making funds or financial services available to or for benefit of designated persons (Section 10-11)
- making economic resources available to or for benefit of designated persons (Section 12-13).

356. All these offences carry prison sentences and fines which vary according to the severity of the offence. In addition, failure to comply with a freezing order issued under Section 20 TL is also a criminal offence, punishable with a maximum of 2 years imprisonment and an unlimited fine (paragraph 7[2] of Schedule 4 to TL). Furthermore, the Guernsey authorities confirmed that failure to comply with freezing orders could also be prosecuted, depending on the characteristics of the case, as a FT offence or an ancillary offence and so attract the penalties for those offences.

357. Apart from criminal sanctions, the regulatory powers of the supervisory authorities (GFSC and AGCC) may also be used to impose sanctions for failing to comply with these measures. Similarly to the time of the previous assessment, the range of these sanctions includes the refusal to grant a licence, the revocation or suspension of a licence, and the imposition of financial penalties.

Additional element – Implementation of measures in Best Practices Paper for SR.III (c.III.14)

358. The legislative framework and procedures in place in Guernsey, as outlined above, reflect a number of practices set out in the Best Practices Paper. This feature was already recognised in the previous assessment report where the evaluation team gave a detailed account of all characteristics of the system then in place which met one or more of the Best Practices.

359. These features of the system have since remained largely the same. The Guernsey authorities made reference to a number of characteristics reflecting Best Practices such as the existence of

designated accountable and competent authorities with responsibility for the freezing of funds, and an effective framework for communication and cooperation among the various governmental departments and agencies (as in Best Practice 5) that the authorities regularly enter into mutual exchange of information about frozen funds with other jurisdictions (Best Practice 6) that information about designated persons is swiftly and effectively communicated to the private sector via THEMIS and that information on the obligations of financial institutions in freezing terrorist-related funds is readily available on the States of Guernsey and the GFSC website (Best Practice 7). The reporting regime and regulatory framework ensures compliance, controls and reporting in the private sector by use of measures referred to under Best Practice 8. Finally, the Bailiwick has designated law enforcement, intelligence and security authorities closely cooperating and coordinating among themselves and with the private sector (Best Practice 9).

Implementation of procedures to access frozen funds (c.III.15)

360. See under c.III.9 above.

Effectiveness and efficiency

361. To date, no terrorist assets have been frozen in the Bailiwick in respect of any persons under the legislation implementing UNSCR 1267 and UNSCR 1373. The lack of cases, however, appears to be consistent with the opinion of the local authorities that the risk of TF has always been and remained remarkably low in the Bailiwick which can also be demonstrated by the absence of any MLA requests and the low numbers of STRs in relation to terrorist financing in the last four years (none of the few TF STRs has resulted in a case being opened or a notification being sent to law enforcement agencies).

362. Notwithstanding the lack of practice, the effective implementation of the legal framework can be assessed by reference to its application in other circumstances. With regard to the legislation implementing UNSCRs 1267 and 1373, the measures outlined above can be shown to have been successful in their application to other targeted financial sanctions regimes, for example in the case of Iran and Libya (both covered by similarly-worded EU Regulations). Therefore it is likely that if assets targeted under UNSCRs 1267 and 1373 were located within the Bailiwick, the measures that are in place to address this would be applicable with the same effectiveness, also making use of practical experience gained from the implementation of similar sanctioning regimes.

363. Apart from the development in legislation, a number of measures have been taken to facilitate the effective implementation of the new legal framework including the establishment of a dedicated Sanctions Committee in 2010 to coordinate and ensure effective compliance with the UNSCRs and other sanctions measures. The committee is made up of representatives from the Policy Council, the Attorney General's Chambers, the GFSC and the GBA, who discuss implementation of sanctions measures at a legislative, strategic and operational level. This has resulted in measures both to improve the systems in place for giving effect to and enforcing international sanctions within the jurisdiction, and to improve access to information from external sources that may assist domestic implementation. These measures apply to the implementation of UNSCRs 1267 and 1373 in the same way as to all other international sanctions.

364. Within the jurisdiction, the process for introducing amendments to legislation has been reviewed and streamlined so that any changes can be implemented faster, while the process for providing guidance on the implementation of sanctions and the communication of changes in the legislation or the listings has also been improved (reference can be made to THEMIS that is used to send information directly to MLROs or to the dedicated sanctions section on the States of Guernsey website to provide comprehensive information on the different regimes in place). Adequate guidance and monitoring mechanisms are likewise provided for. Compliance is overseen by the supervisory authorities (GFSC and AGCC) including the on-site assessment of

the policies, procedures and controls that businesses have in place to meet the requirements of targeted financial sanctions.

365. The assessment team was advised that the active steps the Sanctions Committee have taken to promote an increased understanding of the sanctions framework have had a marked effect. That is, the number of sanctions-related queries from businesses which the authorities receive has increased since the creation of the Sanctions Committee and, as it was added by representatives of the GFSC, their on-site inspections show that businesses have heightened levels of awareness, better procedures and a greater emphasis on providing training for staff in relation to sanctions. Indeed, the evaluators also experienced, in their meetings held during the on-site visit, a high degree of awareness of the issue among the various entities subject to the AML/CFT regime which has clearly increased the likelihood of businesses detecting the involvement of parties designated in respect of UNSCRs 1267 and 1373.

366. The authorities of the Bailiwick have established contacts to obtain information from external sources to facilitate implementation of targeted financial sanctions. Reference was made, first of all, to the effective working relationship the Policy Council has developed with HM Treasury, the UK's competent authority for asset freezing measures. As a result, the Policy Council is given indirect access to intelligence-based material and other sources of information for the purposes of verifying information provided in support of applications for licences and authorisations which would not otherwise be available to it. The Sanctions Committee has also liaised with the UK's Foreign and Commonwealth Office in order to facilitate effective implementation in cases where cooperation between the two jurisdictions is required, for example in the context of de-listing requests.

367. Links have also been established, in cooperation with the United Kingdom, with the European Commission, with the aim of raising awareness within the EU of the implementation of EU Regulations by the Bailiwick to promote information-sharing with other competent authorities as appropriate. In addition, practical contacts have also been made with authorities outside the EU such as the USA's Office of Foreign Asset Control (OFAC) as a result of which the States of Guernsey sanctions website now provides information, for awareness raising purposes, on OFAC regulations (which however have not been given a direct effect in the Bailiwick).

368. As noted above, appropriate communication of lists and any relevant changes is provided for under the current legislation and practices and the assessment team appreciates the comprehensiveness of the current regime by which designations are communicated to the industry. Notwithstanding that, the evaluators can see some room for improvement regarding, first, the apparent legal uncertainty concerning measures to be taken within the time gap between the designation of a person or entity by the UN and the making of the respective EU designation and, secondly, in terms of timeliness.

369. As far as designations made by the UN Security Council's Al-Qaida and Taliban Committees are concerned, the Guernsey authorities (the Policy Council) receive direct notice of any changes via information feeds from the UN website. The respective updates to the EU lists are communicated to the Bailiwick via the Channel Islands Brussels Office (CIBO) (which provides advance notice) and the UK British and Commonwealth Office. The CIBO was established as a joint Guernsey and Jersey initiative in April 2011 to promote the interests of the Channel Islands in Europe, to represent their Governments and public authorities to the EU institutions and to advise them on EU policy issues. CIBO provides the Guernsey authorities with advance notice of forthcoming Decisions and Regulations, including Implementing Regulations dealing with changes to designations (both autonomous EU designations and designations that implement UN designations).

370. The current regime of administrative freezing would only cover assets that belong to persons or entities that have already been designated by an EU Implementing Regulation but cannot be applied before such a designation is made. This leads to an unavoidable delay usually of

approximately 7 to 10 days. Because of this, as soon as the Guernsey authorities are notified of any update to the original UN lists, an immediate online notice would be issued to all MLROs alerting them to the UN's changes, advising them that corresponding changes to the EU designations are expected imminently and warning them that if they release any relevant funds in the meantime that will be regarded by the authorities as the commission of a TF offence. (Examples of this form of notice were provided to the evaluators.)

371. That is, for the time period between the UN and the EU designation, an administrative freezing order made by the Policy Council under section 20 of the Terrorism Law or the rules of criminal procedural law could only be used to freeze or seize the assets of the designated person or entity. An administrative freezing order could be made in the event that the designated person (who must be a resident of a country or territory outside of the Bailiwick) had threatened or was likely to threaten the economy of the Bailiwick, the life or property of UK nationals or the life or property of residents of the Bailiwick. This power could therefore be used if, for example, the designated person or entity in question was connected to kidnapping or hostage taking or other forms of terrorist activity such as cyber-attacks in a way that meet these criteria. The rules of criminal procedure cannot be applied without initiating a formal criminal investigation, either into the relevant assets themselves on an in rem basis under the Civil Forfeiture Law or the Terrorism Law, or into the commission of a criminal offence subject to the jurisdiction of the Bailiwick. Certainly, if an FSB or any other obliged entity releases funds which they know belongs to a designated person or entity, this act can be considered as a potential TF offence and the funds can be frozen on this basis. It is a question, however, whether the same legal basis could apply, in the same time period, to freeze or seize deposited funds without any attempt to release them (considering that the mere appearance of a name on any terrorist list does not necessarily constitute a domestic criminal offence.) Moreover once a criminal procedure is initiated, the freezing action would then depend on the outcome of the proceedings (which is not the case with the administrative freezing) and the evaluators cannot see how a criminal seizure or freezing could be converted to an administrative one once the EU designation has also been made. Nonetheless, there is no jurisprudence in this field: there have been no such procedures initiated so the applicability of criminal procedure for such cases is yet to be tested before the Court.

372. During the on-site visit, the assessment team was advised of a number of instances where representatives of the financial industry which were branches of companies overseas had been notified of the latest updates to these lists through their respective communication channels within the group of companies before receiving any official notification from the Policy Council via THEMIS or otherwise. In such cases, the delay was not reported to be significant but in urgent cases even hours count and the Bailiwick regime does not seem to be fully adapted to immediate actions. The Bailiwick authorities advise that they aim to issue the online notices to the MLROs without any delay after they have been notified of any update to the UN or EU lists (from the UN website or via the CIBO, respectively). Nevertheless, the evaluators found more than one instances where it appears to have taken one or more working days for the authorities to issue the online notice. For example, UNSCR 1267 was updated on 23rd September 2014 which was communicated in an online sanctions notice to all MLROs on 24 September (1 day later). Again, the respective amendment to the EU list (by virtue of Reg. 1058/2014) was published on the EurLex website on 08th October and only notified to MLROs by online sanctions notice on 10th October (2 working days later).

2.4.2 Recommendations and comments

Special Recommendation III

373. The size and structure of the financial sector in the Bailiwick might unavoidably attract funds of various sources including those that belong to designated persons or entities and thus there is a potential vulnerability to the terrorist financing threat despite the lack of concrete cases.

374. The immediateness of the freezing actions is therefore a key factor and the Guernsey authorities should strengthen their efforts to minimize delays in communicating UN and/or EU designations to the financial sector and other obliged entities so as to ensure the immediateness of the freezing actions.

375. While the evaluators appreciate that the Guernsey authorities seek for solutions to reach terrorist-related funds even before the designation is made by the EU (i.e. in the interim period between the UN and the EU designation) they harbour concerns whether the rules of criminal procedure could be a sound legal basis for this purpose particularly as the conversion from criminal to administrative freezing is concerned. Uncertainty should ideally be eliminated by adopting legislation either to extend the scope of administrative freezing to assets belonging to persons or entities that had already been designated by the UN Security Council but their respective EU designation has not yet taken place (e.g. by means of an interim domestic designation) or to expressly provide for the applicability of criminal provisional measures for the same time period.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**LC**	• Concerns about the practical applicability of criminal procedural rules to seize/freeze assets in the interim period between an UN and a EU designation; • Further efforts are required to ensure the immediate communication of UN/EU designations to the obliged entities and thus the effectiveness of the freezing actions.

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and analysis

Recommendation 26 (rated LC in the IMF report***)***

Summary of 2011 factors underlying the rating

376. In the 2011 Detailed Assessment Report R.26 was rated "Largely Compliant". The deficiencies were stated as limited effectiveness of the overall reporting system in terms of domestic law enforcement results in respect of money laundering, and lack of effectiveness due to a limited direct access to financial information.

Legal framework

- Disclosure Law (DL), 2007;
- Terrorism and Crime Law (TL);
- FIS Handbook;
- Disclosure (Bailiwick of Guernsey) Regulations, 2007;
- Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007;
- FSB Handbook;
- PB Handbook;

377. The functions of the Financial Intelligence Unit are entrusted in the Bailiwick of Guernsey to the Financial Intelligence Service (FIS) which is a division within the Financial Investigation

Unit of the Guernsey Border Agency (GBA). For the sake of clarity in the analysis of this Recommendation, the acronym "FIU" is used as defined by the FATF Methodology and the Guernsey Border Agency Financial Investigation Unit (which is a law enforcement agency in Guernsey *but not the FIU as understood in the FATF Recommendations*) is abbreviated as GBA FI Unit.

378. Although reports of suspicion are referred to as STRs for the purposes of consistency with the language of the FATF Recommendations, the practice of the FIS is to refer to SARs, i.e. Suspicious Activity Reports, to ensure that reports are made in situations where no actual transaction is involved. References to STRs in this document should therefore be read with this in mind.

379. The major legal change since the IMF evaluation relating to the FIS activities has been the introduction to the DL (since 28th of May 2014) and the TL (since 30th of July 2014) of amendments introducing the notion of "any other person" into the power of authorities to prescribe the form and manner of provision of additional information. The necessary amendments authorizing the FIS to request additional information from third parties if there was an initial disclosure, were introduced into the Disclosure Regulations and Terrorism and Crime Regulations (Terrorism Regulations) and came into force on 7th of August 2014.

380. Since the last evaluation the FIS has introduced a computer facility known as THEMIS. As a result the manner in which an STR must be submitted to the FIS has been changed, and the Regulations now require reports using the prescribed form to be submitted through an online reporting facility (i.e. via THEMIS) unless consent to submit the form by alternative means has been given by an authorised officer. In practice virtually all STRs are now submitted via THEMIS.

Establishment of an FIU as national centre (c.26.1)

381. The Guernsey FIU is the Financial Intelligence Service (FIS). The FIS was established in 2001 as a joint service, headed by Police and Customs officers on a rotational basis. After several changes to the structure of law enforcement and names of units, the FIS sits now within the Financial Investigation Unit in the Guernsey Border Agency (GBA FI Unit) and is formed by police and customs officers.

382. The FIS competences for receiving ML related STRs from the obliged entities are set out in Sections 1 (financial services business) and 3 (non-financial services business) of the Disclosure Law (DL), which provides the obligation to report to a *"nominated officer"* or to a *"prescribed police officer"*. The definition of a *"prescribed police officer"* is stipulated in Section 17 of DL as a member of the Financial Intelligence Service.

383. The role of the FIS is mentioned in the DL in Section 17 which introduced a definition as follows: ""Financial Intelligence Service" means the division of the Financial Investigation Unit, comprising those police officers and other persons assigned to the division for the purpose of the receipt, analysis and dissemination within the Bailiwick, and elsewhere, of disclosures under Part 1, which are more commonly known or referred to as suspicious transaction reports or suspicious activity reports". The composition of the FIS organisational structure is not provided in any document but is left to the discretion of GBA.

384. An identical definition is included in the TL in Section 79. Similar obligations are set for TF related STRs in the TL under Sections 15 (financial services business), 12 (non-financial services business) and Section 79 (the definitions of a *""Financial Intelligence Service"* and *"prescribed police officer"*).

385. The FIS itself was not established by law or regulation but its status is explicitly recognised and enshrined in legislation. It is mentioned in the DL and the TL as a division of the FI Unit and in the Disclosure Regulations and the Terrorism Law Regulations. All of these pieces of

legislation make it clear that STRs should be made to the FIS and that the FIS is responsible for receiving, analysing and disseminating STRs.

386. Thus the FIS is the competent authority for receiving reports of suspicion, analysing these reports and disseminating the results of that analysis. The analysis is carried out at both an operational and a strategic level. The FIS also receives information from other sources that are relevant to money laundering, associated predicate offences and terrorist financing. In addition, it responds to requests for assistance from other domestic and international authorities.

387. The primary objective of the FIS is to receive, develop and disseminate financial intelligence in association with other agencies, in order to combat crime and terrorist financing, both locally and internationally.

388. The FIS is headed by a Senior Investigation Office and is subject to the ultimate oversight of the Head of Law Enforcement in Guernsey[78] through reporting lines, as its head reports to the Head of the GBA FI Unit, who then reports to the Deputy Chief Officer of the GBA, who in turn reports to the Head of Law Enforcement.

389. The FIS receives STRs from a wide range of businesses both within and outside the financial services sector. The FIS also receives reports from the Bailiwick's two regulatory bodies. The GFSC makes reports relating to suspicions which have been identified during on-site visits or from information provided by the financial services businesses and prescribed businesses. The AGCC makes its own reports in relation to its licensees.

390. Other than in exceptional cases where the consent of an authorised officer is required, the STRs have to be submitted to the FIS via the THEMIS portal. They are automatically acknowledged by THEMIS on receipt and given a generic reference number.

Guidance to financial institutions and other reporting parties on reporting STRs (c.26.2)

391. The Disclosure Regulations and the Terrorism Regulations prescribe the manner in which STRs must be made. Regulation 1(1) requires reports to be made using the online reporting facility. This involves the completion and submission of a prescribed form via THEMIS. The prescribed form requires the completion of a number of boxes covering a wide range of details, and it provides further information about relevant supporting documentation.

392. The THEMIS can be accessed both from the FIS and from the GBA FI Unit webpages. The login is made based on credentials (name and password) given by the FIS to the reporting entities. After receiving each SAR an acknowledgement message is automatically sent to the originator.

393. Detailed guidelines on how the electronic form should be submitted are available on-line: description of the reporting process, Frequently Asked Questions, 'distance learning package' on THEMIS and best practice information for submitting STRs.

394. THEMIS also has the facility to provide financial institutions and other reporting entities with specific notices which are sent via a generic email address to individual users. These notices are a mechanism through which the GBA FI Unit provides information to all THEMIS users or to specific *'targeted'* distribution groups, dependent on the information or guidance that is being issued. Notices sent via THEMIS relevant to STRs include updates on changes to the legislative framework and news of forthcoming presentations or seminars.

395. The FIS issued specific guidance on reporting attempted and proposed activity or transactions that has been placed on the FIS website. The GFSC has also issued information and guidance on reporting suspicion at Chapter 10 of the FSB Handbook and at chapter 8 of the PB Handbook. The guidance outlines the statutory provisions concerning the reporting and disclosing of

[78] Head of the Law Enforcement post provides operational oversight of both the Police and the Guernsey Border Agency.

suspicion to the FIS relating to a transaction or activity including an attempted or proposed transaction or activity.

Access to information on timely basis by the FIU (c.26.3)

396. Although there is no specific legal provision regulating the FIS's direct or indirect access, on a timely basis to the financial, administrative and law enforcement information, the FIS is entitled to use the provisions of Section 6 of the DL to have access to such information from the public authorities, which stipulates that an *"authorised person"*[79] may disclose to a police officer any information held by a government department if the disclosure is made for the purpose of:

- any criminal investigation which is being or may be carried out, whether in the Bailiwick or elsewhere,
- any criminal proceedings which have been or may be initiated, whether in the Bailiwick or elsewhere,
- the initiation or bringing to an end of any such investigation or proceedings,
- facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end;
- any civil forfeiture investigations within the meaning of section 18 of the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007,
- any proceedings under that Law or under corresponding legislation in force in a country designated under section 53 of that Law.

397. However, the word *"may disclose"* is used. The language "may disclose" in the DL has been considered by the evaluation team. The provisions of Subsection (3) of Section 6 stipulate that no disclosure of information shall be made unless the "authorised person" is satisfied that the making of the disclosure is proportionate to what is thereby sought to be achieved. The language "may disclose" rather than "must disclose" is the common law approach to ensuring that issues such as confidentiality do not impede disclosure. The reason why disclosure of information by a government department under Section 6 of the DL is subject to the approval of an authorised person is to ensure that the disclosure of potentially sensitive government information is dealt with by a reasonably senior member of staff. It is, therefore, an operational measure codified in legislation. Information requested by the FIS from government departments has never been refused in practice.

398. The provisions of Section 6 above do not cover any information in the possession of the Director of Income Tax.

399. Disclosure of information by Director of Income Tax is regulated under Section 9 of the DL which lifts the obligation to confidentiality or other restriction on the disclosure of information imposed by statute to a police officer, in similar circumstances as in case of Section 6.

400. In addition to the limitation described above, Section 9 contains the following restrictions:

- the disclosure is subject to the Director of Income Tax approval;
- the information obtained shall not be further disclosed by a police officer (or the Commission) except for a purpose mentioned in those subsections and with the consent of the Director of Income Tax;

[79] "authorised person" means: in Guernsey, a person employed in a department of the States of Guernsey who is authorised by the chief officer of the department, or in the event that the department has no chief officer, the Chief Executive of the States of Guernsey, to make disclosures under this Law; in Alderney, the Chief Executive of the States of Alderney, and in Sark, a person appointed by the Chief Pleas of Sark to make disclosures under this Law,

- nothing in this section authorises a disclosure, in contravention of any provisions of the Data Protection (Bailiwick of Guernsey) Law, 2001, of personal data which are not exempt from those provisions.

401. These requirements are included in the Disclosure Law as safeguards against abuse, for example if a member of the FIS were seeking to obtain or disclose to a third party sensitive financial information about a person for purely personal reasons that did not relate to a legitimate enquiry. The form of safeguard that is set out under Guernsey's legal system does not impede the effectiveness of the FIS, and the Director of Income Tax has never refused a request from the FIS.

402. According to the FIS Handbook, the FIS personnel have direct access to a number of law enforcement and open source/subscription databases in order to assist them with their investigations. Concretely, FIS has access to:

- Guernsey Police Nominal (Linkworks);
- GBA Immigration database;
- THEMIS - Local GBA information;
- Police National Computer (PNC) database – criminal convictions within UK;
- Income Tax enquiries (restricted only to the officers who have taken the Oath of Secrecy under the Income Tax Law and only to purely domestic matters but not to matters covered by the international exchange of information for tax purposes);
- JARD (records all cash seizures, restraints and criminal and civil asset recovery cases in England and Wales);
- Guernsey Registry (Local company information and registered charities/ NPOs)
- States of Guernsey Cadastre;
- Experian and Equifax; (Credit checks)
- Guernsey vehicle registration and ownership details
- Open sources (World Check, C6, Lexis Nexis)

403. The FIS access to domestic financial and administrative information held by different authorities is further regulated through other legal gateways such as Section 21(2)(b) of the Financial Services Commission Law (for information held by GFSC); Paragraph 12(2)(c) of Schedule 1 of the Gambling (Alderney) Law (for information held by AGCC) and the MOU concluded between the FIS and the Income TaxOffice. Law enforcement has also signed MOUs with the GFSC and the AGCC that cover sharing of information.

404. Information which the Attorney General has obtained under the Fraud Investigation Law may be disclosed under section 2 of that Law to any person or body for the purposes of the investigation of an offence or prosecution.

405. Information held by the Registrar of Charities and NPOs may be disclosed under paragraph 13(2) of the Schedule to the Charities and NPOs Registration Law for the purposes of the prevention or detection of crime or for the purposes of any criminal proceedings. Details of all applications of Guernsey and Sark Charities and NPOs are passed to the FIS.

406. Information held by the Policy Council in relation to international sanctions, which includes UNSCR 1267 and UNSCR 1373 on terrorist financing, may be disclosed to the FIS to assist it in its functions under section 10A of the DL.

407. The FIS may request ownership information on Guernsey companies, Alderney companies and limited liability partnerships from resident agents by way of service of a certificate from the Chief Officer of Police or the Chief Officer of Customs under section 490 of the Companies

Law, section 152H of the Companies (Alderney) Law and paragraph 7 of Schedule 2 to the Limited Liability Partnerships Law respectively.

408. The FIS has access to the Joint Asset Recovery Database (JARD), which records all cash seizures, restraints and criminal and civil asset recovery cases in England and Wales. This tool identifies financial investigations and the results of any cases including those which result in an acquittal.

409. The FIS also subscribes to a number of commercial databases which provide direct and immediate information including information on UK companies, worldwide media reports and credit history records for UK individuals i.e. Experian, Equifax, Lexis Nexus, Companies House, World Check, and C6.

410. In addition to these resources, the FIS may obtain further information under court order which may be made on an urgent ex parte basis. The relevant orders are production orders (under section 45 of the Proceeds of Crime Law, section 63 of the Drug Trafficking Law and Schedule 5 of the TL), customer information orders (under section 48A of the Proceeds of Crime Law, section 67A of the Drug Trafficking Law and Schedule 6 of the TL), and account monitoring orders (under section 48H of the Proceeds of Crime Law, section 67H of the Drug Trafficking Law and Schedule 7 of the TL).

411. The relevant information from such databases is included into the disseminated files.

Additional information from reporting parties (c.26.4)

412. Under Regulation 2 of the Disclosure Regulations and the Terrorism Regulations, the FIS may serve a written notice on a person who has made an STR, requiring that person to provide such additional information relating to the STR. Ordinarily the information must be provided within 7 days, but the FIS may extend the 7 day period and may also reduce it to a reasonable lesser period in urgent cases. Failure without reasonable excuse to comply with a notice in the specified time frame is a criminal offence.

413. An amendment (Regulation 2A) to the Regulations came into force on 7 August 2014. Its effect is that if an STR has been made, the FIS can request information relating to that STR from a third party if it is satisfied that there are reasonable grounds to believe that the third party possesses such information, and also that there are reasonable grounds to believe that the information is necessary to the FIS for the proper discharge of its functions.

414. According to the FIS Handbook, following a disclosure, FIS investigators will contact an MLRO for clarification of matters within the disclosure, and on occasion, ask for some more information.

415. Where an MLRO feels unable to provide the requested information under Regulation 2 of the Disclosure Regulations, perhaps due to his belief that it would be a breach of his client's confidentiality, a formal requirement for the information can be considered. If it is decided to make such a requirement, it must be in writing to the person who made the disclosure. The statutory period within which the additional information must be provided is seven days, but in cases of urgency this can be reduced with the authority of a *"relevant officer"*, *i.e.* a Police Inspector or a GBA Senior Investigating Officer.

416. It is to noted that the chapter of the FIS Handbook (for internal use) regulating the additional information requests made reference to the Guernsey AML Law from 1995 which was repealed in 2010, and the chapter concerning the new (widened) powers to request additional information was under construction. The Handbook was updated after the on-site visit.

417. At the time of the on-site visit the exercise of the widened powers was used in practice only once and thus the evaluators cannot confirm the effective application of the new provisions.[80]

418. In addition to using the powers conferred by the Regulations, the FIS makes enquiries to reporting entities, often as a result of intelligence received from another jurisdiction. This will only be done after an assessment of proportionality has been carried out, in line with human rights principles. The reference to proportionality and human rights is aimed at exceptional situations, for example where a request from a foreign jurisdiction does not relate to prevention, detection or investigation of crime or the apprehension or prosecution of offenders, or where it purports to meet these criteria but appears in fact to be politically motivated rather than a legitimate enquiry. Information communicated by the FIS in the course of making an enquiry may result in the reporting entity in question making an STR, in line with the GFSC Handbook which stipulates that suspicion can arise from sources other than a transaction or activity within a business relationship. If so, the powers under Regulation 2 will then be engaged.

419. However, this way of getting information depends on the suspicion of the reporting entities with regard to the requested information. **F**or that they should form or have reasonable grounds for suspicion themselves otherwise they have the right to refuse to submit STR at the FIS's request. Another restriction in such case might be the second condition for making an SAR which says that the information or other matter must come to a person in the course of the business of the financial services business. But the authorities confirmed that queries made by the FIS to reporting entities are always made to the person concerned in his or her professional capacity, not on a private basis, and therefore the grounds for suspicion generated by an FIS query always come to that person in the course of a business (whether financial or otherwise) as required by the legislation. The FIS also has powers to obtain information on behalf of third parties under section 490 of the Company Law; this power has been used on behalf of third parties (and could use corresponding powers under section 152Hof the Alderney Company Law and schedule 2 paragraph 7 of the Limited Liability Partnerships Law in appropriate cases). It is a matter of administrative convenience from the perspective of the FIS as to which legislative approach it uses.

420. STRs may also be made following the issue by the FIS of a Financial Liaison Notice to registered users of THEMIS, requiring them to check all business records related to named individuals who are charged with or suspected of involvement in criminal offences. Again, in this case the powers at Regulation 2 will be used if the issue of the Notice results in an STR.

Dissemination of information (c.26.5)

421. There is no specific legal provision regulating the power of the FIS to disseminate financial information to domestic authorities for investigation or action. For dissemination, the authorities use the provision of the DL which in its Section 8 provides that information obtained by a *"police officer"* under the DL or any other enactment, or in connection with the carrying out of any of the officer's functions, may be disclosed to any other person if the disclosure is for any purposes set out in subsection (2). Subsection 2 define the purposes as:

- the prevention, detection, investigation or prosecution of criminal offences, whether in the Bailiwick or elsewhere;
- the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of the Bailiwick or of any country or territory outside the Bailiwick;
- the carrying out by the GFSC, or by a body in another country or territory which carries out any similar function to the Commission, of its functions;

[80] The widened powers have been exercised on three further occasions within the evaluation period. The answers were used by the FIS in its analysis

- the carrying out of any functions of any intelligence service;
- the conduct of any civil forfeiture investigations within the meaning of section 18 of the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) Law 2007, or any proceedings under that Law or under corresponding legislation in force in a country designated under section 53 of that Law;
- the carrying out of any function which appears to the Home Department to be a function of a public nature and which it designates as such by order.

422. However, the disclosure is not authorised if:

- Is in contravention of any provisions of the Data Protection (Bailiwick of Guernsey) Law, 2001 of personal data which are not exempt from those provisions,
- Is prohibited by Part I of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, or
- Contains tax information which does not have the approval for dissemination by the Director of Income Tax

423. The definition of a *"police officer"* is provided in Section 17 of the DL as a member of the salaried police force of the Island of Guernsey, a member of the special constabulary of the Island of Guernsey, a member of any police force which may be established by the States of Alderney, a member of the Alderney Special Constabulary and in Sark the Constable and the Vingtenier. A *"police officer"* includes a customs officer. The authorisation to disseminate financial information to other domestic authorities under the Proceeds of Crime Law and the DL covers a wide range of purposes which cover investigation or action in respect of ML/FT.

424. Section 43(1) of the Proceeds of Crime Law permits the disclosure of information for the purposes of the investigation of crime or criminal proceedings in the Bailiwick. There is equivalent provision for purposes outside the Bailiwick at section 44.

425. Section 10 of the DL permits a Police officer of the rank of inspector or above and a Customs officer of the rank of senior investigation officer or above to disclose to the Director of Income Tax information which he/she reasonably believes may assist the Director to carry out his functions.

426. Section 10A of the DL lifts any obligations of secrecy or confidence or others in case of disclosure of information relating to terrorist financing issues covered by UNSCR 1267 and UNSCR 1373 to the Policy Council and other authorities with responsibility for sanctions measures.

427. Before dissemination, the intelligence from STRs is sanitised and evaluated. The THEMIS system creates a generic intelligence report which adopts evaluation as set out in the UK National 5x5x5 Intelligence Model and is marked 'official' taking account of the latest government security classifications.

428. By using the National Intelligence Model 5x5x5 system to grade the reliability of the intelligence and to place restrictions on its use, an initial assessment is made of the risks attached to sharing the intelligence with other parties. Where this grading system is not considered to be sufficient to convey the risks involved, taking into account the particular circumstances of any individual case, an additional risk assessment form must be completed. The identified risks should then be considered when deciding how to manage the intelligence report.

429. The risk assessment process includes consideration of ethical, personal and operational risks in respect of the source, the information content, its use and dissemination. This process requires

justification for the decisions made and is subject to authorization at the appropriate internal authorization level. The person authorizing the intelligence report considers the proportionality, accountability and necessity for recording, retaining and disseminating the information.

430. The dissemination process is not subject to specific procedures as to which beneficiary and in which circumstances a FIS analytical product will be sent. In practice, the main beneficiaries of the FIS' work are foreign FIUs, the GBA, the Guernsey police, the GFSC and the States of Guernsey Income Tax Office. The decision is taken on a case by case basis. As an example, the evaluation team was advised on-site that the SARs containing suspicions that a financial institution (which is *subject* to the SAR, not the *originator* of the SAR) might be in AML/CFT compliance breach, are disseminated to the GFSC.

431. The Intelligence Division of the GFSC has access to data on THEMIS and an officer from the GFSC conducts monthly reviews of all incoming STRs (sanitised) to obtain information that may assist the GFSC in the exercise of its functions. Access to THEMIS is available to nominated officers within the Income Tax Office and the FIS has access to the computer system of the Income Tax Office (having taken the oath of secrecy under the Income Tax Law), which is controlled under the provisions of the MoU between the two bodies. The records available to those FIS nominated officers exclude any records received for the purposes of the international exchange of information for tax purposes.

432. The FIS can impose restrictions to the use of its information. In no case may the FIS report contain any reference or personal detail of the individual that has submitted the STR.

433. The statistics provided show an increase of disseminations abroad while disseminations to local authorities decline. Local disseminations include reports being disseminated to Guernsey Law Enforcement (Police and Border), Law Officers, GFSC, States of Guernsey Income Tax, States Housing Authority and the Policy Council.

434. According to the information received, 70% to 85% of all disclosures are disseminated, with more than two thirds of those being international disseminations. This indicates that the SARs refer mainly to activities abroad, which reflects the character of the business in Guernsey. The authorities confirmed that all domestic disseminations, which comprise the remaining 15% or so, are related to ML suspicion. Approximately 60% of these disseminations are made to law enforcement and 40% to other authorities.

Operational independence and autonomy (c.26.6)

435. The FIS is a Division of the FIU which in turn is a division of the GBA and as such the Head of the FIS reports to the Head of the GBA FI Unit who reports to the Deputy Chief Officer of the GBA, who in turn reports to the Head of Law Enforcement in Guernsey.

436. The FIS has its own allocated budget (see Recommendation 30), from which payments are authorised by the Head of the FIU.

437. While located within the GBA FI Unit the FIS made it clear during the discussion that they do not act under the orders or instructions of the Head of the GBA FI Unit in the exercise of their functions and that they enjoy complete independence in their work. The Head of the GBA FI Unit confirmed the operational independence of the FIS. The evaluation team saw no evidence to contradict this confirmation

438. However the FIS is not established by law or regulation although its core functions and responsibilities are stated in the DL and TL. The FIS Handbook which was issued by the GBA FI Unit in 2002 and which should be updated on a regular basis sets the roles and functions of the FIS. The organizational structure of the FIS is left at the decision of the Head of the GBA FI Unit.

439. The FIS is recognised and its role embodied explicitly in legislation and the authorities are explicit in interpretation that the FIS has an adequate level of operational independence. The

evaluators were not aware of any indication that the operational independence of the FIS had been breached so far. The FIS has equal status with the other teams within the law enforcement divisions. Financial and human resources of the FIS are ring-fenced against being deployed in other areas. These matters are well established as a matter of practice. Although the composition of the FIS organisational structure is within the discretion of the head of the FIU, he reports directly to the Deputy Chief Officer, who in turn reports to the Head of Law Enforcement, so any proposed changes that could undermine the position of the FIS would have to be justified to officials at the highest levels within the GBA.

Protection of information held by the FIU (c.26.7)

440. Information held by the FIS is subject to a wide range of physical, IT, procedural and legal protections. The Egmont security advice published in the document 'Securing a Financial Intelligence Unit' has been implemented.

441. The FIS is situated within a secure building which is alarmed and connected to the Guernsey Police control room. There are procedures to control and limit access to specific areas within the FIS, including restricted access to secure storage areas limited to senior investigation officers, which are also monitored by close circuit television. No intelligence material can be removed from the FIS office without reference to a supervisor, and removal by any non-FIS staff must be recorded. No intelligence material is placed on laptops or other data storage media e.g. USB/CD without the express permission of a senior investigation officer and appropriate security protocols adopted.

442. The personnel deployed within the FIS are predominantly law enforcement officers and are therefore fully trained in the handling of evidence, data and the data protection protocols. The officers working within the FIS are subject to enhanced security vetting upon recruitment into the GBA, which is valid for 10 years. Officers must sign a "Declaration of Secrecy" form and adhere to the codes of practice regarding confidentiality and integrity.

443. The FIS disseminates intelligence to other competent authorities in various secure methods including: Egmont Secure Web (ESW), THEMIS, Police National Network (PNN) and FIN-NET. The IT systems that are utilised by the FIS form part of the States of Guernsey IT system which is secure and meets requirements set out in the Data Protection legislation. The systems have a full audit facility and THEMIS has search justification process which requires officers to justify why they have undertaken a search. THEMIS also has a function which can restrict access to specific records/data sets including the facility to hide records which are deemed to be classified as restricted or secret.

444. The FIS has policies and procedures in place for the handling, storage, dissemination, protection of, access to, and retention of information. The documents are sanitised to protect the source of the intelligence and a risk assessment is undertaken to ensure that the intelligence is not sent to an inappropriate destination, such as a high risk jurisdiction, where it could potentially cause harm or be disclosed to the subject of the report.

445. In addition, the intelligence reports disseminated by the FIS are marked as 'Restricted' and each page contains the following text: *"This document contains sensitive material which, if disclosed to the subject(s) might pose a real risk of prejudice to an important public interest and is therefore subject to the concept of public interest immunity. If this report has been disseminated outside the Bailiwick of Guernsey the recipient jurisdiction should apply their equivalent guidelines so as to ensure the protection of this material. In the event of a prosecution no part of this document should be disclosed to the defence without prior consultation with the originator".*

Publication of periodic reports (c.26.8)

446. FIS produces statistics an annual basis which consist of quantitative data some of which is published both in the GBA and GBA FI Unit annual reports.

447. However, the last annual report on the GBA website is from 2011. No other reports are available. The FIS data included in the report is just data on the numbers of STRs.

448. The FIS was publishing its annual reports on the website until 2009 (the last FIS report is for 2008) which contained statistical data and analysis of STRs, together with sanitised case reports as well as an overview of other activities of the FIS. No further separate annual reports have been published since.

449. Nevertheless, guidance, typologies and information on FIS activities have been released periodically, as well as the provision of feedback on trends, statistics and case studies. During 2013 presentations to large audiences to industry practitioners were delivered by the FIS on its activities, AML/CFT awareness and the reporting of suspicion; written material was also provided. Further presentations were made in 2014. Amongst these, the FIS (together with the GFSC) undertook a number of flagship outreach events attended by 400 MLROs in May/June of 2014. In addition, a copy of the outreach presentation "Best practices for SARs and New Changes to Legislation" was published on the FIS website. Further outreach material "Obligation to report suspicion of money laundering/update from the FIU" and "Typologies: The Cash Controls (BoG) Law, 2007 and Non Convictions Based Forfeiture" were also published by the FIS during 2014.

450. The FIS uses THEMIS to provide financial institutions and other reporting entities with notices which contain information on a range of matters including guidance and warnings on potential risks, new typologies, and changes to the legal framework.

451. The FIS published on the website a document *"Feedback and Typologies 2008-2011"* which contains analysis of STR reporting during that period and examples of case studies (typologies) where STRs led to or assisted in law enforcement investigations and further convictions.

Membership of Egmont Group & Egmont Principles of Exchange of Information among FIUs (c.26.9 & 26.10)

452. The Bailiwick has been an active member of the Egmont Group of FIUs since 1997; this was initially facilitated through the Joint Financial Crime Unit and from 2001 through the FIS. The FIS hosted the Egmont plenary meeting in 2004.

453. In 2013 the FIS formally affirmed its commitment to the new Egmont Charter, i.e. its integral body of standards and its statement of purpose.

454. Guernsey co-operates and exchanges information with other Egmont Group FIUs on the basis of reciprocity or mutual agreement and following the basic rules established in the Egmont principles.

455. The FIS adheres to the EGMONT Group statement of purpose and principles and affirms its commitment to develop co-operation between and amongst other EGMONT members in the interest of combating money laundering and the financing of terrorism.

456. The FIS also adheres to the EGMONT binding principles for information exchange between FIUs. Information received, processed or disseminated by the FIU is securely protected in accordance with agreed policies regarding data storage as detailed in criterion 26.7 above.

457. The FIS exchanges information freely, spontaneously and upon request with foreign FIUs, regardless of their status. Guernsey does not require an MOU in order to exchange information, which can be achieved through its existing legal framework. It will nevertheless enter into agreements if required by other jurisdictions or organisations, and has currently signed MOUs with 23 different parties.

458. Out of 557 spontaneous disseminations made during 2013 there were 473 international disseminations. 36% of these were to the UK. Other significant international disseminations include approximately 4% to TRACFIN (France), 3.5% to FINCEN (US), 3% to SEPBLAC

(Spain) and 2% to UIF (Italy). A total of 124 spontaneous information reports were received in 2013. 89% of information received came from the UK (SOCA/NCA).

Recommendation 30 (FIU)

Adequacy of resources to FIU (c.30.1)

459. The expenditure for the FIS covers salaries, overtime, vehicles, specialist assistance, forensic accountants, furniture and equipment and training. It is coordinated through the GBA FI Unit budget, and is planned and authorised by the GBA FI Unit management team, which includes the head of the FIS.

460. The sums (in GBP) allocated for 2014 are as follows:

TABLE 19: FIS financial resources

Item	GBA FI Unit	FIS	TOTAL
Staffing Costs	£1,175,349.56	£405,681.68	**£1,581,031.24**
Legal Assistance	£15,000.00	-	**£15,000.00**
Publications	£1,450.00	£1,450.00	**£2,900.00**
Training	£3,262.50	£4,362.50	**£7,625.00**
Travel	£14,825.00	£7,000.00	**£21,825.00**
Property	£110,197.50	£110,197.50	**£220,395.00**
TOTAL	**£1,320,084.56**	**£528,691.68**	**£1,848,776.24**

461. The FIS is staffed by members of both the GBA and the Police. It currently has an establishment of 8 staff, comprising a Senior Investigation Officer, a Detective Sergeant, an Acting Detective Sergeant; one GBA Investigator, one Dedicated Financial Investigator, one (part-time) Financial Crime Analyst and two administrative staff (including a Part Time Process Manager). The FIS also draws upon other resources of the GBA and Police staff to assist with major cases as required.

Integrity of FIU authorities (c.30.2)

462. The FIS maintains a high level of professional standards both in respect of the initial selection of personnel and through continuous development. Investigative personnel are selected from the GBA and Police, including from the other teams within the FIU, subject to their investigative experience and aptitude for financial investigation. All GBA investigators selected for the role are subject to successfully completing basic investigative training.

463. All posts within the FIS are subject to security clearance and all personnel are advised of the confidentiality requirements during the induction process, on-going training and office meetings. All personnel are required to sign both the Police and GBA IT User Policy agreements. All members of staff receive data protection training as well as instruction on the IT systems available to assist with intelligence development and analysis as well as security issues.

464. All FIS personnel are subject to a one to one appraisal on a biannual basis. The appraisal includes a Personal Development Plan (PDP).

465. In addition, to ensure that staff with a law enforcement background have a good understanding of the finance sector, some have completed (or are in the process of completing) a Certificate in Offshore Banking Practice as part of their 2014 PDP. The course is certified by the Chartered Banker Institute.

Training of FIU staff (c.30.3)

466. Training is organised across the GBA FI Unit and training for the FIS comes within this. Training is planned on an annual basis, subject to departmental and individual staff needs.

467. All personnel on joining undergo a period of induction and are required to attend a number of locally based courses run by the Guernsey Training Agency to provide an understanding of a number of the core financial structures e.g. companies and trusts. In addition, all staff members receive data protection training and *"cascade"* training in respect of all accessible databases. Update sessions are also arranged at regular intervals.

468. The NCA Financial Investigation Training programme is central to training for investigators. All staff will attend the initial Financial Investigation/intelligence module, which includes a pre-requisite course and completion of an examination based on course pre-reads.

469. The Financial Crime Analysts have undertaken training that includes i2 analyst Notebook, advanced i2 analyst Notebook, Open Source Intelligence and Internet Investigations, ACPO Accredited Intelligence Analyst and NPIA Financial Investigator training courses, and also maintained their skills using the various analytical products.

470. A combined Egmont Tactical and Strategic Analysis course was delivered by the Financial Crime Analyst to 30 Channel Island based staff in January 2014. This included 15 members of the GBA FI Unit.

471. There is a dedicated terrorist finance officer who has attended the course run by the UK NTFIU and continues to obtain updates in national developments through attendance at conferences and regional meetings. Key issues and topics discussed during these meetings are cascaded to other officers by way of team meetings. There are also sessions involving outside speakers in respect of terrorist financing.

Recommendation 32 (FIU)

472. The FIS maintains comprehensive statistics on matters relevant to the effectiveness and efficiency of AML/CFT systems. These include a breakdown in respect of the type of organisations making the STR and a breakdown of STRs analysed and disseminated. Statistics are also kept in respect of the residence of the subject of STRs, the grounds for making STRs and STRs in respect of NPOs, PEPs and other exposed persons.

Effectiveness and efficiency

473. All STRs are subject to analysis to establish the criminality, risk and priority. The initial analysis is conducted two ways: by a priority matrix system incorporated in THEMIS and by an officer who will make a preliminary assessment of the suspected criminality and record the outcome accordingly. The initial analysis process will determine a number of factors including:

- the level of priority;
- any risk to the jurisdiction;
- whether there is a request for consent to a transaction;
- whether the STR relates to an act which requires immediate attention i.e. successful fraudulent act;
- whether the STR involves a current ML/FT investigation;
- whether or not additional information is required from the disclosing institution.

474. If the initial analysis of the STR indicates that it should be pursued, the STR is allocated to an officer for further analysis, to identify possible offences of money laundering or terrorist financing as appropriate.

475. The second stage of the analysis process is to conduct open and closed source checks to establish if the subject of the STR is known to the law enforcement agencies or to determine

whether there are links to possible criminality. These checks are made against both domestic sources, *i.e.* the GBA, the Police, and other Bailiwick authorities, and commercial databases. The results of this initial stage are analysed, evaluated and recorded on the STR's file as a *'snap shot'* of what information has been collected and the inferences that have been drawn in respect of it.

476. One important power of the FIS is the authority to postpone the execution of suspicious transactions. STRs are often accompanied by a request for the consent of FIS to a particular transaction, and if consent is granted this may amount to a defence for the reporting person to the money laundering offences under the Proceeds of Crime Law and the Drug Trafficking Law. Reporting entities are obliged to postpone transactions themselves when they send request for consent to the FIS.

477. The FIS is expected to respond to requests for consent within 7 days save in exceptional circumstances. If it suspects that the proposed transaction involves the commission of a criminal offence, or it is awaiting the result of checks or enquiries that will assist in the negating of the relevant suspicion, it will refuse to consent to the transaction unless it is considered that a refusal may prejudice a law enforcement operation by alerting relevant parties.

478. A refusal of consent must be authorised by a person at the level of senior investigation officer or above and is subject to regular review by a senior investigation officer as well as being reviewed at regular tasking and coordination meetings and also by the Head of the FIU. At the same time, the evaluators could only find in the Proceeds of Crime Law (Section 39(3)) that consent from the police officer is a defence for a reporting person. While the right of the reporting entities to request consent is fixed in the law and in the reporting form there is no obligation for the FIS to respond within a specified period. The 7 days are mentioned only in the GFSC Handbook issued for reporting entities and the FIS handbook but not in legal acts.[81]

479. In cases involving the transfer of assets, the refusal of consent acts as an informal freezing of the assets involved because the service provider will not usually proceed with the activity for fear of committing a money laundering offence. In the 2012 case of *Garnett v Chief Officer of Customs*, which concerned an application for judicial review, the Guernsey Court of Appeal ruled that consent should only be given if the FIS considers it justified by reference to the interests of law enforcement, and in any case in which it has a suspicion that has not been dispelled, it is entitled to refuse consent whatever period of time has elapsed.

480. Most cases where consent is requested do not give rise to suspicion and consent is granted. For example, in 2013, approximately 46% of initial STRs received by the FIS included a consent request, and consent was withheld in approximately 2% of these cases. It should be noted that the THEMIS disclosure form has a special field for filing request for consent with specification of the act or transaction for which consent is sought.

481. At the time of the on-site visit, the FIS had recently been given the power to request additional information from the third parties than the one issuing the STRs. Before the new powers, in case of need, the FIS had to persuade the reporting entities to make a disclosure in order to have access to the additional information needed

482. From the information received, 70% to 85% of all disclosures are disseminated, with more than two thirds of those being international disseminations. This indicates that the SARs refer mainly to activities abroad, which reflects the character of the business in Guernsey. Around 60% of domestic disseminations (that is around 15% of all disclosures) are made to law enforcement and 40% to other authorities.

[81] The Garnet case concerned the refusal of the FIS to grant consent to a transaction under section 39 of the Proceeds of Crime Law which, unlike the corresponding legislation in the UK, does not contain any time frames within which consent must ordinarily be granted.

483. The total number of disseminations made by the FIS is recorded in the table below. The evaluators were told that 2 convictions for autonomous ML and one conviction for self-laundering resulted from investigations following STRs and a further autonomous ML conviction was obtained with the assistance of STR information. Generally, about 50% of the total domestic cases identified by the FIS which were disseminated to the FIU, were accepted for a money laundering investigation locally.

TABLE 20: Disseminations by FIS

	2010	2011	2012	2013	Jan – Jun 2014
Total SARs received	680	1136	673	745	387
Total number of SARs with disseminations	572	822	412	483	231
Total number of SARs with no disseminations	108	314	261	262	156
Total number of disseminations	689	966	483	557	280
Total number of International disseminations	411	840	390	473	245
Total number of local disseminations	278	126	93	84	35

TABLE 20.1: SARs received with Politically Exposed Person (PEP) links

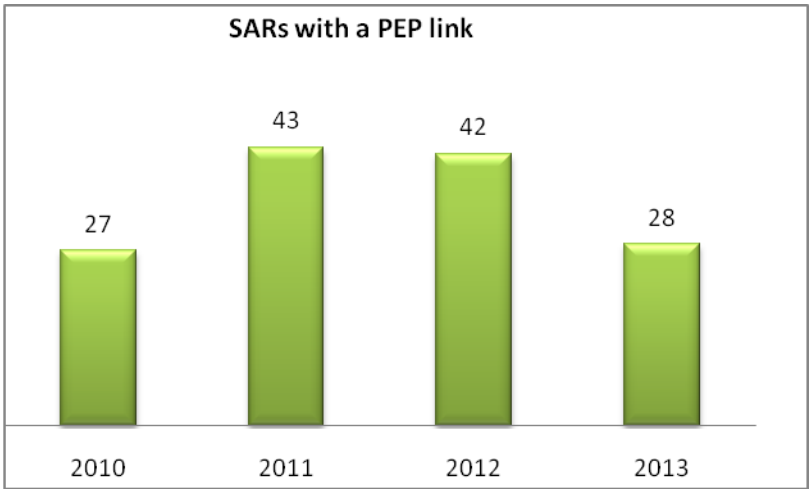
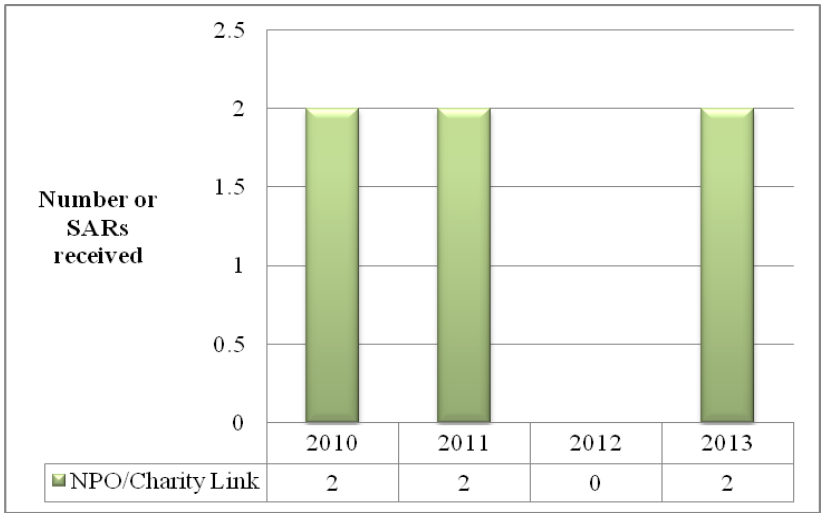


TABLE 20.2: SARs with Non- Profit Organisation (NPO) or Charity Links



484. With regard to terrorist financing, 5 STRs were received under the Terrorism Law and 3 of these led to disseminations to 5 different competent authorities.

485. In addition the FIS has carried out a review of the effectiveness of STR regime, in which STRs from the period 2007 – 2012 were reviewed to identify resulting convictions, sentences and confiscations or other outcomes. The review involved consideration of open source material, feedback from other jurisdictions, and local results. The review findings are set out in the table below.

Table 21

Year	Convictions	Sentence (Years)	Criminal Confiscations	Other Funds Recovered	Description
2007	18	46.3	£341,928	£284,712,705	12,267,505 Fines 272,405,200 Bonds 40,000 Civil Recovery Pending
2008	13	47.4	£551,074	£3,551,726 240 hours	Fines Community service
2009	22	137.8	£1,227,373	5 years £585,589,984.94 £1,901,898 240 hours	Director Ban Fines Restrained Community Service
2010	28	55.9	£505,000	300 hours £1,568,980 1 500 million US$ €24,789	Community Service Restrained Disqualified Director Fine Fine
2011	2	5		£19,913,473	Restrained
2012	10	29.5	925,000	£8,800.00 $150,000 BD 40000 £9,555.00 2 40,000	Fines Fine Fine Benefit Overpayment Companies Struck off Compensation order

486. Information provided by the FIS following an STR has also assisted in 2 cases of enforcement action under the Cash Controls Law.

487. The following table identifies the number of STRs that have been disseminated to the GFSC:

Table 22

Year	Number of Disseminations to GFSC
2010	14
2011	28
2012	38
2013	40

488. These intelligence reports assist the GFSC by highlighting potential areas of weakness for specific licensees and this contributes to the GFSC's overall Risk Assessments. Intelligence reports have also been of direct assistance where the GFSC has commenced enquiries on behalf of overseas regulatory bodies.

489. The FIS frequently receives positive feedback from other jurisdictions about the way in which the intelligence it provides has been used.

490. A further effective measure implemented by the FIS is a strategic analysis of common trends/patterns associated with attempted frauds, some of which were identified through the STR regime. The FIS identified, through the analysis, that Phishing was a common trend utilised by fraudsters to make fraudulent transactions without the knowledge of the client. The FIS published "warning notices" via THEMIS and raised awareness of the threat by publishing news feeds on the FIS and GFSC websites and the media.

2.5.2 Recommendations and comments

Recommendation 26

491. Although the authorities are explicit in interpretation that the FIS has an adequate level of operational independence, no legal safeguards have been introduced in this regard. The evaluators were not aware of any indication that the operational independence of the FIS had been breached so far, but the lack of legal provisions or statute of the FIS or on the structure and resources of the FIS within the GBA, together with being placed at the lower level of the hierarchy of the GBA, gives concerns over its operational functioning. The GBA could in practice at any time draw from the FIS staff in case of need for other purposes. At the same time the head of the FIU reports directly to the Deputy Chief Officer, who in turn reports to the Head of Law Enforcement, so any proposed changes that could undermine the position of the FIS would have to be justified to officials at the highest levels within the GBA. The authorities should introduce terms of reference or other formal safeguards to ensure the FIS's operational functioning.

492. The evaluation team recommends the Guernsey authorities to issue guidance on the procedure for information requests and to update the FIS Handbook regularly to reflect the legislation currently in force[82].

493. The FIS periodically provides feedback on trends, statistics and case studies to the industry practitioners. Similar information is also available on THEMIS. However sometimes this is available only to the reporting institutions and is not always publicly available. The last annual report on the GBA website is for the year 2011. No more reports are available. The FIS data included into the report is just data on the numbers of STRs. After the on-site visit but not within 2 months period after it, new reports on FIU statistics were placed on the FIU website with very limited statistics related to the FIS (Law Enforcement Reports). The authorities are recommended to periodically release reports on FIS activities, statistical data, guidance and typologies and trends.

494. While the FIS exchanges information freely, spontaneously and upon request with foreign FIUs, regardless of their status, the need for the FIS to have received an initial disclosure in order to be able to request information from third parties limits possibilities of cooperation. Although in cases without an initial disclosure the FIS can use the provisions of the Company law and other similar laws (see paragraph 419) to request information from legal entities that information will be related to ownership only. All this raises concern in this section as well as under the section on international cooperation due to the international character of the financial business in Guernsey. The FIS should study the practice of the exchange of information and introduce the needed mechanisms to liquidate this impediment.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating

[82] The Guidance was issued after the on-site mission.

R.26	**LC**	• Lack of legal safeguards for operational 'functioning"; • Insufficient information in public reports released. ***Effectiveness:*** • Lack of legal provisions for requesting additional information without an initial STR might limit the power of the FIS to render assistance to other FIUs.

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Legal framework and developments since the previous evaluation

Law, regulations and other enforceable means

495. The primary legislative foundation for AML/CFT preventative measures in the Bailiwick is the Proceeds of Crime Law (POCL), which defines ―money laundering, specifies which businesses are considered to be financial services businesses ("FSBs"), and provides the Policy Council with the mandate and powers to set out obligations and requirements to be complied with by FSBs to prevent money laundering and terrorist financing. In addition, Section 15 of the Disclosure Law (DL) also provides that the GFSC may implement rules and issue guidance for FSBs (and others) relating to the disclosure of information. It may also implement rules and provide guidance regarding money laundering generally. For the purposes of this assessment, both the POCL and the DL, having been adopted by the Bailiwick's legislative body and sanctioned by the Privy Council, constitute primary legislation.

496. Under Section 49 of the POCL, in December 2007, the Policy Council issued the FSB Regulations, which impose basic requirements on FSBs to prevent money laundering and terrorist financing. These obligations include corporate governance, risk assessment, CDD, monitoring of transactions and activity, the reporting of suspicion, employee screening, training, and record keeping. Pursuant to regulation 17 of the FSB Regulations, breaches are subject to criminal sanctions. Any person contravening any requirement of the FSB regulations is guilty of a criminal offense and liable (a) on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both, and (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £10,000 or both.

497. The FSB Regulations are secondary legislations and are considered ―law or regulation - within the FATF definition for purposes of this assessment, as they were issued under a specific power granted in primary legislation, are approved by the States of Guernsey (as required by Guernsey law), and contain mandatory provisions which are enforceable and subject to the sanctions as set out in regulation 17 of the FSB Regulations.

498. In addition to the POCL and the FSB Regulations, the third document that must be considered is the Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing (FSB Handbook), which was issued by the GFSC in December 2007 pursuant to Section 49(7) of the POCL, and was last updated in March and April 2013. The FSB Handbook contains two types of material applicable to FSBs with respect to the Regulations: Level One, which are referred to as rules and are set out in boxes with a shaded background, and Level Two, which are referred to as guidance. The assessors share the view taken by the IMF report that the rules contained in the Handbook (Rules) qualify as other enforceable means within the FATF definition. The analysis that underpins this approach is set out in detail in paragraphs 513 to 517 of the IMF report.

Proceeds of Crime Law (POCL)	Law and Regulation
Disclosure Law (DL)	
FSB Regulations	
FSB Handbook (Rules)	Other enforceable means

Scope

499. The FSB Regulations apply to financial services businesses which are defined in Regulation 19 of the FSB Regulations as being any business specified in Schedule 1 to Proceeds of Crime Law and includes, unless the context otherwise requires, a person carrying on such a business.

500. The FSB Regulations apply to ―financial services businesses,‖ which are defined in regulation 19 of the FSB Regulations by reference to the businesses specified in Schedule 1 to the POCL and include, unless the context otherwise requires, a person carrying on such an activity by way of business for or on behalf of a customer. The list of businesses in Part I of Schedule 1 covers all the businesses included in the activities or operations set forth in the FATF definition of ―financial institution‖ (and in some cases goes beyond the FATF definition). The list of businesses specified in Schedule 1 is listed in paragraph 510 of the IMF report. The list of businesses changed in March 2013 to remove general insurance, except life insurance business, from the application of the POCL. The revised schedule remains consistent with the FATF's definition of a financial institution.

501. There are some exceptions set forth in Part II of Schedule 1 to POCL but none apply to the provisions of financial services which comprise the four main sectors of the finance industry, and crucially not to where the transfer of money or value is made or facilitated. As explained by the authorities the exceptions are based on a consideration of the risk, including the effects of the exemption; the size of the affected sector or sub-sector; intelligence from STRs, mutual legal assistance requests, asset restraints, or other intelligence; the nature of the relationships and transactions in the sector or sub-sector; the size of the affected businesses; their customer bases; and whether there were any mitigating factors to offset any ML/TF risk.

502. The evaluators agree that the exemptions are consistent with the FATF definition of financial institution and are satisfied with the adequacy of the process to determine low risk and the reasonableness of the conclusions. The assessors were also satisfied that these exemptions were periodically reviewed to ensure that the risks remain sufficiently unchanged at low risk to warrant continuation of the exemption. Some exemptions set forth in Part II of Schedule 1 to POCL are provided below:

- Exemption for Actuaries providing a financial service identified in Part 1 of Schedule 1 which is incidental to the provision of actuarial advice or services.
- The carrying on of any business in Part 1 by way of in-house legal, accountancy or actuarial advice or services for a supervised business or provision of these services to a client carrying on such a business.
- Provision of dealing, advising and promotion for the purposes of Schedule 2 of the Protection of Investors Law by a non-Bailiwick entity.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering or terrorist financing

503. As outlined in paragraph 627 seq. of this report the customer base of Guernsey financial institutions typically consist of non-resident customers which is one of the FATF's examples of a high risk category of customer. A significant portion of customers of some financial institutions may also present additional high-risk characteristics which are considered by the FATF to be of higher risk. To address this generally elevated level of risk, the Bailiwick has substantially strengthened the AML/CFT preventive measures to which its financial institutions are subject. While the relevant Regulations and Rules generally provide a sound basis for determining the situations requiring enhanced due diligence and the methods for performing it, these requirements are not extended to non-resident customers, private banking, or legal persons and arrangements that are personal asset holding vehicles. These categories, which are included in the Methodology as potentially higher risk, make up part of the customer base of the Bailiwick's financial institutions. The IMF therefore recommended in the 2011 report to expand the list of higher-risk categories of customers to which enhanced due diligence must be applied. This recommendation is reiterated by the MONEYVAL evaluation team.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8)

3.2.1 Description and analysis

Recommendation 5 (rated LC in the IMF report)

Summary of 2011 factors underlying the rating

504. In the IMF report of 2011 Guernsey was rated as Largely Compliant with Recommendation 5. The IMF criticized the fact that the list of customers to which EDD must be applied omits higher-risk categories relevant to Guernsey. The IMF recommended that authorities should expand the list of higher-risk customers to which enhanced due diligence must be applied and consider including private banking and non-resident customers.

Anonymous accounts and accounts in fictitious names (c.5.1)

505. FSB Regulation 8 provides that a financial institution must, in relation to all customers, not set up anonymous accounts or accounts in fictitious names and must maintain accounts in a manner which facilitates the meeting of the requirements of the Regulations.

506. FSB Regulation 4(1) provides that in relation to a business relationship established prior to the coming into force of the Regulations in December 2007, in respect of which there is maintained an anonymous account or an account in a fictitious name, the CDD requirements must be undertaken as soon as possible after the coming into force of the Regulations and in any event before such account is used again in any way.

507. Additionally, the rules in chapter 8 of the FSB Handbook require financial institutions to have policies, procedures and controls in place in respect of existing customers that are appropriate and effective and which provide for its customers to be identified.

508. The current provisions regarding c.5.1 are consistent with the requirements of the standard.

Customer due diligence

When CDD is required (c.5.2)*

509. FSB Regulations 4(1) and 4(2) require financial institutions to undertake CDD when "establishing a business relationship". Pursuant to FSB Regulation 19(1) a "business relationship" is defined as a "business, professional or commercial relationship between a financial services business and a customer which is expected by the financial services business, at the time when contact is established, to have an element of duration."

5.2 (b)

510. FSB Regulations 4(1) and 4(2) require Financial institutions to undertake CDD when *"carrying out an occasional transaction"*. Pursuant to FSB Regulation 19(1) *"occasional transaction"* is defined as *"any transaction involving more than £10,000 (…) where no business relationship has been proposed or established and includes such transactions carried out in a single operation or two or more operations that appear to be linked."*

5.2 (c)

511. Section 2(5) of the Wire Transfer Ordinances of Guernsey, Alderney and Sark require that, "where a transfer of funds is not made from an account, the payment service provider of the payer must verify the information on the payer where (a) the amount transferred exceeds 1000 Euros, or (b) the transaction is carried out in two or more operations (i) that appear to the payment service provider of the payer to be linked, and which together exceed 1000 Euros."

5.2 (d)

512. FSB Regulations 4(1) and 4(2) require Financial institutions to undertake CDD *"where the financial institution knows or suspects or has reasonable grounds for knowing or suspecting (i)*

that, notwithstanding any exemptions or thresholds pursuant to these Regulations, any party to a business relationship is engaged in money laundering or terrorist financing; or (ii) that it is carrying out a transaction on behalf of a person, including a beneficial owner or underlying principal, who is engaged in money laundering or terrorist financing".

5.2 (e)

513. FSB Regulations 4(1) and 4(2) also require financial institutions to undertake CDD "where the FSB has doubts about the veracity or adequacy of previously obtained customer identification data."

514. The current legal provisions regarding c.5.2 are consistent with the requirements of the standard.

Identification measures and verification sources (c.5.3)*

515. FSB Regulations 4(1) and 4(3) require each customer to "be identified and his identity verified using identification data". FSB Regulation 19 defines identification data as "documents which are from a reliable and independent source".

516. A customer is defined as a "person or legal arrangement who is seeking (a) to establish or has established, a business relationship with a financial institution, or (b) to carry out, or has carried out, an occasional transaction with a financial institution."

517. The Regulations also explicitly state that where such a person or legal arrangement is an introducer, the customer is the person or legal arrangement on whose behalf the introducer is seeking to establish or has established the business relationship.

518. The rules in section 4.4 of the FSB Handbook require a financial institution to collect relevant identification data on an individual, which includes legal name, any former names (such as maiden name) and any other names used, principal residential address, date and place of birth, nationality, any occupation, public position held and, where appropriate, the name of the employer; and an official personal identification number or other unique identifier contained in an unexpired official document (e.g. passport, identification card, residence permit, social security records, driving licence) that bears a photograph of the customer.

519. Furthermore, financial institutions are required to verify the legal name, address, date and place of birth, nationality and official personal identification number of the individual.

520. In order to verify the legal name, date and place of birth, nationality and official personal identification number of the individual, the following documents are considered *"to be the best possible"*, in descending order of acceptability: (1) current passport (providing photographic evidence of identity); (2) current national identity card (providing photographic evidence of identity), (3) armed forces identity card.

521. As regards documents that are considered to be suitable to verify the residential address of individuals the Handbooks mentions inter alia, a bank/credit card statement or utility bill, correspondence from an independent source such as a central or local Government department or agency, commercial or electronic databases, and others.

522. The current legal provisions regarding c.5.3 are consistent with the requirements of the standard.

Identification of legal persons or other arrangements (c.5.4)

5.4 (a)

523. FSB Regulations 4(1) (a) and 4(3) (b) require that "any person purporting to act on behalf of the customer shall be identified and his identity and his authority to so act shall be verified".

5.4. (b)

524. For customers that are legal persons or legal arrangements, a financial institution is required pursuant to Section 4.3 of the FSB Handbook to

(i) verify the legal status of the legal person or legal arrangement; and

(ii) obtain information concerning the customer's name, the names of trustees (for trusts), legal form, address, directors (for legal persons), foundation officials (for foundations) and provisions regulating the power to bind the legal person or arrangement.

525. The FSB Handbook list various examples, which are considered suitable to verify the legal status of the legal body (e.g. a copy of the Certificate of Incorporation, a company registry search, a copy of the Memorandum and Articles of Association or equivalent constitutional documentation, a copy of the Directors'/Shareholders' registers, etc.) The Handbook does not specify how the legal status of the legal arrangements is expected to be verified.

526. For customers, which are legal arrangements, the FSB Handbook (section 4.6.6) establishes that the identity of the trustees of the trust does not have to be verified if they are themselves subject either to the Handbook or are an Appendix C business[83].

527. The wording of this provision suggests that verification of the identity is not required at all. The FATF Recommendations do not permit refraining from any of the CDD measures (even when reduced or simplified CDD measures are permissible), but financial institutions may adjust the amount or type of each or all of the CDD measures in a way that is commensurate to the low risk identified. However, the assessors acknowledge that the customer's identity de facto still needs to be verified based on reliable information by examining whether the business is in fact subject to the Handbook or regulated and supervised by an authority in Appendix C country or territory. This needs to be done by using reliable information (e.g. by examining the authorities' website information on regulated and supervised firms).

528. The abovementioned provision also exempts financial institutions from the requirement to identify the beneficial owner of a corporate trustee. The authorities argue that in respect of a corporate trustee supervised by the GFSC or by a supervisory authority in a jurisdiction listed on Appendix C the corporate trustee will be subject to an AML/CFT regime that meets FATF Recommendation 23 in relation to market entry and therefore there will be fit and proper checks on controllers of the corporate trustee. As a consequence as the owners and controllers will be known to the relevant supervisory authority.

529. The assessors take the view that it is essential for the financial institution to know who ultimately controls a certain trust property and to be aware of potential relations that might exist between this person and the settlor and beneficiaries of the trust. This is critical for a proper customer risk assessment. Furthermore, fit and proper checks would usually not prevent a PEP from being a beneficial owner of a corporate trustee. However, this information (regarding his PEP status) would remain unknown to the financial institution maintaining the business relationship. The assessors take the view that the exemption from identifying the beneficial owner of a corporate trustee is not in line with criterion 5.9.

Identification and verification of the identity of the beneficial owner (c.5.5, c.5.5.1 and c.5.5.2)

530. FSB Regulations 4(1)(a) and 4(3)(c) require financial institutions to identify the beneficial owner and underlying principal and take reasonable measures to verify such identity using identification data[84] and such measures shall include, in the case of a legal person or legal arrangement, measures to understand the ownership and control structure of the customer.

[83] The term "Appendix C business" is explained in the analysis under c.5.10.

[84] The term "identification data" is defined in FSB Regulation 19 as documents which are from a reliable and independent source.

Section 19 of the Regulations defines "beneficial owner" to mean

(a) the natural person who ultimately owns or controls the customer[85], and

(b) a person on whose behalf the business relationship or occasional transaction is to be or is being conducted, and

(c) in the case of a foundation or trust or other legal arrangement, to mean

(i) any beneficiary in whom an interest has vested[86], and

(ii) any other person who benefits[87] from that foundation or trust or other legal arrangement.

Section 19 defines "underlying principal"[88] to mean any person who is not a beneficial owner but who

(a) is a settlor[89], trustee, protector or enforcer of a trust, or a founder or foundation official of a foundation which is the customer or the beneficiaries of which are the beneficial owners, or

(b) exercises ultimate effective control over the customer or exercises or is to exercise such control over the business relationship or occasional transaction.

531. It is important to highlight that pursuant to rule 139 of the Handbook, a financial institution entering a relationship with a customer which is a trust is not required to identify itself the identities of the underlying principals and beneficial owners (i.e.: the settlor(s); any protector(s) or trustee(s); and any beneficiary with a vested interest or any person who is the object of a power;). Instead, a financial institution is allowed to "rely" on the trustee of the trust to identify and notify it of their names. This reliance is not subject to the requirements for third party reliance set out in Section 4.10 of the FSB Handbook (paragraph 218) but subject to the requirements set out in section 6.5 of the Handbook (intermediary relationships; see paragraph 569 of the report). However Rules 218 and 219 in Section 6.5 require a financial institution to risk assess the relationship and only where the risk is assessed as low can it apply Rule 139. Furthermore Rule 220 in Section 6.5 limits the financial institution to applying Rule 139 to trust relationships only where the trustee is licensed by the GFSC under the Regulation of Fiduciaries Law. This application of reduced due diligence appears to be consistent with 5.9 of the FATF Methodology as the identity of underlying principals and beneficial owners is still obtained by the financial institution and their identity still needs to be verified based on reliable information by examining whether the trustee is in fact licensed by the GFSC. This needs to be done by using reliable information (e.g. by examining the GFSC's website information).

[85] Pursuant to Rule 113 of the Handbook financial institutions are required to identify and verify the individuals ultimately holding a 25% or more interest in the capital or net assets of the legal body.

[86] A vested interest is an interest that, whether or not currently in possession, is not contingent or conditional on the occurrence of any event (Glossary to the FSB Handbook).

[87] Prior to March 2013 the definition in the Regulation included "any other person that is likely to benefit" and therefore appeared to include persons who are object of a power as mentioned in Rule 139 of the Handbook (a person who is object of a power is not expressly identified in the trust instrument or by law as a beneficiary, but could still benefit from the trust if the trustee were to exercise its power for this purpose). The new definition in the Regulation is inconsistent with the definition contained in the Handbook, as it is narrower. The new definition in section 19 of the Regulations does not necessarily cover any person, who is the object of a power and should be amended accordingly.

[88] While these persons are not termed as "beneficial owners" under the Bailiwick FSB Regulation and Handbook the due diligence obligations applicable to beneficial owners and "underlying principals" are the same. The assessors take the view that this is sufficient to meet the FATF standard, and that it is not necessary to term these persons as "beneficial owners". The authorities also confirmed that information on the "underlying principals" would also be provided to requesting foreign authorities, even if these authorities only referred to "beneficial ownership information" in their request.

[89] The authorities stated that the settlor/founder has to be identified and verified regardless of whether the trust/foundation is revocable or not.

532. The rules in section 4.8 of the FSB Handbook require that where the product or service is a life or other investment linked insurance policy, the issuer, in order to meet the CDD requirements of the FSB Regulations, must also identify and verify the identity of any beneficiary.

533. Rule 143 establishes that when identifying and verifying the identity of trustees, beneficiaries and others, financial services businesses must act in accordance with the identification and verification requirements for customers who are individuals and legal bodies. The authorities stated that this means that in the case of a corporate trustee, corporate settlor or corporate beneficiary the identity of the individual person being the ultimate beneficial owner of the corporate trustee or corporate beneficiary has to be identified and verified. Given the central role of the settlor, it appears peculiar, that Rule 143 does not expressly mention the settlor but only contains a vague reference to "others". This leaves a certain ambiguity in the FSB Handbook to the question whether the identity of the ultimate beneficial owner of a corporate settlor has to be identified. However in practice this appears to be done (as outlined in the assessment of financial institutions' policies and procedures in paragraph 604).

534. Regulations 4(1) (a) and 4(3) (d) require the FSB to make a determination as to whether the customer is acting on behalf of another person and, if the customer is so acting, take reasonable measures to obtain sufficient identification data to identify and verify the identity of that other person.

535. The FSB Regulations and Handbook are also supported by section 7 of the GFSC's guidance note on visit trends and observations.

Information on purpose and nature of business relationship (c.5.6)

536. FSB Regulation 4(3) (e) requires all FSB to obtain information on the purpose and intended nature of each business relationship. In addition, the Rules in Section 3.5 of the FSB Handbook require that Financial institutions, when assessing the risk of a proposed business relationship or occasional transaction, must take into consideration information on the purpose and intended nature of the business relationship or occasional transaction, including the possibility of legal persons and legal arrangements forming part of the business relationship or occasional transaction. (Paragraph 56)

Ongoing due diligence on business relationship (c.5.7, 5.7.1 & 5.7.2)*

537. FSB Regulation 11 requires a financial institution to perform on-going and effective monitoring of any existing business relationship, which includes (a) reviewing identification data to ensure it is kept up to date and relevant in particular for high-risk relationships or customers in respect of whom there is high risk, and (b) scrutiny of any transactions or other activity.

538. Rules in Section 9.2 of the FSB Handbook require scrutiny of transactions and activity to be undertaken throughout the course of the business relationship to ensure that the transactions and activity being conducted are consistent with the FSB's knowledge of the customer, their business, source of funds, and source of wealth (Paragraph 276).

539. In addition, the Rules in Section 9.4 of the FSB Handbook require an FSB to conduct ongoing CDD to ensure they are aware of any changes in the development of the business relationship. The extent of the ongoing CDD measures must be determined on a risk-sensitive basis but a financial institution must bear in mind that, as the business relationship develops, the risk of money laundering or terrorist financing may change (Paragraph 286).

540. FSB Regulation 11(c) also requires an FSB to ensure that the way in which identification data is recorded and stored is such as to facilitate the ongoing monitoring of each business relationship. Additionally, the extent of any monitoring carried out and the frequency at which it is carried out is to be determined on a risk-sensitive basis including whether or not the business relationship is a high-risk relationship.

Risk – enhanced due diligence for higher risk customers (c.5.8)

541. Regulation 5 of the FSB Regulations requires Financial institutions to conduct enhanced CDD in relation to:

- a business relationship or occasional transaction in which the customer or any beneficial owner or underlying principal is a politically exposed person;
- a business relationship which is a correspondent banking relationship or similar to such a relationship in that it involves the provision of services, which themselves amount to financial institution or facilitate the carrying on of such business, by one financial institution to another;
- a business relationship or an occasional transaction
  - where the customer is established or situated in a country or territory that does not apply or insufficiently applies the FATF Recommendations on Money Laundering;
  - which the financial institution considers to be a high risk relationship, taking into account any notices, instructions or warnings issued from time to time by the Commission; and
- a business relationship or an occasional transaction which has been assessed as a high risk relationship pursuant to the financial institutions' business relationship risk assessment (see further below).

Enhanced CDD requires additional steps to be taken in relation to identification and verification including:

- obtaining senior management approval for establishing a business relationship or undertaking an occasional transaction;
- obtaining senior management approval for, in the case of an existing business relationship with a PEP, continuing that relationship;
- taking reasonable measures to establish the source of any funds and of the wealth of the customer and beneficial owner and underlying principal;
- carrying out more frequent and more extensive on-going monitoring; and
- taking one or more of the following steps as would be appropriate to the particular business relationship or occasional transaction:
  - obtaining additional identification data;
  - verifying additional aspects of the customer's identity; and
  - obtaining additional information to understand the purpose and intended nature of each business relationship.

542. Business relationship risk assessment: FSB Regulation 3 (2) also requires the financial institutions - prior to the establishment of a business relationship or the carrying out of an occasional transaction - to undertake a risk assessment of that proposed business relationship or occasional transaction. Based on this assessment, the financial institution must decide whether or not to accept each business relationship, or any instructions to carry out any occasional transactions. This assessment must be regularly reviewed so as to keep it up to date and, where changes to that risk assessment are required, the financial institution must make those changes. The financial institution must ensure that its policies, procedures and controls on forestalling, preventing and detecting money laundering and terrorist financing are appropriate and effective, having regard to the assessed risk.

543. Pursuant to FSB Regulation 3 (3) the financial institution must have regard to any relevant rules and guidance in the Handbook, and any notice or instruction issued by the Commission under the Law, in determining, for the purposes of these Regulations, what constitutes a high or low risk.

544. When assessing the risk of a proposed business relationship or occasional transaction a financial institution must ensure that all the relevant risk factors are considered before making a determination on the level of overall assessed risk. Information which must be taken into consideration when undertaking a relationship risk assessment includes but is not limited to the identity of the customer, beneficial owners and underlying principals, the associated geographic areas, the products/services being provided and the delivery channel, the purpose and intended nature of the business relationship or occasional transaction, including the possibility of legal persons and legal arrangements forming part of the business relationship or occasional transaction; and the type, volume and value of activity that can be expected within the business relationship.

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

546. A financial institution must ensure that any proposed or existing business relationship or any proposed occasional transaction is designated as high risk if the customer or beneficial owner is a politically exposed person, the relationship is a correspondent banking relationship or a relationship which involves the provision of financial services or it is a relationship where the customer is established in or situated in countries or territories which do not apply or insufficiently apply the FATF recommendations or which is linked to notices, instructions or warnings issued by the GFSC.

547. To conclude the analysis of c.5.8, the assessors refer to the IMF's findings following the evaluation in 2011: While the above-outlined Regulation and Rules generally provide a sound basis for determining the situations requiring enhanced due diligence and the methods for performing it, these requirements are not extended to non-resident customers, private banking, or trusts that are personal asset holding vehicles. These categories, which are included in the Methodology as potentially higher risk, make up a significant part of the customer base of some of the Bailiwick's financial institutions. The IMF therefore recommended in IMF report to expand the list of higher-risk categories of customers to which enhanced due diligence must be applied.

Risk – application of simplified/reduced CDD measures when appropriate (c.5.9)

548. The general rule is that business relationships and occasional transactions are subject to the full range of CDD measures, including the requirement to identify and verify the identity of the customer, beneficial owners and any underlying principals. Only where a FSB has assessed a business relationship or occasional transaction as a low risk pursuant to Regulation 3 (2)(a), FSB Regulation 6 (1) permits the FSB to

a) apply reduced or simplified customer due diligence measures (see Section A below), or

b) treat an intermediary as if it were the customer (see Section B below).

It is clearly emphasised in the FSB Handbook that a comprehensive relationship risk assessment must be conducted before a financial institution can determine that the above-mentioned measures can be applied.

A. Simplified or reduced CDD

549. Chapter 6 of the FSB Handbook sets outs the specific occasions when it may be appropriate for a financial institution to apply simplified or reduced CDD measures and includes general rules which require that:

- a financial institution must ensure that when it becomes aware of circumstances which affect the assessed risk of the business relationship or occasional transaction, a review of the CDD

documentation and information held is undertaken to determine whether it remains appropriate to the revised risk of the business relationship or occasional transaction;

- where a financial institution has taken a decision to apply reduced or simplified CDD measures, documentary evidence must be retained which reflects the reason for the decision; and
- the financial institution recognises that the application of simplified or reduced CDD measures does not remove its responsibility for ensuring that the level of CDD required is proportionate to the risk.

550. Where a financial institution has reason to believe that any aspect of the relationship or occasional transaction could be other than low, then simplified or reduced CDD measures must not be applied.

551. As specified in Regulation 6(2), the discretion to apply reduced or simplified CDD measures may only be exercised in accordance with the requirements set out in chapter 6 of the FSB Handbook. The application of simplified or reduced CDD is limited to the circumstances provided for in Regulation 6 and chapter 6 of the FSB Handbook and include defined cases in relation to the identification and verification of a customer who is a Guernsey resident; legal bodies quoted on a regulated market; customers which are Appendix C businesses; non-Guernsey collective investment schemes; and receipt of funds.

552. Chapter 6 of the FSB Handbook lists the following five situations where reduced or simplified CDD may be applied (if the individual relationship has been assessed as low risk by the financial institution):

553. Guernsey residents: Where establishing a business relationship with or undertaking an occasional transaction for an individual customer who is a Guernsey resident and the requirements for the application of simplified or reduced CDD measures, as set out above are met, a financial institution must obtain at a minimum the name, any former names (such as maiden name) and any other names used, principal residential address; date of birth; and nationality. The name and either the principal residential address or the date of birth of the individual must be verified. This provision appears to be in line with the FATF standard.

554. Legal bodies quoted on a regulated market: The simplified/ reduced CDD measures in respect of listed legal bodies consist in the discretion to treat the legal body itself as the customer to be identified and verified (instead of the ultimate beneficial owners). In addition to the above-mentioned general preconditions, the financial institution must obtain documentation which confirms that the legal body is quoted on a regulated market and must identify and verify authorised signatories who have authority to operate an account or to give the financial institution instructions concerning the use or transfer of funds or assets.

555. This provision appears to be in line with the standard[90] as the standard establishes that where the customer is a public company that is subject to regulatory disclosure requirements i.e. a public company listed on a recognised stock exchange, it is not necessary to seek to identify and verify the identity of the shareholders of that public company.

556. Investment schemes: The simplified/reduced CDD measures in respect of investment schemes consist in the discretion to treat the collective investment scheme itself as the customer to be identified and verified (instead of the ultimate investors). In addition to the above-mentioned general preconditions, the financial institution must obtain documentation which confirms that the legal body is a collective investment scheme regulated by the GFSC and must identify and verify authorised signatories who have authority to operate an account or to give the financial institution instructions concerning the use or transfer of funds or assets.

[90] See „Note to assessors“ on top of page 17 of the FATF Methodology.

557. In other words, financial institutions (for example custodian banks holding the assets of the collective investment scheme) are not required to identify and verify the identity of the ultimate beneficial owner on whose behalf the investment into the investment scheme is ultimately being conducted (even if they hold a major amount of the investment scheme assets).[91] However, the FATF Methodology clearly establishes that "the general rule is that customers must be subject to the full range of CDD measures, including the requirement to identify the beneficial owner." Accordingly, simplified CDD (in terms of the FATF Recommendations) does not mean an exemption from any of the CDD measures, but financial institutions can adjust the amount or type of each or all of the CDD measures in a way that is commensurate to the low risk identified. In the case of beneficial ownership identification, this could consist for example in obtaining less detailed identification information. However, the assessors are fully aware, that the above-mentioned concessions made with respect to investment schemes reflect those made to the investment sector in many other countries.

558. The Guernsey authorities argue that the above mentioned exemption from identifying and verifying the identity of the ultimate beneficial owner has to be seen in the light of the fact that a regulated scheme must have a Guernsey licensed fund administrator under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (to whom a scheme would typically contract the function of applying AML/CFT measures), which is also subject to the FSB Regulations and Handbook. However, the fund administrator is allowed to make use of the intermediary provisions (in section 6.5 of the FSB Handbook[92]), if the investment into the collective investment scheme is made by a regulated financial institution on behalf of its clients[93] (i.e. the discretionary or advisory investment manager or custodian). As a consequence, the investor who ultimately provided the funds for the investment would not be known to the fund administrator.

559. Information on these ultimate beneficial owners is only held (in a fragmented and decentralised way) by intermediaries potentially located in various jurisdictions that subscribed for shares, interests or units (as relevant) in the collective investment scheme on behalf of their clients (the ultimate beneficial owners). As a consequence, the Bailiwick Financial Institution will not be able to establish whether there are hundreds of different beneficial owners investing into the CIS or if there are only very few of them (neither will the intermediaries be able to do so as they only hold a piece of the entire ownership information). The assessors' would consider this information on the ownership structure as highly important for an adequate customer risk assessment. It must also be emphasised that there might be chains of intermediaries in different jurisdictions involved. This would make it particularly difficult (if not impossible) for law enforcement and other authorities to find out the ultimate beneficial owners, which makes this product vulnerable for the purpose of disguising the true ownership of funds.

[91] The Guernsey authorities argue that as the collective investment scheme will contract the provisions of scheme-specific activities to various specialist financial institutions, it is the scheme which is the financial institution's customer to identify and verify and not each of the underlying investors of the fund, unless part of that contract for services with the scheme includes the application of AML/CFT measures to the scheme's investors. Within the Guernsey collective investment scheme sector it is invariably to the scheme's administrator these AML/CFT measures are contracted.

[92] The authorities stress that under rules in section 6.5 of the Handbook the financial institution (the fund administrator) has to establish that the intermediary meets the criteria in order to be treated as an intermediary and provides to the administrator written confirmation that it has appropriate risk grading procedures to differentiate between high and low risk relationships; an assurance that it has appropriate and effective CDD procedures, that the administrator is provided with sufficient information to understand the purposes and intended nature of the relationships and that the account will only be operated by the intermediary. It is questionable however, whether this confirmation is also useful in the case of chains of intermediaries. It has to be emphasised that the intermediary has to qualify as an Appendix C business (the term "appendix C business is explained in the analysis under c.5.10)

[93] This institution has to meet the criteria to qualify as an Appendix C business (the term "appendix C business is explained in the analysis under c.5.10)

560. The Guernsey authorities argue that financial institutions which provide financial services to a Guernsey regulated collective investment scheme have to risk assess the relationship they will have with the scheme in accordance with Regulation 3. The GFSC stated that it has observed that such an assessment will include an assessment of the scheme's intended client base (minimum subscription amounts are helpful indicators in the authorities' view), the types of investors[94], how it will be marketed, the types of assets it will hold, its frequency of valuation and dealing, investment objective and strategy and control issues covering the scheme's directors (if a company) and management. The Guernsey authorities also informed that all regulated CIS submit quarterly statistics to the GFSC which includes information on the numbers of investors subscribed on the share register. Statistics at the end of June 2015 show that approximately 300 regulated CIS each have more than 50 investors. Approximately 220 regulated CIS have less than 10 investors but nearly half of these are private equity funds where the use of intermediary provisions is rare according to an industry representative. A further 10% of regulated CIS are listed on a regulated markets such as Guernsey or /UK. The assessors take the view that the above mentioned information items (which are the basis for the institutions' risk assessment) are not useful in identifying cases where a collective investment scheme is in fact used as a personal assets holdings vehicle that is considered to be of higher risk according to the FATF methodology. The statistics provided also highlight that there is a considerable amount of regulated CIS with a very narrowly held ownership (less than 10 investors). The Guernsey authorities also argue that these arrangements are consistent with the Principles on Client Identification and Beneficial Ownership for the Securities Industry issued in May 2004 and Anti-Money Laundering Guidance for Collective Investment Schemes issued in October 2005 by the International Organization of Securities Commissions. However, the assessors point out that the IOSCO Guidance (2005) simply states that *certain jurisdictions* consider it low risk when a financial institution (e.g. a broker/dealer or bank), acting as an intermediary, submits bunched orders through an omnibus account to an open-end CIS where the financial institution: i) is based in a jurisdiction that the CIS is satisfied has appropriate anti-money laundering legislation; ii) has in place an anti-money laundering program; and iii) is supervised for compliance, and has measures in place to comply, with those requirements.

561. Appendix C business[95]: When the customer has been identified as an Appendix C business, and the purpose and intended nature of the relationship is understood, verification of the identity of the Appendix C business is not required (Rule 208 of the FSB Handbook). The wording of this provision suggests that verification of the identity is not required at all. As mentioned previously, the FATF Recommendations do not permit refraining from any of the CDD measures (even when reduced or simplified CDD measures are permissible), but financial institutions may adjust the amount or type of each or all of the CDD measures in a way that is commensurate to the low risk identified.

562. However, the assessors acknowledge that the customer's identity de facto still needs to be verified based on reliable information by examining whether the business is in fact regulated and supervised by an authority in Appendix C country or territory. This needs to be done by using reliable information (e.g. by examining the authorities' website information on regulated and supervised firms). The authorities stated that Rule 208 of the FSB Handbook does not exempt the financial institution from identifying the beneficial owner of the Appendix C business. It is clarified in the Handbook that the discretion provided by Rule 208 does not apply if the Appendix C business is acting for underlying principals. The Handbook establishes that in such instances the underlying principals must be identified and their identity verified in accordance with the requirements of the Handbook.

[94] It remains unclear to which extent the type of investors is ascertainable without having identified the ultimate beneficial owners.
[95] The term "Appendix C business" is explained in the analysis under c.5.10.

563. Non-Guernsey Collective Investment Funds: A Guernsey regulated financial institution which is providing services within the scope of a licence issued to it by the GFSC, to a collective investment fund established outside Guernsey may in certain circumstances refrain from undertaking CDD procedures on the investor and instead content itself with a contracted party, for instance the administrator or the transfer agent, of the fund having undertaken CDD procedures on the investor.

564. Where the financial institution in Guernsey wishes to content itself with the administrator of the fund having undertaken CDD procedures on the investor, the financial institution must:

- undertake CDD procedures in respect of the administrator to ensure that it is an Appendix C business and that it is regulated and supervised for investment business; and
- require the administrator to provide a written confirmation which:
  - contains adequate assurance that the administrator conducts the necessary CDD procedures in respect of investors in the fund;
  - confirms that the administrator has appropriate risk-grading procedures in place to differentiate between the CDD requirements for high and low risk relationships; and
  - contains an assurance that the administrator will notify of any investor in the fund categorised as a PEP.

565. In addition, the Guernsey financial institution must have a programme for testing and reviewing the CDD procedures of the administrator.

566. First of all, it is important to stress, that the Guernsey regulated financial institution is not required to obtain any customer or beneficial owner information from the administrator or transfer agent. Therefore, these Handbook rules cannot be regarded as third party reliance in terms of FATF Recommendation 9. As mentioned above, simplified CDD (in terms of the FATF Recommendations) does not permit refraining from any of the CDD measures, but financial institutions can adjust the amount or type of each or all of the CDD measures in a way that is commensurate to the low risk identified. While the safeguards foreseen in the FSB Handbook (for compensating the fact that the ultimate beneficial owner does not have to be identified) appear to be well ahead of many other jurisdictions, the exemption provided is not consistent with the requirements of the standard.

567. Irrespective of the overall deficiency identified, in relation to the safeguards in place it has to be stressed that the administrator is only required to notify any investor in the fund categorised as a PEP. The administrator does not have to notify any other types of higher risk investors. For example, the Guernsey financial institution would not be made aware of any investors resident in a country subject to the FATF's Public Statement.[96] Furthermore, it remains unclear whether the assurance that the administrator conducts the necessary CDD procedures in respect of the "investors" in the fund extends to the ultimate beneficial owner or only to the direct "investor" (which might often be a financial institution investing on behalf of an ultimate beneficial owner).

568. Section 6.4 of the FSB Handbook sets out that under certain circumstances the receipt of funds from an Appendix C business may provide satisfactory means of verifying the identity of the customer, beneficial owner and any underlying principal, provided that the relationship or occasional transaction is considered to be a low risk relationship. The financial institution – inter alia – must ensure that all initial and future funds are received from an Appendix C business; all transactions are to or from accounts in the customer's name and there are no cash withdrawals unless these are face to face with the customer or underlying principal.

[96] However for the administrator to qualify as an Appendix C business it must be located in a jurisdiction listed in Appendix C and regulated and supervised to AML/CFT measures which are consistent with FATF standards.

B. Treating intermediary as customer

569. Section 6.5 of the FSB Handbook sets out the criteria, which must be met for an intermediary relationship to be established. In such circumstances, it is not deemed necessary to undertake CDD procedures on the customers of the intermediary unless the FSB considers this course of action to be appropriate (paragraph 217 of the FSB Handbook). Before establishing an intermediary relationship, the financial institution undertake a risk assessment which will allow the financial institution to consider whether it is appropriate to consider the intermediary as its customer or whether the intermediary should be considered as an introducer and as such be subject to the requirements for third party reliance set out in Section 4.10 of the FSB Handbook (paragraph 218).

570. CDD procedures must be undertaken on the intermediary to ensure that the intermediary is either

- an Appendix C business[97], excluding a foreign trust and corporate service provider;
- a wholly owned nominee subsidiary vehicle of an Appendix C business, excluding a foreign trust and corporate service provider;
- a wholly owned pension trustee subsidiary vehicle of an Appendix C business, excluding a foreign trust and corporate service provider; or
- a firm of lawyers or estate agents operating in Guernsey, and the pooled funds are to be used for the purchase or sale of Guernsey real estate and have been received from a Guernsey bank or a bank operating from an Appendix C jurisdiction.

In addition, the intermediary must provide a written confirmation that:

- appropriate risk-grading procedures are in place to differentiate between the CDD requirements for high and low risk relationships;
- contains adequate assurance that the intermediary conducts appropriate and effective CDD procedures in respect of its customers, including enhanced CDD measures for PEP and other high risk relationships;
- contains sufficient information to enable the financial institution to understand the purpose and intended nature of the business relationship; and
- confirms that the account will only be operated by the intermediary who has ultimate, effective control over the financial product or service.

571. For an intermediary to be considered as the customer of the financial institution, a business relationship must be established to provide for one or more the products and services in the table below. Some additions to the list of the products and services were made in March and April 2013 (asterisked in the table below).

Table 23

Product/service	Intermediaries who may be considered as the customer
Investment of life insurance company funds to back the company's policyholder liabilities where the life company opens an account. If the account has a policy identifier then the bank must require an undertaking to be given by the life company that they are the legal and beneficial owner of the funds and that the policyholder has not been led to believe	The life insurance company.

[97] The term "Appendix C business" is explained in the analysis under c.5.10.

that he has rights over a bank account in Guernsey.	
The offering of insurance products to another regulated financial institution by a Guernsey licensed insurer, as part of its relationship falling within the scope of the Insurance Law	The regulated financial institution.
Investments via discretionary or advisory investment managers or custodians of their customers' monies into a collective investment scheme either authorised or registered by the GFSC where the funds (and any income) may not be returned to a third party unless that third party was the source of funds.	The regulated financial institution, i.e. the discretionary or advisory investment manager or custodian.
Investments via discretionary or advisory investment managers of their customers' monies into a non-Guernsey scheme, where approval has been granted by the GFSC to a POI licensee to provide administration, and where the funds (and any income) may not be returned to a third party unless that third party was the source of funds.*	The regulated financial institution, i.e. the discretionary or advisory investment manager.
Undertaking various restricted activities by a POI licensee, within the scope of its licence as part of its relationship falling within the scope of the POI Law, with another regulated financial institution licence where the funds (and any income) may not be returned to a third party unless that third party was the source of funds.	The regulated financial institution.
Dealing in bullion (although not covered by FATF requirements this is a financial activity under the POCL to which AML/CFT measures must be applied by the bullion dealer) by a licensed bank, a POI licensee or a Guernsey licensed fiduciary as part of its relationship with another regulated financial institution, where: • safe custody services are provided in relation to bullion; • no physical bullion is received or delivered; and • any funds may only be received from and/or returned to the intermediary.*	The regulated financial institution
The provision of nominee shareholder services*	The nominee subsidiary vehicle
The provision of pension trustee services to its parent company*	The pension trustee subsidiary vehicle
Client accounts held by banks in the name of a POI licensee e.g. a pooled client money account, where the funds are subject to the conduct of business rules.*	The POI licensee
Client accounts held by banks in the name of a Guernsey licensed fiduciary or a firm of lawyers or estate agents registered with the GFSC where the holding of funds in the client account is on a short-term basis and is necessary to	The licensed fiduciary or firm of lawyers or estate agents operating in Guernsey.

facilitate a transaction	
Pooled accounts held by banks in the name of a Guernsey licensed fiduciary where the holding of funds in the pooled account is on a short-term basis and where the funds (and any income generated) will only be returned to the bank account from which the funds originated. Licensed fiduciaries should ensure that any such use is compatible with relevant trust deeds, and applicable legislation and Codes of Practice.	The Guernsey licensed fiduciary

572. As outlined above, Section 6.5 of the Handbook permits financial institutions to refrain from undertaking CDD procedures on the customers of the intermediary. In other words, the ultimate beneficial owner (on whose behalf a transaction is being conducted) does not have to be identified and verified in those instances. As mentioned previously, simplified CDD (in terms of the FATF Recommendations) does not permit refraining from any of the CDD measures, but financial institutions can adjust the amount or type of each or all of the CDD measures in a way that is commensurate to the low risk identified. When it comes to beneficial ownership identification, this could consist for example in obtaining less detailed identification information, but not refraining at all from identifying the ultimate beneficial owner.[98]

573. While the safeguards foreseen in the FSB Handbook (for compensating the fact that the ultimate beneficial owner does not have to be identified) appear to be well ahead of many other jurisdictions, the exemption provided is not consistent with the requirements of the standard. The authorities stress that they considered guidance issued by IOSCO and the Basel Committee in drawing up these provisions.

Risk – simplification/ reduction of CDD measures relating to overseas residents (c.5.10)

574. Criterion 5.10. requires that, where financial institutions are permitted to apply simplified or reduced CDD measures to customers resident in another country, this should be limited to countries that the original country (and not only the financial institution) is satisfied are in compliance with and have effectively implemented the FATF Recommendations. For this purpose the GFSC has drawn up Appendix C to the Handbook. Appendix C reflects those countries or territories which the GFSC considers require regulated FSB to have in place standards to combat money laundering and terrorist financing consistent with the FATF Recommendations and where such financial institutions are supervised for compliance with those requirements. It was also designed as a mechanism to recognise the geographic spread of the customers of the Guernsey finance sector and is reviewed periodically with countries or territories being added as appropriate.

575. In accordance with the definition provided for in the Regulations an "Appendix C business" means:

a) a financial institution supervised by the GFSC; or

b) a business which is carried on from -

(i) a country or territory listed in Appendix C to the Handbook[99] and which would, if it were carried on in the Bailiwick, be a financial institution; or

[98] Rule 223 of the FSB Handbook requires that a financial institution should always consider whether it feels that the risks would be better managed if the financial services business undertook CDD on the beneficial owner and underlying principal(s) for whom the intermediary is acting rather than treating the intermediary as the customer. This wording suggests that the Guernsey authorities share the assessors' view that the intermediary cannot be considered as the beneficial owner in any of the above-mentioned situations, even if the intermediary might qualify as legal owner of the client's funds in some of these instances (e.g. insurance company as legal owner of the insurance premiums).

[99] At the time of the onsite visit the following countries were listed in Appendix C to the Handbook: Austria,

(ii) the United Kingdom, the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man by a lawyer or accountant;

and, in either case is a business –

(A) which may only be carried on in that country or territory by a person regulated for that purpose under the law of that country or territory;

(B) the conduct of which is subject to requirements to forestall, prevent and detect money laundering and terrorist financing that are consistent with those in the Financial Action Task Force Recommendations on Money Laundering in respect of such a business; and

(C) the conduct of which is supervised for compliance with the requirements referred to in subparagraph (B), by the GFSC or an overseas regulatory authority.

576. Regulation 6 of the FSB Regulations provides that the discretion set out in Regulation 6(1) to apply reduced or simplified CDD measure or treat an intermediary as if it were the customer, may only be exercised in accordance with the rules set out in chapter 6 of the FSB Handbook. The criteria for each of the designated categories of low risk customer specified under criterion 5.9 above and which are included in chapter 6 of the Handbook link the application of reduced or simplified CDD measures in almost all cases either to Guernsey or a country listed in Appendix C.

577. According to paragraph 206 (second bullet point) of the FSB Handbook, an FSB is allowed to consider a legal body quoted on a regulated market as the principal to be identified (as the listed entity will be subject to the relevant exchange's disclosure requirements). Thus, this application of simplified CDD is not restricted to a listed legal body that is domiciled in Guernsey or an Appendix C jurisdiction. However the listed legal body has to be quoted on a "regulated market". This term is defined in the Insider Dealing (Securities and Regulated Markets) Order, 1996 as amended. According to the Insider Dealing Order various major global stock exchanges qualify as regulated markets (which are explicitly mentioned in the Order). In addition, the term comprises "any exchange, which is an ordinary, associate or affiliate member of IOSCO or any exchange which is regulated, or supervised by, such a member". In the assessor's view IOSCO membership does not warrant for equivalent disclosure requirements, as the adequacy of these requirements are not assessed in the application process for membership. The authorities should therefore draw up a list of "regulated markets" that have been assessed as having adequate disclosure requirements.

578. Furthermore, the discretion to treat an intermediary as if it were the customer may also be applied to an intermediary which is

• a wholly owned nominee subsidiary vehicle of an Appendix C business, excluding a foreign trust and corporate service provider;

• a wholly owned pension trustee subsidiary vehicle of an Appendix C business, excluding a foreign trust and corporate service provider; or

• a firm of lawyers or estate agents operating in Guernsey, and the pooled funds are to be used for the purchase or sale of Guernsey real estate and have been received from a Guernsey bank or a bank operating from an Appendix C jurisdiction.

579. However, there is no requirement that these subsidiary vehicles are domiciled in Guernsey or an Appendix C jurisdiction. Given that subsidiary might be unable to observe the (equivalent) AML/CFT standards applied by the mother company because this is prohibited by local (i.e. host country) laws, regulations or other measures (compare FATF criterion 22.2), the discretion

Australia, Belgium, Bulgaria, Canada, Cayman Islands, Cyprus, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hong Kong, Iceland, Ireland, Isle of Man, Italy, Japan, Jersey, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States of America

to apply simplified due diligence should be limited to Guernsey and countries listed in Appendix C.

Risk – simplified / reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

580. FSB Regulation 6 (3) prohibits the application of simplified or reduced CDD measures from being applied where the financial institution knows or suspects or has reasonable grounds for knowing or suspecting that any party to a business relationship or any beneficial owner or underlying principal is engaged in money laundering or terrorist financing, or in relation to business relationships or occasional transactions where the risk is other than low. In such cases it is also prohibited to treat an intermediary as if it were the customer.

581. The rules in chapter 6 of the FSB Handbook require financial institutions to ensure that when they become aware of circumstances which affect the assessed risk of the business relationship or occasional transaction, a review of the CDD documentation and information held is undertaken to determine whether it remains appropriate to the revised risk of the business relationship or occasional transaction. Where a decision has been taken to apply reduced or simplified CDD measures, documentary evidence must be retained which reflects the reason for the decision.

Risk Based application of CDD to be consistent with guidelines (c.5.12)

582. Where financial institutions are permitted to determine the extent of the CDD measures on a risk sensitive basis, pursuant to FATF criterion 5.12 this should be consistent with guidelines issued by the competent authorities.

583. Regulation 6(2) of the FSB Regulations provides that the application of simplified or reduced CDD measures may only be exercised in accordance with the requirements set out in chapter 6 of the FSB Handbook.

584. The rules and the guidance in chapter 6 of the FSB Handbook detailing the types of customers, transactions or products where the risk may be considered as low and where a financial institution may wish to apply the reduced or simplified CDD measures are set out fully in the response to criterion 5.9.

585. As regards the application of enhanced due diligence, the assessors refer to the IMF's findings following the evaluation in 2010: While the Regulation and Rules generally provide a sound basis for determining the situations requiring enhanced due diligence and the methods for performing it, these requirements are not extended to non-resident customers, private banking, or trusts that are personal asset holding vehicles. These categories, which are included in the Methodology as potentially higher risk, make up a significant part of the customer base of some Bailiwick financial institutions. The IMF therefore recommended to expand the list of higher-risk customers to which enhanced due diligence must be applied accordingly.

Timing of verification of identity – general rule (c.5.13)

586. Regulation 7 of the FSB Regulations provides 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.

Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

587. FSB Regulation 7(2) provides that verification of the identity of the customer and of any beneficial owners and underlying principals may be completed following the establishment of a business relationship provided that: it is completed as soon as reasonably practicable thereafter; the need to do so is essential not to interrupt the normal conduct of business, and appropriate; and effective policies, procedures and controls are in place which operate so as to manage risk.

588. In addition, section 4.13 of the FSB Handbook requires that when the circumstances are such that verification of identity of customers, beneficial owners and underlying principals may be completed following the establishment of the business relationship or after carrying out the occasional transaction, a financial institution must have appropriate and effective policies, procedures and controls in place so as to manage the risk which must include:

- establishing that it is not a high risk relationship;
- monitoring by senior management of these business relationships to ensure verification of identity is completed as soon as reasonably practicable;
- ensuring funds received are not passed to third parties; and
- establishing procedures to limit the number, types and/or amount of transactions that can be undertaken.

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

589. FSB Regulation 9 requires that where a FSB cannot comply with the CDD requirements of the Regulations it must 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 consider whether an STR must be made.

590. Additionally, the rules in section 4.14 of the FSB Handbook require that when a financial institution has been unable, within a reasonable time frame, to complete CDD procedures in accordance with the requirements of the FSB Regulations and the FSB Handbook, it must assess the circumstances and ensure that the appropriate action is undertaken as required by Regulation 9 (see above). A FSB is also required by the rules in section 4.14 to ensure that where funds have already been received they are returned to the source from which they came and not returned to a third party.

Application of CDD requirements to existing customers – (c.5.17)

591. Regulation 4 of the FSB Regulations provides that the CDD requirements of the FSB Regulations must be carried out in relation to a business relationship established prior to the coming into force of the Regulations to the extent that such steps have not already been carried out, at appropriate times on a risk-sensitive basis. These Regulations came into force in 2007.

592. Additionally, chapter 8 of the FSB Handbook provides rules and guidance in respect of the CDD measures to be undertaken in respect of business relationships, which were established with customers taken on before the coming into force of the FSB Regulations. The rules in chapter 8 include a requirement for a financial institution to ensure that its policies, procedures and controls in place in respect of existing customers are appropriate and effective and provide for:

- its customers to be identified;
- the assessment of risk of its customer base;
- the level of CDD to be appropriate to the assessed risk of the business relationship;
- the level of CDD, where the business relationship has been identified as a high risk relationship (for example, a PEP relationship), to be sufficient to allow the risk to be managed;
- the business relationship to be understood; and
- the application of such policies, procedures and controls to be based on materiality and risk.

593. In November 2009 the GFSC issued instruction number 6 for financial institutions. This instruction was made under section 49(7) of the Proceeds of Crime Law and is subject to sanctions for non-compliance.

594. Instruction number 6 required that the Board of each financial institution must review the policies, procedures and controls in place in respect of existing customers to ensure that the requirements of Regulations 4 and 8 (relating to CDD and the setting up and maintenance of accounts respectively) of the FSB Regulations and each of the rules in chapter 8 of the FSB Handbook are met (information on Regulations 4 and 8 and the rules in chapter 8 is provided in the above paragraphs); and by the close of business on 31 March 2010 have taken any necessary action to remedy any identified deficiencies and satisfy itself that CDD information appropriate to the assessed risk is held in respect of each business relationship.

Performance of CDD measures on existing customers (c.5.18)

595. FSB Regulation 4(1)(b) requires a FSB to ensure that the full identification and verification requirements are carried out in relation to a business relationship established prior to the coming into force of these Regulations in respect of which there is maintained an anonymous account or an account which the financial institution knows, or has reasonable cause to suspect, is in a fictitious name, as soon as possible after the coming into force of these Regulations and in any event before such account is used again in any way.

Effectiveness and efficiency

596. Financial services businesses have been subject to AML/CFT obligations since 2000 (with some types of business such as banks subject to guidance long before that date). The FSB Regulations and FSB Handbook were first issued in 2007 as part of Guernsey's approach to meeting the 2003 FATF Recommendations and 2004 Methodology. Financial institutions have therefore had many years to embed compliance with the AML/CFT requirements to which they are subject. The assessors take the view that the maturity of the regulatory framework in place, as well as the continuous political and policy attention paid to this area over those years, is a major factor to be taken into consideration when evaluating the overall effectiveness and efficiency of the customer due diligence measures. Substantial resources are dedicated from both the competent authorities as well as the financial institutions to put this framework into practice. Financial institutions clearly demonstrated that they are highly knowledgeable of their AML/CFT obligations.

Effectiveness - Anonymous accounts and accounts in fictitious names (c.5.1)

597. All internal procedures reviewed by the assessment team contained a clear prohibition regarding the set-up of anonymous accounts or accounts in fictitious names. The GFSC stated that every financial institution was visited by 2010 and no cases of anonymous or fictitious accounts have been identified. The GFSC continues to include a question in its onsite questionnaire as to whether a business maintains any anonymous or fictitious accounts in order to ensure that no such accounts are established.

598. One bank has legacy accounts which are numbered accounts, which were opened prior to the introduction of the Handbook and had already been notified to the GFSC. The GFSC has established on each occasion that it has visited the bank that due diligence is held on these customers and is available to management and compliance staff.

Effectiveness - Identification and verification of the identity of the customer and the beneficial owner (c.5.2, 5.3, 5.4 & 5.5)

599. All financial institutions met have comprehensive customer take-on policies, procedures and controls in place. The financial institutions interviewed by the assessment team demonstrated good knowledge of the identification and verification requirements as set out in the Regulation and the Handbook. The documentation standards set out in the internal procedures reviewed by the assessors were in line with the requirements of the FSB Handbook. The compliance

functions of financial institutions appear to be adequately consulted by front-line staff, at least when it comes to the acceptance of high-risk customers.

600. In the past, most financial institutions placed reliance on a domestic or foreign introducer (in particular fiduciaries and lawyers) to have verified the identity of the customer, beneficial owner and any underlying principals. Due to risk considerations and due to the increasingly burdensome requirements for third party reliance[100] there appears to be a trend of abstaining from the option to rely on a third party or group introducer for the verification of the customer. Instead, more and more financial institutions conduct the verification of the introduced customers themselves, though still without having face-to-face contact with the beneficial owner and/or underlying principals for the majority of their customers.

601. For the latter reason (i.e. lacking face-to-face contact) Guernsey financial institutions commonly have to rely on copy documentation which therefore has to be certified to guard against the risk that identification data provided does not correspond to the individual whose identity is to be verified. Guernsey financial institutions are required to consider the suitability of the certifier in conjunction with the assessed risk of the business relationship or occasional transaction together with the level of reliance being placed on the certified documents (Section 4.5.2 of the FSB Handbook).[101] It must also exercise caution when considering certified documents originating from high risk jurisdictions or unregulated entities. The rules also require an assessment that the financial institution is satisfied that the certifier is appropriate and not closely associated to the person whose identity is being certified, and requirements regarding what the certification must attest and must contain. All institutions must follow these requirements as a consequence. Some of the internal procedures reviewed by the assessors contained comprehensive policies to determine which kind of persons the company would regard as a "suitable certifier" while the policies and procedures of other institutions were silent on how they would determine that an individual would be suitable to certify documents. The authorities have recently reacted to this situation by publishing best practices on this matter in the FAQ section of the GFSC website, which is very welcomed by the assessment team.

602. As far as the beneficial owner identification of legal persons are concerned, the GFSC stated that onsite visits indicate that there is now a discernible trend within industry to apply a significantly lower threshold than required by the FSB Handbook to identify and verify the individuals ultimately holding an interest in the capital or net assets of the legal body or legal arrangement. This is mainly because of US and UK tax reporting. Furthermore, given that the customer base of financial institutions in the Bailiwick may often involve trusts, assessors focused particularly on the effective compliance with the identification and verification measures in this context. In order to verify the identity/ existence of the trust and to identify and verify the beneficial owner and underlying principals, financial institutions typically require a certified copy or original extract of the trust deed showing settlors and where applicable the beneficiaries. Some financial institutions appear not to require copies of the relevant extracts of the trust deed but only want to have sight of these extracts from which they can record the pertinent details. The assessors consider this practice to be in line with 5.4(b) of the Methodology. Some financial institutions stated that they would not want to see or hold the entire trust deed, as they could, at a future date, be found liable as a constructive trustee for failing to notice that a professional trustee was acting outside the scope of the powers in the

[100] This refers in particular to the requirement to have a programme of testing to ensure that introducers are able to fulfil the requirement that certified copies or originals of the identification data will be provided upon request and without delay.

[101] For the sake of completeness the authorities would like to point out that pursuant to Section 4.5. of the FSB Handbook financial institutions are also required to take adequate measures to manage and mitigate the specific risks of business relationships or occasional transactions with a non-resident individual customers. The measures mirror the examples of procedures applicable to non-face to face customers as mentioned under c.8.2.1 of the FATF Methodology.

constitutional documents. However, other institutions stated that they see no liability risk in holding a full copy of the Trust Deed.

603. Only few internal procedures mentioned the requirement to obtain subsequent deeds of variation/amendment. Furthermore, financial institutions stated that they would not require to have sight of letter of wishes, which often accompany discretionary trusts, setting out the settlor's wishes regarding how he desires the trustee to carry out his duties, who the trustee should accept instructions from, and who the beneficiaries should be (which may include the settlor himself). The internal procedures reviewed by the assessors did not contain any requirements either to ask for a potential letter of wishes, or alternatively, the trustees' memorandum or file note of the settlor's wishes. Financial institutions explained that they would not ask for such documents, as they are not legally binding. The authorities also pointed out that under the Trusts (Guernsey) Law a trustee is not obliged to disclose any letter of wishes except by order of the Royal Court. They also stress that wider knowledge about the settlor's wishes outside the trustee increases the risk that an individual who might potentially benefit finds out inadvertently. However, from the assessor's point of view, having sight of such documents is highly important to test whether there are persons who might otherwise benefit from the trust depending upon whether those with power to make such a determination, exercise those powers in their favour (the GFSC Handbook refers to "person who is the object of a power"). The GFSC has however set out its expectation on the due diligence requirements on a person who is the "object of a power" in an FAQ on its website which was issued in October 2013. Under this trustees should notify the financial institution of any individuals who are "objects of a power". The information that licensed trustees provide to other financial institutions and the information that financial institutions receive from trustees is assessed as part of the GFSC's onsite inspections.

604. It is important to note that several internal procedures reviewed by the assessors set out that the underlying individual(s) have to be identified where a settlor(s) is a legal entity (corporate settlor). In addition, most of the internal procedures reviewed appear to confirm that the true (or economic) settlor (as opposed to a nominee settlor) has to be identified and verified. Most of the internal procedures also mentioned the need to identify and verify the identity of any person subsequently settling funds into the trust. However, in the interviews it was understood by the evaluation team that a few representative of the TCSP sector (which provides the financial institutions with the relevant beneficial owner information) would in exceptional cases – while establishing the true or economic settlor - only record the details of a nominee settlor in the CDD files to have an additional layer of confidentiality. The GFSC stated that that this was a misunderstanding and that the TCSPs interviewed referred to a historic practice. According to the GFSC all TCSP are emphatic that this practice is not applied anymore. The GFSC emphasised that the findings from the GFSC's onsite visits to these TCSPs supports their denial. In order to have legal certainty on this issue the assessors recommend clarifications to the FSB Handbook which applies to both financial institutions and DNFBPs.

605. Where the trustee is a corporate entity, the internal procedures reviewed by the assessment team require the identification of the underlying individual persons and the confirmation that the corporate trustee is a licensed fiduciary.

606. An issue of concern is that none of the internal procedures reviewed did contain any instructions with respect to how CDD measures have to be applied with respect to PCCs and ICCs. This raised concerns whether CDD is in fact applied with respect to each cell, in particular when it comes to the identification of the identity of the beneficial owner(s) (for details see the excursus on cellular companies in the analysis under R.33 (paragraph 1056 seq.). Following the onsite visit, the GFSC has obtained confirmation of the position from relevant industry associations confirming that CDD obligations are understood by their members to apply to the individual cells of cellular companies. These statements are acknowledged by the

evaluation team. However, in order to ensure enforceability the authorities should clarify this requirement in the FSB Handbook.

607. Financial institutions met appeared to apply robust procedures to ensure that third parties are legally authorised to act for and on behalf of the customer. In addition, appropriate CDD measures appear to be undertaken on these third parties prior to accepting instructions from them.

608. It is also worth to mention that the FSB Handbook establishes that all key CDD documents (or parts thereof) must be understood by an employee of the financial institution, and must be translated into English at the reasonable request of the FIS or the GFSC. GFSC's onsite reviews have established that it is common practice for businesses to include in their procedures a requirement to ensure that all documents that are in a foreign language are translated. Data on non-compliance shows only three instances of a business failing to translate documentation that required remediation.

Effectiveness - Information on purpose and nature of business relationship (c.5.6)

609. Obtaining information on the nature and intended purpose of the business relationship means developing a more comprehensive picture of the customer and the beneficial owner. This ultimately allows for developing a customer risk profile and is also key to providing the financial institution with a solid basis for monitoring the business relationship. Obtaining information on the commercial rationale is an important element of this process, in particular for financial institutions servicing foreign customers.

610. The importance of establishing the rationale is also reflected in the GFSC Handbook in Rule 56 of the Handbook under which a financial institution must take into account when undertaking a relationship risk assessment – inter alia – the purpose and intended nature of the business relationship or occasional transaction. Under guidance in section 3.5.3 of the Handbook, financial institutions should consider as a high risk indicator, "where a customer wants a product or service in one country or territory when there are very similar products or services in his home country or territory, and where there is no legitimate economic or other rationale for buying the product or service abroad". It is also mentioned as a poor practice in the GFSC's guidance note on visit trends of June 2014 if no record is maintained as to the customer's rationale in selecting the Bailiwick to obtain the requested products and services.

611. While some of the institutions interviewed showed awareness for this matter, the internal AML procedures reviewed by the assessors did not clearly demonstrate that all financial institutions are in fact establishing this rationale. The GFSC reported that in some instances, relevant information on the rationale appeared to be known to senior personnel or the group/parent office but information was not properly recorded in the client files. However poor records compromise (significantly if material) the quality and effectiveness of the customer risk assessment and the on-going monitoring of the business relationship if the information on rationale is not readily available.

612. Some institutions reported that they are in the process of reviewing their existing customer relationships in order to identify and fill potential gaps in the documentation of the economic or other rationale for the structure and the business relationship (some of these reviews are related to the acquisitions of existing books of businesses). However, it appears that in some instances this review has only been applied to a limited portion of the customer base so far. The review of existing records should not be limited to high-risk customers, as medium or lower risk customers might not have been properly classified in the absence of meaningful information on file on the commercial rationale.

613. The assessors also welcome that the GFSC has in fact emphasised the importance of verifying that the intended nature and purpose of each business relationship is recorded with the customer risk assessment in its above-mentioned guidance note on visit trends and observations and the letter to chief executive officers of financial institutions of May 2014.

614. On the positive side, it also has to be highlighted that some financial institutions reported that where the rationale of a business relationship is tax planning or tax mitigation, they would expect the customer to provide a copy of the tax opinion or advice to ascertain the compliance with relevant tax laws. The assessment team recommends that the GFSC should consider promoting this best practice.

615. The assessors also welcome the regulator's initiative to raise the financial sector´s awareness with respect to potential risks in the area of tax planning by hosting a seminar in co-operation with industry representatives. A few financial institutions also reported internal training initiatives in this respect. The authorities and the private sector are encouraged to reinforce these measures to further strengthen their abilities to identify business relationships with illegitimate purposes.

Effectiveness - On-going due diligence on business relationship (c.5.7)

616. Some banks use automated monitoring systems implemented by the groups to which they belong. In a limited number of instances, the day-to-day monitoring function is delegated to the group. The bank remains responsible for complying with Guernsey requirements and must understand how the monitoring is undertaken, how the risk profile of its relationships informs the monitoring system, including the expected level of transactional activity so that anomalies can be identified in a timely and effective manner. Other banks use a combination of automated and manual measures, with the latter more commonly seen applied in relation to high-risk customers.

617. Life insurance policies are normally of significant duration and monitoring is usually on a trigger event basis such as changes to sums insured. Early cancellation will always be treated as an unusual event and will result in additional due diligence. Life assurers use third party databases to monitor individuals starting from the time of take-on and then at any trigger event, which may occur thereafter. Captive insurance managers have an on-going, active face-to-face relationship with their customers and primarily undertake monitoring activities on a manual basis. Customers are subject to regular reviews, together with trigger event reviews e.g. a change of controller or a material change to risk underwritten. Use of third party databases for on-going monitoring and verification purposes is common.

618. Like the banks, many investment businesses use automated monitoring systems implemented by the groups to which they belong. In the context of collective investment schemes, transfer agency functions performed in Guernsey require the monitoring of CDD in accordance with the terms of business and are subject to on-going monitoring by the administrator, who retains responsibility for ensuring that the requirements of the FSB Regulations and the FSB Handbook are met. Businesses are often made aware in advance of anticipated transactions as these are prescribed in accordance with the terms of the collective investment scheme's prospectus (e.g. subscriptions and redemptions). This more readily facilitates the business' ability to identify proposed transactions and parties seeking to undertake those transactions which fall outside the expected and permissible activity under the terms of the scheme, in a timely manner, prior to any processing of the transaction.

619. Investment businesses apply controls to monitor both distributions and redemption payments to ensure that they are only made to nominated bank accounts which are in the investor's name and suspend such payments until they are satisfied that the activity falls within that expected of the investors, given the known risk profile. Again, similar to the banks, investment licensees use a combination of automated and manual measures, with the latter more commonly seen applied in relation to high-risk investors and promoters.

620. Monitoring undertaken by the registered business sector[102] generally incorporates both manual and automated measures. This will depend upon whether the business is administered by a fiduciary, in which case the monitoring measures of the administrator are applied, operates as a stand-alone business or forms part of a broader group for which automated measures are provided, such as where a registered business which undertakes lending forms part of a larger banking group.

621. The GFCS stated that financial institutions tend to incorporate the requirements concerning the review of business relationship assessments with their monitoring programmes. This is designed to ensure that CDD remains up to date and that the risk profile of the relationship is current and understood.

622. During on-site inspections the GFSC observed that some financial institutions tended to focus on transaction monitoring, particularly in the banking sector. Over the last 2 years, therefore, the GFSC has stressed the importance of ensuring that on-going monitoring processes incorporate possible changes of a non-transactional nature to a customer's risk profile, including the assessment of events or life style changes that could impact a customer's profile and result in a revised relationship risk. An example of this would be where an individual is elected to public office after being taken on as a customer. This has been a particular theme of the GFSC's feedback over the last two years. The GFSC stated that it has observed a notable enhancement to the monitoring processes of the relevant businesses.

623. As can be seen of the technical analysis of c.5.8 the requirement to take reasonable measures to establish the source of wealth and the source funds (of the customer, beneficial owner and any underlying principal) is articulated expressly with respect to high-risk relationships (FSB Regulation 5 (2) (a) (iii)). The wording in the General Introducer Certificate contained in Appendix A to the FSB Handbook suggests that the source of wealth and the source of funds is in practice established for PEP relationships and, only where appropriate, for other high-risk relationships.

624. However, it is important to mention that some financial institutions appear to establish the source of wealth and the source of funds beyond the above outlined statutory requirements. They request such information itself for their medium risk relationships. In the assessor's view this practice is to be commended as this information is also essential for a proper risk classification of the customer and understanding the legitimacy of a customer's source of funds and wealth is key.

625. The Handbook and Regulation do not prescribe the measures that must be taken by a financial institution to establish the source of wealth and the source of funds. The GFSC has described its expectation in this regard in the Q&A section of the GFSC´s website. Financial institutions appear to ascertain the source of funds and wealth mainly through responses from customers to enquiries about their source of funds and wealth. Most internal AML procedures reviewed by the assessors contained very comprehensive guidance on the details of information details to be obtained for each type of fund or wealth source.

626. The internal AML procedures also mention examples of documentary evidences for each type of fund or wealth source. However, the internal procedures do not clearly specify in which instances it would be considered mandatory to obtain evidence with respect to the customers' responses regarding the source of funds and wealth. For example, one internal procedure establishes that requests for documentary evidence could be made in "some exceptional

[102] Under Guernsey's AML/CFT framework there are three broad types of registered businesses: (1) non-regulated financial services businesses which are supervised for AML/CFT purposes only; (2) prescribed businesses which are supervised for AML/CFT purposes only; and (3) regulated financial services businesses carrying out money services business which are also required to register for AML/CFT purposes as money service providers.

circumstances". The authorities stress that firms often wish to retain discretion over when to require evidence and flexibility over what type of evidence is required. Based on the review of the internal procedures the assessors gained the view that such documentary evidence is requested rather infrequently.

Effectiveness - Risk – enhanced due diligence for higher risk customers (c.5.8)

627. As outlined in section 3.1. of this report significant portions of the customer base of some Guernsey financial institutions may present multiple high-risk characteristics which are considered by the FATF to be of higher risk. First of all, the beneficial owners of more than 90% of all business relationships are non-resident customers (or rather non-resident beneficial owners).

628. For some business relationships Guernsey financial institutions may never have a face-to-face contact with the beneficial owner and/or underlying principals (in particular those settling funds into a trust).[103] Guernsey financial institutions have certain measures in places (which are mentioned as examples in the FATF Methodology[104]) for mitigating the risks inherent to such non-face-to-face business relationships.

629. However, it has to be taken in to account that some of these non-face-to-face business relationships of Guernsey financial institutions may have additional risk characteristics. These relationships might involve legal persons or arrangements that are personal asset-holding vehicles, which are listed in the FATF Methodology as another example of higher risk, as there is little on public record as to their commercial use and their activities.

630. It should also be taken into account that under the terms of a discretionary trust (which is widely used in Guernsey) financial institutions with customers which are a legal arrangement might not have a reliable indication of who will benefit from the trust as the trust deed might contain a widely defined class of potential beneficiaries. Typically, the trustee is given wide discretionary powers as to when, how much and to which beneficiaries he should distribute the income and capital of the trust. In cases where there is a wide class of beneficiaries there is uncertainty about the final destination of funds which must be seen as an additional risk-layer from the financial institutions' perspective.

631. Guernsey trust law also provides for the possibility to establish non-charitable purpose trusts, which (from a Guernsey trust law point of view) do not have beneficiaries (see paragraph 1119 seq. for details) As a consequence, any legal entity that is ultimately held by a non-charitable purpose trust becomes an ownerless or "orphan" entity. This circumstance is in fact promoted by Guernsey TCSPs, emphasizing that such arrangements enhance the confidentiality of private asset holding vehicles and investment structures. Non-charitable purpose trusts are typically used as an orphan ownership vehicle for private trust companies (PTCs) and for securitisation and for structuring 'off-balance sheet' investments.[105]. In the assessor's view these orphan entities pose a higher risk to financial institutions maintaining business relationships with such entities.

[103] The authorities emphasise that many financial institutions have direct clients with whom they establish contact. Where they act for a legal person or legal arrangement the GFSC often finds that the firm does have contact - for example an investment manager presenting on its strategy for managing the assets will often include the beneficial owner or underlying principal.

[104] The measures applied by Guernsey financial institutions include in particular: the certification of documents presented; reliance on third party introducers or requiring the first payment to be carried out through an account in the customer's name with another bank subject to similar customer due diligence standards.

[105] Guernsey authorities stress however, that the same AML/CFT obligations apply in relation to undertaking CDD on the settlor, trustees and enforcer (protector) of the trust and establishing the intended purpose and rationale for the purpose trust.

632. It also has to be kept in mind that the structures of above mentioned personal asset-holding vehicles often include nominee shareholders (another example of high risk mentioned in the FATF Methodology).[106]

633. There is an additional risk layer, which is related to wealth management, which is a feature of the Guernsey financial sector. The inherent risks are outlined in the FSB Handbook: Wealthy customers, private banking customers and powerful customers may be reluctant or unwilling to provide adequate documents, details and explanations. They might have multiple and complex accounts which might be in more than one jurisdiction, either within the same firm or group, or with different firms. Finally, the transmission of funds and other assets by this type of private customer often involve high value transactions, requiring rapid transfers to be made across accounts in different countries and regions of the world.

634. The assessors welcome that Guernsey financial institutions apply enhanced due diligence to a wider range of customers than those required expressly in the FSB Handbook.[107] However, the internal procedures reviewed by the assessment team reveal that business relationships presenting cumulatively the above-mentioned examples of characteristics would typically not be regarded as high-risk customers, unless there is another risk element (e.g. customer from country with significant corruption levels or company with bearer shares).

635. The assessors acknowledge that Guernsey financial institutions qualify a significant share of their customer-base as high risk and apply enhanced due diligence accordingly. The evaluation team also takes into account that Guernsey financial institutions have developed a lot of experience and expertise with the category of business relationships described above. They are also highly knowledgeable as regards CDD in the area of wealth management and appear to be aware of the inherent risks. However, the assessors doubt that these aspects can be considered as sufficient mitigating factors to address the cumulative risk of business relationships with the multiple risk factors described above. In the light of these considerations the assessors have concerns whether financial institutions have categorized all their clients commensurate to the risk involved, or in other words, whether the risks inherent to customers currently categorized as standard risk customers are adequately mitigated.

Business risk assessment

636. As already outlined in the analysis of c.5.8 Guernsey financial institutions are required to carry out and document a suitable and sufficient money laundering and terrorist financing business risk assessment which is specific to the activities and relative to the size, nature and complexity of the firm's business. Shortly after the introduction of the FSB Regulations and the FSB Handbook in December 2007, the GFSC required all banks and the forty TCSPs whose relationships posed the highest risk to provide it with business risk assessments for review. While the quality of some of the initial assessments appeared to be overly generic, the quality of risk assessments has improved since, according to the GFSC.

637. The GFSC has further increased its supervisory focus on this obligation and has reviewed 225 business risk assessments during the 18 months prior to the onsite visit. The evaluation team

[106] Guernsey authorities point to the mitigating factor that the provision of nominee services by way of business is a regulated activity for which a fiduciary licensce is required. Furthermore, locally licensed TCSPs, in addition to being the trustee, usually utilise one of their licensed subsidiaries to provide nominee services for any underlying company of a trust. For companies not owned by trusts, the licensed fiduciary will provide nominee shareholders as well as acting as director.

[107] Pursuant to the internal AML procedures reviewed by the assessment team, most financial institutions consider companies with bearer shares in issue and customers conducting sensitive activities (e.g. gambling industry, money service businesses, etc.) as high-risk relationship. In addition, most financial institutions apply enhanced due diligence to a wider range of countries than required by FSB Regulation 5. For example, most financial institutions consider customers residing or domiciled in countries subject to sanctions or embargos as well as countries identified as having significant levels of corruption or other criminal activity as a high-risk relationships.

had the opportunity to see a few business risk assessments. The assessments appeared to reflect well the specific activities of the business and the corresponding financial crimes risks. However, the business risk assessments appeared not yet to recognise sufficiently that the accumulation of risks (as described above) can present overarching ML/TF risks;

638. The assessors consider it particularly positive that the GFSC has emphasized (most recently in the letter to chief executive officers in May 2014) the need for an overall risk appetite statement, driven by its business risk assessment, which informs the business activities. However, only few statements clearly defined where the financial institution would find it appropriate, based on an assessment of risk, to reject or terminate a business relationship.

Client risk assessment

639. Based on the policies and procedures provided by the financial institutions met, the assessors conclude that clear customer acceptance policies and procedures have been developed to identify the types of customer that in their view are likely to pose a higher risk of ML and FT. As required by the FSB Handbook, these policies and procedures are approved at Board level. The customer risk classification system is informed by the Regulations, the rules in the Handbook, guidance and the business' own risk appetite, as informed by its business risk assessment. The respective policies and procedures examined by the evaluation team appeared sufficiently recorded and approved at Board level.

640. However, as outlined under c.5.6 only few of the procedures and policies required the financial institution to take into account the customer's rationale in selecting the Bailiwick to obtain the requested products and services. One of the client risk assessments reviewed by the evaluators did include the question whether there is a legitimate economic or other rationale for the structure (i.e. a purpose for the entity holding the investment) and the business relationship with the FSB concerned. It was noted however, that the procedure determined that, if there is no legitimate economic or other rationale, this customer would be considered as a "high risk client" but would not necessarily result in the declination of this business relationship. This suggests that some financial institutions are prepared to demonstrate an excessively high risk appetite.

Effectiveness - Risk – application of simplified/reduced CDD measures when appropriate (c.5.9 to 5.12)

641. The application of simplified or reduced CDD is permissible with respect to Guernsey residents, legal bodies; legal bodies quoted on a regulated market and Appendix C businesses acting on their own account. However, Guernsey financial institutions typically only have few customers meeting this qualification. The utilization of simplified or reduced CDD appears to be more relevant when it comes to Guernsey and Non-Guernsey (collective) investment schemes. Provided that the statutory preconditions are met financial institutions refrain from identifying and verifying the underlying investor in these instances.

642. In circumstances where the discretion of "intermediary relationships" (as described in the technical analysis of c.5.9) can be used it is not deemed necessary to undertake CDD procedures on the customers of the intermediary unless the FSB considers this course of action to be appropriate based upon an assessment that the ML and TF risks are low. The two most important circumstances in practice appear to be where a life insurance company opens an account with a bank to invest the life insurance company fund (in other words the policy holders funds) and with respect to discretionary or advisory investment managers or custodians investing their customer's monies into a Guernsey or Non-Guernsey (collective) investment scheme.

643. The discretion of "intermediary relationships" is also applied to the provision of nominee shareholder services. This is in relation to shareholder services offered to investors by asset managers who utilise a wholly owned subsidiary to hold client monies as well as acting as the registered owner of securities. Authorities argue that the relationship is between the financial

institution and the asset manager as controller of the subsidiary nominee vehicle and not with the clients of the assessment manager whose investments the subsidiary vehicle holds.

644. The discretion is also used where banks hold pooled accounts in the name of a Guernsey licensed fiduciary (on a short-term basis). The authorities stated that the majority of licensed fiduciaries have a pooled account to hold funds received in advance of the establishment of a trust or incorporation of a company. As soon as a bank account has been opened for the trust or company, funds will be transferred out of the pooled account into the account for the trust or the company. Under the prudential supervisory regime for licensed fiduciaries there is a requirement to ensure that funds of different trusts are kept separately from each other and from a licensee's own funds.

645. Notwithstanding the concerns regarding the consistency of the rules regarding simplified CDD and intermediary relationships with the FATF Recommendations (as described in the technical analysis of c.5.9), it has to be stressed that financial institutions met demonstrated good awareness of their specific duties resulting from the FSB Regulation and the FSB Handbook. Most importantly, they appear to ensure that where the risk has been assessed as anything other than low that simplified or reduced CDD measures or the discretion of "intermediary relationships" is not applied.

Effectiveness - Timing of verification of identity – general rule (c.5.13) & treatment of exceptional circumstances (c.5.14)

646. The most relevant instance where financial institutions verify the identity of the customer and beneficial owner only after the establishment of the business relationship appears to be in the context of trust beneficiaries For example, where a beneficiary of a trust or foundation is not currently benefitting or has not previously benefitted from the trust or foundation, the identity of this beneficiary is often only identified and verified at or prior to the distribution of trust assets to (or on behalf of) that beneficiary.[108] Financial institutions stated that this discretion is particularly relevant where the beneficiary is a minor or where the beneficiary should not be made aware of the existence of the trust, because for example they are a vulnerable person.

647. According to the FSB Handbook, the verification of the identity of any beneficiaries must be undertaken immediately, if the relationship has been assessed as high-risk. However, in practice this appears not to be possible in many cases (e.g. in the case of "disenfranchised beneficiaries" who are not entitled to any information or in the case of "persons subject to a power", if the trustee hasn't exercised this power yet). Accordingly, financial institutions simply document the reasons for not having verified the identity of the beneficiary or a person subject to a power, as permitted by the FSB Handbook.

648. Financial institutions stated that the identity of a beneficiary or a person who is the object of a power is also verified prior to any distribution of trust assets to (or on behalf of) that beneficiary.

649. Life insurance companies also stated that the verification of the beneficiary usually takes place after the business relationship with the policyholder is established, but is always conducted at or before the time of payout or the time when the beneficiary intends to exercise vested rights under the policy.

[108] The term "distribution" is not defined in the Regulations or the Handbook. According to the authorities it refers to any payment of income or capital from a trust to a beneficiary. A beneficiary may benefit in some other way such as from a loan from the trust or enjoyment of trust property or chattels. Whilst this is not considered as a distribution, the GFSC emphasises that such beneficiaries would still have to be identified and verified by the licensed fiduciary in accordance with rules 134. The authorities stated that the trustee of the trust would be required to inform the financial institution pursuant to Rule 139. The authorities also emphasize that 286 of the FSB Handbook (ongoing CDD) applies to all financial institutions.

650. Most institutions mentioned that the decision to proceed with the business relationship for which the verification of the identity has not been completed will require a senior management approval. The respective relationships are flagged in the internal IT systems and usually monitored by the compliance unit and the board of directors. In addition, all transactions require a senior management approval in order to ensure that no payments are made to third parties. However, the procedures to limit the number, types and/or amount of transactions that can be undertaken were not clearly defined in the procedures reviewed by the assessors. These limits appear to be set often at the discretion of the director and appear not to be predefined.

Effectiveness - Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

651. The prohibition to open an account, to commence a business relationship, or to perform a transaction appears to be effectively observed. As mentioned above, some financial institutions reported to have IT systems in place to flag situations where the financial institution has not obtained all necessary CDD information in order to prevent the opening of an account or the provision of other financial services.

652. Where the financial institutions have already commenced the business relationship (e.g. where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data, or where the verification of the identity of the customer, beneficial owner was postponed in accordance with FSB regulation 7, or with respect to legacy customers) and they are unable to comply with all CDD requirements, financial institutions in fact appear to have measures in place that such business relationships are terminated without delay.

653. Some of the internal procedures provided by the evaluators refer to contractual or legal reasons outside the control of company which might prevent the financial institution from terminating a business relationship. For such cases, the internal procedures provide that such business relationship to be rated as high risk and all transactions have to be referred to senior management for approval in order for the company to effectively manage and mitigate the associated risk until such time as termination of the relationship is possible. In order to approve a transaction, senior management must ensure that funds are returned to the source where they were originally received from, and where this is not possible they must be paid to an account in the name of the customer.

654. All internal procedures reviewed by the assessment team clearly required financial institutions to file an STR if the reason for declining or terminating a business relationship gives rise to a suspicion. Several financial institutions have referred to situations where they have in fact filed STRs following failure to complete CDD (mainly related to situations where a business relationship was already established).

655. The assessors welcome that several institutions have introduced a log regarding new business relationships declined, which comprises details regarding each declined relationship, including the reason for the declination. Some institutions stated that these details are regularly reported to the Board of directors.

Effectiveness - Application of CDD requirements to existing customers – (c.5.17 & c.5.18)

656. As outline above, financial institutions were – broadly speaking - required through GFSC Instruction number 6 to satisfy themselves that CDD information "appropriate to the assessed risk" is held in respect of each business relationship by the close of business on 31 March 2010.

657. As far as higher-risk customer are concerned, all of the financial institutions met appear to have brought their CDD records up to the level of the current requirement. As regards standard risk and lower risk customers the picture presented to the assessors was less clear. The authorities stated that there were considerable efforts to meet the requirements of Instruction number 6 however over the last 18 months there have been approximately 14 cases where firms have had to remediate for CDD deficiencies across a number of relationships. The failings have

largely been in relation to not collecting some aspect of an individual's identification data such as former name or occupation, to insufficient enhanced due diligence on high risk relationships. From the GFSC's experience through onsite visits CDD measures have been applied to all customers but where there have been deficiencies it has been in relation to complying with a particular aspect of the rules rather than holding no CDD on customers.

658. Guernsey authorities maintain that it is standard practice for relationships to be reviewed at a frequency set to the risk attributed to the relationship as well as upon triggers events. Financial institutions met, stated that there are no existing anonymous accounts or accounts in fictitious names. Neither did the internal procedures reviewed contain any indications for the existence of such accounts.

3.2.2 Recommendations and comments

Recommendation 5

Technical:

659. As already recommended by the IMF in their report authorities should expand the list of higher-risk customers to which enhanced due diligence must be applied and include higher-risk categories relevant to some financial institutions in Guernsey.

660. Authorities should amend the FSB Handbook rules regarding simplified or reduced CDD (including intermediary provisions). The rules should not provide for the discretion to refrain entirely from any of the mandatory CDD measures (including identification of the ultimate beneficial owner) in respect of a regulated or authorised collective investment scheme that has only a very limited number of investors.

661. Financial institutions should be required to identify the beneficial owners of a corporate trustee, even if they establish that the corporate trustee is subject either to the Handbook or that it is an Appendix C business (see Rule 139 of the FSB Handbook);

662. Authorities should amend the FSB Handbook to ensure that the application of simplified or reduced CDD measures to customers resident in another country should be limited to customers resident or domiciled in countries, that Guernsey is satisfied to be in compliance with and have effectively implemented the FATF Recommendations or legal bodies that are listed on a regulated market that has been assessed by the GFSC as having adequate disclosure requirements (see paragraphs 577 and 578).

663. Authorities should amend Regulation 19 in order to cover any person that is the object of a power.

Effectiveness:

664. The authorities should ensure that the customer risk assessments take sufficiently into account that the accumulation of risks in a relationship (which appear to be relevant for a significant portion of the customer base) can present overarching ML/TF risks.

665. Financial institutions should be required to have sight of the trust deed and (if appropriate) letter of wishes (or the trustees memo or file note of the settlors wishes) in their entirety, and subsequent deeds at least in instances where the relationship has been assessed as high risk and effective compliance with this requirement should be examined. Authorities should ensure (through guidance and supervisory measures) that financial institutions enhance their CDD records regarding the economic or other commercial rationale of a business relationship, including the rationale for conducting this business in or through Guernsey, to ensure that records facilitate the undertaking of an adequate customer risk assessment and a meaningful on-going monitoring of the business relationship. The review of existing records should not be limited to high-risk customers.

666. Where the rationale of a business relationship is tax planning or tax mitigation, authorities should consider promoting the best practice applied by some financial institutions that are requesting a copy of the tax opinion or advice to ascertain the compliance with relevant tax laws.

667. The authorities should consider promoting the practice applied by some financial institutions by establishing the source of wealth and the source of funds also for their medium risk relationships, and not only for PEP and higher risk business relationships.

668. The authorities should ensure through clarifications in the Handbook and supervision that financial institutions require documentary evidence more frequently when establishing the source of wealth and the source of funds of high-risk customers.

669. The authorities should encourage financial institutions to define more clearly in their overall risk appetite statements where they would find it appropriate, based on an assessment of risk, to reject or terminate a business relationship.

670. In order to have legal certainty, authorities should clarify in the Regulations and the FSB Handbook that

- the underlying individual persons (ultimate beneficial owners) have to be identified where a settlor is a legal entity (corporate settlor);
- the true settlor (as opposed to a nominee settlor) has to be identified, verified and recorded in the CDD files in all cases;
- the identity of any person subsequently settling funds into the trust has to be identified, verified and recorded in the CDD files in all cases.

671. Authorities should clarify in the FSB Handbook that that the administrating FSB has to identify and to take reasonable measures to verify the identities of the beneficial owners of the cells.

672. Authorities should consider incorporating the statements on certification of copy documentation published on the FAQ section of the GFSC website into the Handbook to ensure their enforceability and effective compliance with these requirements by all financial institutions should be examined.

3.2.3 Compliance with Recommendation 5

	Rating	Summary of factors underlying rating
R.5	**LC**	• The list of factors of to which EDD must be applied omits some higher-risk categories which are relevant to some financial institutions in Guernsey; • The FSB Regulations and the FSB Handbook provide for the discretion to refrain entirely from the application of certain CDD measures in defined circumstances, including on underlying beneficial owners of regulated collective investment schemes. Where a regulated or authorised collective investment scheme has only a very limited number of investors this discretion within the FSB regulations and handbook should not be available; • The application of simplified or reduced CDD measures (including intermediary provisions) to customers in another country is not limited in all instances to customers resident or domiciled in countries, that Guernsey is satisfied to be in compliance with and have effectively implemented the FATF Recommendations or not limited to listed to companies that are

		subject to adequate disclosure requirements. Effectiveness issues: • Customer risk assessments do not sufficiently take into account that the accumulation of risks (which appear to be relevant for a significant portion of the customer base of some financial institutions) are presenting overarching ML/TF risks; • CDD measures are not commensurate to the risk in some instances.

3.3 Financial institution secrecy or confidentiality (R.4)

3.3.1 Description and analysis

Recommendation 4 (rated C in the IMF report)

Summary of 2011 factors underlying the rating

673. In the IMF report of 2011 Guernsey was rated as Compliant with Recommendation 4. There were no comments or recommendations made with respect to Recommendation 4.

General framework

674. While it remains the case that there is no law of financial institution secrecy in the Bailiwick, it has to be underlined that there is a common law principle of confidentiality that applies to financial institutions. Under the common law principle of confidentiality, material disclosed pursuant to statute is not covered by common law confidentiality. In the case of banks, further circumstances in which confidentiality would not apply are set out in the decision of the English Court of Appeal in Tournier v National Provincial & Union Bank of England. This case establishes that duties of confidence do not prevent disclosure where it is under compulsion of law, when an official of the bank is called on to give evidence in court relating to a customer's account or transactions, or where disclosure is necessary to prevent frauds or crimes.

Ability of competent authorities to access information they require to properly perform their functions in combating ML or FT

675. The ability of competent authorities to access information they require to properly perform their functions is analysed in detail under

• Criterion 26.4, 28.1 and 28.2 with regard to the abilities of the law enforcement authorities, including the FIU

• Criteria 29.2 and 29.3 with regard to the abilities of the GFSC.

676. The ability of competent authorities to access information for the purpose of international cooperation is examined under criterion 40.5 and 40.6.

677. No deficiencies have been identified by the assessors in relation to these criteria, or in other words in relation to the abilities of the competent authorities to access information they require to properly perform their functions in combating ML or FT.

678. The various laws which implement the FATF Recommendations in the Bailiwick contain provisions that specifically override any duties of confidentiality applicable to financial institutions or competent authorities that might arise, whether by contract or otherwise, as follows:

- Proceeds of Crime Law

o Section 39(3)(b) (waiver for disclosure of a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct)

- Section 40(5)(b) (waiver for disclosure of a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct)
- Section 45(9)(b) (waiver for disclosure following order to make material available)
- Section , 48(10) (waiver for disclosure of information held by States departments)
- Section 48F (waiver for disclosure following customer information order)
- Section 48L (waiver for disclosures following account monitoring order)
- Section 49B(6) (waiver for disclosure to GFSC during on-site visits to determine compliance any AML/CFT rules, instructions and guidance of the GFSC)

• The Disclosure Law

- Sec. 1(13) (waiver for FSB filing STR)
- Sec. 2(8) (waiver for nominated officer of FSB filing STR)
- Sec. 3(10) (waiver for Non-FSB filing STR)
- Sec. 10A (waiver for disclosures relating to international sanctions)

• Drug Trafficking Law

- Sections 58(3)(a), 59(5)(a), 63(9)(b), 67(10), 67F and 67L;

• Terrorism Law

- Sections 12(10), 15(13), 15A(8), Schedule 5 paragraph 5(4)(b), Schedule 6 paragraph 1(3), Schedule 7 paragraph 5(2)

• Civil Forfeiture Law

- Sections 23(2), 33, 39, 45(5), 47(5), 52(4)

• FSC Law

- Sections 21,
- Section 21E (waiver for disclosure to GFSC to enable or assist it to carry out its functions)

• Section 2 Fraud Investigation Law, Section 41M Protection of Investors Law and section 11(5) Insider Dealing Law (waivers for (compliance) disclosures under the respective laws);

679. There are restrictions on disclosing personal data in the Data Protection Law, but these restrictions are subject to various exemptions, including disclosure for the purposes of the prevention, detection or investigation of crime and the apprehension or prosecution of offenders within or outside the Bailiwick at section 29, disclosure necessary for the exercise of any functions of a Law Officer of the Crown at section 31, and disclosure required by law under section 35. These exemptions are sufficiently wide to cover the various matters relevant to the FATF Recommendations

Sharing of information between competent authorities, either domestically or internationally

680. According to the authorities, the financial institutions are subject only to the above-mentioned common law principle of confidentiality. Several Bailiwick laws establish statutory confidentiality provisions applicable to different authorities.

GFSC

681. Pursuant to section 21(1) of the FSC Law any information from which an individual or body can be identified which is acquired by the GFSC in the course of carrying out its functions shall be regarded as confidential by the GFSC and by its members, officers and servants. A person who without reasonable excuse discloses information, or who without reasonable excuse causes

or permits the disclosure of information, in contravention of this section is guilty of an offence and liable (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both, (b) on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months or to both (section 21 (4) of the FSC Law).

682. However, this confidentiality provision does not appear to inhibit the sharing of information with competent domestic or foreign authorities. Pursuant to section 21 (2) of the FSC Law confidential information can be disclosed to the extent that its disclosure is expressly authorised or required by or under any enactment relating to the GFSC' s statutory functions. The GFSC is expressly authorised by section 21A and 21B of the FSC Law to cooperate with foreign supervisory and law enforcement authorities, including sharing any information, without limitations (see analysis under R. 40 for further information).

683. In addition, section 21 (2) of the FSC Law establishes that confidential information can be disclosed to the extent that it appears to the GFSC to be necessary (inter alia)

- to enable the GFSC to carry out any of its functions, or
- 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, or
- in connection with the discharge of any international obligation to which the Bailiwick is subject, or
- to assist, in the interests of the public or otherwise, any authority which appears to the GFSC to exercise in a place outside the Bailiwick functions corresponding to any of the functions of the GFSC
- to comply with the directions of any division of the Royal Court, or
- to enable any body established to control or supervise gambling or gaming in the Bailiwick or any part thereof to carry out its functions or to investigate matters of relevance to its functions.

684. This provision appears to provide additional assurance that the confidentiality provision applicable to the GFSC does not inhibit the sharing of information with competent domestic or foreign authorities.

Law enforcement and FIU

685. Section 42 (1) of the Proceeds of Crime Law establishes that information which is disclosed to a police officer under the Proceeds of Crime Law or under any related rule, instruction or guidance of the GFSC, shall not be disclosed by that police officer, or by any person who obtains the information directly or indirectly from him. A person who contravenes this provision shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months, a fine not exceeding level 5 on the uniform scale or both.

686. As an exception to this rule, section 43 of the Proceeds of Crime Law expressly authorises the disclosure of information to a person in the Bailiwick for the purposes of the investigation of crime in the Bailiwick or for the purposes of criminal proceedings in the Bailiwick. Furthermore, the disclosure of information is permissible for other purposes in the Bailiwick, to Her Majesty' s Procureur, the GFSC, a police officer, or any other person who is for the time being authorised in writing by Her Majesty's Procureur to obtain that information.

687. Furthermore section 44 of the Proceeds of Crime Law establishes that the disclosure of information outside the Bailiwick is permissible if the information is disclosed for the purposes of the investigation of crime outside the Bailiwick or for the purposes of criminal proceedings outside the Bailiwick, or to a competent authority outside the Bailiwick. Competent authorities

are determined by regulations and currently comprise the Irish Criminal Assets Bureau, the UK Assets Recovery Agency and the Civil Recovery Unit of the Scottish Executive.

688. Analogous provisions to those described above can be found in sections 62B and 62C of the Drug Trafficking Law.

689. In addition to the rules set in the Proceeds of Crime Law and the Drug Trafficking Law, Section 8 of the Disclosure Law establishes to which extent information obtained by Her Majesty's Procureur or a police officer under the Disclosure Law or any other enactment, or in connection with the carrying out of any of the officer's functions, may be disclosed to domestic and foreign authorities (see write-up under criterion 26.5 for details). Pursuant to section 8(3) of the Disclosure Law none of the abovementioned disclosures contravenes any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

690. Hence it can be concluded that the applicable confidentiality provisions do not inhibit the sharing of information with competent domestic or foreign authorities.

Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

691. As mentioned above, there is a common law principle of confidentiality that applies to financial institutions. Under the common law principle of confidentiality, material disclosed pursuant to statute is not covered by the confidentiality obligation.

692. As regards SR.VII, the Transfer of Funds (Guernsey) Ordinance, 2007 and the parallel Ordinances applicable in Alderney and Sark provide a clear statute requiring financial institutions to include relevant customer (originator) identification information in the message or payment form accompanying the domestic or cross-border wire transfer. Given that this information is disclosed pursuant to a clear requirement, this sharing of information between financial institutions appears not to be covered by common law confidentiality.

693. However, with regard to R.7 there is no statute that would require the respondent financial institution to provide relevant customer identification data upon request to the correspondent financial institution. Similarly, as regards R.9, there is no statute that would require a third party (or introducer) to disclose to the relying financial institution the necessary information concerning certain elements of the CDD process (Criteria 5.3 to 5.6) or to provide copies of identification data and other relevant documentation relating to CDD requirements upon request of the relying financial institution. In consideration of the authorities' explication of the common law principle of confidentiality, the sharing of information between financial institutions where this is required by R.7 and R.9 is not clearly exempted from the common law principle of confidentiality. The authorities highlighted the fact that, as the common law duty of confidentiality can be waived by consent, it does not apply to information about a customer that has been disclosed by a correspondent financial institution or introducer with that customer's consent (see effectiveness analysis for further details).

Effectiveness and efficiency

694. Financial institutions did not report any concerns that they might be in breach of the common law principle on confidentiality by disclosing information to the FIS when filing a SAR. When asked about their ability to disclose confidential information upon request of the FIS, financial institutions pointed out that they had no concerns about disclosing such information after having filed a SAR related to this business relationship based on relevant information obtained by the FIS. However, the authorities maintain that such disclosure of information by persons who have not made STRs is compulsory under the regulations made under section 11 of the Disclosure Law in ML cases and section 11 (3) of the Disclosure Law and section 15C (39 of the Terrorism Law. Therefore the provision of this information is covered by the protection against breach of confidence etc. at section 11(2) of the Disclosure Law and section 15C (3) of the Terrorism

Law. In addition, the disclosure of information in these circumstances is disclosure pursuant statute.

695. No issue came to the assessors' attention whereby the effective implementation of the FATF Recommendations might in practice be restricted or otherwise affected by any duties of confidentiality. No cases were brought to the assessor's attention where financial institutions might have challenged the abilities of competent authorities to access information they require to properly perform their functions in combating ML or FT on grounds of secrecy or confidentiality provisions. Financial institutions report any concerns that they might be in breach of the common law principle on confidentiality by disclosing confidential information to the GFSC. It appeared that financial institutions readily understand that confidentiality is overridden by the competent authorities' powers within the AML/CFT framework as outlined above. This view was also confirmed by the GFCS's experience. It appears not to arise as a problem when information is requested by the authorities. The same is true when information is being shared amongst the authorities or with other jurisdictions.

696. As regards the sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII the GFSC stated that on-site visit observations disclose that financial institutions share information with other Guernsey businesses and those outside of the jurisdiction and that no instances were observed in which businesses have refused to provide requested information on grounds of secrecy. As outlined above, the authorities highlighted the fact that, as the common law duty of confidentiality can be waived by consent, it does not apply to information about a customer that has been disclosed by a correspondent financial institution or introducer with that customer's consent. The authorities stress that consent is invariably obtained by the financial institution as a condition precedent to its conducting the relevant business. The authorities argued that in practice confidentiality does not affect the sharing of information between financial institutions as required by R7 or R9.

3.3.2 Recommendations and comments

697. In the absence of a clear statute for respondent institutions and third parties (introducers) to disclose necessary information, the sharing of information between financial institutions where this is required by R.7 and R.9 is not clearly exempted from the common law principle of confidentiality. While the assessors acknowledge that the duty of confidentiality can be waived by consent and that this consent is usually obtained by Guernsey financial institutions, problems can arise where this consent was not obtained. Accordingly, the authorities should introduce a clear statute that requires respondent institutions and third parties (introducers) to disclose information necessary under R.7 and R.9.

3.3.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	

3.4 Record keeping and wire transfer rules (R.10)

3.4.1 Description and analysis

Recommendation 10 (rated C in the IMF report)

Summary of 2011 factors underlying the rating

698. In the IMF report of 2011 Guernsey was rated as Compliant with Recommendation 10. There were no comments or recommendations made with respect to Recommendation 10.

Record keeping & Reconstruction of Transaction Records (c.10.1 and 10.1.1)

699. Regulation 14(1) of the FSB Regulations requires a financial institution to keep a transaction document and any CDD information, or a copy thereof, for the minimum retention period. Regulation 19 of the FSB Regulations defines the minimum retention period as being, in the case of a transaction document a period of five years starting from the date that both the transaction and any related transaction were completed, or such other longer period as the GFSC may direct. A transaction document is defined in Regulation 19 as a document which is a record of a transaction carried out by a financial institution with a customer or introducer.

700. The Rules in Section 12.2 of the FSB Handbook require that all transactions carried out on behalf of or with a customer in the course of business, both domestic and international, must be recorded by the financial institution, and that in every case, sufficient information must be recorded to enable the reconstruction of individual transactions so as to provide, if necessary, evidence of criminal activity. Furthermore, financial institutions have to ensure that in order to meet the record keeping requirements for transactions, documentation is maintained which must include:

- the name and address of the customer, beneficial owner and underlying principal;
- if a monetary transaction, the currency and amount of the transaction;
- account name and number or other information by which it can be identified;
- details of the counterparty, including account details;
- the nature of the transaction; and
- the date of the transaction.

Record keeping of identification data, files and correspondence (c.10.2)

701. FSB Regulation 14(1) requires financial institutions to keep any CDD information, or a copy thereof, for the minimum retention period. FSB Regulation 19 defines CDD information as meaning identification data, and any account files and correspondence relating to the business relationship or occasional transaction. Identification data is defined as meaning documents which are from a reliable and independent source, and the minimum retention period for CDD information is defined as a period of five years starting from the date where a customer's established business relationship with the financial institution ceased, or where a customer's occasional transaction with the financial institution was completed, or such other longer period as the GFSC may direct.

Availability of Records to Competent Authorities in a Timely Manner (c. 10.3):

702. FSB Regulation 14(4) requires that documents and CDD information, including any copies thereof, that are kept pursuant to the Regulation, 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 GFSC, the FIS, or any other person where such documents or CDD information are requested pursuant to the Regulations or any relevant enactment (i.e. Bailiwick enactments relating to money laundering or terrorist financing).

703. Chapter 12 of the FSB Handbook requires in the Rules that financial institutions have appropriate and effective policies, procedures, and controls in place to require that records are prepared, kept for the stipulated period, and in a readily retrievable form so as to be available on a timely basis, i.e., promptly to domestic competent authorities upon appropriate authority and auditors (Rule 348). Additionally, a financial institution must periodically review the ease of retrieval of, and condition of, paper and electronically retrievable records. Financial institutions must, therefore, consider the implications for meeting the requirements of the regulations where documentation, data and information is held overseas or by third parties, such as under outsourcing arrangements, or where reliance is placed on introducers or intermediaries, and must not enter into such arrangements or place reliance on third parties to retain records where

access to records is likely to be restricted, as this would be in breach of the FSB Regulations. (Rules 358-361), which require records to be readily retrievable.

Effectiveness and efficiency

704. Based on the interviews with several financial institutions and information provided by the GFSC on its supervisory work the assessors gained the impression that the institutions keep transaction records, identification data, account files and business correspondence in line with the requirements described above. The GFSC has demonstrated that it regularly assesses compliance with the record-keeping requirements. It is a fundamental component of the GFSC's on-site visits that all financial institutions are required to demonstrate to the GFSC's on-site supervisory teams that they obtain, maintain and retain records in order to evidence their compliance with all of the requirements of the FSB Regulations and rules in the FSB Handbook.

705. The GFSC has also demonstrated that a sample of these records are comprehensively tested during onsite visits in order to verify whether the financial institution's policies, procedures and controls with respect to record-keeping are being applied in practice and complied with by its personnel. The data maintained by the GFSC appears to evidence that financial institutions have a very high level of compliance in relation to the record keeping requirements. The limited non-compliance with the requirements of the FSB Regulations and Handbook arose as a result of a financial institution failing to maintain accurate and appropriate logs of the activity it had undertaken, for example in respect of training completed by its employees. There are no recent examples where a financial institution has failed to comply with the minimum retention period. The nature of records retained by financial institutions has permitted the reconstruction of transactions on an individual basis.

706. No issue came to the assessors' attention with regard to the ability of financial institutions as to timely delivery of records when required by the GFSC, the FIS, or the law enforcement agencies. As already highlighted in previous assessment reports, in cases where a financial institution relies upon an introducer in another jurisdiction to maintain the underlying CDD documentation, there is a risk that such third party may be legally prohibited or otherwise experience delays in supplying these records. To address this risk, financial institutions in the Bailiwick must have a programme of testing to ensure that introducers are able to fulfil the requirement that certified copies or originals of the identification data will be provided upon request and without delay. This will involve financial institutions adopting ongoing procedures to ensure they have the means to obtain that identification data and documentation.

707. The procedures and their application are reviewed as part of the GFSC's onsite supervisory programme. The review includes assessing the introducer take-on process, the documentation held and that a testing program is in place and testing has been undertaken. From these reviews the GFSC has observed that banks categorise their introducers according to a level of risk. The testing program is then aligned with the risk exposure. Equally financial institutions evaluate the level and volume of business being introduced and adjust the frequency of their tests accordingly. It is not uncommon for banks to test new introducers within 6 months'. The GFSC has also noted financial institutions are moving away from relationships where reliance is placed on the introducer for verification of identity of the relationship because of the administrative burden and cost of testing these relationships. Financial institutions are now opting to collect all the CDD at the on-boarding stage and therefore minimise their risk exposure and reduce the level of reliance.

708. Effectiveness also appears to be strengthened by the express statutory requirement to ensure that the way in which identification data is recorded and stored is such as to facilitate the ongoing monitoring of each business relationship (FSB Regulation 11(c)).

3.4.2 Recommendation and comments

Recommendation 10

709. This Recommendation is fully observed.

3.4.3 Compliance with Recommendation 10

	Rating	Summary of factors underlying rating
R.10	**C**	

3.5 Suspicious transaction reports and other reporting (R. 13 and SR. IV)

3.5.1 Description and analysis

Recommendation 13 (rated C in the IMF report)

Summary of 2011 factors underlying the rating

710. In the 2011 Detailed Assessment Report Rec. 13 was rated C and there were no rating points. Nevertheless, there were two recommended actions in the report: to consider amending the DL and TL and/or relevant guidance to explicitly require the reporting of attempts, or issuing guidance to clarify the requirement; and review STR process to determine whether timeliness could be improved by revising and possibly simplifying the procedure.

711. Since the last evaluation, additional language was included on the prescribed form in relation to attempted transactions. There were certain changes to the legal framework for reporting suspicion of money laundering and terrorist financing that are described later.

Requirement to Make STRs on ML to FIU (c.13.1)

712. The legislation dealing with reporting obligations remains the DL in respect of money laundering, and the TL in respect of terrorist financing. The reporting obligations under the two laws, which for these purposes are in identical terms, require financial services businesses and prescribed businesses to report to the FIS any knowledge, suspicion or reasonable grounds for knowledge or suspicion in respect of money laundering or terrorist financing that has been acquired in the course of their business. The way in which reports must be made is prescribed in the Disclosure Regulations and the Terrorism Regulations, which are also in identical terms.

713. The requirement to report is based on SARs rather than STRs, to ensure that reports are made in situations where no actual transaction is involved.

714. Under section 1 of the DL a person must make a required disclosure if two conditions are satisfied.

715. The first condition is that he knows, suspects or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering or that certain property is or is derived from the proceeds of criminal conduct. Money laundering is defined in section 17 by reference to the money laundering offences in the Proceeds of Crime Law and the Drug Trafficking Law, as well as the full range of ancillary offences. Criminal conduct is defined as conduct which constitutes a criminal offence under the law of any part of the Bailiwick, or which if it took place in any part of the Bailiwick, would constitute an offence under the law of that part of the Bailiwick. This means that the reporting of suspicion required by the DL applies to the proceeds of all predicate offences.

716. The second condition is that the information or other matter on which this information is based came to him in the course of a financial services business.

717. At the time of the last evaluation the reporting obligations in the DL and the TL were framed as criminal offences for failure to report, and they applied to suspicion that another person was engaged in money laundering or terrorist financing respectively. With the introduced amendments the reporting obligations are now framed as positive duties to report which are subject to criminal sanctions for breach, and they expressly now also extend to suspicion that

certain property is or is derived from the proceeds of criminal conduct or terrorist property, as the case may be.

718. When deciding whether a person has committed an offence by breaching sections 1 or 2 of the DL, the court must take into account whether or not the person followed any rules or guidance issued and appropriately published by the GFSC under section 15 of the DL or any other enactment in relation to the disclosure requirements.

719. According to the DL, a required disclosure is a disclosure either to a *"nominated officer"*, *i.e.* a person within the financial services business nominated for the purpose by the employer (MLRO), or to a prescribed Police officer (defined as a member of the FIS), in the form and manner prescribed by Regulations made by the Home Department of the States of Guernsey under Section 11. The Disclosure Regulations under Section 11 require reports to be made using an online reporting facility unless an authorised officer agrees otherwise, in which case a report may be made in accordance with the requirements of a form appended to the Regulations. The online reporting facility (THEMIS) involves the completion of an equivalent form.

720. Under Section 2 of the DL, a *"nominated officer"* must make a required disclosure if the same conditions as those under Section 1 are satisfied, and a required disclosure for these purposes is a disclosure to a prescribed Police officer in the prescribed form and manner referred to above.

721. According to the law, "any person who fails to make a required disclosure as soon as possible after the information or other matter comes to him commits a crime". But the person does not commit an offence if he has a *"reasonable excuse"* for not having made a report or he as a legal advisor is under legal privilege. There is a further defence for the person, namely if the person concerned does not know or suspect ML and has not received training from his employer as required by Regulations made under Section 49 respectively of the Proceeds of Crime Law. This defence is therefore limited to cases involving reasonable grounds for suspicion only i.e. a purely objective mental element.

722. The authorities explained that these defences did not mean that there was no obligation to make a report, but rather that a person would not be guilty of a criminal offence for breaching that obligation. The obligation would still arise and could be taken into account in non- criminal circumstances, for example by the supervisory authorities in the exercise of their powers. The authorities also explained that the defence of reasonable excuse is frequently used in common law jurisdictions in relation to offences with a negative physical element, i.e. failure to carry out a specified act. Its purpose is to avoid injustice in cases where a person's failure to carry out the relevant act is attributable to circumstances beyond his control (e.g. sudden illness or crisis). Its scope is therefore very limited, and the burden of proving reasonable excuse falls on the person in breach. The authorities also explained that although to date they have not experienced a person trying to justify a breach of the reporting requirements on these grounds, this burden is likely to be discharged to the satisfaction of the court only in circumstances such as the examples given above or possibly if a person can demonstrate that failure to make a report was attributable to a technical problem of which he was unaware and which prevented a report from being transmitted to the FIS. According to the authorities, the Guernsey courts are very familiar with the concept of reasonableness, which is a fundamental principle of many aspects of the legal system in Guernsey and similar jurisdictions (e.g. the UK, where the reporting obligations in section 330 of the Proceeds of Crime Law are subject to the same defences).

723. The reporting regime is underpinned by the FSB Regulations and the rules and guidance in chapters 2 and 10 of the FSB Handbook. These lay down the basic framework and guidance on the appointment of an MLRO and the particular obligations that relate to the reporting of suspicion, internal reporting, the form and manner of reporting, and tipping off.

724. A further amendment since the last evaluation has been the broadening of the definition of terrorist financing for the purposes of making reports. It now includes breaches of the asset freezes imposed in the domestic legislation that gives effect to UNSCRs 1267 and 1373.

725. A further change to the prescribed manner of reporting was made to the Disclosure Regulations (DR) which came into force on 7 August 2014 and it requires reporting entities to specify suspected predicate offense if possible. At the same time some additional language was included on the prescribed form in relation to attempted transactions, in order to make it easier to maintain statistics in this area. In addition, there have been some revisions to chapter 10 of the FSB Handbook which now made explicit that the obligation to report covers attempts or proposals to enter into a business relationship or to undertake an occasional transaction.

726. During the on-site visit the DL positive reporting obligation did not specify how promptly that must be done. The only indication was in the provision under Section 1(4) setting that *"any person who fails to make a required disclosure as soon as possible*[109] *after the information or other matter comes to him commits an offence"*. From that, one could conclude that the law required reporting to be made *"as soon as is possible"*. Although this wording does not refer in terms to prompt reporting, the authorities explained that in their view the language in the DL does in fact require prompt reporting and that this is well understood and complied with by industry. They confirmed that the wording in the DL mirrored that in jurisdictions with a similar legal system (e.g. the UK, where reports are required to be made, in effect, as soon as practicable under section 330(4) of the Proceeds of Crime Act). As explained by the authorities, it is axiomatic that no report will be made before it is possible to make it and therefore no alternative form of wording could require reports to be made any earlier than was already demanded by the legislation. They considered that specifying a particular time frame or incorporating the term "promptly" into the legislation would make the reporting regime less effective than it is now. In their view, terms such as "promptly" or "timely" are more subjective than "as soon as possible" and are also less exacting, because a person who was able to make a report and who therefore was covered by "as soon as possible" might decide to wait for a day or so before making the report on the basis that this could still be considered prompt or timely reporting. The authorities believe that the introduction of a specific time frame would mean that reporting entities could wait until just before the expiry of the specified time limit rather than, as now, making reports as soon as they are able to, and this would result in later reporting than at present. The authorities accepted that the timing of reporting was not dealt with as a positive obligation under the DL, and therefore, after the mission at the end of November, the DL was amended and introduced a positive obligation on timing of reporting. Now the law states that the disclosure should be made "as soon as possible".

Requirement to Make STRs on FT to FIU (c.13.2 & IV.1)

727. Under sections 15 and 15A of the TL there are obligations to make a required disclosure. These obligations are subject to the same conditions as in sections 1 and 2 of the DL, save that they apply to knowledge, suspicion, or reasonable grounds for knowledge or suspicion that a person is engaged in terrorist financing or that certain property is or is derived from terrorist property.

728. Terrorist financing is defined in section 79 of the TL by reference to the offences at sections 8 to 11 of the TL. These offences apply to funds that are or may be used for the purposes of terrorism and to terrorist property. The definition of purposes of terrorism includes provision of support of any kind to persons involved in terrorism, who are any legal or natural persons, bodies, groups, organisations or entities who commit, participate in, organise or direct acts of terrorism, or who contribute to the commission of acts of terrorism by groups acting with a common purpose.

[109] The current wording was included through an amendment made to the DL after the on-site visit (end of November 2014). The authorities explained that there is no difference legally between *"as soon as practicable"* (the wording at the time of the on-site visit) and *"as soon as possible"*. However, *"as soon as possible"* appears to be more readily understandable to persons outside the Bailiwick from civil law jurisdictions. Based on this explanation the evaluators maintained the conclusions from the on-site.

729. The definition of terrorist financing also includes breaches of the requirements of the Terrorist Asset Freezing Law, the Afghanistan Ordinances and the Al Qaida Ordinances, which require the assets of named persons or entities suspected of involvement in terrorism to be frozen.

730. Regulation 1(1) of the Terrorism Regulations replicates the provisions in the Disclosure Regulations as to the submission of reports to the FIS using the online reporting facility.

731. Under section 15B of the TL, breach of the requirements of the sections 15 and 15A is a criminal offence punishable with up to 5 years' imprisonment and an unlimited fine.

732. There are the same provisions for the defence of the reporting person under the TL (Section 15) as in the DL described above.

No Reporting Threshold for STRs (c. 13.3, c. SR.IV.2)

733. There is no threshold specified in the relevant provisions of the DL or the TL. The definitions of money laundering, proceeds of criminal conduct, terrorist financing and terrorist property in the legislation apply irrespective of the value of the property involved.

734. The rules in section 10.2 of chapter 10 of the FSB Handbook provide that each suspicion must be reported to the MLRO regardless of the amount involved. The experience of the GFSC and the FIS is that this is well understood by industry.

735. With regard to attempted transactions, the obligation to report arises if a person is suspected of engaging in money laundering or terrorist financing. This is defined as activity which comes within the ML/TF offences and attempts to do so are expressly referred to in the Disclosure Law and the Terrorism Law. The Guernsey authorities explained that this means that any attempt to carry out an activity which constitutes a ML/TF offence is subject to the reporting obligation, and for this reason, attempted transactions are included; the language of "attempted transactions" is included only in the reporting form (which is attached to the Regulations), and the authorities state that this is legally binding because under Regulation 1 of the Disclosure Regulations and the Terrorism and Crime Regulations it is mandatory to make a report in line with the form. They also consider that this is underpinned by paragraph 209 of the GFSC Handbooks, which states that references to a transaction or activity also include attempts or proposals to enter into a business relationship or to undertake an occasional transaction, although this document is not a law or regulation. In addition there is guidance about attempted transactions on the FIS website. In addition in a letter to the Secretariat Guernsey's Attorney General has confirmed that in his view the legislation explicitly includes attempted transactions and that he would have no difficulty in deciding to bring a prosecution on that basis.

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

736. No exception is made for tax or other fiscal matters under the DL or the TL. As fiscal offences such as tax evasion or fraud come within the definition of criminal conduct in both the DL and the Proceeds of Crime Law, they are covered by the obligation to report suspicion that a person is engaged in money laundering and also that certain property represents the proceeds of criminal conduct.

737. This is confirmed by the rules in section 10.2 of chapter 10 of the FSB Handbook, which provide that each suspicion must be reported to the MLRO regardless of whether, amongst other things, it is thought to involve tax matters.

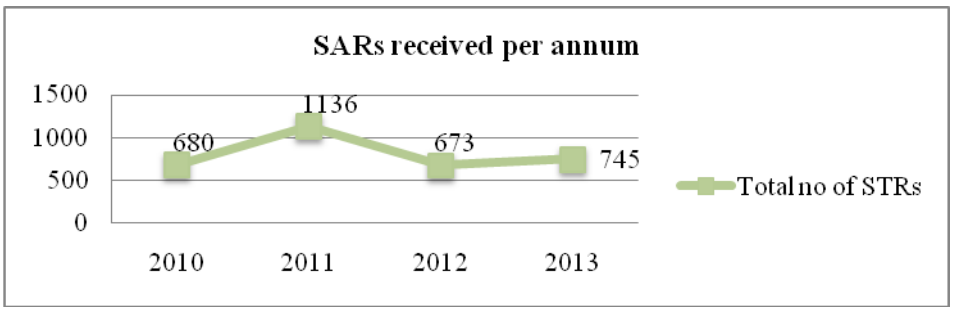
Additional Elements – Reporting of All Criminal Acts (c.13.5)

738. There is an obligation to report suspicion that certain property is or is derived from the proceeds of criminal conduct, and criminal conduct is defined as conduct which constitutes a criminal offence under the law of any part of the Bailiwick, or which if it took place in any part of the Bailiwick, would constitute an offence under the law of that part of the Bailiwick. Therefore the obligation to report applies to all domestic and overseas predicate offenses.

Effectiveness and efficiency R.13

739. The number of STRs made has remained consistent over the last 4 years (subject to an increase in 2011 attributable to a change in the EU tax reporting directive and duplication because of the introduction of online reporting) and is broadly in line with reporting levels in comparable jurisdictions such as the other Crown Dependencies.

Table 24



740. The same point applies to statistics on underlying factors which have also remained consistent in this period, such as the sectors, suspected underlying predicate offences and other jurisdictions involved in STRs.

Table 25 Statistics on submitted SARs

	2010				2011				2012				2013			
Reporting entity	**TOTAL SARs**	**Breakdown of SARs**			**TOTAL SARs**	**Breakdown of SARs**			**TOTAL SARs**	**Breakdown of SARs**			**TOTAL SARs**	**Breakdown of SARs**		
		ML	**TF**	**Attempted transactions**		**ML**	**TF**	**Attempted transactions**		**ML**	**TF**	**Attempted transactions**		**ML**	**TF**	**Attempted transactions**
FINANCIAL INSTITUTIONS																
Banks	**356**	354	2	-	**656**	655	1	-	**261**	261	-	-	**249**	249	-	36
Insurance sector	**7**	7	-	-	**12**	12	-	-	**14**	14	-	-	**21**	21	-	7
Investment & securities	**37**	37	-	-	**110**	110	-	-	**54**	53	1	-	**47**	47	-	9
Currency exchange	**11**	11	-	-	**12**	12	-	-	**15**	15	-	-	**20**	20	-	-
Non-regulated financial services businesses *(excluding currency exchange)*	**7**	7	-	-	**4**	4	-	-	**14**	14	-	-	**28**	28	-	3
DNFBPs																
E-gambling/e-gaming	**64**	64	-	-	**35**	35	-	-	**44**	44	-	-	**94**	94	-	36
Real estate agents	**1**	1	-	-	-	-	-	-	**2**	2	-	-	**3**	3	-	2
High value dealers	-	-	-	-	-	-	-	-	**2**	2	-	-	**8**	6	2	2
Legal professionals	**17**	17	-	-	**27**	27	-	-	**13**	13	-	-	**15**	15	-	4
Notaries	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Accountants	**20**	20	-	-	**19**	19	-	-	**13**	13	-	-	**25**	25	-	2
Trust and	**142**	139	3	-	**243**	24	1	-	**227**	22	1	-	**223**	22	3	45

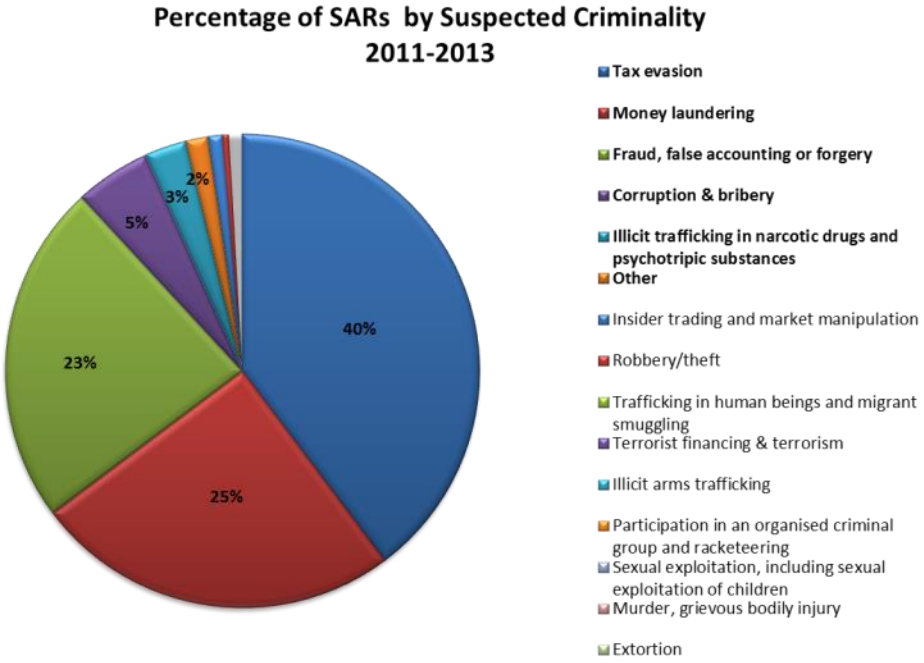
company service providers						2				6				0		
Regulatory authorities	**13**	13	-	-	**14**	14	-	-	**13**	13	-	-	**11**	11	-	-
OTHER																
Other *(general public)*	**5**	5	-	-	**4**	4	-	-	**1**	1	-	-	**1**	**1**	-	-
TOTAL	**680**	675	5		**1136**	1134	2		**673**	671	2		**745**	740	5	**146**

	Jan – Jun 2014			
Reporting entity	**TOTAL SARs**	**Breakdown of SARs**		
		ML	**TF**	**Attempted transactions**
FINANCIAL INSTITUTIONS				
Banks	**139**	**139**	**-**	**19**
Insurance sector	**2**	**2**	**-**	**1**
Investment & Securities	**29**	**29**	**-**	**8**
Currency exchange	**5**	**5**	**-**	**-**
Non-regulated financial services businesses (excluding currency exchange)	**6**	**6**	**-**	**-**
DNFBPs				
E-gambling/e-gaming	**65**	65	-	11
Real estate agents	**-**	-	-	-
High value dealers	**3**	3	-	3
Legal professionals	**11**	11	-	2
Notaries	**-**	-	-	-
Accountants	**17**	17	-	2
Trust and company service providers	**99**	99	-	18
Regulatory authorities	**10**	10	-	-
OTHER				
Other *(general public)*	**1**	1	-	-
TOTAL	**387**	387	-	64

741. Approximately 40% of SARs relate to tax evasion, 25% to money laundering, 23% to fraud, false accounting or forgery and 5% to bribery and corruption. The number of SARs with a link to charities or NPOs in the same period was low and mainly concerned tax evasion.

742. The analysis of these underlying factors reveals a high degree of consistency with the statistics and analysis of mutual legal assistance requests for the same period. In both cases the sectors most frequently involved are the banking and fiduciary sectors, and there has been a rise in the number both of STRs and MLA requests involving the online gambling sector.

Table 26



743. Some two thirds of SARs originate from banks and trust and company service providers. This pattern is consistent with the highly international nature of the customers, beneficial owners and activities within the business relationships of such firms; the high value wealth management nature of a large proportion of the relationships; and the use of legal persons and legal arrangements, sometimes in complex structures, within the relationships. These two sectors accounted for an even larger proportion of SARs in 2010 and 2011 but during the period since 2010 there has been an increase in the numbers of SARs made by trust and company service providers in relative and absolute terms.

744. The third highest reporting sector in 2013 and 2014 is the e-gambling/e-gaming sector. This was also the case in 2010, although the number of SARs dropped in 2011 and 2012. The SAR figure by e-gambling/e-gaming entities for the first half of 2014 suggests a potential increase in reporting even over 2013. The authorities consider that this increase is attributable to training given to the sector and improved practices to identify suspicious activity. The large majority of the SARs in relation to this sector originate from e-casinos (Category 1 e-gambling licensees), which is expected.

745. The investment sector is the fourth highest reporting sector.

746. The insurance sector made a low number of SARs relative to the large numbers of licensees in the sector but the authorities explained this disproportion by the fact that the vast majority of insurance sector licensees are captive insurers. There are only a small number of life insurers with only one which is significant in size with an international customer base.

747. The non-regulated FSBs include entities registered by the GFSC such as non-bank lenders and finance companies. A substantial increase in the number of SARs can be seen in 2013. Further analysis showed that one institution made several reports, instead of including updates to the original submission, thus leading to several duplicates. This led to education of staff within the relevant entity by FIS staff. Removal of the duplicates from the figure for 2013 indicates that the correct figure of SARs for non-regulated FSBs made in that year would be 22, thus still showing a steady increase.

TABLE 27: STRs submitted to FIS

Reporting entity	2010	2011	2012	2013	4 Year Av%
Banks	356	656	261	249	**47.06%**
Trust and company service providers	142	243	227	223	**25.82%**
Investment & securities	37	110	54	47	**7.67%**
E-gambling/e-gaming	64	35	44	94	**7.33%**
Accountants	20	19	13	25	**2.38%**
Legal professionals	17	27	13	15	**2.23%**
Currency exchange	11	12	15	20	**1.79%**
Insurance sector	7	12	14	21	**1.67%**
Non-regulated FSB ***(excluding currency exchange)***	7	4	14	28	**1.64%**
Regulatory authorities	13	14	13	11	**1.58%**
Other	5	4	1	1	**0.34%**
High value dealers	-	-	2	8	**0.31%**
Real estate agents	1	-	2	3	**0.19%**
TOTAL	**680**	**1136**	**673**	**745**	**100.00%**

748. Only 14 SARs were made in relation to terrorist financing, consistent with the view that this presents a very low risk for the jurisdiction.

749. The DL requires a person to make a disclosure "as soon as possible" which might not be exactly the same as "promptly" but the Guernsey authorities consider that provision to be adequate because it sets the quickest moment for reporting.

750. Both the FIS and the GFSC have received positive feedback from industry on implementation issues such as the use of THEMIS. The meetings with the private sector during the on-site visit confirmed a high level of understanding and compliance with reporting obligations. GFSC reviewed the data on level of compliance and understanding in relation to the reporting requirements, both as stipulated in the legislation and in the Handbook. It resulted that non-compliance with the reporting requirements accounted on average for only 5%-6% of non-compliance findings made during the on-site visits that were undertaken between 2010 and 2013. The supervisor imposes different sanctions for non-compliance with reporting requirements. In 2013 a public statement was issued on a company in respect of a range of issues including a breach of Regulation 12 for failing to give timely notification to staff of a change of money laundering reporting officer and not for STR reporting.

3.5.2 Recommendations and comments

751. Although the legislation is clear that the breach of reporting obligations is an offence, the FIS and GFSC are not just sanctioning the reporting entity when breach (rarely) occurs. They tend to find out the reasons for the failure to report and issue recommended actions but do not always

refer the issue to the criminal procedures. There have however been a number of criminal investigations into failure to disclose, although for various reasons none have led to prosecutions to date.

752. As explained in R26, before the August 2014 amendments to the DL, the FIS powers to request additional information were limited to the FI which initially filed the STR. To obtain additional information from other parties, the FIS asked the reporting entities to file an STR. Therefore, the statistics on STRs received by the FIS include those *"upon FIS's request"* reports. The same system is used to obtain information in case of a foreign request in case there was no STR on the subject of the request. For the integrity of the statistics there should be clear data on the number of those STRs.

3.5.3 Compliance with Recommendations 13 and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**C**	
SR.IV	**C**	

Regulation, supervision, guidance, monitoring and sanctions

3.6 The supervisory and oversight system - competent authorities and SROs / Role, functions, duties and powers (including sanctions) (R. 23, 29 and 17)

3.6.1 Description and analysis

Authorities/SROs roles and duties & Structure and resources

Recommendation 23 (23.1, 23.2) (rated C in the IMF report***)***

Summary of 2011factors underlying the rating

753. The Bailiwick of Guernsey was rated Compliant for Recommendation 23 in the 2011 Detailed Assessment Report compiled by the IMF. Therefore no recommendations by the evaluators were issued.

Regulation and Supervision of Financial Institutions (c. 23.1)

754. No major changes in the Bailiwicks legal system have occurred since the last mutual evaluation has taken place.

755. The Financial Services Commission Law provides the GFSC with powers of supervision, including sanctioning powers.

756. Section 49(3) of the Proceeds of Crime Law provides for the Policy Council to make Regulations in respect of the duties and requirements to be complied with by financial services businesses for the purposes of forestalling and preventing money laundering and terrorist financing – the FSB Regulations are made under this section. Section 49(7) of the Proceeds of Crime Law provides for the GFSC to make rules, instructions and guidance for the purposes of the FSB Regulations.

757. Section 49B provides the GFSC with powers to conduct on-site inspections, and to obtain information and documents during such inspections. These provisions apply to all financial institutions, including persons registered under the NRFSB Law.

Table 28 Designated Supervisory authorities

Financial Institutions	Designated Supervisory authorities	Number
Banks	GFSC	31

Insurance Business, Insurance Managers and Insurance Intermediaries	GFSC	372 Insurer 21 Insurance managers 39 Insurance Intermediaries
Investment Sector	GFSC	12 Open Ended Schemes (Registered) 201 Closed Ended Schemes (Registered) 164 Open Ended Schemes (Authorised) 435 Closed Ended Schemes (Authorised)
Money service businesses	GFSC	27
Non-Regulated Financial Services Businesses	GFSC	53

758. In May 2014 the GFSC issued a letter to the chief executive officers of financial services businesses, together with attached guidance. The guidance draws on observations and recommendations made by Moneyval in its evaluations of international finance centres during the previous twelve months. The expectation by the supervisor was that the financial institutions will apply the findings in their practice, if they have not yet taken this approach. All professionals interviewed by the evaluation team on-site did indeed receive the letter, and took due notice of its content.

759. The evaluation team was also advised by the interviewees that the risks highlighted in the said letter were not new to their risk based approach, and have not changed the way they perceive risks altogether. The deliberations on the said letter indicate that the level of financial sectors' awareness in respect of risk assessment and applying overarching risk assessment is high.

760. In addition, in June 2014 the GFSC issued guidance entitled "Financial Crime Guidance Note – Visit Trends and Observations".

Designation of Competent Authority (c. 23.2)

761. One of the GFSC's functions under section 2(2) of the Financial Services Commission Law is the countering of financial crime and the financing of terrorism.

762. As described under criterion 23.1 the Proceeds of Crime Law and the Disclosure Law provide that the GFSC may issue rules, instructions and guidance in respect of money laundering, terrorist financing and STRs.

763. Regulation 15F of the FSB Regulations prescribes the GFSC as the supervisory authority responsible for monitoring and enforcing compliance by financial services businesses with the Regulations and other measures made or issued under the Proceeds of Crime Law or any other enactment for the purpose of forestalling, preventing or detecting money laundering and terrorist financing.

Recommendation 30 (all supervisory authorities) (rated C in the IMF report**)**
Summary of 2011 factors underlying the rating

764. The Bailiwick of Guernsey was rated compliant by the IMF in the IMF report. No recommendations by the evaluation team were hence given to the jurisdiction.

Adequacy of Resources (c. 30.1)

765. The GFSC was established in 1988 under the Financial Services Commission Law with an independent authority with its own staff. The GFSC is overseen by seven Commissioners, who are appointed by the States of Guernsey. Under the Financial Services Commission Law the Commissioners are responsible for overall oversight of the GFSC's supervisory activities.

766. At the executive level the GFSC is headed by the Director General and has 104 full time equivalent staff.

767. Currently, the GFSC comprises four main Supervisory Divisions, each headed by a Director, namely the Fiduciary Supervision and Policy Division (12 staff), the Banking and Insurance Supervision and Policy Division (17 staff), the Investment Supervision and Policy Division (16 staff) and the Financial Crime Supervision and Policy Division (10 staff).

768. A dedicated Enforcement Division was created in the summer of 2013 to investigate a range of enforcement matters, particularly those involving significant breaches of regulatory requirements and poor conduct. The Division commenced its work in earnest at the beginning of September 2013.

769. In November 2012, the GFSC created the Anti-Money Laundering Unit (the AML Unit) as part of the implementation of the recommendations made in an independent evaluation review, commissioned by the GFSC in 2011. The AML Unit's primary responsibilities were the undertaking of on-site visits in order to verify compliance with the AML/CFT regulatory requirements and effective management by financial services and prescribed businesses of money laundering and terrorist financing risks to which those businesses could be exposed. The Unit was also responsible for industry enquiries and identifying appropriate and effective means by which to communicate and explain the AML/CFT regulatory requirements. In mid-2013, the GFSC underwent a further restructuring. This included the transformation in July 2013 of the AML Unit into the Financial Crime and Authorisations Division (FCAD). The Division's responsibilities were expanded to include the broader area of financial crime and related policy activities, together with GFSC-wide training and awareness around ML/FT risks and trends, and industry engagement and education. In June 2014, the FCAD was entrusted with additional tasks: took the responsibilities of the former Supervision and Policy Division of the GFSC, and assumed responsibility for the AML/CFT supervision of prescribed businesses.

770. The Enforcement Division, along with the GFSC's Intelligence Team, provides a focal point of coordination with the GBA and other authorities. The GFSC's Intelligence Team is responsible for receiving intelligence regarding AML/CFT matters from the GBA and other overseas authorities. This intelligence is held securely within the Intelligence Team. There is regular contact between the FIS and the Intelligence Team on case specific matters as well as through formal meetings of the Financial Crime Group, the Enforcement Committee and the Sanctions Committee.

771. When the FIS identifies a matter as likely to be of interest to the GFSC, the FIS spontaneously provides sanitised intelligence reports to the GFSC Intelligence Team. A member of staff from the Intelligence Team also conducts regular reviews of STRs submitted to the FIS and, where relevant, requests formal intelligence reports.

772. Where any issue is identified with a particular licensee from the intelligence it receives, the Intelligence Team notifies the regulatory Division concerned and the Financial Crime Division. This information is used to determine whether the risk profile of the licensee concerned should be changed including its financial crime risk rating. Where the GFSC perceives that the risk has increased measures will be taken to mitigate that risk. The response will depend upon the nature of the intelligence and the sensitivity of the information but this could include bringing forward a scheduled onsite visit, undertaking a short notice onsite visit, a meeting with the licensee or closely monitoring the situation without approaching the licensee about the matter. Because of the Intelligence Team's links with the FIS and its participation in the group and committees referred to above, both Divisions will work closely with the Intelligence Team to ensure that the measures being proposed do not jeopardise any other authority's enquiries and investigations.

773. As well as the regular exchanges of intelligence with the FIS, the Deputy Director of the Intelligence Team acts as the MLRO for the GFSC and files formal Suspicion Reports received from GFSC staff.

774. The Intelligence Team's liaison with law enforcement agencies and the review of intelligence received has led to generic warning notices to financial institutions about various financial crime threats.

775. The Financial Crime Division, the Enforcement Division and the Intelligence Team each maintain separate budgets. The total expenditure for the Financial Crime Division budgeted for 2014 is £1,209,973. The budget for the Enforcement Division for 2014 is £689,517. The budget for the intelligence team for 2014 is £195,079.

Professional Standards and Integrity (c. 30.2)

776. No legal changes have been made to the Bailiwicks legislation in this regard after the mutual evaluation report of IMF.

777. It is however worth to mention that the GFSC staff is subject to a comprehensive recruitment process. The process includes interviews undertaken by senior members of staff and HR personnel, the provision of satisfactory references and checks to verify any professional qualifications held. All candidates are subject to a criminal records' check and employment offers are contingent upon a clean background check being returned. Directors and staff members are recruited on the basis of their experience and skills (including qualifications).

778. The GFSC appears to have in place a number of controls to ensure that confidential information is not released outside the GFSC and to ensure that staff usage of the internet and other materials, does not call into question their integrity or sound judgement. Staff, whether employed on a full time or part time basis, temporary and contract, are each required at the start of their employment to sign a written statement affirming their commitment that they will not, at any time either during or after their engagement by the GFSC, divulge any confidential information of the GFSC or of any person with whom the GFSC deals, or information as to their business, except in accordance with the gateways in the laws administered by the GFSC.

Adequate Training (c. 30.3)

779. The GFSC's staff is subject to comprehensive training programme. Contents of the training provided has included legislative and regulatory requirements, STR trends and typologies, corruption and ML risks, bribery and corruption, fraud, supervision of prescribed businesses, international sanctions, tax evasion, insider dealing, market manipulation, market abuse, cybercrime, mobile payments and virtual currencies.

780. Supporting skill-specific training has been provided to members of the Enforcement and Financial Crime Divisions and the intelligence team. This has included training on strategic decision-making, confiscation training, the conduct of investigative interviews, managing feedback and closing meetings, the conduct of on-site visits generally and of legal professionals in relation to managing access to information and legal professional privilege concerns, assessment of automated monitoring systems used to mitigate ML/FT risks, PRISM risk-based methodology in practice, bribery and corruption techniques, terrorist financing, tax evasion and techniques for the effective and targeted investigation of internet sources for the undertaking of due diligence and related enquiries. Members of the Financial Crime Division also participated in joint training on the investigation and analysis of financial crimes in early 2013, in conjunction with members of the local Police, FIU, Customs and Income Tax.

781. In addition to the above, the GFSC has put in place a programme of training for all Executive and staff members, which covers financial analysis, business model and strategy analysis, governance, interviewing skills and risk-based supervision. Training and re-familiarisation with the Regulations and Handbook requirements has been undertaken for all members of the Executive and staff. The GFSC is committed to providing its staff with high-quality training.

Authorities' powers and sanctions

Recommendation 29 (rated LC in the IMF report***)***

Summary of 2011 factors underlying the rating

782. The Bailiwick of Guernsey was rated largely compliant for recommendation 29.

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1; Authority to Conduct AML/CFT Inspections by Supervisors (c. 29.2); Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1); Powers of Enforcement & Sanction (c. 29.4).

783. Section 49B of the Proceed of Crime Law provides that in order to determine whether a financial services business has complied with any regulations and any rules, instructions and guidance of the GFSC specified in the Law, the GFSC's officers, servants or agents may on request enter any premises in the Bailiwick owned, leased or otherwise controlled or occupied by the business.

784. In addition, the Site Visits Ordinance provides for on-site inspections by the GFSC for the purpose of ascertaining compliance by the financial institutions with the "**regulatory Laws"**[110].

785. In its work the GFSC uses the Financial Crime Supervision and Policy Division's Operational Division Procedures which is a source of information on how the AML/CFT supervision component of the regulator functions.

786. Section 49B of the Proceeds of Crime Law allows the GFSC to require, whilst carrying out an inspection, financial institutions ~~services businesses~~ to produce copies of documents held by the business in legible form for the GFSC to examine either at the premises of the business or at the offices of the GFSC. Section 49B also allows the GFSC to require financial institutions to answer questions during an inspection for the purpose of verifying compliance with any Regulations made under section 49 and any rules, instructions and guidance made under that section. Any person who without reasonable excuse obstructs or fails to comply with the GFSC in exercising these powers is guilty of an offence and liable on summary conviction to imprisonment for a term of up to 6 months or to a fine of up to £10,000 or to both. On conviction on indictment the maximum penalty is imprisonment of up to 2 years or to a fine or both.

787. The GFSC has power to obtain information and documents from financial institutions concerning compliance with AML/CFT obligations under section 25 of the Banking Supervision Law, sections 27 and 30 of the Protection of Investors Law, section 68 of the Insurance Business Law, section 45 of the Insurance managers and Insurance Intermediaries Law and section 18 of the Registration of Non-Regulated Financial Services Businesses Law. It is an offence under these laws for a financial institution not to provide information and documents reasonably requested by the GFSC**.**

788. The subsequent provisions in these laws also provide powers for 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 where, for example, he is satisfied that a financial services business has failed to comply with a notice issued by the GFSC to that business for information or where the documents to which the notice relates would be removed, tampered with or destroyed.

[110] The Protection of Investors (Bailiwick of Guernsey) Law, 1987, the Banking Supervision (Bailiwick of Guernsey) Law, 1994, the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, the Insurance Business (Bailiwick of Guernsey) Law, 2002, the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, any other enactment or statutory instrument prescribed by regulations of the Commission, the Registration of Non-Regulated Financial Services Businesses Law, 2008 or any Ordinance, regulation, order, rule, code, instruction, guidance, principle, condition, requirement or direction under them or the Transfer of Funds Ordinances or any regulation, order, rule, instruction or guidance under them.

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors))

789. The GFSC operates a risk based approach to supervision based on a model called PRISM. Each financial institution is allocated an impact rating based on various metrics including one for financial crime.

790. In assessing whether financial institution are high risk, the GFSC considers a number of factors, including:

- the type of customer base (for example, whether the business has a significant number of PEPs or other high risk relationships; whether there is a significant number of customers located in jurisdictions that do not or insufficiently apply the FATF Recommendations or where there is a significant drug trafficking or financial crime risk which is not appropriately managed; or whether the relationship includes complex company and trust structures which appear not to be fully understood or where the risk is not appropriately managed by the business);
- whether there is significant reliance on CDD undertaken by introducers by a business compared with other businesses in the sector;
- the nature and seriousness of previous on-site visits and the response by the business to those deficiencies;
- financial crime risk

791. The underlying factors of financial crime risk are described in the Financial Crime Supervision and Policy Division Operational Procedures.

792. The financial crime risk must be assessed separately to other risks and the Division's visit programme is informed based on these assessments.

793. The evaluation team was advised that the supervisor does address this potential issue, as indeed this risk rating broadly determines the frequency of on-site visits conducted of that business and the level of on-going supervision undertaken.

794. The on-site visit plan is drafted as a result of risk rating assigned by the PRISM programme, but the evaluation team was satisfied that the GFSC can execute discretion in planning ad-hoc visits. When verifying the compliance by financial institutions with the CDD requirements, the FSB Regulations and the rules in the Handbook are considered.

795. In the monitoring process the GFSC uses information:

- derived from its monitoring of industry enquiries;
- meetings with financial institutions concerning AML/CFT non-compliance identified by the institution or identified by the GFSC's Supervisory and Policy Divisions as part of their on-going supervisory activities;
- customer complaints relating to AML/CFT matters such as requests for identification information after a business relationship has been established;
- information obtained by the GFSC's Intelligence Team concerning a financial institution, its directors and/or controllers or one of its customers;
- the periodic collection of statistical information derived from surveys, annual returns and statutory notifications;
- feedback received from industry.

796. The GFSC seems to have a good knowledge of the financial institutions, and does use the sources identified above. While verifying if any unlicensed business may conduct activities requiring them to register with the GFSC, the supervisor uses publicly available information.

797. The GFSC's on-site visit process includes the use of a detailed questionnaire, along with documentation required from the financial institution to be visited regarding its AML/CFT compliance arrangements. The completed questionnaire and documentation must be provided in advance of the proposed visit date. Usually financial institutions receive a 90 days notification. Using the completed questionnaire and supporting materials, the on-site visit team undertakes a comprehensive pre-visit analysis and risk assessment of the business to assess whether the financial institution has a clear understanding of AML/CFT requirements and how the institution has developed its compliance arrangements. The pre-visit assessment and analysis facilitates greater focus by the GFSC on the effectiveness of AML/CFT by a financial institution and those areas of its business where risks may be greater.

798. As provided in the Financial Crime Supervision and Policy Division Operational Procedures as part of the GFSC's PRISM methodology, visits must be undertaken to firms on the following frequency dependent upon their assigned risk rating:

- High – within 24 months;
- Medium High – within 36 months;
- Medium Low – within 48 months.

799. As advised by the authorities all businesses that are assessed as high risk are in practice visited approximately once every 12 months.

800. The lower number of on-site visits undertaken in 2012 into 2013 reflects the period during which the GFSC was undergoing a restructuring.

801. The evaluation team was satisfied that the on-site visit plan is flexible enough to address institutions where the financial crime risk rating may demand the supervisor to take immediate actions.

802. Additionally it was clear to the evaluation team that all information gathered by the supervisor is fed into the risk model, and acted upon in due course.

803. The PRISM system is used to: record and monitor enquiries, notifications, complaints, results of returns and surveys and other information which may be of relevance to the AML/CFT risk profile of a business; to record the findings of the on-site visits and other supervisory activities; and the action taken by the financial institution on AML/CFT deficiencies. Detailed action plans, investigations, remediation plans and licence conditions on authorisations are all recorded, allowing staff to readily access and review the compliance history of a given institution. Reports can be extracted from the system in various forms, enabling the GFSC to identify trends and track the progression of scheduled supervisory work.

804. The GFSC's risk based approach model is focused on prudential risks. However financial crime risks are taken into account, communicated to the industry (in a form of a letter, which for each institution lists risk ratings for all risk categories used by PRISM), and the supervisor has the flexibility to act on financial crime risks. The parameters of the PRISM model seem not to impede the GFSC ability to take serious action based solely on financial crime risk.

805. Every financial institution met on-site was subject to GFSC on-site visit. Interviewees have described the visit as comprehensive and the staff as skilful. Given the nature of Guernsey's financial market, and sometimes complex structures customers are using, all institutions were convinced that the GFSC's staff is skilful and knowledgeable enough to understand those structures.

806. During the on-site visits the usual sample testing was limited to 20-30 customer files. Given the number of customers per financial institution this seems to be sufficient. Each on-site visit is supported by pre-visit questionnaire and information provided to the GFSC prior to going on-site, which include additional information on the customers.

807. As a result of on-site visits sanctions were levied, or supervisory actions have been taken.

808. The financial institutions supervised by the GFSC generally present a high level of awareness in AML/CFT matters, and a significantly high level of compliance. The GFSC provides training to financial institutions, and reacts to the needs of the financial sectors. An example of such action is the "aggressive tax avoidance seminar" held for the financial institutions by the PWC as requested by the GFSC.

809. At the time of the on-site visit the Financial Crime Supervision Division was structured with a Director and two individuals at assistant director level grade (one focussing on policy and the other on supervision). The assistant directors deputised for the Director in their respective areas of responsibility.

Recommendation 17 (rated LC in the IMF report***)***

Summary of 2011 factors underlying the rating

810. The IMF Detailed Assessment Report has indicated one shortcoming, which indeed affected the rating for recommendation 17.

811. The IMF team noted that: "Current discretionary financial penalties available to the GFSC are not considered dissuasive and proportionate. The maximum financial fine of £200,000 for violations of any provision of the prescribed laws is considered too low.

812. No legislative actions to affect the changes in the legislation have been undertaken by the Guernsey authorities in order to mitigate this shortcoming.

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Range of Sanctions—Scope and Proportionality (c. 17.4)

813. With reference to section 17 of the FSB Regulations, any natural or legal person who contravenes any requirement of the Regulations is guilty of an offence and liable on conviction to imprisonment for a term of up to 5 years or an unlimited fine or both. The penalties on summary indictment are imprisonment for a term of up to 6 months or a fine of up to £10,000.

814. Under sections 1, 2 and 3 of the Disclosure Law, and sections 12, 15 and 15A of the Terrorism Law, it is an offence for a person to fail to make an STR if he has knowledge, suspicion, or reasonable grounds for suspicion that another person is engaged in ML or that certain property is or is derived from the proceeds of criminal conduct or FT. Under Regulations made under section 11 of the Disclosure Law and section 15C of the Terrorism Law it is an offence to fail to provide additional information relating to a report if requested by the law enforcement agencies. There are tipping off offences at section 4 of the Disclosure Law and section 40 of the Terrorism Law. The offences are all punishable by up to 5 years' imprisonment or an unlimited fine. The penalties on summary indictment are imprisonment for a term of up to 6 months or a fine of up to £10,000.

815. The criminal sanctions available under the FSB Regulations and DL are applicable following criminal procedures and following a Court decision.

816. The criminal sanctions are supported by administrative sanctions which can be applied by the GFSC under the Financial Services Commission Law, the Banking Supervision Law, the Protection of Investors Law, the Insurance Business Law, the Insurance Managers and Insurance Intermediaries Law and the Registration of Non-Regulated Financial Services Businesses Law. The GFSC's powers of sanction include:

- the imposition of conditions in respect of financial services businesses, their controllers and staff;

- the issue of discretionary penalties up to £200,000 and public statements in respect of financial services businesses and their relevant officers[111];
- the suspension and cancellation of licences and registrations.

817. The GFSC has published explanatory notes in relation to the application of the sanctioning powers.

818. The GFSC may at any time impose such conditions as it thinks fit in respect of financial services businesses in respect of breaches of the FSB Regulations or rules in the FSB Handbook under section 9 of the Banking Supervision Law, section 5 of the Protection of Investors Law, section 12 of the Insurance Business Law, section 7 of the Insurance Managers and Insurance Intermediaries Law and section 8 of the Registration of Non-Regulated Financial Services Businesses Law.

819. Under section 11C of the Financial Services Commission Law, the GFSC may publish a statement where it is satisfied that a licensee under the regulatory laws, former licensee or relevant officer has contravened in a material particular a provision of, or made under, the prescribed laws; or does not fulfil any of the minimum criteria for licensing specified in the regulatory laws applicable to him. Where a discretionary penalty is imposed on a person, the GFSC may publish his name and the amount of the penalty.

820. The GFSC may also suspend and revoke/cancel licences under section 8 of the Banking Supervision Law, section 6 of the Protection of Investors Law, section 14 of the Insurance Business Law, section 9 of the Insurance Managers and Insurance Intermediaries Law, section 10 of the Registration of Non-regulated Financial Services Business Law. Grounds for suspension and revocation are wide and include situations where any of the minimum criteria for licensing in the laws are not being or have not been fulfilled.

Designation of Authority to Impose Sanctions (c. 17.2)

821. Criminal sanctions are imposed by the Court. Prosecutions are instigated by the Attorney General's Chambers. The GFSC issues administrative sanctions in respect of breaches of the rules in the FSB Handbook and the regulatory laws.

822. In 2013 the GFSC established a dedicated Enforcement Division. The Financial Crime Supervision and Policy Division is empowered to refer any AML/CFT non-compliance of a serious nature directly to the Enforcement Division for its further consideration.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

823. Conditions imposed on a financial services business can be applied in respect of the controllers, directors, partners and senior management of such businesses. The powers of the GFSC under the Financial Services Commission Law to issue discretionary penalties and public statements can be applied directly to controllers, directors, partners, managers (not only senior managers) and general representatives and authorised insurance representatives of financial services businesses or former businesses at the time the AML/CFT contravention took place. The private reprimands and disqualification orders that can be issued under the Registration of Non-Regulated Financial Services Businesses Law can also be applied against individuals.

824. The prohibition powers of the GFSC under the regulatory laws cover any person included in the minimum criteria for licensing, including but not limited to directors and senior management.

Market entry

[111] A **"relevant officer"** means a person who when the contravention or non-fulfilment in question took place was a director, controller, partner, manager, general representative or authorised insurance representative of a licensee or former licensee.

Recommendation 23 (c. 23.3, c. 23.3.1, c. 23.5, c. 23.7, licensing/registration elements only)

Prevention of Criminals from Controlling Institutions, Fit and Proper Criteria (c. 23.3 & 23.3.1)

825. The minimum criteria for licensing can be found in Schedule 3 to the Banking Supervision Law, Schedule 1 to the Regulation of Fiduciaries Law, Schedule 7 to the Insurance Law, Schedule 4 to the Insurance Managers and Intermediaries Law and Schedule 4 to the Protection of Investors Law.

826. Each of the Banking Supervision Law (section 6), the Regulation of Fiduciaries Law (section 6), the Insurance Law (section 7), the Insurance Managers and Intermediaries Law (section 4) and the Protection of Investors Law (section 4), provides that a licence must not be granted to carry out regulated activity unless the GFSC is satisfied that the minimum licensing criteria, including the criteria concerning fitness and propriety, including information on criminal record, are fulfilled by both the applicant and in relation to any person who is or is to be a director, controller, partner or manager of the applicant.

827. Under section 22A of the Banking Supervision Law, section 28A of the Protection of Investors Law, section 11(6) of the Insurance Business Law, section 27(5) of the Insurance Managers and Insurance Intermediaries Law and section 7(3) of the Registration of Non-Regulated Financial Services Businesses Law, it is a requirement for financial institutions to give prior notice before effecting any appointment of a director, controller (including indirect controllers) or a partner. Registration of Non-Regulated Financial Services Businesses Law prescribes possibility to give notice promptly after such change is made where a change is sudden or unexpected.

828. Controller is defined in the above mentioned legislation as: "a managing director or chief executive of the firm or of any other company of which that firm is a subsidiary, and as a shareholder controller or indirect controller". A shareholder controller is: "as a person who alone or with associates is entitled to exercise, or control the exercise of, 15% or more of the voting power." An indirect controller is defined as: "a person in accordance with whose directions or instructions any director of that firm or of any other company of which that firm is a subsidiary, or any controller, is accustomed to act."

829. The fit and proper criteria in the said laws must be taken into account when it is considered if a person is fit and proper to hold a controller, director, partner or manager position of a licensed firm. These criteria include also *inter alia* consideration of the following factor: "engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement."

830. This general clause allows the authorities to stop criminals and their associates from being the beneficial owners of a regulated firm. The evaluators have been informed of cases in which, using the mentioned provisions, the GFSC actions to this effect have been taken (please consult section on effectiveness).

831. According to Guernsey authorities, upon submission for approval for those financial institutions subject to the Core Principles the GFSC requires that personal questionnaires be completed by individuals proposed to hold or holding certain positions with that business. Each of the minimum criteria for licensing in the regulatory laws requires controllers, directors and managers to be fit and proper, including having expertise and integrity. Those appointed as the Money Laundering Reporting Officer and Nominated Officer of a business are also required to complete and submit a personal questionnaire to the GFSC.

832. The personal questionnaire requires that information be disclosed by the individual in relation to 6 areas:

- personal identification information;
- residential history;
- current and previous employment, including nature of positions held and reasons for departure;

−appointments and other interests, including all positions held outside employment as a director, controller, partner or manager over the previous 10 years, the jurisdiction, the period over which the position was held and the principal activities of the entity involved;
−competence – this includes any licences, registrations, authorisations or equivalent approvals (where held personally or as a representative), professional qualifications and memberships held at any time in the previous 10 years, professional qualifications and memberships and additional information provided by the individual concerning their areas of expertise and/or experience;
−probity, judgement, diligence and integrity. This section requests disclosure by the individual of any past criminal or other convictions, whether having occurred in the Bailiwick or elsewhere, in a variety of areas, including any pending prosecutions or convictions; adverse professional association and related entity proceedings or activities; adverse employment activities including investigations, disciplinary action and dismissals; revocation or removal of professional licences or similar authorisations, civil litigation proceedings and insolvency proceedings.

833. Under section 14 of the Banking Supervision Law no person may become a shareholder controller or an indirect controller of a bank unless he has notified the GFSC of his intention to become a controller and the GFSC has notified him in writing that it has no objection to his becoming a controller. The GFSC can require potential controllers to provide it with additional information. The GFSC may serve a notice of objection if inter alia it is not satisfied that the person concerned is a fit and proper person to become a controller or, having regard to that person's likely influence that the business would fail to meet the minimum criteria for licensing in Schedule 3 to the law. Section 15 of the law enables the GFSC to object to and remove existing controllers. Similar powers are contained in sections 28A to 28D of the Protection of Investors Law, sections 25 to 28 of the Insurance Business Law and sections 36 to 39 of the Insurance Managers and Insurance Intermediaries Law.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

834. According to Sections 15A and 15B of the FSB Regulations, persons covered by the Banking Supervision Law, the Protection of Investors Law, the Insurance Business Law, the Insurance Managers and Insurance Intermediaries Law and the Regulation of Fiduciaries Law providing financial services business by way of operating a money service business (including, without limitation, a business providing money or value transmission services, currency exchange (bureau de change) and cheque cashing), facilitating or transmitting money or value through an informal money or value transfer System or network, money broking, money changing, must be registered by the Commission.

835. Under Section 2 of the Registration of Non-Regulated Financial Services Businesses Law a financial services business carrying on or holding itself out as carrying on business in or from within the Bailiwick must be registered by the GFSC. Such business includes a natural or legal person providing financial services business by way of money service business (including, without limitation, a business providing money or value transmission services, currency exchange (bureau de change) and cheque cashing), facilitating or transmitting money or value through an informal or value transfer system or network, money broking or money changing. However the same Law provides exemptions from the registration requirement.

836. As provided under Section 3 of the Registration of Non-Regulated Financial Services Businesses Law a financial services business is not required to be registered by the GFSC where –

(a) the total turnover of the person carrying on the financial services business in respect of financial services business does not exceed £50,000 per annum,

(b) the financial services business does not carry out occasional transactions, that is to say, any transaction involving more than £10,000, carried out by the financial services business in question in the course of that business, where no business relationship has been proposed or

established, including such transactions carried out in a single operation or two or more operations that appear to be linked,

(c) the financial services business does not exceed 5% of the total turnover of the person carrying on the business,

(d) the financial services business is ancillary, and directly related, to the main activity of the person carrying on the business,

(e) the financial services business does not facilitate or transmit money or value by any means,

(f) the main activity of the person carrying on the financial services business is not that of a financial services business, and

(g) the financial services business is provided only to customers of the main activity of the person carrying on the business and is not offered to the public.

837. This exemption cannot be applied in relation to the provision of any financial services covering: banking, insurance (excluding general non-life business); investment and fiduciary activities. Consequently it only applies to an activity which falls under the NRFSB Law and cannot be applied where it involves the transmission of money or value of the facilitation of such transmission.

838. According to the explanations provided by the Guernsey Authorities: "The exemption (like other exemptions) was and is based on a consideration of the risk including the effects of the exemption; the size of the affected sector or sub-sector; intelligence from STRs, mutual legal assistance requests, asset restraints, or other intelligence; the nature of the relationships and transactions in the sector or sub-sector; the size of the affected businesses; their customer bases; and whether there were any mitigating factors to offset any ML/TF risk. These factors, together with consideration of statistics and information known to the GFSC (including information gathered through experience of administering the AML/CFT frameworks for financial services businesses and prescribed businesses frameworks over several years), indicate that the exemptions remain appropriate on qualitative and quantitative grounds. The exemption has been considered periodically by the authorities. There is no information suggesting any money laundering or terrorist financing has arisen from the existence of the exemption."

839. Following the FATF Methodology, the country may decide not to apply some or all of the requirements in one or more Recommendations. However, this should only be done on a strictly limited and justified basis.

840. According to the Guernsey authorities' explanation: "The purpose for the exemption is to allow small business enterprises, whose principal activities are non-financial, frequently with a low number of employees (1 -2), to provide ancillary prescribed business activities without incurring resource and administrative costs to manage basic simplified due diligence. The exemption also provides for business professionals to provide their professional expertise, in a personal capacity, to charities or local benevolent causes."

841. The evaluators satisfied themselves that the current safeguards in place are proportionate in order to mitigate any risk not foreseen, but which still might arise in relation to the before mentioned exemptions.

842. A section has been included since 2012 in the Fiduciary annual return on whether the licensed fiduciary provides any fiduciary services to an entity which would fall in the categories of financial activity in both the NRFSB and PB laws. The provision of this information annually also assists in on-going monitoring.

843. Additionally the GFSC monitors the sector through media sources, intelligence and complaints. As mentioned previously in this report, the GFSC conducts proper "perimeter monitoring", which was proven successful on the few occasions brought to the evaluators

attention. The GFSC has also received enquiries from entities regarding the requirements to register.

844. Given the size of the financial sector in the Bailiwick of Guernsey, the fact that there was a risk assessment conducted by the authorities prior to introducing the said exemptions, there are measures in force to mitigate unforeseen risks, and the supervision is conducted in an effective manner, the evaluators believe that the criteria under point 23(b) of General Interpretation and Guidance in the Methodology are met.

Licensing of other Financial Institutions (c. 23.7)

845. Some hotels offer limited exchange services and fall within the exemption for registration. For further analysis please refer to analysis under criterion 23.5.

On-going supervision and monitoring

Recommendation 23 & 32 (c. 23.4, c. 23.6, c. 23.7, supervision/oversight elements only & c. 32.2d)

Application of Prudential Regulations to AML/CFT (c. 23.4)

846. No changes have been made to the Bailiwick of Guernsey. Therefore the reader is referred to the description of the said criterion under paragraphs 830 and 831 of the IMF report.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

847. No changes have been made to the Bailiwick of Guernsey. Therefore please refer to the description of the said criterion under paragraphs 832 and 835 of the IMF report. However it is worth mentioning that there are some exemptions under Guernsey legislation as analysed under criterion 23.5.

Statistics on On-Site Examinations (c. 32.2(d), all supervisors)

848. Both the GFSC and AGCC have provided full, comprehensive and meaningful statistics on on-site visits

Table 29 On-site visits

	Total number of entities					**Total number of on-site visits conducted**				
FINANCIAL SECTOR										
	2010	2011	2012	2013	01 Jan – 30 Jun 2014	2010	2011	2012	2013	01 Jan – 30 Jun 2014
Banks	38	35	32	31	30	62	41	32	36	14
Securities	653	655	645	636	643	34*	17*	15*	17	3
Insurance	746	756	804	825	873	20**	23**	15	29	3
Other financial institutions	81	90	89	82	80	10	6	4	2	2
NON FINANCIAL SECTOR										
	2010	2011	2012	2013	01 Jan – 30 Jun 2014	2010	2011	2012	2013	01 Jan – 30 Jun 2014
Casinos	43	42	43	38	38	22**	26	28	29	15

* The 34 on-site inspections included inspections of 183 funds and 70 administered licensees.
* The 17 on-site inspections included inspections of 501 funds and 195 administered licensees.
* The 15 on-site inspections included inspections of 203 funds and 62 administered licensees.
** The 20 on-site inspections included inspections of 379 captive insurance companies/protected cell companies.
** The 23 on-site inspections included inspections of 55 captive insurance companies/protected cell companies.

Real estate	26	30	30	29	28	4	2	10	1	-
Dealers in precious metals and stones	2	2	3	1	1	2	-	-	-	-
Lawyers	20	20	20	22	23	2	1	10	-	5
Accountants & auditors	49	52	52	52	56	3	5	5	14	-
Trust and company service providers (including personal fiduciary licensees)	187	182	185	193	192	33	36	7	27	11

Table 30 – Specific on-site visits

	Number of AML/CFT specific on-site visits conducted					**Number of AML/CFT combined with general supervision on-site visit carried out**				
	2010	2011	2012	2013	01 Jan – 30 Jun 2014	2010	2011	2012	2013	01 Jan – 30 Jun 2014
FINANCIAL SECTOR										
Banks	19	8	8	9	4	-	-	-	1	-
Securities	26	-	-	-	1	8	17	17	7	-
Insurance	-	-	-	1	3	20	22	22	3	-
Other financial institutions	10	6	6	2	2	-	-	-	-	-
NON FINANCIAL SECTOR										
Casinos	-	-	-	-	-	22	26	28	29	15
Real estate	4	2	3	1	-	-	-	-	-	-
Dealers in precious metals and stones	2	-	-	-	-	-	-	-	-	-
Lawyers	2	1	2	-	5	-	-	-	-	-
Accountants & auditors	3	5	-	1	-	-	-	-	-	-
Trust and company service providers (including personal fiduciary licensees)	-	-	-	15	6	33	36	7	3	-

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

Statistics on Formal Requests for Assistance (c. 32.2(d), all supervisors)

849. Both AGCC and the GFSC have provided the evaluation team with information on requests for assistance received by the supervisors and proved the requests are being processed in a meaningful way, and authorities receiving the information are satisfied with the material provided to them by both supervisors.

Table 31 GFSC – International cooperation

	2010	2011	2012	2013	Jan –Jun 2014
ML/TF Incoming Requests					
Foreign requests received by supervisory authorities related to ML/TF specifically	14	14	19	21	4
Foreign requests executed	14	13	18	21	4
Average time of execution (days)	46	36	42	54	5
Foreign requests refused	-	1	1	-	-
AML/CFT Outgoing Requests					
Requests sent by supervisory authorities related to AML/CFT specifically	3	3	5	4	-
Number of requests sent and executed by foreign authority	3	3	4	4	-
Number of requests sent and refused by foreign authority	-	-	1	-	-
TOTAL	**17**	**17**	**24**	**25**	**4**

Table 32 AGCC – International cooperation

	2010	2011	2012	2013	Jan –Jun 2014
ML/TF Incoming Requests					
Foreign requests received by supervisory authorities related to ML/TF specifically	2	9	5	8	7
Foreign requests executed	2	9	5	9	7
Average time of execution (days)	1	1	1	1	1
Foreign requests refused	-	-	-	-	-
AML/CFT Outgoing Requests					
Requests sent by supervisory authorities related to AML/CFT specifically	-	-	-	2	-
Number of requests sent and executed by foreign authority	-	-	-	2	-
Number of requests sent and refused by foreign authority	-	-	-	-	-

TOTAL	**2**	**9**	**5**	**10**	**7**

Effectiveness and efficiency (market entry [c. 23.3, c. 23.3.1, c. 23.5, c. 23.7]; on-going supervision and monitoring [c. 23.4, c. 23.6, c. 23.7], c. 32.2d], sanctions [c. 17.1-17.3])

850. The GFSC has provided the evaluation team with examples where information from complaints, whistle-blowers or foreign supervisors have been used for supervisory purposes or transferred to other authorities. The GFSC uses the information obtained by the FIS. The information can and is reviewed by the GFSC on a monthly basis, and where it is of interest can be used for supervisory purposes. The discretionary penalties have been used by the GFSC, and each time a public notice has been published, detailing the reasons.

Table 33 on the Failures Identified and Sanctions Imposed for the period from 2013-2014

Type of Institution	**Causes of Failures Identified**	**Numbers of Failures**	**Sanctions imposed**		
			Fine	Appointment of External Consultants	Remediation Program
Bank	*Ineffective Policies Procedures and Controls*	**6**	**0**	**0**	**7**
	Ineffective Compliance Arrangements	**3**			
	Client Risk Assessment	**3**			
Investment	*Ineffective Policies Procedures and Controls*	**6**	**0**	**1**	**3**
	Client Risk Assessment	**4**			
	Ineffective Compliance Arrangements	**2**			
	Business Risk Assessment	**2**			
Insurance	*Ineffective Policies Procedures and Controls*	**6**	**1**	**0**	**2**
	Business Risk Assessment	**3**			
	Training	**2**			

851. In this respect of financial sanctions were imposed in three cases: one on a natural person, one on an insurance company and one on a trust company.

852. The natural person allowed a person charged with money laundering to be a sole signatory on the bank account of a company controlled by him, even though he was fully aware of the charges brought against the person. His soundness of judgment was brought into question. He was therefore prohibited from holding any compliance function and from being a MLRO for a period of 5 years and fined 10,000 GBP.

853. The insurance company was fined 150,000 GBP for failure to notify staff that the MLRO had been changed and for failures to meet the requirements for relationship risk management, as well as for non-compliance with aspects of the prudential supervisory regime for licensed insurers.

854. The trust company was fined 30,000GBP for failures in the CDD regime.

855. As the details of the cases were examined by the evaluation team, the conclusion is that the discretionary penalties imposed seem to be proportionate to the shortcomings found in the described situations. This however does not mean that the maximum discretionary penalty of 200.000 GBP is indeed sufficient.

856. The evaluation team upholds the concerns raised in the previous detailed assessment report, namely that due to the size and nature of the financial sector in the Bailiwick of Guernsey, the available maximum financial penalty for AML/CFT breaches is not considered sufficiently dissuasive and proportionate.

857. As already mentioned, should a serious case of overarching compliance failures arise, the GFSC would not be able to reflect the severity of shortcomings with the discretionary penalties currently at disposal. It is important to bear in mind that the customer base and assets administered by Guernsey's financial institutions may lead to such cases, even though there might have been none to date and though, as mentioned under Recommendations 29, 30 and 23, the culture of AML/CFT compliance in supervised entities appears to be high.

858. The GFSC has refused to license money service providers where it has assessed that the financial crime risks associated with the business will not be effectively mitigated.

859. According to the GFSC's statistic in 2012 the sanctions were delivered in 98 days (in 4 cases), in 2013 in 150 days (in 6 cases) and in 2014 in 16 days (2 cases). The differences come from the complexity of individual cases and the scope of action that had to be taken by the authority, including liaison with other authorities. Discretionary penalties are applied in a timely manner and this regime appears to be effective in terms of delivering sanctions to the entities responsible.

860. The effectiveness of the regime is nevertheless undermined to some extent by the technical deficiency of disproportionate discretionary penalties available to the GFSC, which was discussed in this section of the report.

861. During the on-site visit the evaluation team raised doubts whether criminal sanctions or discretionary penalties were levied by the regulator for failure to report STR's. As the team was advised during the on-site visit, such cases are passed to the FIS to gather material and decide whether criminal proceedings should be instigated. This was mainly to avoid tipping off and "blue on blue" situations.

862. After the onsite visit (on 10 December 2014) the GFSC and the law enforcement authorities signed a memorandum of understanding to enhance information –sharing with regard to reporting of suspicion by financial institutions. The GFSC and law enforcement case review committee meet on a regular basis to discuss cases. The FIU, GFSC intelligence division and GFSC enforcement division provide operational updates which including FIU cases that could be adopted for investigation by the GFSC (i.e. failure to disclose / regulatory breaches).

863. According to the authorities the FIU has identified cases of failure to disclose which were subsequently reported to the GFSC.

864. From the statistics and information provided by the authorities it is obvious that cases of STR non-reporting are rarely fined or in any other way sanctioned throughout the whole enforcement system of the Bailiwick of Guernsey. As STR non-reporting is undoubtedly a serious shortcoming, the authorities should go to all lengths possible in order to fine or sanction all responsible parties. One way to do this, is to use the GFSC and law enforcement case review committee mechanism described above. The authorities of the Bailiwick of Guernsey should take care in order to ensure this issue is addressed.

865. The GFSC has been risk adverse in relation to allowing financial services businesses to establish operations in Guernsey and in allowing controllers and senior individuals responsible for operating businesses to be appointed. The GFSC has also demonstrated cases where individuals behind an application did not meet the fit and properness tests and the applicants were refused licences including because they individuals were suspected to be associated with criminals.

866. In 2012 the GFSC issued a notice to an applicant for registration under the NRFSB law that it was minded to refuse the application. (This "mind to notice" is the means by which many

adverse decisions of the GFSC are made as it enables the recipient to have a right of reply before the actual decision is made).

867. During the course of considering the application the GFSC's enquiries established that it was part of a group of companies, one of which had been sanctioned by the foreign supervisory authority, who had fined it on 2 occasions – Euros 45,000 in 2009 and Euros 10,000 in 2010 for supervisory infringements (inter alia client money controls and advertising). The beneficial owner of the applicant had failed to disclose this despite being required to do so in the personal questionnaire all controllers are required to complete. The business in the foreign country was in the process of closing at the time of the Guernsey application. The GFSC also identified that another company in the group has been listed as an unauthorised institution" by another foreign supervisory authority

868. The GFSC was concerned that the group, behind the applicant, which used a different name for each operating company, had a record of transferring business from one jurisdiction to another to deter enforcement action.

869. Part of the decision by the GFSC in issuing its minded to notice not to register the applicant related to section 5(h) of the NRFSB Law whereby an application may be refused were a relevant supervisory authority in a country outside the Bailiwick has withdrawn an authorisation or equivalent status.

870. The GFSC issued a similar minded to notice to refuse a registration under the NRFSB Law for another online foreign exchange business in 2012. Among the concerns the GFSC had was the proposal by the applicant's owner to use a technical solutions provider for whom he had worked and who had been fined by a foreign supervisor for inadequate AML/CFT controls. This information was not initially forthcoming in the application.

871. The GFSC issued a similar notice in October 2012 that it was not minded to license an applicant for an investment licence because its controller had failed to disclose to the GFSC an on-going investigation into his business by a foreign supervisor. This information came to the GFSC's attention through its standard due diligence enquiries into the parties behind the application.

872. In July 2010 the GFSC received an application for a licence under the Protection of Investors Law for a company which wanted to act as a principal manager of a Guernsey collective investment scheme. An application for the scheme was received at the same time. The GFSC's due diligence enquiries established that a company in the applicant's group in a foreign country was being investigated for fraud. This information was confidential and could not be used by the GFSC. The GFSC informed the applicant that it had insufficient track record managing collective investment schemes to meet the fit and proper test and the application lapsed. The GFSC provided information to the investigating agency in a foreign country to assist its enquiries and on December 2014 a successful prosecution was brought in that foreign country against the principals behind the applicant.

3.6.2 Recommendations and comments

Recommendation 17

873. The Guernsey authorities should take actions to introduce legislation in order to increase the maximum discretionary fine for legal persons available to the GFSC, and is encouraged to do this as a priority, given the fact that this shortcoming has not been mitigated by legislation since the last evaluation report.

874. Cases of STR non-reporting should be fined or brought to other enforcement actions, which at this stage is happening in limited situations (one case), which undermines the effectiveness both of the reporting and sanctioning regimes.

Recommendation 29

875. All of the supervisors have adequate powers to fulfill their AML/CFT supervisory functions.

3.6.3 Compliance with Recommendations 23, 29 & 17

	Rating	Summary of factors relevant to s.3.10. underlying overall rating
R.17	**PC**	• Discretionary financial penalties for legal persons available to the GFSC are not dissuasive and proportionate. ***Effectiveness:*** • Use of financial penalties for legal persons cannot act as an effective deterrent to non-compliance; • Cases of STR non-reporting are rarely fined or in any other way sanctioned.
R.23	**C**	
R.29	**C**	

4. PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

876. This section outlines the preventative measures for Designated Non- Financial Businesses and Professions (DNFPBs). DNFBPs include the legal profession, accountants, real estate agents, Dealers in Precious Metals and Stones (DPMS) and Trust and Company Service Providers (TCSP). Throughout this section the term Prescribed Businesses (PB) will be used to refer to businesses that are subject to the Prescribed Business Regulations.

877. Prescribed Businesses are legal professionals, accountants and real estate agents. TCSPs and bullion dealers are included in the definition of Financial Services Business (FSB) and the detailing of requirements that apply to them is outlined in Section 3 of this report.

878. As regards dealers in precious metals and dealers in precious stones (other than the above mention bullion dealers), the Bailiwick meets the FATF requirements through the Proceeds of Crime (Restriction on Cash Transactions) Regulations, which creates an offence to accept cash in excess of £10,000 or any currency equivalent to that amount in the course of the business of dealing in any precious metal, precious stone or jewellery (Regulation 1).

879. Guernsey does not have land based casinos but an eGambling industry is present in Alderney. ECasinos are subject to preventive measures as outlined by the Alderney Gambling Law and eGambling Regulations. These measures will be analysed separately in each section.

Type of DNFBP	Legal AML/CFT framework	AML/CFT Supervisor
Trust and Company Service Providers	FSB Regulations and Handbook	GFSC
Legal Professionals	PB Regulations and Handbook	GFSC
Accountants	PB Regulations and Handbook	GFSC
Real Estate Agents	PB Regulations and Handbook	GFSC
Dealers in Precious Metals and Precious Stones	a) Cash restriction in excess of £10,000 b) FSB Regulations and Handbook for Bullion dealers	GFSC
Casinos	eGambling Ordinance, eGambling Regulations, AGCC's AML/CFT Guidance and Internal Control System Guidelines	AGCC

880. The POCL provides the framework outlining requirements for all obligated entities. The specific requirements are laid out in two related regulations: the Proceeds of Crime (Financial Services Business) Regulations for TCSPs and bullion dealers and the Proceeds of Crime (Legal Professionals, Accountants and Real Estate Agents) Regulations, also known as the Prescribed Business (PB) Regulations. Requirements include obligations to conduct customer due diligence (CDD), monitor transactions, keep records, develop policies and procedures, screen employees, establish an audit function and train employees. The GFSC has also published two handbooks targeted at each regulation which sets out both, rules and guidance. The rules set out how the GFSC requires financial services businesses including TCSPS, bullion dealers and PB to meet the requirements set out in the regulations.

881. Rules contained in the PB handbook are considered other enforceable means as they are issued by the GFSC pursuant to Section 49A (4) (e) of the POCL and are subject to sanctions pursuant to Sections 12, 13 and 14 of the PB Law. The rules outlined in the handbook are enforceable. The GFSC has sanctioned firms for breach of the FSB and PB regulations and the rules contained in the FBS and PB handbook. Those sanctions range from imposing supervisory measures such as licensing restrictions and requiring third party reviews and reporting to fines, public statements and prohibitions. The use of sanctions is covered within this report.

882. The handbook also includes guidance which presents ways of complying with the regulations and rules. A PB may adopt other appropriate and effective measures to those set out in guidance, including policies, procedures and controls so long as it can demonstrate that such measures also achieve compliance with the regulations and rules.

883. TCSP and bullion dealers are included in the definition of a financial services business set out in Schedule 1 to the POCL and are therefore subject to exactly the same AML/CFT requirements as financial institutions. Although the description of the requirements applicable to FSBs, including TCSPs and bullion dealers, can be found in Section 3 of this report a discussion of their implementation and effectiveness will be included in this section. A discussion on the use of legal arrangements such as trusts and the transparency of legal arrangements can be found at Recommendations 33 and 34 of this report. All TSCP activities outlined by the standard are covered for AML/CFT purposes, including for persons acting as a director of six companies or less in certain circumstances. Those persons acting as a director of six qualifying companies or less have had to comply with the AML/CFT requirements since an amendment to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law in February 2010.

884. Lawyers, notaries and accountants are subject to the PB Regulations when they prepare for or carry out transactions for a client in relation to the following activities –

- the acquisition or disposal of an interest in or in respect of real property (including for the avoidance of doubt a leasehold interest),
- the management of client money, securities or other assets,
- the management of bank, savings or securities accounts,
- the organisation of contributions for the creation, operation, management or administration of companies,
- the creation, operation, management or administration of legal persons or arrangements, and the acquisition or disposal of business entities.

885. Accountants as well as auditors, insolvency practitioners or tax advisers are subject to the PB Regulations for any work carried out by them.

886. Estate agencies are subject to the PB Regulations when they are acting, in the course of a business, on behalf of others in the acquisition or disposal of real property or any interest therein

- for the purpose of or with a view to effecting the introduction to the client of a third person who wishes to acquire or (as the case may be) dispose of such an interest, and
- after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or (as the case may be) the acquisition of that interest.

887. It should be noted that estate agencies do not include legal and accountancy services even if they are involved in a real estate transaction. Entities who are engaged in legal and accountancy services are obligated to apply preventive measures as set out for the legal and accountancy profession.

888. The PB Regulations do not apply to a prescribed business where

a) the total turnover of the person carrying on the prescribed business in respect of the prescribed business does not exceed £50,000 per annum,

b) the prescribed business –

(i) if it is an estate agent, does not hold deposits, or

(ii) if it is a prescribed business other than an estate agent, does not carry out occasional transactions, that is to say any transactions involving more than £10,000 carried out by the prescribed business in question in the course of that business, where no business relationship has been proposed or established, including such transactions carried out in a single operation or two or more operations that appear to be linked,

c) the services of the prescribed business are provided only to customers or clients resident in the Bailiwick, and

d) the funds received by the prescribed business are drawn on a bank operating from or within the Bailiwick.

889. It has to be emphasized that each of the criteria at a) to d) must be met by the prescribed business in order to qualify for the exemption.

890. The authorities stress that careful consideration was given to the risk of having such an exemption based upon the effects of the exemption, the nature of the services provided by the PB sector, intelligence such as information from STRs and mutual legal assistance requests and the size of the affected businesses and their customer base. The authorities stress that the criteria which must be met to qualify for the exemption were carefully set at levels where it can only apply to businesses providing limited prescribed business activities to the Bailiwick market. According to the authorities the validity of maintaining this exemption is kept under review, most recently in 2014 when the GFSC undertook a series of reviews of lawyers, accountants and estate agents which found that the risks within each sector as a whole remained low to warrant the continued application of the exemption. This assessment took into account that here had been no significant changes to the prescribed business sector in terms of the profile of prescribed business firms, their activities and customers and there has been no adverse information flowing from intelligence sources such as STRs and mutual legal assistance requests indicating that this exemption is no longer appropriate.

891. The assessors were satisfied with the adequacy of the above outlined process to determine low risk and the reasonableness of the conclusion. The assessors were also satisfied that the exemption was periodically reviewed to ensure that the risks remain sufficiently unchanged at low risk to warrant continuation of the exemption.

4.1 Customer due diligence and record-keeping (R.12)

4.1.1 Description and analysis

Recommendation 12 (rated PC in the IMF report)

Summary of 2011 factors underlying the rating

892. The last detailed assessment report by the IMF has listed the following shortcomings in respect of TCSPs, legal professionals, accountants and estate agents:

- The exemption for individuals who act as a director for six companies or less is not in line with the standard.
- The GFSC should identify legal arrangements or fiduciaries as high risk.
- Reliance should not be placed on introducers or intermediaries who are DNFBPs.

As regards the e-casinos business the following shortcomings have been identified:

- On-line verification methods used by eCasinos should be complemented by additional evidence of identity of the client;
- requirements to mitigate against the risk associated with non-face-to-face transactions in the eCasinos sector are not in line with the standard;
- not all eCasinos have effectively implemented the requirement to pay special attention to complex and unusual transactions.

Applying Recommendation 5 (c. 12.1)

Casinos

893. There have been no significant changes in relation to casinos within the Bailiwick. There are still no land-based casinos, and the restrictions on establishing land-based casinos in Guernsey under the Hotel Casino Concession (Guernsey) Law, where it is illegal to operate a casino unless a concession for a hotel and casino has been granted by the States of Guernsey, remain as they were in 2010. The same is true of the general prohibitions against gambling under the Gambling (Alderney) Law and the Gambling (Sark) Law, which prevent casinos from being established in those islands except if permission is granted by way of Ordinance.

894. In Alderney e-casinos are permitted under the Alderney eGambling Ordinance, 2009 and eCasinos are permitted to locate their equipment in Guernsey under the eGambling (Operations in Guernsey) Ordinance. The AGCC is responsible for the regulation of eCasinos.

895. There are two categories of eGambling licence in Alderney's online gambling sector:

a. The Category 1 eGambling licence enables the holder to conduct operations associated with the organising or promoting of eGambling transactions, including customer registration, the management of customer funds and offering gambling. The types of gambling offered by Category 1 eGambling licensees include both traditional bookmaking and betting exchanges as well as traditional casino games, bingo networks and poker rooms. Only Category 1 eGambling licensees are eCasinos; and

b. The Category 2 eGambling licensee or certificate holder 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. Category 2 eGambling licensees do not have customers who engage in financial transactions, nor do they have a direct relationship with the customer. They are, therefore, not eCasinos.

896. As in 2010, each eCasino must be an Alderney company. This gives a presence within the Bailiwick that enables the AGCC to compel attendance or take regulatory action against the eCasino. Under changes made to the Companies (Alderney) Law with effect from January 2013, there is a requirement for Alderney companies (subject to limited exemptions for listed companies and collective investment funds) to have a resident agent who is either an individual resident in Alderney, who is a director of the company, or a corporate service provider licensed by the GFSC under the Regulation of Fiduciaries Law. The evaluation team was advised by the authorities, that all eCasinos have a resident agent that is a corporate services provider licensed by the GFSC. The resident agent has a responsibility to take reasonable steps to ascertain the identity of persons who are the beneficial owners of members' interests in the company. This requirement for Alderney companies is in line with existing requirements for companies in the island of Guernsey.

897. At the end of the fourth quarter of 2013 there were 52 eGambling licensees, 23 licensees holding both eCasino and Category 2 eGambling licences, 15 holding an eCasino licence only and 14 holding a Category 2 eGambling licence only. There were therefore 38 eCasinos, 29 of which were operational. After a licence is granted, an eCasino is not authorised to commence

live operations until all of their gambling equipment has been tested and the eCasino's policies, procedures and controls have been approved.

898. As at the end of the fourth quarter of 2013, combined net profits in the online gambling sector were £30.1 million. The total number of active players (defined as a registered customer who has logged in to their account within the preceding 12 months) registered with eCasinos was approximately three million, with approximately 1.7 million being registered with the five largest eCasinos. In 2013, the number of active players registered with any one eCasino ranged from 1,000 to 500,000 active players

899. The eGambling Regulations contain provisions on risk assessment and mitigation, customer due diligence, customer identification and verification systems, monitoring, reporting suspicion, employee screening and training, record keeping and ensuring compliance, corporate responsibility and related requirements. The Regulations cover the asterisked criteria and a range of other criteria in the Recommendations and lay down the basic framework for compliance with the criteria in Recommendation 5.

900. In addition to the eGambling Regulations, the AGCC issues AML/CFT guidance in relation to the identification and assessment of risk, CDD, the treatment of high risk relationships, the monitoring of transactions and activity and existing customers, and record keeping. Internal Control System Guidelines are also issued by the AGCC in order to give guidance to eCasinos on the internal policies, procedures and controls that are necessary for the purpose of forestalling, preventing and detecting money laundering and terrorist financing, and in order to comply with AML/CFT requirements under the eGambling Regulations and the criteria in Recommendation 5.

901. The AGCC also issues notices, instructions and warnings which include instructions and Business from Sensitive Sources Notices which require eCasinos to exercise a greater degree of caution when establishing customer relationships from the countries or territories specified in such notices or instructions. The action taken by eCasinos under the instructions is reviewed during on-site visits and off-site supervisory activities.

Casinos (Internet casinos / Land based casinos)

902. Regulation 228 of the eGambling Regulations provides that an eCasino must not set up anonymous customer accounts or accounts in fictitious names, and must maintain accounts in a manner which facilitates the meeting of the requirements of the Regulations to ensure that full compliance is achieved with the FATF Recommendations.

903. Paragraph 2 of Schedule 16 to the eGambling Regulations requires that CDD measures must be undertaken when establishing a customer relationship, and prior to the registration of a customer, with an eCasino; where a registered customer makes a deposit of €3,000 or more, where there is suspicion of money laundering or terrorist financing or there are doubts about the veracity or adequacy of previously obtained identification data. The CDD measures are defined in paragraph 10(1) of Schedule 16 to the eGambling Regulations and require: identification and verification of the customer or any person purporting to act on behalf of the customer and verification of their authority to so act; identification and verification of the beneficial owner and underlying principal and in the case of a legal person or legal arrangement, measures to understand the ownership and control structure of the customer; determination as to whether the customer is acting on behalf of another person; information to be obtained on the purpose and intended nature of each customer relationship.

904. The customer registration process under Regulation 227 of the eGambling Regulations also requires that a risk assessment must be carried out in relation to each customer and a determination to be made as to whether the customer, beneficial owner or any underlying principal is a politically exposed person, or whether the customer relationship is high risk. Regulation 229 of the eGambling Regulations requires all customer relationships to be regularly reviewed so that the risk assessment is up to date.

905. eCasinos are required to identify the customer and verify the customer's identity on the basis of identification data. Paragraph 2 of Schedule 16 to the eGambling Regulations requires that eCasinos carry out customer due diligence measures and paragraph 10(1) of Schedule 16 to the eGambling Regulations provides that customer due diligence measures means identifying the customer and verifying the customer's identity using identification data. The eGambling Regulations also require the identification and verification of customers who are not individuals and include requirements for eCasinos to identify and verify beneficial owners and underlying principals.

906. Regulation 227(4)(d) of the eGambling Regulations requires that for customers that are legal persons or legal arrangements, the eCasino must verify the legal status and legal form of the legal person or legal arrangement.

907. Regulation 227(4) of the eGambling Regulations requires that an eCasino makes a determination as to whether the customer is acting on behalf of another person. Customers are required to confirm that they are acting as principal and that they are not acting on behalf of another person in order to complete the customer registration process.

908. Paragraph 6(1) of Schedule 16 to the eGambling Regulations requires that an eCasino performs ongoing and effective monitoring of any existing customer relationship, including the review of identification data to ensure it is kept up to date and relevant and the scrutiny of any transactions or other activity.

909. Paragraph 6(1) of Schedule 16 to the eGambling Regulations requires ongoing and effective monitoring of a customer relationship to be performed, including the scrutiny of any transactions or other activity (including, where necessary, the source of funds) to ensure that the transactions are consistent with the eCasino's knowledge of the registered customer and his risk profile, paying particular attention to all:

a. complex transactions;

b. transactions which are both large and unusual;

c. unusual patterns of transactions; and

d. transactions arising from a country or territory that does not apply or insufficiently applies the FATF Recommendations,

which in each case have no apparent economic or lawful purpose.

910. The eCasino's internal control system must also detail the controls, policies and procedures in place in order to ensure effective ongoing due diligence pursuant to Regulation 175(2)(j) of the eGambling Regulations. Detailed guidance in this regard is set out in section 1.8.4 of the Internal Control System Guidelines where eCasinos are required to explain how they ensure that the transactions and other activity (including source of funds) are consistent with the eCasino's knowledge of the registered customer and his risk profile.

911. Sections 2.2.3 and 8.2 of the AGCC's AML/CFT Guidance provides that eCasino's should be looking for transactions which indicate activity or patterns of activity that are inconsistent with the expected pattern of activity within a particular customer relationship (in for example, their financial or gambling habits or behaviours), and that this may indicate money laundering or terrorist financing activity where the transaction or activity has no apparent economic or visible lawful purpose.

912. The obligation now pertains to all types of e-gambling license holders. The above cited provision brings the laws of Alderney in line with the FATF recommendations and addresses the comments by the IMF.

913. Regulation 227(2) of the eGambling Regulations requires an eCasino to undertake a risk assessment of any proposed customer relationship and establish whether a customer is high risk.

This assessment allows an eCasino to determine, on a risk basis, the extent of identification information (and other CDD information) that must be obtained, how that information will be verified, and the extent to which the resulting customer relationship will be monitored. eCasinos are also required under Regulation 229 of the eGambling Regulations to regularly review the risk assessments carried out in relation to their customers.

914. The general rule is that customers must be subject to the full range of CDD measures, and eCasinos are not permitted to apply simplified or reduced CDD measures to customers (irrespective of their country of residence). eCasinos must either apply standard or enhanced CDD measures to customers in accordance with paragraphs 2 and 3 of Schedule 16 to the eGambling Regulations.

915. eCasinos are not permitted to apply simplified or reduced CDD measures to customers and therefore are unable to apply such simplified or reduced CDD measures where there is suspicion of money laundering or terrorist financing or where higher risk scenarios apply. eCasinos must either apply standard or enhanced CDD measures to customers in accordance with paragraphs 2 and 3 of Schedule 16 to the eGambling Regulations.

916. For higher risk customers, eCasinos are required to perform enhanced customer due diligence measures and apply such measures in a way that is consistent with the eGambling Regulations, the AML/CFT Guidance and the Internal Control System Guidelines issued by the AGCC.

917. Paragraph 4 of Schedule 16 to the eGambling Regulations provides that the verification of the identity of the customer and of any beneficial owner and underlying principal may be completed following the registration of the customer, and thus the establishment of a customer relationship, provided that: it is completed as soon as reasonably practicable thereafter; the need to do so is essential not to interrupt the normal conduct of the eCasino's business; and appropriate and effective policies, procedures and controls are set out in the eCasino's approved internal control system so as to manage money laundering and terrorist financing risks.

918. Paragraphs 5(a) and 5(c) of Schedule 16 to the eGambling Regulations require that where an eCasino cannot comply with the CDD or enhanced CDD requirements set out in the eGambling Regulations it must in the case of a proposed customer relationship, not enter into that customer relationship (and therefore not register that person as a customer), and consider whether an STR must be made pursuant to Section 1 to 3 of the Disclosure Law or sections 12, 15 and 15C of the Terrorism Law.

919. A Control Change Notice was issued by the AGCC in July 2008 to all eCasinos that were operating prior to May, 2008. The Notice required each eCasino to submit a revised set of internal controls, policies and procedures which reflected the enhanced CDD requirements under the amended legislation. From this date, eCasinos have been under an obligation to apply the CDD measures embodied under recommendation 5 to existing customers on the basis of materiality and risk, as eCasinos are required to conduct due diligence at appropriate times under paragraph 2 of Schedule 16 to the eGambling Regulations (or Part VI of Schedule 6 to the 2006 eGambling Regulations). Under paragraph 2 of Schedule 16 to the eGambling Regulations, an eCasino is required to carry out CDD measures on existing customers: immediately after it makes a deposit of € 3000 or more, or that results in the total value of the deposits in the course of any period of 24 hours reaching or exceeding € 3,000; when it knows or suspects or has reasonable grounds for suspecting that customer is engaged in ML/FT; or when it doubts the veracity or adequacy of documents, data or information previously obtained for the purpose of identification or verification of a customer. The CDD measures that are required in relation to existing customers are the same as those required in relation to proposed new customers.

Prescribed Businesses

Criterion 5.1*

920. The relevant requirements are set out in Regulation 8 of the PB Regulations and are the same as those contained in the FSB Regulations as described in section 3.5. of this report. The provisions are in line with the standard.

*Criterion 5.2**

921. The relevant requirements are set out in Regulation 4(2) of the PB Regulations and are the same as those contained in the FSB Regulations as described in section 3.5. of this report. The provisions are in line with the standard.

*Criterion 5.3**

922. The relevant requirements are set out in Regulations 4(3)(a) and 30 of the PB Regulations and section 4.4 and 4.6 of the PB Handbook and are the same as those contained in the FSB Regulations and FSB Handbook as described in section 3.5. of this report. The provisions are in line with the standard.

*Criterion 5.4(a)**

923. The relevant requirements are set out in Regulations 4(3)(b) of the PB Regulations and are the same as those contained in the FSB Regulations as described in section 3.5. of this report. The provisions are in line with the standard.

Criterion 5.4(b)

924. The relevant requirements are set out in section 4.3 and 4.6 of the PB Handbook and are the same as those contained in the FSB Handbook as described in section 3.5. of this report. The provisions are in line with the standard.

*Criterion 5.5**

925. The relevant requirements are set out in in Regulations 4(3)c of the PB Regulations and are the same as those contained in the FSB Regulations as described in section 3.5. of this report. The provisions are in line with the standard.

926. Additionally, see the comments made in respect of essential criterion 5.3* which provides definitions of beneficial owner, underlying principal and identification data.

*Criterion 5.5.1**

927. The relevant requirements are set out in in Regulations 4(3)(d) of the PB Regulations and are the same as those contained in the FSB Regulations as described in section 3.5. of this report. The provisions are in line with the standard.

Criterion 5.5.2(a)

928. The relevant requirements are set out in in Regulations 4(3)(c) of the PB Regulations and are the same as those contained in the FSB Regulations as described in section 3.5. of this report. The provisions are in line with the standard.

*Criterion 5.5.2(b)**

929. The relevant requirements are set out in in Regulations 4(3)(c) of the PB Regulations and are the same as those contained in the FSB Regulations as described in section 3.5. of this report. The provisions are in line with the standard.

Criterion 5.6

930. The relevant requirements are set out in in Regulations 4(3)(e) of the PB Regulations and are the same as those contained in the FSB Regulations as described in section 3.5. of this report. The provisions are in line with the standard.

*Criterion 5.7**

931. The relevant requirements are set out in in Regulations 11 of the PB Regulations and are the same as those contained in the FSB Regulations as described in section 3.5. of this report. The provisions are in line with the standard.

Criterion 5.7.1

932. The relevant requirements are set out in in section 7.2 of the PB Handbook and are the same as those contained in the FSB Handbook as described in section 3.5. of this report. The provisions are in line with the standard.

Criterion 5.7.2

933. The relevant requirements are set out in in Regulations 11 of the PB Regulations and are the same as those contained in the FSB Regulations as described in section 3.5. of this report. The provisions are in line with the standard.

Criterion 5.8

934. The relevant requirements are set out in in Regulations 3 and 5 of the PB Regulations and the rules in chapter 3 and 5 of the PB Handbook. They are the same as those contained in the FSB Regulations and FSB Handbook as described in section 3.5. (criterion 5.8) of this report. The shortcomings identified under criterion 5.8. apply equally to prescribed businesses and TCSPs.

Criterion 5.9

935. The relevant requirements are set out in in Regulation 6 of the PB Regulations and the rules in chapter 6 of the PB Handbook. They are largely the same as those contained in the FSB Regulations and FSB Handbook as described in section 3.5. (c.5.9) of this report.[112] The shortcomings identified under criterion 5.9 apply equally to prescribed businesses in the limited circumstances where prescribed businesses are allowed to apply simplified CDD.

Criterion 5.10

936. The relevant requirements are set out in in Regulation 6(2)(b) of the PB Regulations and the rules in chapter 6 of the PB Handbook and apply for Prescribed Businesses solely in relation to a legal bodies quoted on a regulated market (or wholly owned subsidiaries of such a legal body).. The shortcomings identified under criterion 5.10 apply however fully to fiduciaries as they are subject to the FSB Regulations and Handbook.

937. Instructions issued by the GFSC, including business from sensitive sources notices, list those jurisdictions which are not in compliance with and have not effectively implemented the FATF Recommendations. Simplified or reduced measures cannot be applied to relationships or transactions in relation to those jurisdictions as the language of the Instructions requires a greater degree of caution to be exercised when taking on business from the jurisdictions listed. Enhanced due diligence measures and special attention must be given to all existing and new business relationships and transactions associated with such countries. Jurisdictions listed in the instructions include those listed by the FATF, those of concern to Moneyval and other jurisdictions of concern to the GFSC.

Criterion 5.11

938. The relevant requirements are set out in in Regulation 6(3) of the PB Regulations and the rules in chapter 6 of the PB Handbook. They are the same as those contained in the FSB Regulations and FSB Handbook as described in section 3.5. of this report. The provisions are in line with the standard.

[112] Contrary to financial institutions, prescribed businesses are only allowed to apply simplified CDD to Guernsey residents, legal bodies quoted on a regulated market and Appendix C business and not to Non-Guernsey Schemes and for Intermediaries relationships.

Criterion 5.12

939. The relevant requirements are set out in in Regulation 6(2) of the PB Regulations and the rules in chapter 6 of the PB Handbook. They are the same as those contained in the FSB Regulations and FSB Handbook as described in section 3.5. of this report. The provisions are in line with the standard.

Criteria 5.13, 5.14 and 5.14.1

940. The relevant requirements are set out in in Regulation 7 of the PB Regulations and the rules in section 4.10 of the PB Handbook. They are the same as those contained in the FSB Regulations and FSB Handbook as described in section 3.5. of this report. The provisions are in line with the standard.

Criteria 5.15 and 5.16

941. The relevant requirements are set out in Regulation 9 of the PB Regulations. They are the same as those contained in the FSB Regulations as described in section 3.5. of this report. The provisions are in line with the standard.

Criterion 5.17

942. Criterion 5.17 of the FATF Methodology relates to existing customers as at the date that AML/CFT requirements are brought into force. In respect of PBs those requirements have been in force since September 2008. In relation to existing customers, the rules and guidance in section 4.10.2 of the PB Handbook specify that in order to meet the requirements of Regulation 8 prescribed businesses must ensure that all business relationships are maintained in a manner which facilitates the meeting of the requirements of the PB Regulations.

943. Rule 173 of the PB Handbook establishes that an estate agent acting, in the course of a business, on behalf of others in the acquisition or disposal of real property or any interest therein, a lawyer, notary or other independent legal professional when they prepare for or carry out transactions for a client, in relation to the activities mentioned under c.12.1 (d) of the FATF methodology, and anyone carrying out the business of auditor, external accountant, insolvency practitioner or tax adviser must ensure that its policies, procedures and controls in place in respect of existing business relationships are appropriate and effective and provide for:

- the level of CDD to be appropriate to the assessed risk of the business relationship;
- the level of CDD, where the business relationship has been identified as a high risk relationship (for example, a PEP relationship), to be sufficient to allow the risk to be managed;
- the business relationship to be understood; and
- the application of such policies, procedures and controls to be based on materiality and risk.

Criterion 5.18

944. The relevant requirements are set out in in Regulation 8 of the PB Regulations. They are the same as those contained in the FSB Regulations as described in section 3.5. of this report. The provisions are in line with the standard.

Trust and company service providers

945. Trust and company service providers are included in the definition of a financial services business set out in Schedule 1 to the Proceeds of Crime Law and are therefore subject to exactly the same AML/CFT requirements as the banking, insurance and investment industries. For details please refer to the analysis conducted in section 3.5 of this report.

946. It has to be highlighted however, that that the provision of TCSP services as mentioned under c.12.1 of the FATF methodology, might be exempted from the licensing requirements of the Fiduciaries Law in certain situations. The GFSC is empowered under Section 3 (1) (y) of the Fiduciaries Law to exempt "any particular activity, transaction or appointment" that would otherwise require a fiduciary licence. As a consequence these activities are not subject to the AML/CFT requirements. All applications must be made in writing, and according to the authorities each application is considered very carefully in relation to what the risks would be if the application is granted. The authorities also stated that, as a matter of policy, a condition is attached to all exemptions which are granted which require that the applicant's business is subject to the AML/CFT controls of its administrator who must be licensed by the GFSC and therefore will be subject to the requirements of the Regulations.

947. The GFSC has granted 671 exemptions since the Fiduciaries Law was introduced of which 550 remain active. The majority of these exemptions are granted to general partners of limited partnerships which are being established as part of a supervised Guernsey collective investment scheme which will be administered by a licensed fund administrator subject to the AML/CFT requirements (please refer to Recommendations 33 and 34 for further details). The number of exemptions granted to private trust companies (PTCs)[113] is significantly smaller at 31.

948. The GFSC states that it imposes a further requirement upon any PTC granted an exemption in addition to that of the condition requiring it to be administered in accordance with the AML/CFT controls of the licensed fiduciary administering it. This additional condition is that the PTC must have on its Board of Directors a senior representative from the administering licensed fiduciary to ensure that the administering licensed fiduciary can exercise a degree of control over the PTC, provide the PTC with an experienced and knowledgeable professional trustee to guide the board and enhance the reach the GFSC has over the operation of the PTC should the need arise. The GFSC has also found that the imposition of this condition has the full support of the administering licensed fiduciary because it makes mandatory a role for it on the Board of the PTC.

949. Finally, it has to be mentioned that providing the above-mentioned company services (or "regulated activities") is only subject to the AML/CFT requirements if they are conducted by way of business. Pursuant to section 58(3) of the Regulation of Fiduciaries Law a person acts by way of business if he receives any income, fee, emolument or other consideration in money or money's worth for doing so, and would include gifts in exchange for providing services. Accordingly, the CDD requirements do not have to be fulfilled where such a person is acting on an entirely voluntary basis, irrespective of the number of directorships held. The evaluators take the view that this is in line with the FATF requirements, as the definition of Trust and Company Service Providers contained in the glossary to the FATF Recommendations refers to all persons or businesses (…), and which as a business, provide any of services mentioned under c.12.1. (e) to third parties.

950. Another exemption from the definition of regulated activities in the Fiduciaries Law applies for persons acting in an individual capacity as a director of not more than six companies. As a consequence this activity is not subject to a licensing requirement under the Fiduciaries Law.

[113] A PTC is a privately owned company that is incorporated specifically to act as trustee of a single trust or group of family trusts and is not permitted to offer trustee services to the public generally. PTC structures offer the possibility for individuals to establish and manage, often with the assistance of their trusted advisors, their own trust company. PTCs offer the settlor several advantages, primarily in relation to exerting more influence over the trust. In essence, a PTC does not require a full fiduciary licence if it acts as trustee for one family or group which shares a common interest, if it does not advertise or market its services in any way, and if its administered by a licensed TCSP. If the PTC does receive a fee (even if it is merely acting as a conduit and paying it out to a third party) then it will need to apply for the discretionary exemption mentioned above.

Nevertheless, the activity is still subject to the AML/CFT requirements. This is because paragraph 23 of Schedule 1 to the Proceeds of Crime Law expressly incorporates work that is covered by section 3(1)(g) of the Regulation of Fiduciaries Law when carried out by way of business (as also explained on the GFSC website). However, during the onsite visit the authorities were not in a position to tell how many persons are acting as a director without a personal fiduciary licence but who might be subject to the AML/CFT requirements because of the abovementioned paragraph 23 of Schedule 1 of the Proceeds of Crime Law. Only at later stage the assessors were informed that there are currently 5185 individuals who are acting as directors for not more than 6 companies, so come within the exemption in the Regulation of Fiduciaries Law[114] The GFSC has no statutory powers over these companies as they are not licensed under the Fiduciary Law and thus are not supervised for compliance with their AML/CFT obligations.[115]

951. Guernsey authorities argue that subjecting individuals acting as directors for not more than 6 companies to the AML/CFT requirements (as foreseen in Guernsey) goes beyond the FATF standards, as it captures all directors, including those who are not acting in the context of a professional relationship with a third party. The assessors do not fully agree with this point of view, given that this exemption is applicable to individuals holding up to 6 directorships for which they receive income, fees or other consideration in money or money's worth (otherwise the licensing requirement under the Fiduciaries Law and consequently the AML/CFT obligations would not apply anyway). Accordingly, subjecting these individuals to the AML/CFT requirements is *a priori* required by the FATF standards[116] (which Guernsey meets) and compliance with these requirements has to be supervised accordingly. The latter has not been sufficiently demonstrated.

Dealers in Precious Metals and in Precious Stones

952. The FATF requirement in respect of dealers in precious metals and dealers in precious stones is limited to the acceptance of cash of USD/€15,000. Guernsey meets the FATF requirements by the Proceeds of Crime (Restriction on Cash Transactions) Regulations, which creates an offence to accept cash in excess of £10,000 or any currency equivalent to that amount in the course of the business of dealing in any precious metal, precious stone or jewellery (Regulation 1).

953. A person who contravenes the above mentioned prohibition commits an offence and is liable on summary conviction, in the case of a first offence, to a fine not exceeding level 2. In the case of a second or subsequent offence, a person would be subject to a fine not exceeding twice the value of the cash involved in the offence.

954. In addition to the above-mentioned cash-restriction, Guernsey has introduced a requirement that actually goes beyond the FATF requirements: The buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion, is included in the list of financial activities in Part I of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, except where the value of each purchase, sale or deal the value of each purchase, sale or deal does not exceed

[114] Guernsey authorities argued that this figure encompasses individuals who act as directors of their own company or that of their employer who is a supervised entity or a local non-financial services trading company. They estimate that approximately 2000 of these companies that are not related to financial services..

[115] The GFSC takes the view that the application of the exemption does not expose Guernsey to undue level of risks based on a review conducted in June 2014. The authorities also stress that internal procedures within the GFSC Fiduciary Division exist for handling enquiries about the exemption and that records on these enquiries are maintained for future reference.

[116] This view was also shared by the IMF during the assessment in 2011 (see paragraph 883 "This activity would fall within the FATF definition of a TCSP"). In the view of the assessors, the question whether such activity must be regarded as "provided as a business" and therefore as falling within the scope of Recommendation 12 must be assessed based on several factors and not purely based on the number of directorships held.

£10,000 in total, whether the transaction is executed in a single operation or in two or more transactions, which appear to be linked. Accordingly, businesses providing such activities have to be regarded as financial institutions and are subject to AML/CFT framework applicable to financial institutions. This framework has been described under Recommendation 5. An important discretion provided for licensed banks, POI licensees or Guernsey licensed fiduciaries dealing in bullion as part of its relationship with another regulated financial services business is described under c.5.9. ("intermediary provisions").

E-casinos

955. Paragraph 9(1)(a) of Schedule 16 to the eGambling Regulations requires eCasinos to maintain records of transaction documents, or a copy thereof, for five years commencing from the date that the transaction and any related transaction were completed, or for such longer period as the AGCC, the FIS or an officer of Police may direct. This requirement applies regardless of whether the customer relationship is ongoing or has been terminated.

956. Paragraph 9(1)(a) of Schedule 16 to the eGambling Regulations requires that eCasinos maintain records of transaction documents. Paragraph 10(1) of Schedule 16 to the eGambling Regulations defines transaction documents and provides that transaction documents must as a minimum:

a. identify the customer;

b. the nature and date of the transaction;

c. the type and amount of the currency involved; and

d. the identifying number of any account involved in the transaction.

Effectiveness and efficiency

eCasinos

957. The on-site inspection process has identified that there is a high level of compliance by eCasinos with the AML/CFT regime.

958. All eCasinos are required under the eGambling Regulations to carry out a business risk assessment, and their internal control system must be prepared having regard to their business risk assessment. A business risk assessment must document an eCasino's exposure to any ML/FT risks and vulnerabilities, including those risks that may arise from new or developing technologies that might favour anonymity.

959. The evaluation team had the benefit of meeting on-site the representatives of all types of e-gambling license holder. They have represented a very detailed knowledge of their obligations under the laws of Alderney. According to the interviews all transactions are scrutinized by both e-gambling license type holder, player to player transfers are not allowed, and during the identification process the licensees take due care to satisfy themselves they have identified the customer properly. This also requires additional evidence of customer identity. The team was convinced that even the obligations introduced after the recommendations of the last IMF report have been well understood and effected by the sector.

960. The supervisory regime of the AGCC is indeed robust, and the effectiveness of the system is supported by the outcomes of the on-site visits conducted by the AGCC (sometimes overseas).

961. The sector participants are aware of the risks associated with e-gambling sector (mainly that the proceeds of organised crime activities are laundered through e-casinos) and take risk based measures to mitigate such risks.

TCSPs

962. As outlined above, trust and company service providers (i.e. broadly speaking persons subject to the Fiduciaries Law) are included in the definition of a financial services business set out in

Schedule 1 to the Proceeds of Crime Law and are therefore subject to exactly the same AML/CFT requirements as the banking, insurance and investment industries.

963. The strengths and weaknesses regarding effectiveness and efficiency identified for the banking, insurance and investment industries apply equally to the TCSP (fiduciary) sector. Accordingly, the evaluators abstain from restating these findings in this section of the report but refer to the considerations provided in the detailed analysis of effectiveness and efficiency under Rec. 5. Therefore, the following considerations are to be read in conjunction with the comments and findings under Rec. 5.

964. The assessment team takes the view, that amongst the categories of DNFBP operating in Guernsey, the fiduciary sector is clearly the most essential sector when it comes to preventing money laundering and combatting the financing of terrorism. The fiduciary services provided in Guernsey (i.e. primarily trust and company formation, management and administration) are one of the key drivers of business flows into the Guernsey financial sector, creating demand for banking and investment advisory services.[117]

965. This sector is key from an AML/CFT perspective as the fiduciaries form, manage and administer the legal persons and arrangements that account for a major share of the customer base of some Guernsey financial institutions. In their capacity as trustees, foundations councils or company directors, they frequently represent these customers vis-à-vis the financial institutions that are servicing these legal persons and arrangements. The financial institutions appear to be heavily dependent on the information obtained by the representatives of the fiduciary sector when it comes to scrutinising transactions undertaken throughout the course of the business relationship as part of the on-going due diligence.[118] This is due to the fact that contact with the underlying principal and/or beneficial owner is usually maintained and managed by the fiduciaries rather than by the financial institutions. As a consequence, the quality of CDD information collected by the TCSP sector often still has a direct impact on the quality of CDD measures applied by other financial businesses. The GFSC stresses that it has observed that other financial businesses set a high bar with their due diligence requirements for customers which are legal persons or arrangements.

966. Guernsey's fiduciary sector's overall level of awareness of AML/CFT requirements is reflective of a mature industry well versed in them. The fiduciary sector has demonstrated a serious and long-lasting commitment towards the mitigation of ML/TF risks to which their businesses may be exposed. It was evident that reputational risk of both the business and of the Bailiwick is a primary concern for all members of the industry.

967. The GFSC has also demonstrated a proactive and well-versed approach in identifying quickly weaknesses in the application of AML/CFT requirements (see following paragraphs) and in applying remedial measures. From the assessor's point of view this sets important (additional) incentives for fiduciary firms to comply effectively with the AML/CFT requirements and is seen as a positive indication for the overall level of compliance within the fiduciary sector.

[117] While Guernsey authorities confirm that the TCSP sector is an important source of business for many financial and professional services business in Guernsey they stress that it is not the only source. In particular, they refer to the significance of the captive insurance sector serving largely institutional clients of which Guernsey is the fourth largest domicile in the world and to the net asset value of total funds (collective investment schemes) under management and administration with Guernsey fund providers, which stood at £263 billion at the end of 2014. Whilst a trustee might consider investing in a Guernsey collective investment scheme if it is in the trust's interest, the GFSC stated that is has not noted significant levels of investment by Guernsey TCSPs in Guernsey funds.

[118] It has to be reminded however, that financial institutions increasingly forego the possibility to rely on the fiduciary sector for the identification and verification of the customer's and the beneficial owner's identity, but conduct these CDD measures themselves (as outlined in the analysis of Rec. 5),

968. The GFSC identified as a result of on-site visits undertaken in 2013-early 2014 that some fiduciary businesses were not applying sufficient attention towards the review of their compliance arrangements. In one instance, the GFSC observed that the business risk assessment had only been reviewed on a set review date, despite significant changes having occurred to the risk profile of its client base, products or services which had resulted in a possible change to its overall ML/TF risk exposure. In another instance, a fiduciary business was unable to explain, despite having reviewed its BRA in the last 12 months, its overall risk appetite in relation to, for example, the proportion of high risk business it was prepared to take-on, given the size, complexity and nature of the business, in terms the resourcing required to undertake the requisite enhanced due diligence. As a consequence the GFSC issued guidance on the development of a business risk assessment and also expectations regarding conducting ongoing reviews. The guidance was published on the GFSC website in 2011 and has been updated periodically until it was revised into an FAQ in September 2014.

969. This last finding also ties into a particular concern of the assessment team. The risk appetite statements reviewed by the evaluation team suggest that some fiduciaries are prepared to accept an extensive amount of risk. While some representatives of the fiduciary sector mentioned certain categories of customers, which they do not to accept (trading or consultancy services were mentioned as an example), their internal risk appetite statements do not or hardly designate any business relationships, which would be rejected by the fiduciary firm upfront. Others were not even in a position to demonstrate a written risk appetite statement. The evaluation team recommends that all fiduciary firms should clearly define their risk appetite and clearly define where they would find it appropriate, based on an assessment of risk, to reject or terminate a business relationship. Again, the current absence of clearly specified risk appetite statements might suggest that some fiduciaries are prepared to accept an extensive amount of risk, which raises concerns about the adequacy of resources available to TCSPs to appropriately mitigate those risks. The inclusion of a risk appetite will assist businesses in determining the adequacy of resources to mitigate the identified risks.

970. The GFSC also identified instances where a fiduciary business was unable to show the connection between the risks identified in its business risk assessment and its compliance arrangements put in place, given the size, complexity and nature of the business, to mitigate those ML/TF risks. Another fiduciary business was unable to evidence how it determined that its compliance arrangements were appropriate and effective in mitigating the ML/TF risks identified in its business risk assessment. In particular, some fiduciary businesses were unable to produce evidence of any sample testing undertaken for this purpose.

971. The GFSC also identified some cases where there was clear evidence that the fiduciary business had become aware of a change to a client's risk profile, yet no review of the customer risk assessment had been undertaken.

972. The assessment team noted that steps were taken to educate and raise the sector's awareness of the importance of undertaking these reviews in a complete and timely manner. This included industry sessions held in the autumn of 2013 and presentations made by the GFSC in December 2013. The GFSC engaged with Boards to ensure that the necessary measures were taken. In some instances, this includes the engagement of third party reviewers and additional contract personnel. In the limited instances necessary, the GFSC has imposed licence conditions requiring that the necessary reviews be completed and resourced as a matter of priority. In all of these instances, Boards were cooperative and arranged for the necessary resourcing to reduce the risk of recurrence. As a pro-active measure, the GFSC issued a statutory instruction (Instruction No. 01/2014 for fiduciary financial services businesses), requiring fiduciaries to review their compliance arrangements.

973. It must also be highlighted that 36 (out of 153) fiduciary businesses outsource certain aspects of the compliance functions. Only three fiduciaries (which are part of an international financial group) outsource externally from the Bailiwick (as at 31 March 2015). Businesses which enter

such arrangements appear to be well aware of their responsibility to oversee these arrangements, and their continued accountability for ensuring that the AML/CFT requirements are complied with and understanding how the risk profile of its relationships informs the monitoring system, including the expected level of transactional activity so that anomalies can be identified in a timely and effective manner.

974. Finally, there appear to be effectiveness issues related to the abovementioned exemption from the definition of regulated activities in the Fiduciaries Law for persons acting in an individual capacity as a director of not more than six companies, but who are nevertheless subject to the AML/CFT requirements. During the onsite visit the authorities were not in a position to tell how many persons are acting as a director without a personal fiduciary licence for not more than six companies. This raises concerns whether these individuals are effectively supervised and as a consequence effectively complying with the AML/CFT requirements.

975. Furthermore, the GFSC is empowered under Section 3 (1) (y) of the Fiduciaries Law to exempt upon application "any particular activity, transaction or appointment" that would otherwise require a fiduciary licence. As a consequence these activities are not subject to the AML/CFT requirements. It is understood that the GFSC has granted such exemptions frequently and herby exempted TCSP activities that are relevant under the FATF Standard from the application of AML/CFT requirements. However in practice exemptions are only granted whereby the activity of the exempted entity will be subject to AML/CFT controls of its administrator. Please refer to paragraph 946.

Legal Professionals

976. Approximately 25% of the activities undertaken by legal professionals fall within the activities to which the requirements of the PB Regulations and PB Handbook must be applied. The majority of these activities relate to the formation and operation of companies and legal arrangements. The GFSC surveyed legal professionals in 2014. The survey included a question regarding the level of business conducted in the creation, operation, management or administration of companies, only two firms reported that this service accounted for more than 50% of their services (which as explained above would only have been advising). The majority of legal professionals reported zero or less than 10%. A number of the legal professionals engage in conveyancing activities. In relation to these activities, between 80%-100% involves local property transactions, with the remaining amount being undertaken on behalf of UK-based clients. The activities of 12% of legal professionals focused upon stock exchange listings and related activities.

977. Legal professionals appear to have a strong awareness of the importance of corporate governance in relation to the effective implementation of AML/CFT compliance arrangements. Members of the legal sector seek out advice or input from their compliance functions in relation to new business relationships, in particular, where these relationships would be classified as high risk.

978. The GFSC stated that during on-site visits, legal professionals have evidenced a demonstrable understanding of the importance of having a relevant and up to date business risk assessment, in compliance with the PB Regulations and Handbook. Legal professionals have also demonstrated an understanding about the controls required to mitigate ML/FT risks identified as part of their business risk assessments. Legal professionals recognise the importance of ensuring that periodic review is undertaken of their business risk assessments, so as to ensure that it remains up to date and that any required changes necessary to mitigate any AML/CFT risks that may arise as a result, are effectively addressed by the professional's compliance arrangements.

979. Legal professionals have also demonstrated an awareness of the identification and verification requirements, and the importance of their consistent application. Most legal professionals appear to classify their activities as occasional transactions, with the proportion of those with established business relationships being negligible. Legal professionals refresh or re-perform

CDD on clients who subsequently seek to engage them, where the professional has been previously engaged by that client.

980. Legal professionals met by the assessment team demonstrated that they have a clear understanding to which activities and in which instances CDD measures have to be applied. The policies and procedures reviewed by the evaluation team fully reflect the CDD measures required pursuant to c.5.3 to c.5.7. of the FATF Methodology. Based on the interviews on-site the assessment team gained the impression that these measures are being applied effectively. The GFSC referred to a negligible number of instances in which non-compliance was noted. According to the authorities this tended to be limited to a specific client file and was readily remediated.

981. Although approximately 75% of the legal professionals rely on third parties to perform some of the elements of the CDD process, this varies as between professionals, and amounts to only 1-15% of the overall client base of those professionals. The vast majority of these arrangements are with other Guernsey financial services businesses. Legal professionals have demonstrated an awareness of the risks associated with reliance upon the introducer arrangements and manage the risks accordingly, in compliance with the PB Regulations and Handbook.

982. The GFSC informed that on-site visits results disclose that approximately 90% of legal professional clients are rated standard or low risk. The GFSC stated that this is because legal professional relationships predominantly comprise clients who are Guernsey supervised entities or Guernsey residents. Clients are either subject to supervisory controls or, if the client is an individual, live in the Bailiwick. The GFSC also pointed to the fact that services offered by legal professionals in the Bailiwick comprises work which is of regular repetitive nature e.g. conveyancing, providing legal opinion and advising on company formation. In these cases, risks are further mitigated because the underlying transactions also involve local financial institutions or DNFBPs subject to AML/CFT supervision e.g. banks and TCSPs. Visit results disclosed that approximately 50% of legal professionals undertook all transactions on a face to face basis.

983. Legal professionals apply simplified due diligence in limited instances only. They prefer to collect full CDD in order to broaden their knowledge of a client's profile and provide for any future change in circumstances. This was observed by the GFSC in its assessments of 18 onsite visits to legal professionals and noted in its discussions with representatives of the legal sector. The survey of the sector in 2014 also showed diminishing reliance upon introducer arrangements with only one firm stating more than 50% reliance upon an introducer certificate for due diligence purposes. All other firms collate due diligence on underlying principals, beneficial owners controllers and other key personnel.

984. Complete CDD is regularly performed prior to undertaking a transaction or establishing a relationship. Completing the verification of the identity of the customer and beneficial owner only following the establishment of the business relationship appears to be of minor relevance for legal professionals.

985. Where legal professionals were unable to obtain information required for the performance of CDD measures, they appear neither to be reluctant to reject new business relationships or occasional transactions nor to terminate business relationships that have already been commenced. The legal professionals met by the assessment team were able to refer to respective examples in the past. In 2014 the FIU received 26 reports from legal professionals of which 12 related to new business applications, which had been declined.

Accountants

986. Over 90% of the activities undertaken by the accountancy sector fall within the activities to which the requirements of the PB Regulations and PB Handbook must be applied. Approximately 60% – 70% of these businesses conduct activities in respect of external audit and tax advice, with the remainder being insolvency practitioners and external accountants. Tax

advice is predominantly provided to UK individuals. The nature of the clients ranges from individuals to legal persons and arrangements.

987. The accountancy sector has demonstrated an awareness of the AML/CFT requirements and the importance of their application to its business activities. Accountancy professionals have also demonstrated a consistent understanding of the activities to which the AML/CFT requirements are to be applied.

988. The accountancy professionals met by the assessment team have evidenced a demonstrable understanding of the importance of having a relevant and up to date business risk assessment and of the controls required to mitigate ML/FT risks identified as part of their business risk assessments. Accountancy professionals recognise the importance of ensuring that periodic reviews are undertaken of their business risk assessments, so as to ensure that the business risk assessment remains up to date and that any required changes necessary to mitigate any AML/CFT risks that may arise as a result, are effectively addressed by the professional's compliance arrangements.

989. Accountancy professionals have demonstrated awareness of the identification and verification requirements of the PB Regulations and the Handbook, and the importance of their consistent application. Approximately 70% of the business undertaken by accountancy professionals is undertaken with Guernsey based clients.

990. Approximately 40% of accountancy professionals rely on third parties to perform some of the elements of the CDD process. The vast majority of these arrangements are with other Guernsey financial services businesses or group introducers who are also required to comply with the PB Regulations of PB Handbook, or equivalent AML/CFT requirements. Accountancy professionals have demonstrated an awareness of the risks associated with using third party reliance and manage the risks accordingly. Accountancy professionals appear to understand the importance of and undertake testing of these arrangements in compliance with the requirements.

991. Approximately 80% of accountancy professionals undertake transactions on a face to face basis. Accountancy professionals are aware of and have procedures and controls in place which require that information be obtained about the purpose and intended nature of each business relationship, in compliance with PB Regulations and the PB Handbook.

992. Accountancy professionals assess the risk profile of customer relationships and occasional transactions and have policies, procedures and controls which provide scope to identify and verify identity to a depth appropriate to the assessed risk of a business relationship or occasional transaction.

993. Approximately 70% of accountancy professionals' business relationships are rated as low risk, with the predominant jurisdiction associated with those relationships being Guernsey.

994. The vast majority of accountancy professionals limit their use of simplified due diligence to Guernsey based clients only. Some businesses in the accountancy sector undertake verification of identity following the establishment of a business relationship in compliance with PB Regulations and Handbook.

995. Where accountancy professionals were unable to obtain information required for the performance of CDD measures, they appear neither to be reluctant to reject new business relationships or occasional transactions nor to terminate business relationships that have already been commenced. In 2014 the FIU received 24 reports from accountants of which 3 related to new business relationships, which had been declined. In the accountancy sector where there are established relationships robust monitoring process were witnessed as accountants will undertake an annual review for audit clients and clients whom they provide tax reporting services, and undertake transaction-based monitoring for other clients. Authorities stated that for the majority of PBs the overall number of legacy business relationships is very low as the AML/CFT regime has been in place for six and half years.

Real Estate Agents

996. Approximately 95% of the business undertaken by the real estate sector involves residential real estate transactions conducted on behalf of Bailiwick residents. Very few of those transactions involve the use of legal entities or legal arrangements. The remaining business undertaken involves local commercial real estate transactions, also with the vast majority of transactions being conducted on behalf of Bailiwick residents. Some of these transactions have involved legal persons and legal arrangements.

997. Businesses have evidenced a demonstrable understanding of the importance of having a relevant and up to date business risk assessment in compliance with PB Regulations and Handbook.

998. Businesses have undertaken risk assessments in compliance with PB Regulations and Handbook. There were only 2 instances in which businesses had not completed such a risk assessment. In both cases, the GFSC imposed conditions on the registration of those businesses, which required the timely remediation of those deficiencies.

999. The vast majority of business undertaken by the real estate sector is comprised of occasional transactions. Approximately one third of real estate businesses have established business relationships. These account for some 23% of the overall transactional activity of those businesses. The vast majority of business is undertaken on face-to-face basis.

1000. Real estate agents met by the assessment team demonstrated that they have a clear understanding to which activities and in which instances CDD measures have to be applied. The policies and procedures reviewed by the evaluation team fully reflect the CDD measures required pursuant to c.5.3 to c.5.7. of the FATF Methodology. Based on the interviews on-site the assessment team gained the impression that these measures are being applied effectively. In a negligible number of instances in which non-compliance was noted by the GFSC, this tended to be limited to a specific client file and was readily remediated.

1001. Approximately 40% of the real estate sector relies on third parties (mainly Guernsey law firms) to perform some of the elements of the CDD process. However, such arrangements represent only 10% of their overall business in respect of property transactions.

1002. Businesses are aware of the requirements concerning enhanced due diligence as required by the PB Regulations and Handbook. Very few clients forming a part of the overall client base for the real estate sector are considered to be high risk. There has been no evidence that businesses have failed to comply with the simplified due diligence provisions in the PB Regulations and Handbook.

1003. Real estate agents appear not to make use of the possibility to complete the verification of the identity of the customer and beneficial owner following the establishment of the business relationship. Instead complete CDD is performed prior to undertaking a transaction or establishing a relationship.

1004. Where real estate agents are unable to obtain information required for the performance of CDD measures, they appear neither to be reluctant to reject new business relationships or occasional transactions nor to terminate business relationships that have already been commenced.

1005. As far as existing (or legacy) customers are concerned the GFSC stated that it was evident from its review of legal professionals, accountants and estate agents in 2014 that they met the relevant requirements. It should also be mentioned that all legal professionals and estate agents class all of their business as occasional transactions and would refresh CDD for returning clients. There have been only two instances where the GFSC determined that there was more than minor non-compliance with the AML/CFT requirements. These were the same two firms as those noted above in relation to business risk assessments. In both cases, the GFSC imposed

conditions on the registration of those businesses, which required the timely remediation of those deficiencies. Both registrants complied with the conditions.

Dealers in Precious Metals and in Precious Stones

1006. As outlined above, the acceptance of cash in excess of £10,000 or any currency equivalent to that amount in the course of the business of dealing in any precious metal, precious stone or jewellery is prohibited (Proceeds of Crime (Restriction on Cash Transactions) Regulations). According to the Guernsey authorities this prohibition is monitored and respected in practice and as a consequence there are no dealers in precious metals and stones as encompassed by the FATF recommendations.

1007. There is one bullion dealer operating in Guernsey. This company is licensed to carry on investment services and is in this capacity subject to AML/CFT requirements (and to the requirements under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (POI). If the company did not hold a POI licence, it would still be subject to the AML/CFT requirements applicable to financial institutions due to the above mentioned fact that dealing in bullion is regarded as a financial activity according to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999. The evaluation team has interviewed the company. Due to its status as financial institution this interview was factored into to the effectiveness analysis under Recommendation 5.

Applying Recommendation 6 and 8-11 to DNFBPs (c. 12.2)
Applying Recommendation 6, 8, 9 and 11

1008. Recommendations 6, 8 and 11 were rated "Compliant" and Recommendation 9 was rated "Largely Compliant" during the last assessment in 2010 conducted by the IMF. As these Recommendations constitute neither key nor core Recommendations, they have not been re-assessed during this evaluation round. In accordance with the considerations in the note to assessors in MONEYVAL's 4th Cycle of Evaluations the evaluators of this round relied on the information existing in the previous detailed assessment report so far as possible. The relevant legal framework has not changed since the last assessment.

Applying Recommendation 10

TCSPs

1009. As outlined above, TCSPs are included in the definition of a financial services business set out in Schedule 1 of the POCL and therefore subject to exactly the same AML/CFT requirements as the banking, insurance and investment sector. The rules have been assessed as in compliance with the FATF standard.

Legal Professionals, accountants and real estate agents

1010. The record-keeping requirements are set out in Regulation 14(1) and 30 of the PB Regulations, and chapter 10 of the PB Handbook. The respective provisions have not changed since the last assessment in 2011 (please refer to paragraphs 977 to 979 of the last report) and are the same as those contained in the FSB Regulations and FSB Handbook as described in section 3.5. of this report.

Effectiveness and efficiency

TCSPs

1011. The analysis of the effectiveness and efficiency of the implementation of Rec. 10 for the banking, insurance and investment industries applies equally to the TCSP (fiduciary) sector.

Legal Professionals, accountants and real estate agents

1012. Compliance with the record-keeping requirements is a fundamental component of the GFSC's on-site visits. All businesses are required to demonstrate to the on-site supervisory teams that they obtain, maintain and retain records in order to evidence their compliance with all of the requirements of the PB Regulations and rules in the PB Handbook. During the on-site visit, the

team undertakes ad-hoc reviews of records not requested of the business in advance of the visit in order to further verify on-going compliance with both its own policies, procedures and controls that relate to AML/CFT record-keeping, and also to verify that the business is able to provide any of the records stipulated in the PB Regulations and PB Handbook upon request and without delay. The GFSC indicated that in a negligible number of cases where non-compliance with this requirement was observed, this was readily remediated.

1013. The data maintained by the GFSC indicates that the all legal professionals, accountants and real estate agents have a high level of compliance in relation to the record keeping requirements. The limited non-compliance with the record keeping requirements arose in readily remediated circumstances, such as a business failing to maintain accurate and appropriate logs of the activity it had undertaken, in respect of training completed by its employees. There are no recent examples where businesses have failed to comply with the minimum retention requirements.

1014. No issue came to the assessors' attention with regard to the ability of businesses as to timely delivery of records when required by the GFSC, the FIS, or the law enforcement agencies.

4.1.2 Recommendations and comments

Technical:

- As already recommended by the IMF in 2011 the authorities should expand the list of higher-risk customers to which enhanced due diligence must be applied and include higher-risk categories relevant to some TCSPs and Prescribed Businesses in Guernsey.
- Authorities should amend the PB Handbook rules regarding simplified/ reduced CDD. The rules should not provide for the discretion to abstain entirely from any of the mandatory CDD measures (including identification of the ultimate beneficial owner in respect of a regulated or authorised collective investment scheme that has only a very limited number of investors.
- Authorities should amend the PB Handbook to ensure that the application of simplified or reduced CDD measures should be limited to customers resident or domiciled in countries, that Guernsey is satisfied to be in compliance with and have effectively implemented the FATF Recommendations

Effectiveness:

- The authorities should ensure that the customer risk assessments of TCSPs take sufficiently into account that the accumulation of risks can present overarching ML/TF risks.
- The GFSC should take measures to ensure effective compliance with the AML/CFT requirements in respect of persons acting as a director (for less than six companies) without a personal fiduciary licence but who are subject to the AML/CFT requirements through effective supervision of these directors.
- Authorities should ensure (through guidance and supervisory measures) that TCSPs enhance their CDD records regarding the economic or other commercial rationale of a business relationship, including the rationale for conducting this business in or through Guernsey, to ensure that records facilitate the undertaking of adequate customer risk assessments and meaningful on-going monitoring of the business relationship.
- Where the rationale of a business relationship is tax planning or tax mitigation, authorities should promote the practice applied by some TCSP businesses that are requesting a copy of the tax opinion or advice to ascertain the compliance with relevant tax laws.
- The authorities should consider promoting amongst TCSPs the practice applied by some businesses by establishing the source of wealth and the source of funds also for their medium risk relationships, and not only for PEP and higher risk business relationships.

- The GFSC FAQ guidelines regarding establishing and obtaining documentary evidence for source of funds and source of wealth for medium and high risk relationships should be more widely encouraged through clarifications in the Handbook and supervision. This best practice has already been adopted by some businesses.
- The authorities should encourage TCSPs to define more clearly in their overall risk appetite statements where they would find it appropriate, based on an assessment of risk, to reject or terminate a business relationship.
- In order to have legal certainty, authorities should clarify in the PB Regulations and the PB Handbook that
  - the underlying individual persons (ultimate beneficial owners) have to be identified where a settlor is a legal entity (corporate settlor);
  - the true settlor (as opposed to a nominee settlor) has to be identified, verified and recorded in the CDD files in all cases;
  - the identity of any person subsequently settling funds into the trust has to be identified, verified and recorded in the CDD files in all cases.
- Authorities should clarify in the PB Handbook that in the case of PCCs and ICCs the identity of the beneficial owner has to be identified and verified with respect to each cell.
- Authorities should consider incorporating the statements on certification of copy documentation published on the FAQ section of the GFSC website into the PB Handbook to ensure their enforceability.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12 [119]	**LC**	***Applying Recommendation 5*** • The list of factors to which EDD must be applied omits some higher-risk categories which are relevant to some TCSPs and Prescribed Businesses in Guernsey; • The PB/ FSB Regulations and the PB/ FSB Handbook provide for the discretion to abstain entirely from the application of certain CDD measures in defined circumstances, including on underlying beneficial owners of regulated collective investment schemes. Where a regulated or authorised collective investment scheme has only a very limited number of investors this discretion within the FSB regulations and handbook should not be available; • The application of simplified or reduced CDD measures to customers in another country is not limited in all instances to customers resident or domiciled in countries, that Guernsey is satisfied to be in compliance with and have effectively implemented the FATF Recommendations or is not limited to listed companies that are subject to adequate disclosure requirements.

[119] The review of Recommendation 12 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendations 6, 8, 9 and 11.

		Effectiveness issues: • Customer risk assessments of TCSPs do not sufficiently take into account that the accumulation of risks can present overarching ML/TF risk; • CDD measures are not commensurate to the risk in some instances; • Effective compliance with AML/CFT requirements by persons acting as a director (for less than six companies) without a personal fiduciary licence (but who are subject to the AML/CFT requirements) was not demonstrated.

5. LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

Recommendation 33 (rated C in the IMF report***)***

Summary of 2011 factors underlying the rating

1015. In the IMF report of 2011 Guernsey was rated as Compliant with Recommendation 33. The authorities were recommended to clarify the meaning of the terms "beneficial owner" and "reasonable measures to ascertain" as contained in the Guernsey CL.

5.1.1 Description and analysis

Legal Framework

1016. Bailiwick legal persons are regulated by the Companies (Guernsey) Law 2008 (GCL), the Companies (Alderney) Law 1994 (ACL), the Limited Partnerships (Guernsey) Law 1995, the Limited Liability Partnerships (Guernsey) Law, 2013 and the Foundations (Guernsey) Law, 2012. In addition, the Criminal Justice (Proceeds of Crime) (Financial Service Businesses) Regulations are relevant for this section of the report.

Measures to Prevent Unlawful Use of Legal Persons (c. 33.1)

1017. The availability of basic and beneficial ownership information of legal persons in the Bailiwick is warranted through three different mechanisms:

A. Relying on basic information provided to the Registries or held by the legal persons;

B. Relying on beneficial ownership information obtained, verified and retained by licensed TCSPs where they are involved in the formation or administration of legal persons.

C. Relying on information collected by resident agents based on their obligation to take "reasonable steps to ascertain the identity of beneficial owners of members' interests" in Guernsey and Alderney companies as well as Guernsey LLPs.

Table 34

		Guernsey companies	Alderney companies	Limited partnerships with legal personality (Guernsey only)	LLPs (Guernsey only)	Foundations (Guernsey only)
	Number as of end 2014	17'952	434	400	12	22
A	Registration mandatory	yes	yes	yes	yes	yes
B	TCSP mandatory after incorporation	no	no	no	no	yes
C	Resident agent mandatory	yes	yes	no	yes	yes[120]

[120] Unless foundation officials are Guernsey licensed fiduciaries or authorised persons.

A. Information held by Registries and legal persons

A.1. Guernsey and Alderney Companies

1018. Guernsey companies are governed by the Companies (Guernsey) Law, 2008 (GCL). The relevant legislation for Alderney companies is the Companies (Alderney) Law, 1994 (ACL). Under section 134 of the GCL, the control of a Guernsey company lies with its directors. Ownership of Guernsey companies is by members, who may be legal or natural persons.

1019. The most commonly used type of companies are those limited by shares, where the liability of a member is limited to any amount unpaid on his shares. Companies may also be companies limited by guarantee, where a member agrees to guarantee a certain amount of the debts of the company, and his liability is limited to the amount of the guarantee. Companies limited by guarantee are mainly used by NPOs. The liability of members of companies may also be unlimited, and a company can also be of mixed liability, with shareholders, guarantee members and members with unlimited liability.

1020. Of the 18,000 or so companies currently registered, some 17,700 are limited by share and 194 by guarantee.

1021. All Guernsey and Alderney companies must register with the Guernsey and Alderney Registrars respectively. Pursuant to section 17 of the GCL the following information must be provided in support of the application for incorporation: the memorandum of association, statements in respect of the founder members, the number of shares/guarantees of each founder member (and their class) and the aggregate value of those shareholdings/guarantees, the names and addresses of the first directors, the names and addresses of the first resident agents, and the address of the registered office in Guernsey[121].

1022. The application may be accompanied by the articles of incorporation, which set out regulations for the conduct of the company. If it is not so accompanied, the standard articles prescribed by the Department of Commerce and Employment apply.

1023. Largely the same details have to be provided to the Alderney Registrar (Section 4 of the ACL). For both, Guernsey and Alderney companies, an application for incorporation of a company may only be made by a TCSP (section 17 (9) GCL and section 4(1)(a) of the ACL).

1024. The Guernsey Register records several details of companies[122] registered in Guernsey, including the

- company name (current and previous)
- address of the registered office (current and previous)
- date of incorporation,
- legal form and status of the company,
- company purpose,
- names and service addresses of its directors (current and previous)[123],

[121] Pursuant to section 30 of the GCL, a company's registered office must be in Guernsey respectively Alderney (section 32(1) of the ACL is the corresponding provision for Alderney).

[122] The details are set out in Section 15 and 17 of the GCL. Section 20 GCL states that only details set out in the memorandum of incorporation (Section 15) need to be registered. Nevertheless, the Office of the Registrar records all of the information listed in section 17 so it is available to the authorities, but does not necessarily make all of it public. This is a matter for his determination in the exercise of his powers under section 500, taking into account data protection principles.

- name of the resident agent (current and previous),
- memorandum of incorporation
- articles of association as the case may be (depending on whether bespoke articles or Standard Articles under section 17 (8) are adopted),
- unanimous and special resolutions, and
- annual returns/validations.

1025. The Alderney Register records largely the same details pursuant to sections 2, 3 and 4 of the ACL. In addition, the Articles of Association must be registered pursuant to Section 7 of the ACL.

1026. Section 496 of the GCL states that the Registrar shall keep and maintain a register of companies. Section 495 of the GCL states the Office of the Registrar is a public office. According to the Guernsey authorities this means that registered information is publicly available. This will include the details included in the memorandum of incorporation and additional information supplied under section 17 to the extent determined by the Registrar in the exercise of his powers under section 500. Alderney authorities stated that public access is recognised by the Companies (Alderney) Law (Fees) Ordinance 1995 as amended which allows the Registrar to charge for searches of the Register. For both, Guernsey and Alderney companies, all registered information is held electronically.

1027. Any changes concerning the name (section 25 of the GCL and 30 of the ACL), necessary particulars regarding the registered office (section 30 of the GCL and 32 of the ACL), the directors (sections 145 and 148 (2) of the GCL and section 93 of the ACL) or the resident agent (section 485 of the GCL and 152C of the ACL) must be notified to the Registrar within 14 days.

1028. Section 16 of the GCL requires every company to have articles of incorporation, which set out regulations for the conduct of the company. Section 42 provides for a company to alter its articles by way of special resolution. Section 178(7) of the GCL requires that every special resolution of a company be delivered to the Registrar within 30 days of it being passed. Similarly, under section 4(f) of the ACL, Articles of Association must be registered and any amendments must be notified to the Registrar under section 29 of the ACL. A company, which fails to comply with this notification requirement, is guilty of an offence, and subject to late filing fees of up to £100 (section 145(3) and 485(5) and (6). A failure to notify change of registered office under section 30 GCL/ section 32 ACL is not subject to sanctions because the change is not effective until the Registrar has entered it on the Register in the case of Guernsey companies or until written notice has been provided to the Registrar in the case of Alderney companies.

1029. Both, Guernsey and Alderney companies are also subject to an annual validation process (sections 234 GCL and 37 ACL). This requires them to provide details of any changes in respect of registered information to the Registry, and to confirm that the register of members, which has to be kept at the registered office, is current as at the end of the year to which the annual validation relates. Entities that fail to file an annual validation are subject to a late filing fee of £100 which is applied accumulatively for every month they remain in default. Any entities that still remain in default of the law at two months after the filing deadline date are then written to and advised that they have been added to a strike off list. This list is published for a period of 2 months. At the expiration of this two month period any entity still in default of the Law is struck from the Register unless cause to the contrary is shown (section 237 and 353 of the GCL and section 107 of the ACL).

[123] Where a director is not an individual, the following details have to be registered: its corporate or firm name, the registered office, legal form and the law by which it is governed, and if applicable, the register in which it is entered and its registration number in that register.

A.2. Limited partnerships with legal liability (Guernsey only)

1030. Limited partnerships with legal personality are governed by the Limited Partnerships (Guernsey) Law, 1995. Under section 9A, limited partnerships may have legal personality at the election of the general partners. If the general partners make an election for legal personality, this must be stated in a signed declaration filed with the Registrar at the time of registration. The limited partnership will then have legal personality, which must be stated on the certificate of registration, and the name of the limited partnership must contain the word "incorporated". Subject to this difference, the regime described below applies to limited partnerships with and without legal personality in exactly the same way.

1031. There are currently 1629 limited partnerships registered with the Guernsey Registry, some 400 of which have legal personality. 95% of the limited partnerships registered are established in connection with collective investment schemes, with the remaining 5% being established for the purposes of local trading.

1032. Under section 2, a limited partnership may have general partners, who have unlimited joint and severable liability for the debts of the partnership, and limited partners, whose liability for the debts of the partnership is limited to the extent of their contributions to its capital. Only a general partner can bind the partnership. Under section 8, limited partnerships must be registered with HM Greffier (in practice, with the Registrar of Companies in his capacity as deputy Greffier). Applications for registration must be accompanied by information in respect of the name of the limited partnership, the nature and principal place of its business, the address of its registered office (which under section 6 must be in Guernsey), and the term of the partnership. In addition the full name and address of every general partner must be given, which in the case of a partner that is a body corporate or a partnership should be the address of its registered office, or its principal office if it has none.

1033. The Register records the details of limited partnerships on the registry. This information is held electronically and is publicly available. The registry forms part of Guernsey's public records (section 7 of the Limited Partnerships Law).

1034. Under section 15, limited partnerships must keep copies at their registered office of all registration documents, the partnership agreement, and a register of all persons who are limited partners. This register must set out full names and addresses, together with the capital account of each limited partner and details of the amounts and dates of his or her contributions. These obligations are underpinned by criminal sanction for breach (fine of up to £10,000 on summary conviction or an unlimited fine on conviction on indictment – see section 15(10) and section 40(2)).

1035. Under section 10 of the Limited Partnerships Law, changes to the registration particulars must be provided to the Registrar within 21 days. Failure to do this is a criminal offence by both the partnership itself and by the general partner; it is punishable with an unlimited fine (Section 10). In addition, all limited partnerships must file an annual return which requires them to provide notification of any changes in respect of registration information to the Registry, including details in respect of partners (Regulation 3 of the Limited Partnerships (Fees and Annual Return) Regulations 2008).

A.3. Limited liability partnerships (LLPs) (Guernsey only)

1036. The relevant legislation is the recently introduced Limited Liability Partnerships (Guernsey) Law, 2013. Under section 1, an LLP is a body corporate with legal personality separate from its members, who may be legal or natural persons. Under section 5, members are not liable for the debts of an LLP. There are currently 12 LLPs registered at the Guernsey Registry. Most have been established in order to act as the general partner of a limited partnership.

1037. Under section 8, an application to the Guernsey Registry for the incorporation of an LLP may only be made by a TCSP, who must file an incorporation statement to which every person who

is to be a member of the LLP has subscribed his name and which contains the name of the LLP, the name and address of the resident agent, the nature and principal place of the LLP's business, and the address of its registered office, which must be in Guernsey.

1038. Under section 13, an LLP must have at least 2 members and on the registration of an LLP its members are the persons who subscribed their names to the incorporation statement. Section 13 also sets out certain categories of person who are disqualified from being a member of an LLP.

1039. The Register records the details of LLPs registered in Guernsey, including their name and registration number, the address of the registered office, the nature and principal place of business, and the name of the resident agent. This information is held electronically and is publicly available.

1040. Schedule 4 governs registers of members, and contains obligations which are underpinned by criminal sanction for breach (fine of up to £10,000 on summary conviction or an unlimited fine on conviction on indictment – see section 92(2)). Under paragraph 1, every LLP must keep a register of members at its registered office. In the case of a member who is a natural person, the particulars that must be recorded are his name and any former name, his address (which may be either his usual residential address or his service address), his nationality, his business occupation and his date of birth. Where a member's address in the register of members is a service address, under paragraph 47 the LLP company must keep a record of his usual residential address. Where a person becomes a member of an LLP and his address entered in the register is a service address, under paragraph 6 the LLP must within a period of 14 days after the date of appointment give notice to the Registrar of the member's usual residential address. Where a member is not a natural person, the register must record its corporate or firm name and any former name it has had in the preceding 5 years, the address of its registered office or principal office, its legal form, the law by which it is governed and the register in which it is entered together with its registration number if applicable.

1041. Under section 9, changes to the registration particulars must be notified to the Registrar within 21 days. The absence of notification is an offence punishable on summary conviction to a fine up to GBP 10 000 (applicable to the partnership and each general partner). Under schedule 4, changes to members or to the particulars contained in the register of members must be notified to the Registrar within 14 days.

1042. LLPs are also subject to an annual validation process. Section 22 of the LLP Law requires all LLPs to file an annual validation in each calendar year before 30th June. This must contain the name of the LLP, the name and address of the resident agent, the nature and place of business, the address of its registered office, and the name and address of members.

1043. Section 6(2) of the LLP Law requires the Registrar to keep and maintain a register of LLPs. Although there is no clear provision that stipulates that this information is publicly available, the authorities confirmed that there was nothing to prevent this, and public access is recognised by regulations which allow the Registrar to charge for searches of the Register

A.4. Foundations (Guernsey only)

1044. Foundations are governed by the Foundations (Guernsey) Law, 2012. Under section 1, a foundation may only be established by being entered on the register of foundations, and once established has legal personality separate from its founder. It is created by a person endowing it with capital, inscribing his name on its constitution and complying with the Schedule 1 requirements as to registration and others. Under section 4, a foundation must have a constitution, comprising a charter setting out the name, purpose and duration (if it is to subsist for a limited period only) of the foundation and a description of its initial capital, together with Rules governing its operation. Under section 9 a foundation must have a council which comprises at least 2 councillors, who may be legal or natural persons. Under section 10, if a foundation has a purpose in respect of which there are no beneficiaries, or there are disenfranchised beneficiaries (i.e. beneficiaries with no right to any information about the

foundation), a guardian must also be appointed. Under section 12, if no foundation officials are TCSPs, a resident agent who is a TCSP must be appointed. Under section 30, a beneficiary of a foundation may be identified in its constitution by name or may be identified by virtue of membership of a class or persons or a relationship with a particular person.

1045. Under paragraph 7(2), an application for registration may only be made by a TCSP, who must file with the Registrar the foundation's Charter, together with additional information including the names and addresses of the proposed councillors, the name and address of the proposed guardian and resident agent if any, and the address of the registered office in Guernsey (which under paragraph 2(1) is obligatory).

1046. Under Schedule 1 paragraph 4, information about a foundation is recorded on the register in two parts. Part A includes the name and registration number of the foundation and the name and address of its councillors and any guardian, together with details of the registered office. Part B comprises a statement of the purpose of the foundation, and all declarations and other documents filed with the Registrar. This information is held electronically. Part A is publicly available, and Part B may be disclosed to the Attorney General and to the GFSC to assist in the discharge of their functions, or to any person for the purposes of the investigation, prevention or detection of crime or for the purposes of any criminal proceedings in the Bailiwick or elsewhere (paragraphs 4(3) and 5(2) (e) to (g) of Schedule 1 of the Foundations Law).

1047. Under Schedule 1 paragraph 10 of the Foundations Law, if there is any change to the registration particulars, or a person becomes or ceases to be a foundation official, this must be notified to the Registrar within 21 days. Schedule 1, paragraph 10 (2) (a) of the Foundations Law provides that in default of compliance with this requirement, both the foundation and the foundation official shall be guilty of an offence, which is punishable with an unlimited fine - see section 48(2). In addition, under Schedule 1, paragraph 10 (2) (b) the Registrar may impose financial penalties on prescribed persons. In addition, under the Foundations (Annual Renewal) (Guernsey) Regulations 2014, foundations have to comply with an annual renewal process that involves updating all details relevant to the registration process, including details as to the councillors and the guardian and resident agent, if any.

Table 35

	Guernsey companies	Alderney companies	Limited partnerships with legal personality (Guernsey only)	LLPs (Guernsey only)	Foundations (Guernsey only)
Number as of end 2014	17'952	434	400	12	22
Registries					
Registration of entity name	yes	yes	yes	yes	yes
Registration of nature and principal place of business registered	yes	yes	yes	yes	yes, but not public
Registration of address of the registered office in Guernsey[124]	yes	yes	yes	yes	yes
Registration of name and address of registered agent	yes	yes	no resident agent required	yes	yes
Registration of basic regulating powers (articles of incorporation, partnership agreement, foundation rules)	yes	yes	no	no	no

[124] Registered office for all legal persons required to be in Guernsey or Alderney.

Registration of name and address of directors (general partners, councillors)	yes[125]	yes	yes[126]	yes	yes
Corporate directors or equivalent permissible	yes	yes	yes	yes	yes
Obligation to notify changes regarding all registration details	yes	yes	yes	yes	yes
Obligation to file annual validation (accuracy of registered information and compliance declaration)	yes	yes	yes	yes	yes
At registered office (not public)					
Information on shareholders or equivalent to be kept at registered office	yes[127]	yes	yes[128]	yes[129]	not applicable[130]
Information on number of shares held by each shareholder/member and categories of shares to be kept at registered office	yes	yes	yes	yes	not applicable
Information on shareholders or equivalent open to public	Yes[131]	Yes[132]	no	yes[133]	not applicable
Mandatory audit	yes (for large companies)	yes (for large companies)	no	no	no

B. Information held by Trust and Company Service Providers

1048. Beneficial ownership information is held by TCSPs, which are subject to the AML/CFT requirements, including the obligation to identify and verify the beneficial owner of the respective company. The involvement of a licensed TCSP after the incorporation stage is only mandatory for Guernsey foundations. For Guernsey and Alderney companies as well as LLPs there is no such legal requirement. However, a person involved on a by way of business basis in the establishment or administration of a Guernsey or Alderney companies or a partnership must be licensed and supervised by the GFSC based on the Regulation of Fiduciaries Law (see following paragraph for details). As a consequence such person must also comply with the AML/CFT requirements (subject to the exemptions that are explained under paragraph 1050

[125] The directors of an incorporated cell company are deemed to constitute the directors for each of its cells, and where the directors of an incorporated cell are different from the directors of its incorporated cell company these differences must be set out.

[126] In the case of a partner that is a body corporate or a partnership, the address of its registered office, or its principal office if has none, must be given.

[127] In the case of a protected cell company, both the members of its cells and the members of the core must be recorded, and in the case of an incorporated cell company, the members of each of its incorporated cells must be recorded. Incorporated cells or other companies that have over 50 members must keep an index of the names of the members to enable the account in the register of members of each member to be readily found.

[128] General partners are registered.

[129] Where a member's address in the register of members is a service address, the LLP must keep a record of his usual residential address. Where a member is not a natural person, the register must record its corporate or firm name, the address of its registered office or principal office, its legal form, the law by which it is governed and the register in which it is entered together with its registration number if applicable.

[130] Records of the foundation, including details of the founder and the foundation officials as well as records of all financial transactions including any payments to beneficiaries, to be kept at registered office

[131] see Section 127 (2) GLC

[132] see Section 73 (3) (c) ACL; "subject to such reasonable restrictions as the company may by its articles or in general meeting impose"

[133] The register of members must be open during ordinary business hours for inspection by any member without charge, and any other person on payment of a fee.

below).The authorities estimate that as a consequence, around 75% of Guernsey and 50% of Alderney companies are administered by TCSPs in practice. They also estimate that in practice the vast majority of limited partnerships with legal personality are administered by a TCSP, because currently 1707 out of 1709 of all limited partnerships (with or without legal personality) give the address of a TCSP as their registered office. The authorities further confirmed that of the 12 LLPs that had been established at the time of the onsite visit, only 1 did not have a TCSP as registered agent.

1049. As outlined in the analysis under Recommendation 12, the AML/CFT requirements, apply to all "regulated activities" specified in section 2 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law 2000 when carried out by way of business. The "regulated activities" expressly include (inter alia) the following services:

- the formation, management or administration of companies and partnerships, and the provision of advice in relation to the formation, management or administration of companies and partnerships, whether incorporated or established in or under the laws of the Bailiwick or elsewhere
- the provision to any such companies or partnerships of
  - corporate or individual directors or partners,
  - individuals or companies to act as company or corporate secretary or in any other capacity as officer of a company or partnership, other than a director,
  - nominee services, including acting as or providing nominee shareholders
  - registered offices or accommodation addresses
- acting as director of any company or a partner of any partnership, whether incorporated, registered or established in or under the laws of the Bailiwick or elsewhere
- the formation, management or administration of foundations, and the provision of advice in relation to the formation, management or administration of foundations, including (without limitation) –
  - acting as corporate or individual foundation official,
  - the provision to foundations of corporate or individual foundation officials.

Exemptions:

1050. Acting as trustee or custodian of a collective investment scheme authorised by the GFSC is exempted from the definition of regulated activities (section 3 of the Regulation of Fiduciaries Law). As a consequence, acting by way of business as a trustee or custodian of a collective investment scheme is not subject to licensing requirements under the Fiduciaries Law and thus there is no fiduciary that would be subject to the AML/CFT requirements. The purpose of the exemption in the Regulation of Fiduciaries Law for trustees and custodian of Guernsey authorised collective investment schemes is to prevent dual regulation, as a trustee or a custodian of the scheme must be licensed by the GFSC under the Protection of Investors Law 1987 ("the POI Law") and must comply with the AML/CFT requirements.[134] The availability of beneficial ownership information in relation to collective investment schemes in such cases is

[134] Under the POI Law a Guernsey registered or authorised collective investment scheme is required to have a designated administrator who must hold a licence issued under the POI Law. That designated administrator also has to comply with the AML/CFT requirements as it is carrying out controlled investment business. However, the designated administrator might treat an investment manager or custodian as the customer (in low risk situations where the intermediary is an appendix C business) and therefore carry out CDD on that person rather than on the investors in a collective investment scheme based on the discretion provided by section 6.5 of the FSB Handbook.

analysed in paragraph 1099.

1051. A further exemption from the application of the Fiduciaries Law and consequently from the application of the AML/CFT requirements are provided for persons

- acting as a partner of a partnership which has an established place of business within the Bailiwick provided that no services consisting of or comprising a regulated activity are supplied to the partnership by the partner (other than acting as partner) in order to exempt a very wide range of non–fiduciary activity that is commonly provided by partnerships, such as architectural or dentistry services and it is not considered necessary to regulate this activity for AML purposes. Authorities state, that information on partners carrying out this activity is still available to the authorities via personal income tax returns.
- acting as a partner of a partnership
  - which holds a licence to carry on controlled investment business under section 4 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 or which is exempt from licensing under section 29 of that Law, or
  - which holds an authorisation under section 8 of that Law,

  Like the exemption described in paragraph 1050 this exemption is to prevent dual regulation. Partners carrying out these activities must be licensed by the GFSC under the Protection of Investors Law 1987 ("the POI Law") and must comply with the AML/CFT requirements. The availability of beneficial ownership information in relation to collective investment schemes in such cases is analysed in paragraph 1099.

1052. In addition to the aforementioned exemption, the GFSC may exempt under Section 3 (1) (y) of the Fiduciaries Law "any particular activity, transaction or appointment" that would otherwise require a fiduciary license and that would be AML/CFT requirements. See paragraph 1141 for further details.

1053. Another exemption from the definition of regulated activities in the Fiduciaries Law applies for persons acting in an individual capacity as a director of not more than six companies. As a consequence this activity is not subject to a licensing requirement under the Fiduciaries Law. Nevertheless, the activity is still subject to the AML/CFT requirements. This is because paragraph 23 of Schedule 1 to the Proceeds of Crime Law expressly incorporates work that is covered by section 3(1)(g) of the Regulation of Fiduciaries Law when carried out by way of business (as also explained on the GFSC website). The evaluation team was informed after the onsite visit that the Registrar has recently provided the GFSC with details in respect of the number of individual directors acting as resident agents for not more than 6 companies, who are therefore exempt from prudential regulation but are nonetheless subject to the AML/CFT obligations. The evaluators were informed that the GFSC was analysing this information. This raises concerns whether this group of persons has been adequately supervised for compliance with AML/CFT requirements. The assessors were subsequently informed that there are currently 5185 individuals who are acting as directors for not more than 6 companies, and therefore come within the exemption in the Regulation of Fiduciaries Law.

Another exemption applies to persons acting as a director of a company where more than half in nominal value of the equity share capital of that company is held by –

(i) the director, as beneficial owner,

(ii) any close relative of the director, as beneficial owner, or

(iii) the trustees of a trust of which a person mentioned in subparagraph (i) or (ii) is a beneficiary,

1054. Authorities state that the objective of this provision is to relieve Guernsey residents of the need to obtain a fiduciary licence for acting as the director of a company which they or their family own.

1055. Finally, it has to be underlined that providing the above-mentioned company services (or "regulated activities") is only subject to the AML/CFT requirements if they are conducted by way of business. Pursuant to section 58(3) of the Regulation of Fiduciaries Law a person acts by way of business if he receives any income, fee, emolument or other consideration in money or money's worth for doing so, and would include gifts in exchange for providing services. Accordingly, the CDD requirements have not to be fulfilled where such a person is acting on an entirely voluntary basis, irrespective of the number of directorships held.

Excursus: Cellular companies

1056. Guernsey was the first jurisdiction to introduce a protected cell company (PCC) in 1997. PCCs were initially introduced to address concerns about risk contagion in the insurance industry, but are now also used in connection with collective investment schemes.[135] PCCs are governed by Part XXVII of the Companies (Guernsey) Law 2008.

1057. As at January 2015, out of the total of 17'894 companies 431 are cellular companies, of which 161 are incorporated cell companies with a total of 253 incorporated cells. The 270 protected cell companies account for a total of 1822 protected cells. 49% of these PCCs and 60% of these ICCs are either licensed insurers or Guernsey regulated funds. The remaining 51% of PCCs and 40% of ICCs are administered by TCSPs and are often used as vehicles to hold pensions or for multiple property developments according to the authorities. All PCCs and ICCs require the consent of and are scrutinised by the GFSC before they can be formed. They must also be administered by entities licensed by the GFSC.

1058. A PCC is a limited liability company and has a board of directors. A PCC may create one or more cells, the assets and liabilities of which are segregated from the assets of the PCC itself (the core) and from the assets and liabilities of other cells. A cell is established by a board resolution. The cells of a PCC do not have legal personality, but shares may be issued in respect of a particular cell ("cell shares") and the proceeds of the issue of any such shares will form part of the assets of that cell (section 444 (1) of the GCL). In addition to the register of the shareholders of the "core shares", a register of the shareholders of each of the individual cells in a ICC and PCC has to be kept at the registered office.[136] Typically the core shares are held by the licensed administrator.

1059. Usually, cell shareholders will have voting and other rights which are restricted to matters relating to the cell. For example, cell shareholders are unlikely to be able to vote on resolutions in respect of the PCC which do not affect cell shareholders or in respect of matters relating to other cells.

1060. While the cells of a PCC do not have legal personality, the effect of the legislation on PCCs is that the cells are de facto treated as if they have separate legal personality as far as the enforcement of civil liability or criminal penalties is concerned.[137]

[135] PCCs provide the possibility to establish a number of portfolios in the same company with fewer risks attaching to contagion of claims between asset classes or lines of business. Furthermore, PCCs are less expensive to administer than would be the case in a company with multiple subsidiaries. A single board, a single company secretary and a single administrator are required. As the cells of a PCC do not require registration with the Guernsey Registrar of Companies, they can be formed quickly by a board resolution. A PCC is also treated as a single legal entity for taxation purposes which can result in tax benefits.

[136] Section 123. (1) GCL requires for incorporated cell companies to keep a register of the members of each of its incorporated cells at its registered office. Section 123(7) GCL requires the register of members in the case of a PCC to distinguish between members of its cells and members of the core.

[137] For example, liabilities incurred in respect of one cell cannot be enforced against the assets of the core or another cell, and neither can liabilities incurred in respect of the core be enforced against the assets of the cells. The position is similar in respect of criminal penalties. A criminal penalty incurred by the act or default of an

1061. The assessment team takes the view that the particular nature of PCCs has also to be taken into account when applying CDD. That is to say that each cell should be treated as if it was a separate legal person and thus CDD should be applied to each cell and not only with respect to the core.

1062. Given the importance of PCC structures in Guernsey the assessors were concerned that neither the Proceeds of Crime Law nor the AML/CFT Handbook contained any rules on how CDD must be applied on PCCs. The financial institution's internal AML/CFT policies and procedures reviewed by the assessment team did not contain any instructions either. The need for such rules is confirmed by the fact that other jurisdictions (with a comparable PCC industry) have issued such rules.

1063. The assessors take the view that the wording of the FSB Handbook would allow financial institutions to identify and verify only the individuals ultimately holding a 25% or more interest in the capital or net assets of the legal body (Rule 113 of the FSB Handbook). As the individual cells do not have an interest in the capital or net assets of the core, there appears to be no clear enforceable requirement to identify and verify the beneficial owners of the cells.

1064. As regards incorporated cell companies (ICCs) the assessors have fewer concerns given that each cell of an ICC has legal personality and essentially forms a company within a company.

1065. Following the onsite visit, the GFSC has obtained confirmation of the position from relevant industry associations confirming that CDD obligations are understood by their members to apply to the individual cells of cellular companies. These statements, which were confirmed by a copy of the AML/CFT procedures of a major provider of captive insurance in Guernsey that was also provided, are accepted by the evaluation team. However, in order to ensure enforceability the authorities should clarify this requirement in the FSB Handbook.

C. Information held by resident agents

1066. Having a resident agent is mandatory for most Guernsey companies and as mentioned above, his/ her identity must be notified to the Registrar (sections 484 and 485 of the GCL). Resident agents must be either an individual director of the company (resident in Guernsey) or a TCSP. As at end of 2014, there were 191 legal persons registered as resident agents in Guernsey. In addition there were 2'904 natural persons acting as resident agents.

1067. The responsibilities and powers of resident agents are provided for in the GCL, the Companies (Beneficial Ownership) Regulations, 2008, and the Companies (Recognised Stock Exchanges) Regulations 2009. Moreover, the Commerce and Employment Department released a Guidance Note which is available on the Guernsey Registry website, to assist Guernsey registered companies to understand and comply with resident agent requirements. The company must keep a record of its resident agent's name and address.

1068. Under section 486, the resident agent must take "reasonable steps to ascertain the identity of the beneficial owners of all members' interests". This is subject to an exemption set out in the Companies (Beneficial Ownership) Regulations, 2008, whereby the obligation to obtain beneficial ownership information in respect of a member's interest does not apply where the relevant member holds less than 10% of the total voting rights of all the members of the company having a right to vote at general meetings. This exemption, which was introduced when the law was first enacted, has not been replicated for the purposes of the more recently introduced beneficial ownership provisions in respect of Alderney companies and LLPs. The authorities stated that the exemption for Guernsey companies will be reviewed in 2015 as part of the work carried out in connection with the national risk assessment.

officer acting in relation to the cell of a PCC may only be met by the assets of that cell and is not enforceable against the assets of the core or another cell.

1069. A resident agent is required to "take reasonable steps to ascertain the identity of the persons who are the beneficial owners of members' interests" in the respective company. Where a resident agent has ascertained, that a member of a company is not a beneficial owner of that member' s interest, he shall keep a record of the required details of the beneficial owner in respect of that member in the "record of beneficial owners". The record of beneficial owners has to be kept at the company's registered office. The record of the beneficial ownership structure must contain:

- for individuals: the name, usual residential address, nationality and date of birth; and
- for companies (including overseas companies): corporate or firm name, registered or principal office, legal form and law by which it is governed, and if applicable, the register in which it is entered and its registration number

1070. A corporate legal owner has no duty to notify the resident agent of any change in its ownership structure, but the resident agent may give the owner notice to disclose whether it holds its interest in the company for its own benefit or the benefit of another person, and if so, the details in respect of that person. Failure to answer the notice or giving a false answer is an offence (section 488) and should be reported by the resident agent to the company. In turn, the company may "as it thinks fit" restrict the rights of the member or even cancel the member's interest in the company (Guernsey Companies Law, section 489). Moreover, if the member of the company refused to provide the information, the resident agent may refer the matter to the police for investigation, as a criminal offence. There have been no instances to date of such action being taken.

1071. Resident agents are not required to keep records when the class of beneficial owners is "of such a size that it is not reasonably practicable to identify each member of the class" (Guernsey Companies Law, section 487(5)). The exact meaning of such an expression is unclear from the laws and regulations. Guernsey officials explain that this exception applies where a company has a large number of shareholders such that the burden of recording the beneficial owners would be excessive compared to the risk. However, there is no reference to the level of risk in the relevant provision of the company law. The authorities further stated that it is a matter for resident agents to use their judgement on the extent to which they can rely on this simplification.

1072. The term "beneficial owner" for the purposes of the Companies Law is not defined. The website of the Guernsey Registry contains different guidance documents. The guidance with respect to the term "beneficial owner" does not clearly refer to the ultimate natural person. The following wording used in the resident agent guidance published on the website of the Guernsey Registry actually suggests that a beneficial owner might also be a legal person: "in the case of a beneficial owner which is a Guernsey company or an overseas company (…)".

1073. Companies not required to have a resident agent are those listed on a recognised stock exchange, open-ended or closed-ended investment companies (meaning a collective investment scheme which are currently supervised by the GFSC under the Protection of Investors (Bailiwick of Guernsey) Law, 1987) or any other prescribed category of company (which currently are GFSC supervised companies and States Trading Companies) and subsidiaries of these exempt companies (section 483). As at end of 2014, 1722 companies claimed resident agent exempt status under this section.

1074. The Registrar undertakes reviews on a regular basis, and identifies companies that require a resident agent be appointed and contacts these companies for rectification (within a 2 week period). Failure to comply will result in the company being struck off the Register of Companies in accordance with Part XX of the Companies Law, if appropriate (36 companies have been struck off to this date). Experience in Guernsey is that companies that do not have a resident agent tend not to have an effective registered office so will be removed from the

Register on that basis. In 2014, 44 companies were listed for strike off and/or were removed from the Register for not having an effective registered office. In Alderney 2 companies have been struck off for not having a resident agent to this date.

1075. A resident agent requirement identical to the one existing in Guernsey was introduced on 1 January 2013 for Alderney companies (The Companies (Alderney) (Amendment) Law, 2012) and in the recently introduced Limited Liability Partnerships (Guernsey) Law, 2013 for Limited Liability Partnerships (LLPs). In contrast to the requirements for Guernsey companies, the requirement to ascertain beneficial ownership applies for both laws without any thresholds (compare threshold of 10% of the total voting rights foreseen in the Companies (Guernsey) Law).

1076. For Limited partnerships with legal personality there is no requirement to have a resident agent. However, Guernsey authorities maintain that in practice the vast majority of limited partnerships give the address of a TCSP as their registered office (currently 1707 out of 1709). New limited partnership legislation is currently being prepared which will underpin this practice by including a resident agent requirement.

1077. The resident agent and beneficial ownership information obligations apply to both cellular and non-cellular companies. In the case of incorporated cell companies, where each cell has legal personality, section 484(3) provides that the resident agent of an incorporated cell company is deemed to be the resident agent for each cell.

Legal persons governed by the law of other jurisdictions

1078. Legal persons governed by the law of other jurisdictions may conduct transactions, hold bank accounts or own real or personal property within the Bailiwick. These legal persons are governed by the laws of those other jurisdictions and it is the responsibility of a TCSP acting for such persons to familiarise itself with the applicable law as part of the competence requirements of the prudential regulatory framework. Usually, non-Bailiwick incorporated legal persons owning property or transacting in the Bailiwick are administered by a TCSP and so are subject to the CDD requirements in the AML/CFT framework. There are currently 10,397 non-Bailiwick companies administered by TCSPs. It would theoretically be possible for a non-Bailiwick incorporated legal person which is not administered by a TCSP to hold property or transact in the Bailiwick, but in those circumstances, the non-Bailiwick company would need to open an account or relationship with a Bailiwick bank or other financial services business or to purchase real property via a lawyer and estate agent, so would be subject to CDD by those parties in order to meet their obligations under the AML/CFT framework.

Access to Information on Beneficial Owners of Legal Persons (c. 33.2)

1079. The authorities have timely access to registration details and basic ownership information available at the relevant Registries. Most such information is immediately available on line or is set out on registers that are open for public inspection (see table No. 35). Any additional information that is not publicly available may be disclosed by the Registrar to the other authorities on request, without the need for a court order. The disclosure of residential address details of controllers without a court order by the Registrar to other authorities is permitted under section 151 of the GCL and Schedule 4 paragraph 9 of the LLPs Law. Under Schedule 1 paragraph 5 of the Foundations Law, the statement of the purpose of the foundation and all declarations and other documents filed with the Registrar may be disclosed by him to other authorities without a court order. All information held at the Alderney Company Registry is available by personal searches or by telephone/email enquiry.

1080. The authorities have access to the publicly available registers of shareholders or members referred to in Table 35 that are kept at registered offices (most importantly, Regulation 2 of the Disclosure Regulations, further relevant provisions are set out in the following paragraph).

1081. As regards beneficial ownership information, the above-mentioned CDD obligations in the AML/CFT regulatory framework, which are also underpinned by criminal sanctions, expressly require detailed information to be maintained, verified and kept up to date. The AML/CFT regulatory framework also addresses timeliness, as it specifies that documents and customer due diligence information must be kept in a readily retrievable manner, and must be made available promptly to any police officer, the FIS, the GFSC or any other person where such documents or customer due diligence information are requested pursuant to the regulations or any relevant enactment.

1082. Powers to obtain information from TCSPs without a court order are set out under section 23 of the Regulation of Fiduciaries Law, section 500 of the GCL, section 1C of the Charities and NPOs (Registration) (Guernsey and Alderney) Law, Regulation 2 of the Disclosure (Bailiwick of Guernsey) Regulations, 2007 and the Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007, section 1 of the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991, under paragraph 12 of Schedule 1 of the Gambling (Alderney) Law, 1999, under the schedule to the Al-Qaida (Restrictive Measures) Ordinances for Guernsey Alderney and Sark and under section 18(5) of the Terrorist Asset Freezing Law.

1083. Second, as outlined above a resident agent is required to take reasonable steps to ascertain the identity of the persons who are the beneficial owners of members' interests" in the respective company. Under section 490, a resident agent must disclose to the Attorney General, the Guernsey Financial Services Commission or the law enforcement agencies upon request any information he or she holds as required under the legislation. It is a criminal offence for a resident agent without reasonable excuse to fail to provide the requested information or to provide information that is materially false, deceptive or misleading.

1084. The requesting authority has to present a certificate to the resident agent stating that the information is sought for the purposes of (1) any criminal or regulatory investigation which is being or may be carried out, whether in Guernsey or elsewhere, (2) any criminal or regulatory proceedings which have been or may be initiated, whether in Guernsey or elsewhere, (3) the initiation or bringing to an end of any such investigation or proceedings, or (4) facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end if the disclosure is proportionate to what is sought to be achieved by it. The authority also has to confirm that it has satisfied itself that the making of the disclosure is proportionate to what is sought to be achieved by it.

1085. There are corresponding provisions applicable to Alderney companies and LLPS at sections 152I to 152L of the Alderney Companies Law and paragraphs 4 to 7 of Schedule 2 to the LLP Law respectively. As the resident agent must provide the relevant information upon request, it is accessible to the authorities in a timely fashion.

1086. In addition to these specific provisions, the generally applicable investigative powers under the criminal justice framework do not require a court order in some cases, and where a court order is required; it can be made on an urgent, ex parte basis.

Prevention of Misuse of Bearer Shares (c. 33.3)

1087. It remains the case that, as at the last evaluation, Guernsey companies cannot issue bearer shares because benefit rights attach to the register of members rather than to share certificates. Under section 121 of the GCL the members of a company are those whose names are entered on the register of members. Voting rights are set out at section 91 of the GCL and only apply to members. Distributions and dividends are dealt with at sections 301 to 309 and only apply to members. There are corresponding provisions for Alderney companies on the meaning of member, voting rights and distributions respectively at section 163, section 100 and sections 61 and 62 of the ACL.

1088. Under section 123 of the Guernsey Companies Law every company must keep a register of its members at its registered office, containing the names and addresses of the members, the date

on which a person was registered as a member, and the date on which a person ceased to be a member. A failure to identify a member by name and address is a criminal offence. In the case of a company having share capital, the register must state the shares held by the member distinguishing each share by its number and by its class, and the amount paid or agreed to be paid on the shares. As the register must identify the legal or natural person who holds that share, shares cannot be issued to "bearer". It has to be kept in mind that this mechanism is still prone to abuse given that the share register must not necessarily identify a natural person but must simply contain the name of a legal person. The shares of this legal person can be held by a (foreign) company with bearer shares which makes the ownership of the underlying Guernsey company less transparent and transferrable without notice to any share register.

1089. Bearer shares are also not permitted in Alderney companies. Under section 71 of the Alderney Companies Law every company must keep a register of its members at its registered office, and the name and address of each member must be recorded in the register of members. A failure to identify a member by name and address is a criminal offence. The register must also record the shares held by each member, distinguishing each share by its number and where applicable by its class. Therefore, as in Guernsey shares cannot be issued to "bearer" because the register must identify the legal or natural person who holds that share.

1090. Where TCSPs administer companies incorporated under the laws of jurisdictions which permit bearer shares to be issued, the CDD requirements in the AML/CFT framework must be applied. The same is true of the formation or administration of a Guernsey company with corporate members or directors who have been incorporated in a jurisdiction where bearer shares are permitted. Chapter 5.6 of the FSB Handbook requires businesses when assessing the risk of a relationship to consider whether any legal person who is the customer, beneficial owner or underlying principal has issued or has the potential to issue bearer shares, bearer warrants or bearer negotiable instruments, and if so, enhanced CDD measures must be undertaken.

1091. In addition, under section 77(e) of the Guernsey Companies Law, an overseas company cannot be registered with the Guernsey registry if it is empowered by its memorandum or articles or other equivalent constitutive documents to issue bearer shares. Overseas companies cannot be registered with the Alderney Registry.

Additional Element—Access to Information on Beneficial Owners of Legal Persons by Financial Institutions) (c. 33.4)

1092. Financial institutions have access to all of the publicly available information held by the Guernsey and Alderney Registries, and to the information on the registers of members maintained at the registered offices of the different legal persons referred to above (except for foundations who do not have members). The access to the register of members is granted by section 127 (2) of the GCL, section 73 (3)(c) of the ACL and schedule 4, paragraph 2 of the LLP Law. However, as outlined above, the Registries do not contain beneficial ownership information and members or partners listed in the registers to be maintained at the registered office can be legal persons or arrangements. Accordingly, these registers do not provide adequate access to information on beneficial ownership.

Effectiveness and efficiency

1093. The availability of basic information, including the proof of incorporation, legal form and status, the address of the registered office, basic regulating powers, and a list of directors or equivalent, is ensured by the registration requirements described under c. 33.1 (subsection A). The availability of information on the shareholders is warranted by the requirements to keep registers at the registered office. Most of this information is publicly available.

1094. The Guernsey and Alderney Registries actively supervise compliance with the Law through the annual validation process and the ongoing monitoring of filings at the Registry. Effective action appears to be taken against breaches identified. While the fees for late filings regarding changes of registered information are very low (up to £100) and therefore appear not to be

dissuasive, the authorities maintain that late notifications occur very rarely. As regards annual validations, the companies appear to comply effectively with their filing obligation. The backlogs in the filings reported by the Registries are negligible and companies that fail to file annual validations are in effect struck off from the registers within a reasonable timeframe.

1095. As regards beneficial ownership and control of legal persons adequate, accurate and timely information appears to be warranted where a licensed TCSP is involved in the administration of a Bailiwick legal person, which is subject to the CDD requirements under the AML/CFT framework. As outlined under Recommendation 12, the TCSPs met by the evaluation team demonstrated a high level of professionalism and good knowledge of their obligations with respect to the identification and verification of the beneficial owner.

1096. However, there are concerns whether persons acting as directors for not more than 6 companies, who are therefore exempt from prudential regulation but are nonetheless subject to the AML/CFT framework have been effectively supervised, given that the authorities were not in a position to provide details in respect of the number of these individuals.

1097. The assessors also considered the availability of adequate information regarding the beneficial owners of protected cells within PCCs for the reasons outlined in the analysis above. (see paragraph 1056 seq. for details). As outlined in the analysis, following the onsite visit, the GFSC has obtained confirmation of the position from relevant industry associations confirming that CDD obligations are understood by their members to apply to the individual cells of cellular companies. These statements, which were confirmed by a copy of the AML/CFT procedures of a major provider of captive insurance in Guernsey that was also provided to the assessors, are accepted by the evaluation team. However, the authorities should clarify this requirement in the FSB Handbook.

1098. Concerns also persist regarding those legal persons with no link to a licensed TCSP. According to the authorities' estimates, the number of such legal persons amounts to around 25% of all Bailiwick legal persons. According to the authorities, approximately half of these companies are asset holding vehicles, in other words companies that have been set up for the express purpose of owning particular property, typically a house. The authorities further argue that the other half primarily comprises companies where the director, resident agent and beneficial owner is the same person, which have been established for the purposes of local trading e.g. small building companies.

1099. However, as described above, the aforementioned number of legal persons without link to a licensed TCSP also includes a significant number of open-ended or closed-ended investment companies (i.e. collective investment schemes). At the same time the AML/CFT provisions described in the analysis above allow financial institutions to undertake CDD on the intermediary (e.g. foreign bank acting on the account of the ultimate investor) rather than undertaking CDD on the beneficial owner and underlying principal(s) for whom the intermediary is acting, if the collective investment scheme is registered or authorised as a fund under the Protection of Investors Law.[138] Accordingly, it would be possible for no domestic financial institutions to hold adequate beneficial ownership regarding collective investment schemes that fall into this category. While the authorities state that it is highly unlikely that any single investor will hold such a stake in a collective investment scheme that they would meet the 25% ownership threshold, the assessors emphasize that there are no safeguards in place to avoid such situations and financial institutions are not able to establish if significant ownership thresholds might be exceeded.

1100. The authorities further explained that although approximately 1300 limited partnerships (with or without legal personality) have been established in connection with collective investment

[138] It is recalled that these intermediary provisions are only applicable in circumstances where the intermediary is located in a jurisdiction on the list of countries in Appendix C and where the risk has been assessed as low by the financial institution.

schemes, only 400 are in fact registered or authorised as funds under the Protection of Investors Law and therefore able to rely on the intermediary provisions (the remaining 900 or so being co-investment vehicles or similar that do not comprise registered or authorised funds under the Protection of Investors Law). The majority of the 400 entities that are entitled to rely on the intermediary provisions are private equity collective investment schemes where the use of intermediary relationship provisions is very limited according to the GFSC and a letter from a significant local private equity fund manager.

1101. Beneficial ownership information obtained by resident agents does not fill the above mentioned gap regarding legal companies with no link to a licensed TCSP. In the absence of clear definition of beneficial ownership under the relevant company laws[139] and the fact that investment companies are not required to have a resident agent, this mechanism does not provide a full fall-back solution. Furthermore, for limited partnerships with legal personality there is no requirement at all to have a resident agent.

1102. As outlined above, Foundations (Guernsey) Law also provides for the possibility to establish a foundation for a non-charitable purpose. According to the provisions of the Foundations (Guernsey) Law, all foundations must have a purpose but need not have *beneficiaries* i.e. if there are no beneficiaries or a class of persons in whose main interest the foundation is being established. The purpose of a foundation without beneficiaries may be the holding of shares or another administrative function in relation to an underlying structure (e.g a foundation or company), which does have beneficiaries. The authorities confirmed that all purpose foundations and underlying structures are covered by the obligation to carry out CDD, as the definition of beneficial owner for the purposes of the AML/CFT framework covers any person who benefits from a trust or foundation or other legal arrangement and there is no exemption for purpose foundations.

1103. CDD must be carried out in respect of the founder i.e. the person who establishes the overall structure and any underlying structure, the guardian (an independent third party who must be appointed in respect of all foundations without beneficiaries in order to make sure that the purposes of the foundation are complied with) and any person who benefits from the purpose foundation or any underlying structure. However, the authorities emphasize that (following the idea of the non-charitable-purpose foundation) no economic benefit will be generated by a purpose foundation where its functions are purely administrative i.e. simply to own shares in or otherwise administer an underlying structure. Following this understanding, there are typically no beneficiaries that need to be identified.

1104. Arrangements of this kind are promoted by Guernsey TCSPs by emphasizing that such an arrangement enhances the confidentiality of investment and wealth management structures.[140]The authorities explained that this does not have any bearing on their ability to obtain information relating to these arrangements. The evaluation team does not contest this but has concerns regarding the impact on the ability of other financial institutions to conduct meaningful CDD on legal entities that are held by a purpose foundation (which as a result are ownerless vehicles) and their potential vulnerability to abuse (see also more detailed elaborations on non-charitable purpose trusts in paragraph 1119).

1105. Overall, it has to be acknowledged, that Guernsey was able to refer to a substantial number of successful cases where beneficial ownership was obtained by domestic authorities and shared with authorities of other jurisdictions, mainly in a tax context. They also informed that their experience as to the quality of the information that is available within the jurisdiction and the

[139] The company laws do not contain a clear definition of the term "beneficial owner" and the beneficial ownership definition used in the guidance published on the website of the Guernsey Registry is not fully in line with the FATF definition of beneficial ownership (a legal person - contrary to a natural person - might be identified as beneficial owner); The Alderney Registry does not provide any guidance at all in this regard.

[140] Foundations are particularly advertised as a suitable alternative to non-charitable purpose trusts for holding shares in private trust companies.

ease with which it can be obtained was recently reviewed by the authorities and the findings were extremely positive. This information was set out in a comprehensive document, which has been provided to the evaluation team.

1106. The evaluation team has received little feedback from other jurisdictions on their experiences regarding beneficial ownership information obtained by the Bailiwick authorities as only few jurisdictions have responded to the respective request by MONEYVAL. Guernsey authorities pointed out that this might be due to the fact that information exchange mainly takes place in a tax context.

5.1.2 Recommendations and comments

1107. The authorities should put in place specific measures to ensure the availability of accurate and complete beneficial ownership information for legal persons in whose management or administration no licensed TCSP is involved, given that the existing requirements for resident agents do not provide an equivalent mechanism as there they are not clearly required to identify and to take reasonable measures to verify the beneficial owner of legal persons (see paragraphs 1072 and 1101).

1108. The authorities should put in place specific measures to ensure the availability of accurate and complete beneficial ownership information on authorised or registered open-ended or closed-ended investment companies.

1109. The authorities should clarify in the FSB Handbook that the administrating FSB has to identify and to take reasonable measures to verify the identities of the beneficial owners of the cells.

1110. The authorities should put in place measures to ensure effective supervision of persons acting as resident agents for not more than 6 companies, who are therefore exempt from prudential regulation but are nonetheless subject to the AML/CFT obligations.

1111. Guernsey authorities should consider measures to facilitate access by financial institutions to beneficial ownership and control information, so as to allow them to verify more easily the customer identification data.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	LC	• Insufficient measures are in place to ensure that accurate, complete, and current beneficial ownership information is available for legal persons in whose management or administration no licensed TCSP is involved; • Insufficient measures are in place to ensure that accurate, complete, and current beneficial ownership information is available on authorised or registered open-ended or closed-ended investment companies where reliance can be placed on intermediary provisions.

5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and analysis

Recommendation 34 (rated LC in the IMF report)

Summary of 2011 factors underlying the rating

1112. In the IMF report of 2011 Guernsey was rated as Largely Compliant with Recommendation 34. The IMF stated that while the vast majority of trust arrangements seem to be covered by the CDD requirements of the AML/CFT framework, no measures are in place to ensure that

accurate, complete, and current beneficial ownership information is available for legal arrangements that are not administered by a licensed TCSP.

1113. There has been no change to the framework for legal arrangements since the last evaluation. Trusts, limited partnerships without legal personality and general partnerships are the only legal arrangements that can be created under the law of Guernsey, and there is no equivalent legislation in Alderney or Sark.

Measures to prevent unlawful use of legal arrangements (c. 34.1)

Table 36

		Trusts (Guernsey only)	Limited Partnerships without legal personality (Guernsey only	General partnerships (Guernsey only)
	Current number	not known	1229	not known
A	Registration mandatory	no	yes	No
B	TCSP mandatory after incorporation[141]	no	no	No
C	Resident agent mandatory	no	no	No

A. Information held by Registries or trustees/ partners

A.1. Trusts

1114. Trusts are governed by the Trusts (Guernsey) Law, 2007. There is no trust legislation in Alderney and Herm, thus it is only possible to set up trusts therein under customary law. Under section 1 of the Trusts (Guernsey) Law, a trust exists if a trustee holds or has vested in him, or is deemed to hold or have vested in him, property which does not form or which has ceased to form part of his own estate for the benefit of another person and/ or for any purpose, other than a purpose for the benefit only of the trustee. Under section 6, with the exception of unit trusts or trusts holding real property in Guernsey, formal documents are not essential for the establishment of a trust. In practice, where trusts are created within the professional and fiduciary sectors this is invariably done in writing to provide certainty, as the risk to a law firm or TCSP of creating a trust other than in writing would be unacceptable. The standard document is a declaration or deed of trust recording the terms on which the trustee named in the document holds the trust property. The initial trust property will be identified in the document and later additions to trust property recorded by a minute of the trustee's acceptance of the further asset as trust property. In accordance with the usual principles of trusts law, trust assets are held by a trustee as legal owner for the benefit of beneficiaries or for a purpose in accordance with the

[141] In those situations where persons are involved in the formation, management or administration of these legal arrangements by way of business, these persons must be licensed and supervised by the GFSC pursuant to the Regulation of Fiduciaries Law and must also comply with the AML/CFT requirements (subject to exemptions described in paragraphs 1141, 1145 and 991); see subsection B below for details.

trust deed. The trust does not have separate legal personality from that of the trustee, and therefore has no registered office or agent.

1115. There are no figures available on the total number of trusts governed under Guernsey law or the amount of assets held by Guernsey trusts. The annual return that must be provided to the GFSC's Fiduciary Division requires each TCSP to disclose the number of trustee appointments it has. The data is collated as at 30th June each year and as at 30th June 2014 there were 21,883 trustee appointments. The number of Guernsey trusts where no licensed TCSP has been appointed remains unknown.

1116. In addition, there were 628 trusts where a Guernsey licensed trustee services provider is not acting as the trustee (but in another capacity). As at the end of 2014 there were 151 full fiduciary licence holders and 37 personal fiduciary licence holders.

1117. The most common form of Guernsey trust is the private discretionary trust. There are in excess of 15'000 appointments of licensed fiduciaries. The number of discretionary trusts without an appointed licensed fiduciary is unknown.

1118. Under the discretionary trust the trustees are under a duty to use their discretion to apply the income and capital of the trust assets for the benefit of a class of beneficiaries. The trustees decide which beneficiaries benefit, and what proportion of the trust fund they receive. The beneficiaries have no right to either income or capital of the trust, but merely a hope that the trustees will exercise their discretion for their benefit. The settlor can give guidance (usually through a letter of wishes) to the trustees as to how they would like the trustees to exercise their discretion. In addition, the settlor has the possibility to appoint a protector, whose role is to enforce and oversee certain of the trust powers, such as the power to make trustee distributions, the power to force a trustee to retire in favour of a new trustee, the power to monitor investments and to generally supervise the conduct of the trustee on behalf of the settlor and beneficiaries.

1119. Another type of trust that is available in Guernsey is the non-charitable purpose trust (hereafter referred to as purpose trust). This is used within wealth management and investment structures. A purpose trust is established for one or more specific purposes. As a result there are no beneficiaries or class of persons in whose main interest the trust is being established. It is (inter alia) for the latter reason that under common law, trusts formed for non-charitable purposes are generally held to be void as there is no person with a right to enforce the purposes of the trust. It is also for this reason that a purpose trust must appoint an independent third party as an enforcer, to ensure that the purposes of the trust are complied with. As a consequence of the above-mentioned concept of the Guernsey trust law, any legal entity that is ultimately held by a non-charitable purpose becomes an ownerless or "orphan" entity. This circumstance is in fact promoted by Guernsey TCSPs, emphasizing that such arrangements enhance the confidentiality of private asset vehicles and investment structures. The authorities explained that this does not have any bearing on their ability to obtain information relating to these arrangements. The evaluation team does not contest this. The authorities also confirmed that the enforcers of purpose trusts are subject to CDD, and that because of the wide definition of beneficial owner in the AML/CFT Regulations, which includes any person who benefits from any form of legal arrangement, the CDD requirements in the AML/CFT framework apply to purpose trusts in the same way as to any other form of trusts. However, the authorities also emphasize that (following the idea of the non-charitable-purpose trust) no economic benefit will be generated by a purpose foundation where its functions are purely administrative i.e. simply to own shares in or otherwise administer an underlying structure. Following this understanding, there are typically no beneficiaries that need to be identified.

1120. The evaluation team has concerns regarding the impact on the ability of other financial institutions to conduct meaningful CDD on legal entities that are held by a purpose trusts (which as a result are ownerless vehicles) and their potential vulnerability to abuse.

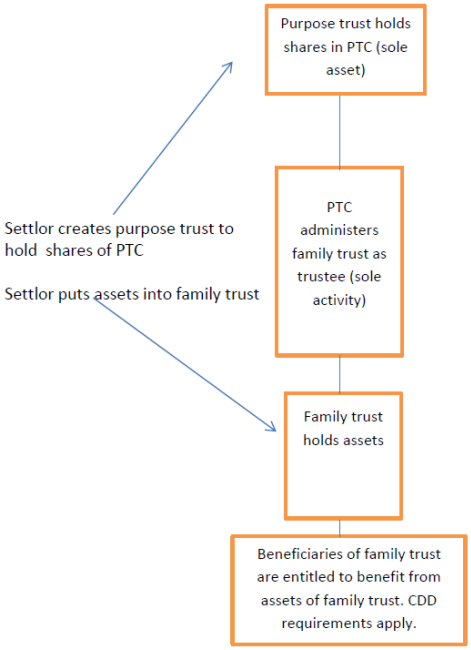
a) Use of purpose trusts in the context of private trust companies (PTC)

1121. A common reason for setting up a family trust is to prevent assets from passing to a particular family member under forced heirship provisions. Other reasons may be to reduce liability for inheritance tax or similar taxes in other jurisdictions, or to protect family assets from potential creditors of the settlor if he is at risk of becoming insolvent. The creation of the family trust brings with it the need to appoint a trustee, and a private trust company (PTC) is often used to fulfil this function. PTCs provide a means by which a settlor, or his family, can retain a greater degree of control over their trust affairs without compromising the validity of the trust(s). PTCs offer the settlor the possibility to compose the board of directors of the settlor, family members and/or trusted friends/advisors.

1122. Guernsey authorities explained that the PTC itself, and therefore its shares, have little or no intrinsic value. Although the PTC holds and administers the assets of the family trusts which are likely to be valuable, as with any other trustee it has no entitlement itself to the benefits of those assets and it does not own any property in its own right. Equally, because the PTC's only function is to administer the assets in the family trust, it will charge a fee to cover its own running expenses but will not carry out any activities that could lead to profits or surplus such as to generate dividends.

1123. The creation of the PTC in turn brings with it the need to appoint shareholders, and the purpose trust is established to fulfil this sole function. There are several reasons for establishing a purpose trust. First, if an individual were to own the shares in the PTC those shares would form part of his estate, which could compromise any succession planning that was the very reason for establishing the underlying family trust. Second, ownership of the PTC shares by an individual could have adverse tax consequences in some jurisdictions. Third, if a person owned the shares and subsequently became insolvent, the shares in PTC could be controlled by his creditors who might use that control to try to gain access to the assets within the family trusts administered by the PTC.

1124. The authorities further explained that although, as indicated above, purpose trusts are included within the scope of the AML/CFT framework, in practice the property held by the purpose trust in this context neither generates financial assets or benefits given that the only purpose of the purpose trust is to form the PTC and hold its shares. The only property held by the trustees of the purpose trust is the shares in the PTC (apart from possibly some limited assets that may have been settled into the purpose trust to cover start-up administration etc. costs). For the reasons given above, PTC shares have a nominal value only. The shares only allow for control of the underlying PTC without any economic benefits attached.



1125. The authorities confirmed for the avoidance of doubt that settlors under structures of this kind are subject to CDD. They also point to the fact that the terms of a purpose trust do not allow for making payments to third parties (a beneficiary). Otherwise it would not be a purpose trust. Any attempt to confer benefit on a third party would be a breach of the purposes of the trust and subject to challenge by the enforcer.

b) Use of purpose trusts for structuring 'off-balance sheet' investments

1126. Non-charitable purpose trusts are also used for securitisation and for structuring 'off-balance sheet' investments or as. The advantage for a company when taking transactions off balance sheet is mainly, that such transactions have not to be consolidated into the group accounts of the structuring entity, thereby making the financial position of this entity look better. This can also facilitate compliance with regulatory requirements (e.g. capital requirements of financial institutions).

1127. To take a transaction off balance sheet of the main company requires that it be performed by a separate company which is not a "subsidiary" as defined by the relevant legislation. Usually such definitions are put in terms of control of the company or of its voting rights. In order to avoid that an entity is considered as a subsidiary, a purpose trust is used as a holding vehicle to create an ownerless entity. By way of example the quasi-'subsidiary' company's shares might be divided into two classes, voting shares with no economic benefits attached and non-voting shares carrying all the economic benefits. The voting shares are held by an offshore trust company on the terms of a purpose trust.[142] The non-voting shares are held by the main company (i.e. the "quasi-parent parent company"), which thereby benefits from the assets owned by the legal person without being regarded as having control in terms of accounting or other rules.[143]

1128. Guernsey authorities stated that there are 276 appointments of licensed fiduciaries for non-charitable purpose trusts. The number of underlying entities that are held by purpose trusts (and therefore being orphan vehicles) as well as the number of purpose trusts without an appointed Guernsey licensed fiduciary is unknown.

[142] The purpose trust is settled by the main company (i.e. the "parent company").
[143] For the avoidance of doubt the authorities emphasize that the AML/CFT framework applies to this situation in the same way as to any other structure or arrangement involving trusts.

1129. As with many other jurisdictions in which trusts can be created, Guernsey trusts are not subject to a system of registration. There is no requirement to file information to government authorities except for the situations outlined in sub-section C "Information held by GFSC and tax authorities".

1130. Pursuant to section 25 of the Trusts Law a trustee required to keep "accurate accounts and records of his trusteeship". This obligation is not specified by the Trusts Law but the authorities confirmed that its scope is well understood from case law as requiring a trustee to maintain clear and distinct accounts of his administration, together with all supporting vouchers and other documentation. The authorities maintain that this obligation includes all relevant documents including the trust deed, accounting records and records of transfers of property made by the settlor. However, the trust deed might not ensure adequate information given that the trust deed might only mention a corporate settlor or nominee settlor or corporate beneficiary. A trustee that is not covered by the AML/CFT regime (that is, one who is not acting by way of business) is not required by law to identify, verify and keep records of the individuals behind the corporate settlor, nominee settlor or corporate beneficiary.

A.2 Limited Partnerships without legal personality

1131. Limited partnerships with legal personality are governed by the Limited Partnerships (Guernsey) Law, 1995. Under section 2, a limited partnership may have general partners, who have unlimited joint and severable liability for the debts of the partnership, and limited partners, whose liability for the debts of the partnership is limited to the extent of their contributions to its capital. Only a general partner can bind the partnership.

1132. There are currently 1298 limited partnerships without legal personality. 95% of the limited partnerships registered are established in connection with regulated activities. These limited partnerships are collective investment funds or involved in the overall fund relationship through, for example, use as co-investment vehicles or carried interest vehicles, with the remaining 5% being established for the purposes of local trading.

1133. Under section 8 of the Limited Partnerships (Guernsey) Law, limited partnerships must be *registered with HM Greffier (in practice, with the Registrar of Companies in his capacity as deputy* Greffier). Applications for registration must be accompanied by information in respect of the name of the limited partnership, the nature and principal place of its business, the address of its registered office (which under section 6 must be in Guernsey), and the term of the partnership. In addition the full name and address of every general partner must be given, which in the case of a partner that is a body corporate or a partnership should be the address of its registered office, or its principal office if it has none.

1134. The Registrar records the details of limited partnerships on the Register. This information is held electronically and is publicly available. The Register forms part of Guernsey's public records.

1135. Under section 10 of the Limited Partnerships Law, changes to the registration particulars must be provided to the Registrar within 21 days. In addition, all limited partnerships must file an annual return which requires them to provide notification of any changes in respect of registration information to the Registry, including details in respect of partners (Limited Partnerships (Fees and Annual Return) Regulations 2008). The required details include the full name and address of every general partner.

1136. Under section 15, limited partnerships must keep copies at their registered office of all registration documents, the partnership agreement, and a register of all persons who are limited partners. This register must set out full names and addresses, together with the capital account of each limited partner and details of the amounts and dates of his or her contributions. Failing to properly maintain the register of limited partners is an offence punishable on summary conviction to a fine up to GBP 10 000 (applicable to the partnership and each general partner) or an unlimited fine on conviction on indictment – see section 40 (2).

A.3 General Partnerships

1137. General Partnerships are governed by the Partnership (Guernsey) Law 1995. General partnerships are primarily formed for the purposes of providing services within the jurisdiction in respect of various areas of activity such as dentistry or legal services. According to the authorities, it would be very unusual for there to be underlying owners of partnerships of this kind.

1138. Ordinary partnerships are not registered by a public authority (neither the States of Guernsey nor the GFSC) unless their activities are specifically covered by statute (for example, in the case of a financial services business).

1139. There are no specific requirements for partnerships to retain information under the Partnership Law.

B. Information held by Trust and Company Service Providers

B.1 Trusts

1140. Trustees that perform regulated activities, including acting as corporate or individual trustee or protector for trusts and the provision to trusts of corporate or individual trustees or protectors (section 2 of the Fiduciaries Law) must be licensed by the GFSC and are subject to the obligations concerning the acquisition, retention and production of information arising under the Fiduciaries Law and the AML/CFT regime, if this activities are performed by way of business. The regulation of trust services is in place for nearly 15 years.

1141. This regime is subject to some exemptions (section 3 of the Fiduciaries Law) for activities that are supervised under other regulatory laws (e.g. acting as a trustee or custodian of a collective investment scheme authorised by the GFSC under the Protection of Investors Law) and so are also covered by the AML/CFT framework. In addition, the GFSC is empowered under Section 3 (1) (y) of the Fiduciaries Law to exempt "any particular activity, transaction or appointment" upon application.

1142. The GFSC has informed the assessment team that it has granted 671 exemptions of which 550 remain active. Exemptions have often been provided to corporate vehicles acting as general partners of limited partnerships being formed as co-investment vehicles or carried interest vehicles in connection with a Guernsey regulated collective investment scheme. Applications for exemption have been made to the GFSC which decides whether, on the basis of risk and the limited activities proposed whether an exemption should be granted. Some applications have been refused. Exempted persons must be administered by a licensed entity (this is a requirement of the GFSC) who is subject to AML/CFT obligations and responsible for ensuring that adequate beneficial ownership information is available in relation to exempted persons. In 2012 the GFSC reviewed all of the exemptions it had granted to identify any changes and to determine whether the exemptions were still required. This resulted in a number of applications to vary the terms of exemption and in some cases the exemption was no longer required because the fiduciary activity had ceased.

1143. Out of the 671 exemptions granted, 31 were granted to Private Trust Companies (PTCs). A PTC is a company which acts as trustee to a trust (or group of trusts) for families, and for other groups who share a common interest. Although acting as a trustee is a regulated activity, under section 2 of the Fiduciary Law, a PTC is exempt from the requirement to have a full fiduciary licence where it fulfils certain criteria, which the GFSC has published on the Fiduciary pages of the GFSC's website regarding PTCs. In essence a PTC cannot receive a fee, cannot market its services and can only act for just one family or group which shares a common interest. Furthermore, the PTC must be administered by a company or partnership which holds a full fiduciary licence. This administration activity is regulated activity for AML/CFT purposes, as well as the Regulation of Fiduciaries Law. The licensed fiduciary must undertake CDD measures upon the owners of PTCs and external board members. Each year the licensed

fiduciary must notify the GFSC of how many PTCs which are not acting by way of business is that it is responsible for.

1144. If the PTC does receive a fee (even if it is merely acting as a conduit and paying it out to a third party) then it will need to apply for a specific discretionary exemption. When granting such a discretionary exemption, it is the Commission's policy to impose a standard condition requiring the full fiduciary licensee to maintain at all times at least one executive director on the board of the PTC. This is to ensure that the administering licensed fiduciary can exercise a degree of control over the PTC and can provide the PTC with an experienced and knowledgeable professional trustee to guide the board. This also enhances the reach the GFSC has over the operation of the PTC should the need arise. Beneficial ownership information and details of its directors must accompany the application. The directors are subject to a fit and proper check by the GFSC.

1145. Apart from the aforementioned exemption (section 3 (1) (y) of the Fiduciaries Law) all activity by way of business in relation to trusts comes within both the prudential and the AML/CFT regulatory frameworks. This means that the CDD requirements described under Recommendation 12 are applicable, and specific provision is made for trusts. Under regulation 19 of the FSB Regulations, beneficial owner includes a natural person who is the beneficiary of a trust in whom an interest has vested or any natural person who appears likely to benefit from that trust, and underlying principal includes the settlor, trustee, protector or enforcer of a trust. In addition, sections 4.6.5 and 4.6.6 of the FSB Handbook contains specific provisions in relation to identification and verification requirements applicable when establishing a trust relationship or entering into a relationship with a customer that is a trust. These requirements are described in detail under section 4.1 of the report.

1146. The wide definition of way of business in the Regulation of Fiduciaries Law, as described under Recommendation 33 above, means that (subject to the observations regarding exemptions granted by the GFSC) the only trusts outside the scope of the prudential and AML/CFT regulatory frameworks are those where services in connection with the establishment or administration of the trust are provided on a voluntary basis. Guernsey authorities maintain that in practice this invariably means trusts where a person is acting in the context of a family or social relationship, so is fully aware of the identity of the underlying principal or settlor and the money laundering or terrorist financing risk is negligible.

1147. Typical examples according to the Guernsey authorities are a parent holding property on behalf of a child, or a person acting as trustee of a trust set up for the purposes of a local charity, choir or sports club to which he belongs. Trusts without a regulated trustee that are established for charitable or social purposes will come within the requirements of the NPO framework if they meet the thresholds for assets or annual income.

1148. The authorities also point out that information from a number of sources is available to the GFSC to enable it to assess whether an unregulated person performing trust services should in fact be regulated. These include the NPO Register, requests for assistance from overseas authorities that involve possible trust-related activity in the jurisdiction (no requests to date have involved unregulated trustees), tip offs from financial services providers who have been approached by unregulated trustees or from other Guernsey residents and complaints from beneficiaries.

1149. In any case where the GFSC looks into this issue, it carefully considers why a person might be acting as a trustee and any incentives for doing so. The GFSC referred to a recent example where the GFSC's enquiries revealed that some unregulated trustees should in fact have been regulated involving four individuals who acted as co-trustees for more than 100 trusts. The individuals had provided these trust services free of charge but received commission payments through related insurance services. The GFSC determined that this practice amounted to acting by way of business. Guernsey authorities take the view that in theory a person could act as an

unregulated trustee of a trust that is established for the benefit of overseas residents or activities, but that in practice it was highly unlikely that in the absence of a family connection, a person in the Bailiwick would agree to act on a voluntary basis in those circumstances.

1150. In addition, Guernsey authorities stress that any person acting as an unregulated trustee who wished to hold property or transact in the Bailiwick on behalf of the trust would need to open an account or relationship with a bank or other financial services business, and could only buy or sell real property on behalf of the trust via a lawyer and estate agent. In those circumstances the other parties to the transaction would be subject to the AML/CFT framework and would therefore have to carry out CDD in respect of the trust. However, where financial services are only sought outside Guernsey, this mechanism would not ensure that relevant information is available within the Bailiwick.

1151. Guernsey authorities take the view that the risk of an unregulated trustee not disclosing the fact of his trustee status in an attempt to avoid or shorten the CDD process is low, because under section 42 of the Trusts Law, trustees who act for a trust in transactions or matters involving third parties incur no personal liability to such parties if they have informed them that they are acting as trustees. This applies to all trustees, irrespective of whether they are acting in the way of business or on a voluntary basis.

B.2 Limited partnerships without legal personality

1152. As outlined under Recommendation 33 (section 4.1, subsection B of the report) acting as a partner of a partnership, the formation, management or administration of partnerships (including limited partnerships) as well as other services are subject to licensing requirements under the Fiduciaries Law and subsequently subject to the AML/CFT framework when carried out by way of business.

1153. An exemption from the application of the Fiduciaries Law and consequently from the application of the AML/CFT requirements are provided for persons

- acting as a partner of a partnership which has an established place of business within the Bailiwick provided that no services consisting of or comprising a regulated activity are supplied to the partnership by the partner (other than acting as partner) This exemption is to avoid the regulation of non–fiduciary activity (e.g. dentistry).
- acting as a partner of a partnership
  - which holds a licence to carry on controlled investment business under section 4 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 or which is exempt from licensing under section 29 of that Law, or
  - which holds an authorisation under section 8 of that Law. This exemption is to prevent dual regulation under the Fiduciaries and the POI Law.

1154. As mentioned above, the authorities maintain above 95% of limited partnerships are collective investment schemes administered by licensed fund managers who are subject to the AML/CFT framework. However, it has to be highlighted that that the fund manager is not necessarily required to identify and verify the ultimate beneficial owners of the fund (i.e. the ultimate investors) but is allowed to treat an intermediary as if it were the customer under certain circumstances (see analysis of provisions on "intermediary relationships" under c.5.9 for further details). As a consequence, there is a gap in respect of the obligation to obtain information on the beneficial owners of partnerships that are investment schemes. As indicated above in respect of legal persons, the authorities take the view that the extent to which the gap is an issue in practice is limited, because it only applies to legal persons or arrangements that are registered or authorised as funds under the Protection of Investors Law. The assessors consider however, that the number of registered or authorised funds (400) and the assets held within these funds are significant. The authorities also maintained that the majority of collective investment schemes

that fall into that category do not in fact rely on the intermediary provisions. A letter from a significant local private equity fund manager was provided to the assessors to substantiate this.

B.3 General partnerships

1155. Where general partnerships involve the provision of legal, accountancy or estate agency services they must be licensed by the GFSC, and are subject to the requirements of the AML/CFT framework. Equally, partnerships that provide financial services business must be licensed by or registered with the GFSC, and are subject to the requirements of the AML/CFT framework.

1156. In addition, the CDD obligations under the regulatory frameworks referred to above in respect of limited partnerships apply in the same way to the formation, management or administration of general partnerships as well as acting as a partner where this is done by way of business. There are no figures available on the number of general partnerships that are not subject to the requirements of the AML/CFT and prudential framework.

C. Information held by GFSC and tax authorities

C.1 Trusts

1157. A significant proportion of Guernsey trusts are established as pension schemes. Licensed fiduciaries hold trustee appointments in respect of just over 2,000 Guernsey trusts established as pension schemes, which have to be declared to Guernsey's Income Tax Office. These schemes have a total number of Bailiwick and non-Bailiwick members (beneficiaries) of 11,000.

1158. The GFSC is aware that in addition to the number of pension trusts under the trusteeship of licensed fiduciaries there are a number of Bailiwick residents who have established pension trusts with lay trustees acting in a purely pro bono basis. However, in order for the member to obtain the tax benefits attached to pensions, these schemes must be disclosed to the Income Tax Office for approval regardless of whether they have a licensed fiduciary acting as trustee or not. Under this system the identity of both trustees and members are available to the Guernsey authorities.

1159. Guernsey authorities also point to the fact that the personal income tax return issued to persons subject to the domestic tax regime contains a section requiring them to declare any interest they may have in a settlement and that includes trusts.

C.2 Limited Partnerships without legal personality

1160. Out of 1229 limited partnerships without legal personality there are currently 400 limited partnerships specifically authorised or registered as funds under the Protection of Investors Law which must be administered by a licensed administrator subject to the AML/CFT requirements and supervised by the GFSC.

1161. However, as outlined under paragraph 558 the designated administrators are allowed to treat an investment manager or custodian as the customer and therefore carry out CDD on that person rather than on the investors in a collective investment scheme (based on the intermediary provisions in section 6.5 of the FSB Handbook).

1162. A Guernsey collective investment scheme that does not meet the criteria to be an authorised or registered fund under the POI Law (typically because it is very narrowly held and there is no third party management of its assets) will not come within the exemption in the Regulation of Fiduciaries Law. Consequently any person who acts as a trustee or custodian of such a scheme is carrying out regulated activity for the purposes of the Regulation of Fiduciaries Law and is therefore subject to the supervision of the GFSC and to the AML requirements. This is not an

intermediary relationship so the intermediary provisions in Chapter 6 of the GFSC's AML/CFT Handbook will not apply.

C.3 General Partnerships

1163. Information about the activities and profits of general partnerships is available to the Income Tax Office from the income tax returns made by the domestic partners. The Director of Income Tax may make this information available to the law enforcement agencies using the gateways in section 9 of the Disclosure Law in appropriate cases.

Non-Bailiwick Guernsey legal arrangements

1164. These arrangements are governed by the laws under which they are formed. The Royal Court of Guernsey has jurisdiction over trusts formed under the laws of other jurisdictions to the extent that such trusts have Guernsey-resident trustees or property situated or administered in Guernsey.

1165. It is possible, although unusual, for a Bailiwick trustee to act as trustee of a trust formed under the laws of another jurisdiction (usually the United Kingdom or Jersey). Trustees acting as trustees of trusts formed in other jurisdictions may conduct business or hold bank accounts or real or personal property within the Bailiwick. Generally, non-Bailiwick trusts owning property or transacting in the Bailiwick are administered by TCSPs, who are responsible for familiarising themselves with the applicable trusts law as part of the competence requirements of the prudential regulatory framework and must comply with the CDD requirements under the Bailiwick's AML/CFT framework. It would theoretically be possible for an unregulated person to act as trustee of a trust or to administer any other legal arrangement formed under the laws of another jurisdiction, and to hold property or transact in the Bailiwick on behalf of that legal arrangement. Such a person would in those circumstances need to open an account or relationship with a Bailiwick bank or other financial services business subject to the AML/CFT framework, or to purchase real property via a lawyer and estate agent who would also be subject to the AML/CFT framework, and such persons would therefore be obliged to carry out CDD on the trust or other legal arrangement.

Timely access to adequate, accurate and current information on beneficial owners of legal arrangements (c. 34.2)

1166. The general information-gathering powers of the authorities under the supervisory and criminal justice frameworks described above in respect of legal persons apply equally in respect of all legal arrangements. In addition, the availability of information under the Limited Partnerships Law described under Recommendation 33 above applies to limited partnerships without legal personality.

1167. As indicated above, the CDD obligations in the AML/CFT regulatory framework require detailed information to be maintained, verified and kept up to date, and these requirements are underpinned by criminal sanctions. There are additional specific requirements in place for trustees and limited partnerships. Under section 25 of the Trusts Law, trustees are required to keep accurate accounts and records. This applies to all trustees, whether regulated or not, and in the case of regulated trustees is in addition to the obligations under the AML/CFT framework. However, the Trusts Law does not require that these "accounts and records" are stored within Guernsey and timely access would therefore not be warranted in respect of unregulated trustees, i.e. those who are acting pro bono, in the event that they were to choose to store the records of their trusteeship overseas. The Guernsey authorities maintain that the prospects of unremunerated trustees doing this in practice are remote. The specific requirements in respect of limited partnerships are as set out at 33.2 above.

1168. The provisions under the regulatory and criminal justice frameworks outlined above ensure that timely access to ownership information by the authorities in respect of legal persons apply equally to legal arrangements. Timely access to information relating to limited partnerships is

also available from the Guernsey Registry or from the register of limited partners maintained at the registered offices of limited partnerships as outlined at criterion 33.2 above.

1169. As in other trust jurisdictions, Guernsey trust law allows for flee clauses, which specify circumstances in which the law governing a trust (or in some jurisdictions, the location of its assets) will change. They are usually aimed at protecting trust assets in the event of unforeseen circumstances, and typical triggers are regime changes or other events leading to instability which could result in trust assets being at risk of appropriation by third parties under the existing proper law of the trust. This could happen for example where a country amended its trust legislation to enable the creditors of a settlor to treat assets held in a trust governed by the law of that country as the property of the settlor.

1170. The position in Guernsey law is set out at section 51 of the Trusts Law, which states that the terms of a trust may provide for the proper law of the trust to be changed from the law of Guernsey to the law of any other jurisdiction. This is subject to section 65, which provides that a foreign trust is unenforceable in Guernsey to the extent that:

(a) it purports to do anything contrary to the law of Guernsey,

(b) it confers or imposes any right or function the exercise or discharge of which would be contrary to the law of Guernsey, or

(c) the Royal Court declares that it is immoral or contrary to public policy.

1171. If the proper law of a Guernsey trust were to change to the law of another jurisdiction, the position would become the same as if the trust had been subject to the law of that jurisdiction from the outset, i.e. the position as described in paragraph 1164 seq. of the report under the heading "Non-Bailiwick Guernsey legal arrangements". The Royal Court would still have jurisdiction over the trust itself in the event that it had any Guernsey–resident trustees or property located in or administered in Guernsey, and any Guernsey trustee acting as a trustee of the trust would still be subject to the supervisory regime under the Regulation of Fiduciaries Law and the AML/CFT framework. Equally any business relationship with a financial services business or a prescribed business involving trust property would still be subject to the AML/CFT framework in the same way as for any other trust.

Additional elements

1172. Financial institutions have access to publicly available information held by the Guernsey Registry in respect of limited partnerships (i.e. information on general partners), and to the information on the register of limited partners maintained at registered offices (i.e. information on limited partners). They also have access to information about any trusts, limited partnerships or general partnerships that are charities or NPOs via the publicly accessible part of the NPOs register at the Guernsey Registry (i.e. the NPO's name, registration number, business address, purpose, status and status date, plus a contact name and address and the name and role of title of NPO officials or officers)

1173. However, as regards the important bulk of non-charitable trusts there are no measures in place to facilitate access by financial institutions to beneficial ownership and control information, so as to allow them to more easily verify the customer identification data. The authorities believe that the money laundering and terrorist financing risks presented by legal arrangements are fully addressed.

Effectiveness and efficiency

1174. As outlined under Recommendation 12, the TCSP sector demonstrated overall a good understanding of their AML/CFT obligations and a mature approach to applying customer due diligence measures arising from their continuous involvement in formation and administration of legal entitles and arrangements. In addition, it has to be stressed that the regulation of trust

services is in place for nearly 15 years. Except for the effectiveness issues identified under R. 12 the AML/CFT requirements for TCSPs appear to be well established and extensive in scope.

1175. In those cases in which a licensed TCSP is involved in the administration of a trust timely access to adequate, accurate and current information on beneficial owners appears to be warranted. Authorities referred to several cases in which foreign supervisors and law enforcement agencies expressed their satisfaction with the quality of beneficial ownership information provided in the context of international cooperation.

1176. As regards trusts that are not administered by a TCSP only the record keeping requirements for trustees pursuant to the Trustee Law are applicable. However, this obligation does not appear to be a sufficient equivalent to the requirements under the AML/CFT framework and therefore does not seem to ensure the availability of adequate, accurate and current information on the beneficial ownership as required under the FATF Recommendation. Furthermore, the Trusts Law does not require that these "accounts and records" are stored within Guernsey and timely access would therefore not be warranted in the event that an unregulated trustee chose to store records overseas. Under the Partnership Law there are no specific requirements at all for retaining information on the beneficial ownership.

1177. Given that the number of trusts and general partnerships that are no administered by a TCSP cannot be ascertained, the number of legal arrangements for which beneficial ownership information is insufficient or unavailable, remains unknown. This situation also constrains the authorities in identifying persons providing regulated activities under the Fiduciaries Law services on a professional basis without a respective license.

1178. The Bailiwick authorities take the view that only a small proportion of trusts are not administered by a TCSP and that they are at limited risk of being abused for the purposes of ML or TF. Authorities maintain that the activity and relationships with which these arrangements are typically concerned are not regarded as giving rise to any realistic risk of abuse for money laundering and terrorist financing purposes. The authorities argue that this view is confirmed by the fact that other than the one case involving an unlicensed TCSP (which in any event was not related to trusts), none of the money laundering investigations from 2008 to date has involved unregulated persons acting on behalf of legal arrangements, and also by the fact that, as with legal persons, no mutual legal assistance requests in the last four years have involved unregulated persons acting on behalf of legal arrangements.

1179. The assessors take the view that the authorities' analysis of information requested by foreign authorities does indeed suggest that the number trusts and general partnerships that are not administered by a TCSP might be minor. However, this assessment appears to be incomplete without having a clear overview of all trusts formed, managed or administered in Guernsey.

1180. Due to the provisions on intermediary relationships as described under c.5.9 which exempt financial institutions from identifying and verifying the ultimate beneficial owner, there is a gap in the framework in respect of the availability of beneficial ownership information regarding these legal arrangements, The gap is related to authorized or registered collective investment schemes to the extent that they in fact rely on the intermediary provisions of the FSB Handbook.

5.2.2 Recommendations and comments

- The authorities should urgently put in place a specific mechanism that enables Guernsey authorities to have knowledge of the number of trusts and general partnerships governed under Guernsey law (at least where a Guernsey resident trustee or partner is involved).
- As already recommended by the IMF during the assessment in 2011, the authorities should put in place specific measures to ensure the availability of accurate and complete beneficial

ownership information for trusts and general partnerships that are not administered by a licensed TCSP.

- Guernsey authorities should consider introducing a requirement for trustees to disclose their status to financial institutions and DNFBPs when forming a business relationship or carrying out an occasional transaction;
- Guernsey authorities should consider measures to facilitate access by financial institutions to beneficial ownership and control information, so as to allow them to more easily verify the customer identification data.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**LC**	• Insufficient measures are in place to ensure that accurate, complete, and current beneficial ownership information is available for trusts and general partnerships that are not administered by a licensed TCSP. Given that the total number of these legal arrangements cannot be ascertained, the extent of this shortcoming remains unknown; • Insufficient measures are in place to ensure that accurate, complete, and current information is available regarding legal arrangements that are collective investment schemes where reliance can be placed on intermediary provisions.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and analysis

Special Recommendation VIII (rated PC in the IMF report***)***

Summary of 2011 factors underlying the rating

1181. Guernsey was rated PC under the IMF report. The shortcomings in the registration system were identified. The IMF DAR also noted shortcomings related to the supervisory and sanctioning regimes. The report also identified absence of outreach of the entire NPO sector.

Legal framework

1182. In Guernsey and Alderney, NPOs are required to register but the same exemptions remained as in 2010 meaning that only NPOs which have gross assets and funds of £10,000 or more, or a gross annual income of £5,000 or more, must apply to be placed on the Register and their registration must be renewed annually. Manumitted NPOs, that is, organizations administered, controlled or operated by a professional trustee licensed by the GFSC under its regulatory legislation whose dealings with the NPO are carried out in the course of his regulated activities and is subject to the full requirements of the regulatory and AML/CFT frameworks, are still generally exempted from the registration requirements. Drafting of legislation to remove this exemption had reportedly been under consideration at the time of the on-site visit and has since been subject of parliamentary commitment as the States of Guernsey has directed that legislation to bring manumitted NPOs within the registration framework be drafted and put before the States. For the time being, however, registration is available on a voluntary basis for all NPOs who are not required to register under the Charities and NPOs Registration Law. Further obligations under the same Law such as the keeping of proper records and the provision

of information on request to the Guernsey and Alderney Registrar of NPOs, apply to both registered organisations and manumitted organisations although the latter are not required to file annual financial statements with the Registrar.

1183. In Sark, all NPOs are required to be registered. There are further requirements of record keeping and filing annual financial statements, similar to those in the Guernsey and Alderney legislation, which are applicable to "international organisations" (NPOs solely for the benefit of a cause or people outside Sark) but may be extended by Regulations to domestic "large organisations" (meaning NPOs with gross assets and funds of £10,000 or more, or a gross annual income of £5,000 or more).

1184. As it was reported by the Guernsey authorities, the NPOs active within the Bailiwick comprise charities operating in varying areas, and other non-charitable NPOs whose activities range from professional associations to social and sports clubs. At the time of the on-site visit, there were 417 charities and 138 other NPOs registered with the Guernsey and Alderney Registrar of NPOs (the statistical table below represent a somewhat earlier status hence the slight differences). The charities fall into three categories. The first category is locally based charities that focus entirely on an aim within the Bailiwick (e.g. supporting a local health or educational facility); the second is charities which are branches of large UK charities (e.g. Oxfam or the Red Cross); and the third is charities which have been established, and are run by, local individuals or groups but whose area of activity is international, mainly in the developing world (e.g.Bridge2). The non-charitable NPOs are predominantly local sports, arts and business related organisations.

1185. The Sark Registrar of NPOs categorises NPOs in the same way. At the time of the on-site visit, there were 7 charities and 14 other NPOs registered with the Sark Registrar. Sark is a very small community (population 600) hence the very low number of registered NPOs all of which are locally based organisations focused on charitable aims within Sark itself or on sports, arts and business related activities. While some of these entities are classified under the respective legislation as "large organisations" (6 charities and 2 other NPOs) the Guernsey authorities pointed out that all charities and NPOs in Sark are small organisations that are established for the benefit of islanders (e.g. health and medical care) are publically known within Sark and do not raise funds abroad so none of them is considered an "international organisation".

Table 37

Charities by Category	Sark	Alderney	Guernsey	Total
Social welfare etc.	2	8	123	132
Health, medical etc.	3	3	62	68
Religious	-	2	64	66
Arts, music, sport	-	10	50	60
Educational	1	1	41	43
Other, general	1	2	27	30
Overseas development	-	-	21	21
Animal welfare	-	4	11	15
Total	**7**	**30**	**399**	**436**

Table 38

NPO by Category	Sark	Alderney	Guernsey	Total
Sport	3	7	52	62
Arts & crafts	4	3	21	28
Professional, business	2	-	24	26
Social	2	1	14	17
Residence, housing assoc.	-	-	7	7
Heritage, historical	1	4	10	15
Education	-	-	4	4
Religious	-	-	3	3
Uniformed organisations (scout etc.)	-	-	2	2
Animal	-	-	4	4
Other	2	-	3	5
Total	**14**	**15**	**144**	**173**

1186. With regard to manumitted NPOs, the GFSC holds substantial information about each of such organizations. The latest statistical figures the assessment team was given are from 30 June 2014 when there were 168 manumitted charities and other NPOs administered by a total of 46 fiduciary businesses licensed by the GFSC, with assets of approximately £2 billion. As opposed to the respective figures indicated in the IMF report the number of manumitted NPOs have dropped by approximately 18% (from 207 to 168) while the total asset value remained the same. The nature and size of manumitted NPOs is varied but there are 17 outstanding manumitted NPOs (meaning 15 licensees) with assets of over £1 million held primarily in Guernsey, the UK and Switzerland (but 96% of these assets and the activities of these NPOs originated or were undertaken outside the Bailiwick). According to the GFSC statistics, there was one single organisation with assets exceeding £1.56 billion in 2014 while the rest held assets ranging from £1.16 to 92.7 million (meaning that 78% of assets were held by the one organization). These 17 NPOs were reported to carry out world-wide activities including education, health, support for wounded service personnel, medical research, humanitarian aid and onward support of other charitable organisations.

Review of adequacy of laws and regulations (c.VIII.1)

1187. At the time of the last evaluation, the AML/CFT Advisory Committee had recently compiled a risk assessment specific to the NPO sector. Subsequent changes to the NPO framework such as the inclusion of the Alderney NPOs in the Guernsey registration regime, the introduction of the Sark NPOs legislation and the amendment to create administrative penalties were made against the background of that assessment.

1188. The Advisory Committee as a whole has continued to consider the effectiveness of the NPO framework routinely at its meetings and, more recently, a dedicated working group was established in 2013 to examine all aspects of the oversight of charities and NPOs. Its membership comprises the Registrar and Deputy Registrar of Guernsey and Alderney NPOs and the Sark Registrar, together with representatives from the Policy Council, the GFSC, the GBA, and the Attorney General's Chambers.

1189. The conclusions of the working group were reflected in two consultation documents issued in April 2014, one relating to the proposed extension of the registration framework to manumitted organisations and the other relating to some proposed minor changes to the existing framework. The proposed changes were expected to be approved at the September 2014 meeting of the States of Guernsey but it only happened to the latter amendment consisting of minor technical changes that were subsequently introduced in the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) Ordinance, 2014 being in force as from 10th December 2014. As noted above, however, no legislation has yet been introduced to extend the registration regime to manumitted NPOs.

1190. The working group has also discussed the risks presented by the NPO sector which was then reflected in an updated wider risk assessment issued roughly at the time of the on-site visit as the Bailiwick of Guernsey ML/FT Risk Book. Furthermore, in addition to this structured review process, discussion of issues relating to the NPO framework takes place between the Guernsey/Alderney and Sark Registrars of NPOs and the other authorities, and there are also regular discussions with the Association of Guernsey Charities.

1191. The Guernsey and Alderney Registrar of NPOs periodically reviews information on NPOs in order to identify those that require greater scrutiny. As it was already described in the previous DAR this is done by using an internal framework that categorises NPOs by risk as follows:

Category 1: locally based NPOs that focus entirely on an aim within the Bailiwick;

Category 2: branches of large UK charities;

Category 3: established and run by local individuals or groups that have an area of activity that operates internationally, mainly in the developing world.

1192. In order to determine the correct risk category, all applicants are required on the application form to confirm the aim and purpose of the proposed NPO and to provide details of the manner in which the assets, funds and income are to be applied and used including details of the geographical focus or destination. Applicants are also required to confirm if the gross annual income exceeds £20,000 or if the funds/assets held exceed £100,000. They are further required to confirm whether funds will be received from outside of the Bailiwick and sent outside of the Bailiwick.

1193. Analysis of the information is then undertaken and used to formulate a risk rating in terms of vulnerability and exposure to potential risks. The RAG (red, amber, green) system is then used to identify those organisations that have been identified as needing to be closely monitored, red being those considered most vulnerable and exposed in relative terms (Category 3) with green being locally focused NPOs (Category 1).

1194. Accounts are submitted with the annual renewal for all NPOs whose gross funds and assets exceed £100,000 or whose annual income exceeds £20,000 and these are sampled and reviewed for areas of concern. This process is underpinned by information-gathering powers in the legislation as discussed below more in details.

1195. Both the Registrar of Guernsey and Alderney NPOs and the Registrar of Sark NPOs have recently used their powers to gather information from a sample of NPOs in order to ascertain whether the requirements on NPOs to maintain records are being met.

1196. In November 2013 the Registrar of Guernsey and Alderney NPOs issued a Notice, using its information-gathering powers, to a randomly selected sample of the registered charities and NPOs. The Notice included a requirement for the recipient to provide the Registrar with sight of all of the records the organisation has made, kept and retained in order to meet its obligations in accordance with the Charities and NPOs Registration Law in relation to the accounting period ending in the calendar year 2012. The Registrar received the requested records from all of the randomly selected organisations and a review of those records were carried out by both the officer in the Income Tax Office (where the Registrar was located at that time) who undertook the day to day management of charities and NPOs and selected members of staff from within the Income Tax Office Compliance & Investigation Unit. The inspection identified that the quality and completeness of the records was of a good standard and as such it was not necessary for the Registrar to take any further action or refer any cases to the Attorney General for consideration of prosecution in accordance with the Charities and NPOs Registration Law.

1197. As the Charities and NPOs Registration Law permits the onward transmission of information to the law enforcement agencies, details of all applications that are considered high-risk or where adverse intelligence has been established are passed to the FIS which then reviews these details against law enforcement databases, and is asked to provide any known relevant convictions or intelligence, including financial intelligence, back to the Registry. The Registrar will then use this information to confirm the risk classification of any NPO, or whether to proceed or suspend a registration/application.

1198. Considering that 74% of charities and 81% of NPOs have been classified as low risk (Category 1) as opposed to 8% of charities and 1% of NPOs being considered high risk (Category 3) the vast majority of applications are received from low risk organisations and, accordingly, the need to notify law enforcement of a high risk application is minimal (although the evaluation team was not provided with exact figures on this). According to the Guernsey authorities, the Registrar has had cause to investigate two NPO cases but neither indicates any activity related to ML or FT. One case initially suggested misappropriation of funds and the other one, also initiated in 2014, was a matter of misrepresentation of jurisdictional registration. The FIS has been investigating the first case since October 2014 in conjunction with the Registry and a FSB, which has filed a SAR in respect of the NPO. (The information so far received suggests that the funds destined for the NPO had actually been used for purposes other than those set out in the application for registration for the NPO.)

1199. The Sark Registrar of NPOs has powers to request and disseminate information at paragraphs 9 and 14 of the Schedule to the Sark Charities and NPOs Registration Law that correspond to those referred to above. The Sark Registrar has used these powers in June 2014 to obtain information from a sample of registered NPOs to verify that they are maintaining the information required by law (including financial statements). Details of all Sark applications are routinely passed to the FIS for the same purpose and procedure as described above for Guernsey and Alderney (no matches have so far occurred.)

1200. Unlike at the time of the previous assessment, the GFSC reviews, on a risk basis, compliance with the FSB Regulations and the rules in the FSB Handbook by licensed fiduciaries in their administration of manumitted NPOs. The reviews consider the activities of manumitted NPOs and whether the fiduciary understands the ML/FT risks posed by the NPOs under administration. Also, the GFSC, as part of its supervision of the fiduciary sector, collects considerable information on that sector in its mandatory annual surveys. This information includes the names of manumitted organisations, their purpose or activities, their asset value, the jurisdictions where the assets are held and the jurisdictions where the activities are conducted. Discrepancies or variations from the previous year's data are the subject of further enquiry. (Further details can be found below under EC VIII.3)

Outreach to the NPO Sector to protect it from Terrorist Financing Abuse (c.VIII.2)

1201. The Bailiwick authorities continued their efforts to raise awareness of the vulnerability of NPOs to abuse for the purposes of ML and FT. Information on the risks associated with FT had already been placed on Guernsey and Alderney governmental websites at the time of the previous evaluation and all registered NPOs were directed to this information. This material, which specifically deals with issues surrounding the potential abuse of NPOs relating to ML and FT can now be found on the ML/FT Risk Awareness page on the website of the Guernsey and Alderney Registry[144]. It comprises a list of reports and case studies, which has been updated and includes papers from the FATF and the OECD, as well as case studies and typologies prepared by the authorities in Guernsey and the UK. The evaluators learnt that Guernsey and Alderney Registrar of NPOs contacted all registered NPOs to advise them of the availability of this material and to highlight the importance of understanding the risks. Reference is also made to external resources such as the "compliance toolkit" issued by the Charity Commission of England and Wales to protect charities from terrorism, fraud and other abuse145.

1202. Furthermore, the application form itself (which must be completed by all new charities and other NPOs who are either required to or volunteer to register) contains information on the importance of ensuring the organisation is aware of the risks of the abuse of NPOs and requires applicants to confirm that they are aware of these risks, while directing them to the relevant reports on the website. The annual registration renewal form reiterates the same advice and requires all applicants to confirm annually that they are aware of these risks. The Sark Registrar of NPOs has provided registered NPOs in Sark with the same advice, by way of directing them to the website of the Sark Chief Pleas[146] which contains the above-mentioned documents.

1203. In order to ensure manumitted NPOs are included within the programme of feedback, the Guernsey and Alderney Registrar of NPOs provides the same information about risks and vulnerabilities to licensed fiduciaries (which administer manumitted NPOs) as was provided to registered NPOs. In addition, the Deputy Registrar, in conjunction with law enforcement and specialist trainers on AML/CFT, delivers face to face training in workshops to Guernsey charities and NPOs and Guernsey fiduciaries administering manumitted NPOs.

1204. Further outreach to NPOs in Guernsey, Alderney and Sark by way of specific seminars took place in the summer and autumn of 2014 (the last in September 2014) including a presentation on AML/CFT risks posed to the NPO sector and in addition, more general information to raise awareness on general risks to NPOs and the role of the Guernsey Registry. Meanwhile, the GFSC published on its website a notice in August 2014 to advise fiduciaries administering a charity or NPO that they must ensure that their AML/CFT compliance arrangements are effectively applied. The communication also provided hyperlink to the aforementioned risk awareness page of the Guernsey Registry website.

1205. The Association of Guernsey Charities also issued a local orientated guidance document to managing and mitigating risks generally posed in relation to NPOs[147]. The Guernsey and Alderney Registry website links to the Association's guidance.

Supervision or monitoring of NPO-s that account for significant share of the sector's resources or international activities (c.VIII.3)

1206. While in Sark all NPOs must be registered, in Guernsey and Alderney the same requirement only applies to NPOs that have gross assets and funds of £10,000 or more, or a gross annual income of £5,000 or more. The registration requirement does not apply in general to manumitted organisations but the licensees who administer, control or operate NPOs in the

144 http://www.guernseyregistry.com/article/113111/Risk-Awareness---money-laundering-and-the-financing-of-terrorism

145 https://www.gov.uk/government/collections/protecting-charities-from-harm-compliance-toolkit

146 http://www.gov.sark.gg/Charities_NPOs.html

147 http://www.charity.org.gg/information?id=12

latter category are subject to the supervision of the GFSC for both AML/CFT and prudential purposes.

1207. Indeed, it is now the area of manumitted NPOs that are subject of a systemic supervision by the GFSC even if indirectly, as part of its supervision of the fiduciary sector. In this process, the GFSC collects considerable information on that sector in its mandatory annual surveys through the licensed businesses that administer those NPOs, extending to the names of manumitted organisations, their purpose or activities, their asset value, the jurisdictions where the assets are held and the jurisdictions where the activities are conducted. Pre-on-site visit questionnaires must be completed by fiduciaries including information in relation to any manumitted NPOs which they administer including

the geographical and economic patterns of the individuals and entities which have established the NPO as well as those who provide assets for its purposes,

the manner in which the sponsors go about seeking funds for the NPO,

the ML/FT risks the licensee considers to be posed by the NPO,

the policies, procedures and controls which the licensee applies to the NPO,

and the manner in which the licensee ensures that the NPOs it administers meet the record-keeping duties of registered NPOs. Fiduciary businesses are also required to provide documentation with the questionnaire including a list of its existing customers (including those which are NPOs). The on-site visit team requires access to the customer files for an NPO where it is selected as part of the sample review. The application of policies, procedures and controls in relation to their application to NPOs is also reviewed.

1208. The on-site visit team verify that the fiduciary business has undertaken complete CDD on the NPO and undertakes ongoing monitoring throughout the duration of its administration. A review of the decision-making structure relating to the management of the NPO's assets, payments made to and from the structure, and transaction records retention is also undertaken and the supervisors verify the rationale or purpose of the NPO's establishment and operation as well, in order to test its alignment to the risk classification assigned to the NPO. Statistics are collected as part of the annual returns, which are considered as part of the GFSC's overall supervision of fiduciary businesses and form a part of the revised risk assessment criteria applied by the Financial Crime Supervision and Policy Division.

1209. The risk classification of manumitted NPOs is different from the "red-amber-green" classification discussed above. Risk is classified in two ways, first by the relevant administering TCSP which classifies the risk of a manumitted NPO in accordance with the relevant regulations and rules in the Handbook and secondly by the GFSC which, in its supervision, takes account of NPO data from the fiduciary returns (data from each return is reviewed annually, including the profile of fiduciaries administering NPOs.) Furthermore, the GFSC undertook a specific project in 2013 to focus on fiduciaries administering NPOs as part of its onsite programme. It covered the areas mentioned above and also included the targeting of four specific TCSPs as a result of particular factors, including both size of their NPO client base and risk, and the risk profile of the administering fiduciary.

1210. The aforementioned project consisted of onsite visits to 7 of the 15 fiduciaries administering the largest manumitted NPOs by asset value. Licensed fiduciaries from all four of the separate categories of TCSPs that have been established by the GFSC were visited and enabled the GFSC to analyse whether or not the type of TCSP has a bearing on the quality of AML/CFT standards in relation to NPOs. (The fiduciary administering the single largest manumitted NPO was visited as part of the exercise, the results of which were positive.)

Information maintained by NPO-s and availability to the public thereof (c.VIII.3.1)

1211. For NPOs registered in Guernsey and Alderney, the retention of information is generally addressed under Schedule 1 to the Charities and NPOs Registration Law. Applications for registration must contain details of the purposes, objectives and objects of the organisation (paragraph 2(2)c) as well as the identification of the persons who own, direct or control an NPO's activities, including directors, officers and trustees, and to specify their home and business addresses. As it was already noted in the previous assessment report, legal persons and/or legal arrangements are not prohibited from owning or controlling NPOs and therefore the requirements in the Bailiwick to obtain information as to beneficial ownership of legal persons or arrangements applies to the owners or controllers of NPOs in all such cases.

1212. At the time of the previous assessment, only the name of the registered NPOs was publicly available on the Income Tax Office website while other information relating to the purpose and objectives of their stated activity and the identity of the person who own, control or direct their activities were not available to the public at that time. Publicly available data from the Register are now published on the website of the Guernsey Registry[148] and extend to the name, registration number, business address, status and status date of each registered NPO together with the respective registration document in pdf with additional information on the contact person and address as well as the names of the NPO's controlling principals and the office they hold. The latter is a result of recent changes with respect to the breadth of the publicly available information which includes, with effect from 2014 onwards, not only the names of the persons who own, direct or control the NPO but also a summary of the NPO's purposes and objectives. The process of adding to the information on the public part of the Guernsey and Alderney NPOs Register was ongoing at the time of the onsite visit. The Guernsey authorities added that a compliance exercise has been undertaken by the Guernsey Registry to ensure that the required information is complete and accurate

1213. The annual renewal application form requires the NPO to state whether there are any changes to the information held on the NPO register and, if so, to provide full particulars of the changes. It also requires the NPO to re-confirm the aims and purpose of the NPO. Any changes will be reflected on the Guernsey Register for NPOs. In addition to the annual obligatory renewal process, the NPOs can complete a change of particular form, at any time when changes have occurred, and present this to the Registry for the Register to be updated accordingly.

1214. Manumitted organisations in Guernsey and Alderney are required to hold detailed information pursuant to Section 8 of the Charities and NPOs Registration Law (see below) which is accessible to the GFSC but not to the public.

1215. The requirements are similar for Sark NPOs. Paragraph 2(3) of the Schedule to the Sark Charities and NPOs Registration Law requires the relevant information (including information on the purpose of each charity and NPO) to be provided upon applying for registration and any changes to this information must be provided during the annual renewal process pursuant to paragraph 5.

Measures in place to sanction violations of oversight rules by NPO-s (c.VIII.3.2)

1216. The criminal penalties to sanction oversight measures and rules had already been in place at the time of the previous evaluation and there have not since been significant changes in this field. For Guernsey and Alderney NPOs, failure to comply with the requirement to register under Section 1 of the Charities and NPOs Registration Law is punishable on summary conviction with a fine of up to £10,000 under paragraph (5) of the same Section. It is however a more serious offence to make a statement or to produce information which is false, deceptive or misleading in a material particular in connection with an application for registration, in

[148] http://www.guernseyregistry.com/article/112771/NPO-Register and http://www.guernseyregistry.com/article/112909/Charities-Register

purported compliance with any requirement under the law or an Ordinance or Regulation made under it, or which might otherwise be used by the Guernsey and Alderney Registrar of NPOs in the exercise of his functions under the law (Section 2). Such an offence is punishable on indictment with an unlimited fine and/or up to 2 years' imprisonment, and on summary conviction with a term of imprisonment of up to 3 months and/or a fine of up to £10,000 (Section 3).

1217. Failure to comply with the duties in respect of annual statements and the keeping of proper records under paragraph 8 of Schedule 1 to the Charities and NPOs Registration Law for Guernsey and Alderney is a criminal offence punishable with a fine of up to £10,000 (paragraph 8[4]). As a result of a recent technical amendment to the Law[149] being in force since 10th December 2014, paragraph 10A of Schedule 1 now also renders it an offence (punishable with a fine up to £500) if a registered NPO fails to comply with either a request for information made by the Registrar or with any obligation or requirement imposed by or under the Charities and NPO Registration Law.

1218. Under Section 10(1) of the Law, officers, directors and others acting on behalf of corporate bodies and unincorporated associations may be prosecuted for offences under the law if appropriate.

1219. According to the IMF report, there were no civil or administrative sanctions in this field before 2010. While the assessors of the previous round noted that the Charities and NPO Registration Law had recently been amended (28th July 2010) to establish administrative penalties to address instances where criminal sanctions were inappropriate, they were concerned about the dissuasiveness of the relatively low pecuniary sanctions ranging from £10 to £500. It was therefore recommended that sanctions for non-compliance with registration requirements should be strengthened to ensure that they are effective and dissuasive.

1220. The aforementioned administrative sanctions can be found in paragraph 7 of Schedule 2 to the Charities and NPOs Registration Law for Guernsey and Alderney. No further amendment has since taken place to this provision and therefore the range of penalties has also remained the same. That is, failure to register gives rise to a penalty of £500 while failure to renew registration or to file annual financial statements is sanctioned on a cumulative basis, that is, £20 for the first calendar month, £40 for the second one and £80 for each subsequent calendar month in which the NPO is in default of that obligation. Failure to respond to the Registry's requests for information is to be sanctioned similarly but only from the third calendar month (by a penalty of £10 for each calendar month). The Guernsey authorities emphasized that the cumulativeness of these pecuniary penalties means there is no upper limit to the sum of the penalty that can be imposed and therefore they consider that the level of sanctions is sufficiently dissuasive.

1221. Furthermore, paragraph 10 of Schedule 1 provides that the Guernsey and Alderney Registrar of NPOs may strike off from the Register any NPO that fails to comply with any of the requirements of the same Law including instances where

- the Registrar has reason to believe that the organisation is not a non profit organisation,
- the organisation fails to comply with any request for information by the Registrar,
- the organisation fails to comply with any obligation or requirement imposed by or under this Law,

[149] By virtue of the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) Ordinance, 2014

- or a person is found guilty of an offence under Section 2 in respect of statements made or information or documents produced or furnished for or on behalf of the organisation.

1222. Guernsey authorities pointed out that the use of one form of sanctions does not preclude use of another. It equally refers to different administrative sanctions (for the same administrative failure, an NPO can first be sanctioned by a pecuniary penalty and then struck off from the Register) and the parallel use of criminal and administrative ones (as one of the grounds for striking an NPO off the Register is a conviction under Section 2). In addition, paragraph 7(4) of Schedule 2 expressly provides that the imposition of administrative penalties is without prejudice to any other criminal, civil or administrative power, penalty, sanction or remedy under the Law.

1223. With regard to manumitted organisations, they are also bound by the aforementioned record-keeping requirements of the Charities and NPO Registration Law and hence the criminal offence under paragraph 8(4) of Schedule 1 applies here. In addition to that, breach of the Bailiwick's AML/CFT regulatory requirements by persons responsible for the administration of manumitted NPOs is also punishable as a criminal offence and is subject to administrative sanctions under the regulatory framework.

1224. For Sark NPOs, under the Sark Charities and NPOs Registration Law there are criminal offences and penalties for non-compliance at Sections 1(4), 6 and 7, as well as at paragraphs 8(4) and 11 of the Schedule to the Law. In addition, there are powers to strike off an NPO and to impose administrative penalties at paragraphs 5 and 12A respectively of the Schedule. All these provisions broadly correspond to those applicable to Guernsey and Alderney NPOs (including the range of penalties referred to above). Here too, the exercise of one form of sanctions does not preclude the use of another, and paragraph 12A(4) expressly provides that the imposition of administrative penalties is without prejudice to any other criminal, civil or administrative power, penalty, sanction or remedy under the Law.

Licensing or Registration of NPO-s and availability of this information (c.VIII.3.3)

1225. Guernsey and Alderney NPOs other than manumitted organisations or those who meet the threshold test referred to above are required to be registered as per paragraph 2 of Schedule 1 to the Charities and NPOs Registration Law. All information held by the Guernsey and Alderney Registrar of NPOs under the Charities and NPOs Registration Law may be disclosed to competent authorities under paragraph 13 of Schedule 1.

1226. All Sark NPOs must be registered under paragraph 2(1) of the Schedule to the Sark Charities and NPOs Registration Law. All information held by the Sark Registrar of NPOs under the Charities and NPOs Registration Law may be disclosed to competent authorities under paragraph 14 of the Schedule.

1227. As a result of the mandatory returns completed by fiduciaries, in practice the GFSC holds substantial information relating to manumitted NPOs. Under the definition of manumitted organisations, persons administering them must be licensed by the GFSC, and information held by the GFSC relating to manumitted organisations may be disclosed to competent authorities under section 21(2)(b) of the Financial Services Commission Law.

Maintenance of records by NPO-s, and availability to appropriate authorities (c.VIII.3.4)

1228. Similarly to the time of the previous assessment, all Guernsey and Alderney NPOs, that is, both registered and manumitted organisations must make, keep and retain appropriate financial records in order to evidence the application or use of the organisation's assets, funds and income, for a period of at least six years pursuant to paragraph 8(1)(a) of Schedule 1 to the Charities and NPOs Registration Law. These records must be sufficiently detailed to enable verification that the organisation's assets, funds and income have been applied or used in a manner consistent with the purposes, objectives and objects of the organisation stated in the Register (paragraph 8[2]). The records of both registered and manumitted organisations are

available to the Guernsey and Alderney Registrar of NPOs using the powers in paragraph 9 of Schedule 1 according to which the Registrar may require any such organisation to provide any documents within its possession or power which he considers relevant to the organisation's assets, funds and income, and the application or use of any such assets, funds or income.

1229. Paragraph 8(1)(b) requires all registered NPOs to file annual financial statements with the Guernsey and Alderney Registrar of NPOs, unless they are exempt under Regulations made by the Treasury and Resources Department[150]. NPOs that have gross assets and funds of less than £100,000 or a gross income of less than £20,000 (or equivalent amounts) and whose assets, funds and income (other than overhead expenses, etc.) are applied or used exclusively in the Bailiwick, are thus exempt from the duty to file annual financial statements. The evaluators learnt that the vast majority of the charities and NPOs registered in the Bailiwick (approximately 80%) fall into this category and thus benefit from the exemption[151]. (The appropriateness of the threshold for exemption had already been considered at the time of the onsite visit but no formal revision has since taken place.) These registered organisations must also, if required, advise the Guernsey and Alderney Registrar of NPOs of any changes to the information submitted at the time of registration.

1230. Under paragraph 8 of the Schedule to the Sark Charities and NPOs Registration Law, there are obligations applicable to international organisations in respect of record keeping and filing annual financial statements that mirror the corresponding obligations in the Charities and NPOs Registration Law referred to above. The General Purposes and Advisory Committee of the Chief Pleas of Sark has the power to extend the requirements for record keeping to all other NPOs, and to extend those for filing financial statements to domestic "large organisations" but it has not been considered necessary to do so. The records of all Sark NPOs are available to the Sark Registrar of NPOs using the powers in paragraph 9 of the Schedule.

Measures to ensure effective investigation and gathering of information (c.VIII.4)

1231. By use of the information-gathering powers under both Charities and NPOs Registration Laws referred to above, documents that contain, or may contain, information relevant to the organisation's assets, funds and income as well as the application or use of any such assets, funds or income can be quickly obtained and the same Laws also permit the onward transmission of information to the law enforcement agencies (see more in details below).

1232. The GFSC is able to obtain information in relation to manumitted NPOs only through the licensees that administer them by using the information gathering powers specified elsewhere in this report, such as Section 23 of the Regulation of Fiduciaries Law.

1233. As the definition of terrorist investigation at section 31 of the Terrorism Law includes investigations into FT offences, the investigatory powers at Schedules 5 to 7 to the Terrorism Law, which cover entry search and seizure, production orders, customer information orders and account monitoring orders, may also be used to gather information on NPOs in appropriate cases.

1234. In addition to that, the Charities and NPOs (Investigatory Powers) Law152 provide the Attorney General with powers to investigate unlawful conducts related to charities and NPOs regardless of whether or not such an organization is registered under the respective Registration Law and also including bodies located outside the Bailiwick. Pursuant to the de minimis restriction at Section 5 however, the powers under this Law can only be applied to NPOs with gross assets of more than £100,000 in the Bailiwick or gross annual income of more than

[150] Charities and Non Profit Organisations (Exemption) Regulations, 2008

[151] The assessment team was given statistical figures for 2015 according to which out of the 502 charities renewing in 2015 114 have filed accounts and 388 (77.3%) have claimed the exemption. Of the 202 NPOs 32 have filed accounts and 171 (84%) have claimed the exemption.

[152] Charities and Non Profit Organisations (Investigatory Powers) (Bailiwick of Guernsey) Law, 2008

£20,000 from sources within the Bailiwick except if the Attorney General has evidence that an NPO is engaged in any unlawful conduct where investigation can be launched regardless of the financial threshold. The investigatory procedure also covers production orders, search and seizure and criminal sanctions for non-compliance.

Domestic co-operation, coordination and information sharing on NPO-s (c.VIII.4.1)

1235. Paragraph 13(2) of Schedule 1 to the Charities and NPOs Registration Law allows the Guernsey and Alderney Registrar of NPOs to provide information in a range of circumstances including for the purposes of the investigation, prevention and detection of crime (subpara "e") for the purposes of enabling or assisting the Attorney General to discharge his functions ("f) or to comply with an order of a court ("h"). There are equivalent powers for the Sark Registrar of NPOs under paragraph 14(2) of the Schedule to the Sark Charities and NPOs Registration Law. The law enforcement agencies can in turn provide the Guernsey and Alderney Registrar of NPOs and the Sark Registrar of NPOs with information under section 8 of the Disclosure Law and section 43(1) of the Proceeds of Crime Law. The GFSC may disclose information to the law enforcement under section 21(2)(b) of the Financial Services Commission Law.

1236. The evaluation team learnt that in practice, cooperation, coordination and information sharing take place between the authorities not only on a case-by-case basis as required but also within a formal committee structure. As stated above, the NPO working group also enables and contributes to this process. As it was explained by the authorities, this group not only maintains a policy oversight of the NPO regime in the Bailiwick and Sark but it also has an operational focus, allowing the various members to review and update one another on more day to day ad hoc operational matters, and develop closer working relationships and procedures along with the sharing of information and knowledge.

1237. Furthermore, the Guernsey-Alderney and Sark Registrars of NPOs also sit on the AML/CFT Advisory Committee alongside representatives from law enforcement, the GFSC, the Attorney General's Chambers, the AGCC, the Companies Registrar and the Policy Council. The Guernsey and Alderney Registrar is also represented on the Financial Crime Group, an operational sub-committee that reports to the Advisory Committee on AML/CFT issues. Both Registrars and the secretariat for the financial crime committees within the States of Guernsey Policy Council maintain close links.

Access to information on administration and management of NPO-s during investigations (c.VIII.4.2)

1238. All of the powers described above can be used in an investigation. Information on the administration and management of a particular NPO is thus available through the respective Registrar or the GFSC.

Sharing of information, preventative actions and investigative expertise and capability, with respect to NPO-s suspected of being exploited for terrorist financing purposes (c.VIII.4.3)

1239. The legislative provisions that permit information sharing are described under EC VIII.4.1 above. Under these provisions, information consisting of a full copy of the Guernsey and Alderney Register for NPOs (including the non-public part) is regularly provided to the FIS, together with documents, including financial statements. In addition, the Guernsey and Alderney Registrar of NPOs is in regular contact with the GFSC to receive updates in respect of new material related to risks associated with NPOs which is then published on the NPO/Charities webpage of the Guernsey Registry website where appropriate. The Sark Registrar and the FIS are able to take share information promptly should it become necessary.

1240. The FIU (with the inclusion of the FIS within it) is responsible for conducting an examination or investigation into an NPO, usually on the basis of information initially provided by the Guernsey and Alderney Registrar of NPOs. Both the FIU and the Registry continually review,

enhance and develop the information sharing processes via the NPO working group and also on a case by case basis.

1241. The investigatory powers set out under EC VIII.4 above can be promptly invoked to support action against NPOs, as can the powers of seizure and freezing and forfeiture in the Terrorism Law and the Civil Forfeiture Law as described under R.3.

Responding to international requests regarding NPO-s – points of contacts and procedures (c.VIII.5)

1242. At the time of the previous assessment, it was the Director of Income Tax who was empowered through paragraph 13(2)(d) of Schedule 1 to the Charities and NPOs Registration Law to disclose information to assist an equivalent authority exercising the same functions outside the Bailiwick and, under paragraph 13(2)(e) to do so for the purposes of the investigation, prevention or detection of crime both inside and outside the Bailiwick. The same paragraph now serves to provide the same authorization to the Guernsey and Alderney Registrar of NPOs with the recent amendment of 10th December 2014 mentioned above, which restricts the territorial scope of paragraph 13(2)d to equivalent authorities exercising the same functions "outside the Islands of Guernsey and Alderney" and thus enables the Guernsey and Alderney Registrar of NPOs to make disclosures to its Sark counterpart in the event that this might be required in respect of information unrelated to potential criminal matters. Paragraphs 14(2)(d) and (e) of the Schedule to the Sark Charities and NPOs Registration Law contain identical provisions to empower the Sark Registrar of NPOs in relation to NPOs registered in that island.

1243. The Deputy Registrar is the first point of contact in respect of international requests for assistance made directly to the Guernsey and Alderney Registrar of NPOs. To date only one request of this nature has been received, which requested information the charity had submitted as part of its initial application and this information was provided accordingly. In Sark, the Sark Registrar of NPOs is the direct contact point for any requests for assistance but no direct requests have so far been received. Accurate information on these contact points can be found on the websites of the Guernsey and Alderney Registrar and the Sark Registrar.

1244. In addition, requests for information at an intelligence level may also be directed to the FIU (see under R.40 and SR.V) while requests for information to be used as evidence under the MLA process to the Attorney General as the designated point of contact for such requests (see under R.36 and SR.V).

Effectiveness and efficiency

1245. Evaluators of the previous round already considered that the registration framework for NPOs was not comprehensive as the decision to exempt manumitted organizations could not be justified from a risk perspective. Bearing in mind the large asset values and the almost fully international nature of the holdings, manumitted organizations were found to present a higher level of vulnerability to TF in the NPO and charities sector in the Bailiwick and were recommended to be subject to registration. The present evaluation team learnt that there had been preparations for drafting legislation so as to provide for the inclusion of manumitted organizations in the registration mechanism under the Charities and NPOs Registration Law but no legislation has yet been adopted to address this issue and manumitted NPOs are still exempt from registration.

1246. As for the registered NPOs, whereas information on the purpose and objectives of such entities has already been made available to the public, the same cannot be said about the identity of the persons who own, control or direct their activities despite the changes that have reportedly been going on in this field. Furthermore, no pieces of information relating to manumitted organizations are available publicly which might have a direct impact on the immediate accessibility to such information by relevant authorities.

1247. The Bailiwick was criticised in the last report for having no supervision or monitoring activities undertaken with respect to the registration requirements of the Charities and NPO

Registration Law and that the GFSC had not specifically conducted inspections with respect to all of manumitted organizations' obligations under the same Law. As it was discussed above under EC VIII.2 and VIII.3 the authorities of the Bailiwick achieved remarkable development in this field which began after, and upon recommendations made by, the previous evaluation in 2010. Specifically, the GFSC reported that the single fiduciary business which administers £1.63 billion itself was the subject of an on-site visit in 2013 together with two other fiduciaries administering NPOs holding assets valued at over £50 million in which a thorough review was undertaken of the NPO, its activities, beneficiaries, directors and the policies and procedures applied to mitigate the ML/FT risks that could be associated with the NPO and no adverse compliance findings were made as a result of this review.

1248. The Charities and NPOs (Investigatory Powers) Law, which was mentioned as a novelty in the last assessment report, would theoretically extend to all NPOs within the Bailiwick (and even abroad) including any manumitted NPOs in Guernsey and Alderney. However, the de minimis rule in Section 5 restricts the scope of the Law, apart from obvious cases where there is evidence from the beginning, to NPOs with gross assets of more than £100,000 held within the Bailiwick or gross annual income of more than £20,000 from sources within the Bailiwick thus practically excluding the majority of the manumitted NPOs where 95% of the entities have their assets outside the Bailiwick. Using the Registrar's risk classification scheme, these NPOs would belong to the "red" (highest risk) category but they seem to be left out from the scope of this Law. In addition to that, the Guernsey authorities confirmed that no investigation has ever been initiated pursuant to the Charities and NPOs (Investigatory Powers) Law.

1249. The regime for administrative sanctions applicable to non-compliance with registration requirements could not be assessed in the previous round of evaluation given its recent implementation, but the assessors questioned the dissuasiveness of the relatively low administrative penalties. Whereas there have not been any legislative changes in this field, the authorities claimed that the previous assessment disregarded the fact that the relatively low monthly penalties can be cumulated and they could eventually result in significant penalties being imposed. Furthermore, the administrative sanctions were said to have been introduced just to strengthen the range of sanctions sufficiently to enable them effectively to address less serious cases of non-compliance, while the existing criminal sanctions may be invoked to deal with more significant failures of compliance.

1250. Having said that, the administrative penalties are doubtlessly very moderate as compared to the assets held and administered by the sector. The maximum penalty of £500 is not cumulative (and is quite mild in itself) while the other penalties can only be cumulated in the timeframe of several months (adding maximum £80 to the sum every other calendar month) which is far from being dissuasive to any legal entity. Certainly, there are other, criminal sanctions for more serious or repeated violations of the regulations but this is the very area where the evaluators of the last round experienced reluctance from the authorities' side to apply criminal sanctions to organizations that had charitable goals.

1251. There have been no instances of criminal or other sanctions applied under either Registration Laws in the Bailiwick. As it was explained by the Guernsey authorities, both Registers are proactively managed, where all application and renewal documentation is scrutinised, risk assessed and, as appropriate, investigated so as to clarify any missing or unclear information. Investigations would be launched where an NPO has not re-registered to ensure they are not still in operation as well as in cases where the Registrar believes an organisation is not registered although it should be. In such cases, the entities provided sufficient clarification of information and there was no need to apply either criminal or other sanctions.

1252. At the time of the on-site visit, there were 10 charities and 7 NPOs being investigated by the Guernsey and Alderney Registrar for non-reregistration. The instances where investigation has been necessary have led to liaison by the Registrar with overseas Charities Commissions as well

as law enforcement and other authorities (including the GFSC or the Scottish Charity Regulator). As for the charities and NPOs in Sark, there has been no cause to investigate or sanction any of them beyond seeking clarification of information which has been provided.

1253. The types of NPOs registered in the Bailiwick appear to indicate a low-level FT risk as the majority of such entities have a purely domestic focus and do not solicit or otherwise obtain any significant funds while the major charities are branches of large charities from the UK and thus are not independently responsible for the distribution of funds or other assets. Manumitted NPOs, as mentioned above, clearly represent a relatively higher level of risk but, as it was disclosed by the GFSC's 2013 annual survey, one single NPO structure accounts for 83% (2013) of all assets currently held for such entities administered in the Bailiwick and this NPO (that is to say, the fiduciary business which administers it) was the subject of a thorough review in 2013 as a result of which no significant FT risk was justified.

1254. The authorities also added in the aforementioned Risk Book that the low FT risk of the sector is supported by the fact that in the last 4 years there had been no SARs relating to FT made in respect of the NPO sector (and a very low number relating to ML) and no MLA requests at all relating to the NPO sector. In the same period, only 1 request for assistance from an international counterpart has been received by the Registrar of NPOs.

5.3.2 Recommendations and comments

1255. The evaluators appreciate that the authorities of the Bailiwick have taken significant steps, both in terms of legislation and effectiveness, to achieve compliance with the requirements under SR.VIII by addressing a number of recommendations made by the previous assessment team. The registration regime of charities and NPOs became more comprehensive by extending its scope to the NPOs in the island of Alderney and by introducing a separate Registrar in the island of Sark.

1256. Changes have also begun with respect to the information that is publicly available on the Guernsey and Alderney NPOs Register which now includes the names of the controlling principals as well as a summary of the purposes and objectives of each entity, in line with the recommendations made in the previous round. However relevant information on manumitted NPOs is still not publicly available.

1257. It was also recommended in the IMF report that the registration requirement be extended to manumitted NPOs but no definitive steps have been taken in this area. According to Guernsey authorities, it was only in April 2014 when the NPOs working group, which had been established in the preceding year, produced a consultation document relating to the proposed extension of the registration framework to manumitted organisations but the amendment, contrary to the expectations expressed in the MEQ have not yet been approved by the States of Guernsey. The evaluators reiterate the recommendation made in the previous round that manumitted organizations, which still can be deemed as vulnerable to FT activities, should be subject to the same registration requirements and other obligations that must currently be met by the NPO registered in Guernsey and Alderney.

1258. On the other hand, the supervision of manumitted organizations with respect to their obligations under the Charities and NPO Registration Law (which practically covers record-keeping requirements) has since been carried out by the GFSC in an indirect manner, as part of its supervisory activities regarding the fiduciary businesses including those administering manumitted NPOs and this supervision extends to record-keeping obligations too (see above under EC VIII.2 and VIII.3). Outreach focused on the raising awareness on the risks of FT abuse and the available measures to protect against such abuses was also recommended to be provided to the entire NPO sector including manumitted NPOs. The evaluators noted a significant development in this field as described above under EC VIII.2 meaning that this recommendation can also be considered as being met.

1259. The sanctioning regime applicable for actions of non-compliance with registration requirements remained the same as it was at the time of the previous evaluation and the assessors can see no reason not to reiterate that it should be strengthened, particularly in the field of administrative sanctions, to ensure that they are effective and dissuasive.

1260. The evaluators thus recommend the following actions to be taken by Bailiwick authorities:

- manumitted organizations should be subject to registration requirements under the Charities and NPO Registration Law;
- and the sanctions for non-compliance with registration requirements should be strengthened in line with the recommendations made in the previous round.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**LC**	• The NPO registration system is not comprehensive as manumitted NPOs of Guernsey and Alderney are still exempt from registration obligations; • There is no publicly available information on manumitted NPOs; • Sanctions for non-compliance with registration requirements are still not effective and dissuasive.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31 and R. 32)

6.1.1 Description and analysis

Recommendation 31 (rated C in the IMF report***)***

Summary of 2011 factors underlying the rating

1261. Guernsey was rated compliant in the IMF report for national co-operation. As noted in this report the Bailiwick has developed very effective mechanisms for coordination and cooperation among all domestic AML/CFT stakeholders.

1262. As at the last evaluation, there is a high level of cooperation and coordination between the different AML/CFT authorities in the Bailiwick. This is achieved through a formal committee structure as well as by additional meetings and communication as necessary, and is underpinned by the wide range of information sharing gateways in the legal framework.

Effective mechanisms in place for domestic cooperation and coordination in AML/CFT (c.31.1)

1263. The formal committee structure is headed by the AML/CFT Advisory Committee (or Financial Crime Advisory Committee), which is made up of senior representatives of different authorities and has a high-level, strategic role[153]. Below it are a number of committees and working groups which report to the Advisory Committee.

1264. In addition to those in place during the last evaluation, the Sanctions Committee and the Anti–Bribery and Corruption Committee have been created to ensure that the Bailiwick has a properly coordinated response to emerging areas of particular international concern. Whilst the smaller committees are essentially specialist bodies with distinct areas of responsibility, there is overlap in terms of membership and matters under consideration which facilitates a consistent approach across the jurisdiction.

1265. The objectives of the Committee are: a) to coordinate actions to identify, assess, evaluate and address risks in relation to money laundering and the financing of terrorism (money laundering for these purposes includes bribery and corruption, on the basis that this is primarily an issue of asset recovery in the Bailiwick given its role as an international finance centre); and b) to coordinate development of and responses to the Bailiwick's strategy for combating money laundering and the financing of terrorism, to ensure that it follows international standards and is effective and proportionate to any threat to either financial stability or the security of the Bailiwick. The AML/CFT Advisory Committee meets at least twice a year.

1266. In achieving its objectives the Committee a) considers any significant international changes in, money laundering or terrorist financing that may affect the Bailiwick and make recommendations for changes to legislation, supervision or law enforcement; and b) responds to developments in the financial industry to ensure that financial crime, money laundering and terrorist financing to the Bailiwick is limited by seeking an appropriate and proportionate reaction to minimise risk.

[153] The Bailiwick AML/CFT Advisory Committee is chaired by the Attorney General and its other members are the Director of Financial Crime Policy and International Regulatory Adviser to the Policy Council, the Director General of the GFSC, the Head of Law Enforcement, the Executive Director of the AGCC, the Director of Income Tax, the Guernsey and Alderney Registrar of NPOs (also present in his capacity as the Guernsey Registrar of Companies), the Sark Registrar of NPOs and the Alderney Company Registrar. Most of these representatives are supported at meetings by key members of their respective senior personnel.

1267. As well as committees that involve all of the AML/CFT authorities, there are structures in place which involve only some of them in areas where there is a shared responsibility, for example the regular scheduled meetings between Attorney General's Chambers and the FIS in respect of mutual legal assistance requests. Further examples are the Enforcement Case Review Committee established in 2013 by the FIU and the GFSC in order to ensure close liaison between the two authorities on particular cases, and the MOU between the FIU and the Income Tax Office which was signed in March 2014 and which gives the two authorities access to certain aspects of one another's systems and records (subject to strict internal controls and excluding any information relating to the exchange of information which the Director of Income Tax has facilitated as competent authority of the large portfolio of international tax information exchange agreements).

1268. A significant change since the last evaluation has been the increasing role of government in the coordination and development of the Bailiwick's AML/CFT policy. As was the case in 2010, ultimate responsibility for AML/CFT policy issues rests with the Policy Council of the States of Guernsey. The Policy Council's increased involvement is at a policy level only (other than in respect of sanctions where, as indicated above, it has operational responsibilities).

1269. Cooperation and coordination at an operational level is achieved by both formal and supplementary meetings.

1270. The law enforcement agencies work closely with members of the prosecution team in the Attorney General's Chambers in the preparation of particular cases, and the economic crime prosecutor has been actively involved in assisting the FIU in the review and preparation of cases on both a specific and a more general basis. There are also regular meetings to review cases between the GBA and the members of the Attorney General's chambers who work on mutual legal assistance. In addition, there are regular meetings between the FIS and the GFSC at the Enforcement Case Review Committee.

1271. A number of other committees and working groups report directly to the AML/CFT Advisory Committee. These are the Financial Crime Working Group, the Sanctions Committee and the Anti-Bribery & Corruption Committee. The Sanctions Committee also reports to the Policy Council.

1272. The Financial Crime Working Group has responsibility for sharing and discussing appropriate tactical and operational information, ensuring that collective effort is joined up; identifying financial crime risks to the Bailiwick, together with the Bailiwick's exposure to those risks; identifying and where possible resolving impediments to addressing financial crime risk at the tactical and operational levels. It is chaired by the head of the FIU and its other members are representatives from law enforcement, the Attorney General's Chambers, the GFSC and Income Tax. The group discusses current issues and cases, trends, and mutual co-operation and the identification of money laundering risks within the Bailiwick. Terrorist financing issues are also discussed as necessary. Representatives from other bodies whose responsibilities relate to AML/CFT issues such as the AGCC are invited to attend meetings of the Financial Crime Group, and the Terrorist Financing Team within it, when issues relevant to their areas of responsibility are to be discussed.

1273. The Sanctions Committee is chaired by the Director of Financial Crime Policy and International Regulatory Adviser to the Policy Council. Its other members comprise representatives from GBA, the Attorney General's Chambers the GFSC and the AGCC. Its objectives are to coordinate compliance with the UN sanctions and other relevant sanctions issued by supranational or international bodies, and to ensure effective compliance with UN and other relevant sanctions. It aims to achieve these objectives by monitoring international developments regarding sanctions; ensuring swift and effective response to sanctions issued by the UN and other relevant supranational and international bodies; and ensuring that information

relating to sanctions which have effect is widely available to the public and that persons required to comply with sanctions are made aware of them.

1274. The Anti-Bribery and Corruption Committee is chaired by the head of the FIU. Its other members comprise representatives from the GBA, the Policy Council, the Attorney General's Chambers and the GFSC. Its objectives are to oversee and coordinate compliance with relevant anti-bribery and corruption standards or recommendations issued or recommended by supranational or international bodies, and to ensure effective compliance with relevant anti-bribery and corruption standards and measures.

1275. In addition, there is also a working group in place to deal with changes to the NPO regime. It is chaired by Guernsey and Alderney Registrar of NPOs and its other members are the Sark Registrar and representatives from the Policy Council, the GBA, the Attorney General's Chambers and the GFSC.

Bilateral cooperation

1276. Section 6 of the Disclosure Law permits persons, employed in the department of the state of Guernsey, who are authorised to make a disclosure, of any information held by a government department for the purposes of any criminal investigation or proceedings whether in the Bailiwick or elsewhere.

1277. No disclosure of information shall be made by virtue of the section 6 unless the authorised person who makes the disclosure is satisfied that the making of the disclosure is proportionate to what is thereby sought to be achieved.

1278. Section 8 permits a Police officer (which includes a Customs officer) to disclose to any person any information obtained under any enactment or in connection with the carrying out of any of his functions, for the purposes set out at section 8(2). These purposes are the prevention, detection, investigation or prosecution of criminal offences in the Bailiwick or elsewhere, the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of the Bailiwick or of any country or territory outside the Bailiwick, the carrying out by the GFSC or an equivalent body in another country of it functions, the carrying out of the functions of any intelligence service, and any other function of a public nature designated by order of the Home Department.

1279. Section 43 of the Proceeds of Crime Law enables the police officer or any other person who has received that information to disclose it to the Attorney General, the GFSC, a Police officer (which includes Customs officer) or any other person authorized in writing to receive it by the Attorney General for other purposes within the Bailiwick.

1280. Fraud Investigation Law section 2 permits disclosure of information authorised by Attorney General for the purpose of a prosecution in the Bailiwick or elsewhere for the purposes of any investigation and to competent authorities responsible for supervisory, regulatory or disciplinary functions.

1281. The Financial Services Commission Law provides exception for the disclosure of confidential information for a wide range of purposes. These include purposes specifically to enable the GFSC to carry out any of its functions, for the purposes of the prevention or detection of crime or for the purposes of any criminal proceedings, in connection with the discharge of any international obligation to which the Bailiwick is subject, and to assist, in the interests of the public or otherwise, any authority which appears to the GFSC to exercise in a place outside the Bailiwick functions corresponding to those of the GFSC. The purposes also include a provision enabling the GFSC to disclose information to enable any body established to control or supervise gambling in the Bailiwick or any part therefore to carry out its functions or to investigate matters of relevance to its functions.

1282. Charities and NPOs Registration Law permits the Guernsey and Alderney Registrar of NPOs to disclose information held by him in his capacity as the keeper of the register of charities and

NPOs for a wide range of purposes, Sark Charities and NPOs Registration Law permits the Sark Registrar of NPOs to disclose information held by him in his capacity as the keeper of the register of charities and NPOs for a wide range of purposes.

1283. Gambling (Alderney) Law permits the AGCC to transmit to other persons or bodies, in such manner as it considers appropriate, such information relating to its functions as it sees fit.

1284. Data Protection Law contains exemptions from the prohibition on the disclosure of personal data which apply to disclosures for the purposes respectively of the prevention detection and investigation of crime or the apprehension or prosecution of offenders, and regulatory activity relating amongst other things to the protection of the public and charities against financial loss and the protection of the reputation and standing of the Bailiwick.

Additional element – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBPS) (c. 31.2)

1285. The introduction of changes to the legal framework is always preceded by a formal consultation process with affected sectors unless the proposed changes are purely technical. Recent examples include consultation about changes to the NPO framework and to the power to obtain additional information following the making of STRs.

1286. In addition to this process, there are regular meetings between the authorities and representatives of the financial sector. This includes the Finance Sector Forum, a body which meets monthly.

1287. The GFSC has well-established systems for consulting industry which include annual all–day industry seminars as well as periodic meetings with the different associations which represent the finance sector. The GFSC also consults industry on specific matters such as its Handbooks, which are currently being reviewed by a joint working group which includes industry representatives and a representative from the FIU.

1288. As described under Recommendation 26, the FIS has a system for consulting MLROs via THEMIS. In addition it has instigated an Industry Focus Group with representatives from the main financial services sectors in order to enable informal discussion with members of the FIS and to give MLROs the opportunity to refer issues of interest.

1289. There is a system of consultation between the AGCC and the online gambling sector. The AGCC holds meetings with licensees to discuss AML/CFT issues and maintains a list of MLROs and nominated officers that enable it to target AML/CFT information to the relevant individuals.

1290. With regard to NPOs, the Guernsey and Alderney Registrar of NPOs has regular contact with the Association of Guernsey Charities. He communicates concerns and items of interest to the Chairman of that body for dissemination to members, receives any feedback from them and deals with any concerns which charities themselves have.

Recommendation 32.1 (Review of the effectiveness of the AML/CFT system on a regular basis)

1291. The Bailiwick AML/CFT Advisory Committee has overall responsibility for reviewing the effectiveness of the Bailiwick's AML/CFT regime.

1292. Any specific issues which require action are reported to the Advisory Committee, which also considers any specific issues which arise from statistics produced by the different authorities, jurisdictional risk assessments produced by law enforcement and the GFSC, and specific threat assessments that are usually produced by law enforcement. Action is then taken as necessary in response to that information.

1293. The Advisory Committee is also responsible for preparing and reviewing compliance with the Bailiwick's strategy for addressing financial crime. Work is currently ongoing to prepare a new strategy document. This work has been informed by an analysis of comprehensive statistics

relating to all aspects of the AML/CFT framework which the authorities have been collating since the summer of 2013. The different authorities have carried out analysis of statistics in relation to their particular areas of responsibility and work is currently ongoing to bring these separate pieces of analysis together in a single document in preparation for compiling a national risk assessment.

1294. A risk book providing information on aspects of potential money laundering and terrorist financing risk to the Bailiwick of Guernsey is developed by the authorities in September 2014. It will be updated periodically.

Recommendation 30 (Policy makers – resources, professional standards and training)

1295. Although Guernsey, Alderney and Sark constitute three different jurisdictions with separate structures, staff, funding and other resources, there is a high level of cooperation and coordination between the policy makers in the three islands and all benefit from input from the AML/CFT Advisory Committee.

1296. Ultimate responsibility for Bailiwick AML/CFT policy issues rests with the Policy Council of the States of Guernsey which comprises ministers and is chaired by the Chief Minister.

1297. All members of the Policy Council, the Home Department, the Treasury and Resources Department and the Commerce and Employment Department at a political level are bound by a Code of Conduct issued under article 20F of the Reform Law. The Code of Conduct prohibits members from placing themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties, and requires them to uphold the political impartiality of the civil service. There is an equivalent Code for political members of the States of Alderney and rules of procedure which cover matters such as declaration of interests.

1298. Officers of the Policy Council, the three departments of the States of Guernsey and the States of Alderney are bound by the Civil Service Code. This specifies that civil servants must not be influenced by pressures from others, and requires civil servants to act with personal and political impartiality.

1299. The Policy Council has an annual budget of over £8,000,000. The Treasury and Resources Department has an annual budget of £17,000,000. Within the Home Department, the development of legislation is the responsibility of the Central Services Support Division, which has an annual budget of over £3,500,000. The Commerce and Employment Department has an annual revenue budget of £10,625,000.00 net for 2014.

1300. The Policy Council employs 36 Full Time Equivalent ("FTE") members of staff. This includes the recently recruited Director of Financial Crime Policy and International Regulatory Adviser to the Policy Council. The Treasury and Resources Department employs 277 FTE staff members and the Home Department's, Central Services Support Division employs 17 FTE staff. The Commerce and Employment Department has 106 FTE members of staff, including two full time lawyers in the Policy Unit.

1301. The States of Alderney Policy and Finance Committee comprises 10 elected members, supported by the Chief Executive of the States of Alderney and two dedicated staff members as well as by the States Treasurer who has a staff of six.

1302. The General Purposes and Advisory Committee of the Chief Pleas of Sark comprises 5 elected members and are supported by the Senior Administrator.

1303. In exercising their policy-making functions the Policy Council, the two departments of the States of Guernsey, the States of Alderney and the Chief Pleas of Sark have the benefit of expert advice from the different agencies represented on the AML/CFT Advisory Committee as well as the secretariat to the committee. This is at both a strategic and a specific level.

1304. The various bodies referred to above all have a full range of IT and other resources.

1305. The appointment of non-political members of staff in Guernsey and Alderney is governed by normal civil service recruitment standards and practices. The Civil Service produces internal guidelines to assist in the recruitment process. These cover issues such as job evaluation, transparency and the publication of key criteria that specify the necessary qualifications and experience for all posts. There are provisions in respect of integrity and confidentiality at paragraphs 4 to 9 of the Civil Service Code. All civil servants have to sign a declaration of secrecy as part of their contract of employment.

1306. Sark elected members take an oath of office and have rules of procedure including declaring an interest at Chief Pleas. Officials operate within the definition of relevant roles as specified in the relevant legislation, as well as within the relevant professional codes for those roles. They are supported by the Senior Administrator in terms of good governance.

1307. Presentations and briefings are given to policy makers on AML/CFT related issues by representatives from the AML/CFT Advisory Committee and the Director of Financial Crime Policy and International Regulatory Adviser to the Policy Council. Representatives from law enforcement, the Attorney General's Chambers and the GFSC have also provided information to policy makers on an individual basis.

1308. For example, the Attorney General's Chambers advised policy officials in connection with the introduction of new primary legislation to implement UNSCR 1373. This led to the preparation of a report for the States of Deliberation containing recommendations that were subsequently approved, and the Terrorist Asset Freezing Law was enacted as a result.

1309. Good cooperation and coordination are also demonstrated by joint presentations and seminars that are arranged by different authorities. Examples include a major conference organised in 2012 by all the members of the Anti–Bribery and Corruption Committee, a joint presentation on sanctions given to members of the legal profession by representatives of the Attorney General's chambers and the Policy Council in 2013, a joint presentation on sanctions given to members of the finance industry by representatives of the Policy Council and FIU also in 2013 and a joint seminar on STRs in May 2014 given to industry by the GFSC and the FIS. All of these events received extremely positive feedback.

Review of Effectiveness of AML/CFT Systems

1310. The systems in place for cooperation and coordination of the legal framework are considered to be effective.

1311. The systems in place for the review of the effectiveness of the Bailiwick's AML/CFT systems are considered to operate well. As indicated above, this takes place at a jurisdiction-wide level as well as by the individual authorities who carry out reviews of information relevant to their particular areas independently or in conjunction with another authority.

Effectiveness and efficiency

1312. The authorities have a variety of mechanisms to facilitate cooperation and policy development.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**C**	

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

Recommendation 35 (rated LC in the IMF report) & Special Recommendation I (rated LC in the IMF report)

Summary of 2011 factors underlying the rating

1313. Recommendation 35 was rated LC in the IMF report based on the following conclusions:

- Palermo Convention not yet extended to the Bailiwick.
- Questions regarding the effective application of ML **p**rovisions with few ML cases involving financial sector participants, and disconnect between investigations and prosecutions/convictions.

1314. Special Recommendation I was rated LC in the IMF report based on the following conclusions:

UNSCR implementation:

- In the legal framework, it is not explicit that designated persons are not to receive prior notice of a freeze action.
- Guidance regarding lists and their application in the Bailiwick should be improved.
- Criminal provision for enforcement could have greater clarity as identified in SR III section.

Legal Framework

1315. As it was pointed out by the Guernsey authorities, the position with regard to the three Conventions covered by R.35 (meaning the Vienna and the Palermo Conventions and the FT Convention) remained the same at the time of the on-site visit as it was at the time of the previous assessment[154]. That is to say the Bailiwick, as a dependency of the British Crown, cannot itself sign or ratify international Conventions on its own. As it is the government of the UK that acts, by longstanding constitutional convention, for the Bailiwick in any international matters, it is also the UK that can extend its ratification of international Conventions to the Bailiwick. As it was already noted in the IMF report, such an extension can be done at the request of the Bailiwick in cases where the latter has satisfied itself as well as the UK authorities that it has in place the legislative and other measures necessary to meet the requirements of the Convention in question. The UK government then conducts its own assessment and if satisfied as to the Bailiwick's compliance, informs the secretariat for the relevant Convention (in case of UN Conventions, the Secretary General of the UN) that its ratification of the Convention is extended to the Bailiwick.

1316. The UK's ratification of the Vienna Convention and the FT Convention had already been extended to the Bailiwick at the time of the last evaluation. This was not the case in respect of the Palermo Convention due to some outstanding issues that needed to be addressed in discussion with the UK.[155]

Ratification of AML Related UN Conventions (c. R.35.1 and of CFT Related UN Conventions (c. SR I.1)

1317. As it was already noted in the previous report, the Vienna Convention was extended to the Bailiwick on 9th April 2002 and is implemented by the DTL and related legislation such as the Misuse of Drugs Law. The situation of the Palermo Convention, however, has also remained the same at the time of the on-site visit.

1318. As it was explained by the Guernsey authorities, the main obstacle to the extension of the Palermo Convention lay in the area of extradition. The UK's 1989 Extradition Act, which still governs extradition from the Bailiwick has already been repealed and replaced by the Extradition Act 2003 for the purposes of the UK itself yet remained in force in the Bailiwick. In consultation with the UK authorities, a question had been raised prior to the previous round of evaluation regarding whether the extradition laws that applied at that time (and have since been in force) in the Bailiwick meet fully all Palermo Convention requirements. At that time, a view

[154] See paragraph 1215 page 297 of the IMF report.
[155] See paragraph 1216 page 297.

had been expressed in the UK that the procedures under the 1989 Act might not comply with the requirement for simplified extradition at Article 16(8) of the Palermo Convention and this issue needed to be clarified before the extension of ratification of the said Convention could be requested. Having said that, the UK government has since supported the extension of the Palermo Convention to other jurisdictions that were governed by the 1989 Extradition Act (e.g. the Isle of Man) which indicated that the UK authorities were in fact satisfied that the 1989 Extradition Act met the requirements of the Convention.

1319. At the same time, a possible new issue of non-compliance was identified in 2013 in respect of extra-territorial jurisdiction over offences committed on Bailiwick-registered ships in foreign ports but appropriate legislation has already been drafted and adopted to address the jurisdiction issue that came into force in March 2015156 (although the UK authorities were content to proceed with the ratification process even before that).

1320. After the on-site visit the evaluation team was informed that the Palermo Convention had been extended to Guernsey. This was effected by the UK government notifying the Secretary-General of the United Nations that it wished the UK's ratification of the Convention be extended to Guernsey and this was not subject to any declarations or reservations. The date of entry into force of the Convention for the Bailiwick was 17 December 2014 which thus took place beyond the two-month period normally foreseen by the FATF Handbook.

1321. Taking into account the fact, however, that the relevant delay is only 6 days the evaluators considered that an exception to the two-month deadline can be justified in this case.

1322. Ratification of the FT Convention was extended to the Bailiwick on 25th September 2008 and it is implemented through provisions of the TL particularly those dealing with the FT offences (Sections 8 to 11) and the related investigatory powers (Schedule 5) as well as by a number of other enactments including the Police Powers Law (in respect of the treatment of suspects in parts III to V) the Interpretation Law (in respect of the liability of legal persons) the aforementioned Extradition Act (in respect of the extradition of foreign nationals) and the International Cooperation Law (in respect of MLA issues).

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1)

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c.35.1)

1323. Generally speaking, the provisions of the Vienna and Palermo Conventions had already been implemented to a remarkable extent at the time of the previous assessment and it was particularly true for the provisions that require criminalization of ML. Further details of the legislation by which these Conventions are implemented can be found in Annex 3 (attached).

Implementation of the Terrorist Financing Convention (Articles 2-18, c.35.1 & c. SR. I.1)

1324. The provisions of the FT Convention and particularly those relating to the criminalization of FT had been fully implemented at the time of the previous assessment.

Implementation of UNSCRs relating to Prevention and Suppression (c. SR.I.2)

1325. As it was explained by the Guernsey authorities in the MEQ, all UN Security Council Resolutions would traditionally be given effect in the Bailiwick by an Order in Council made under section 1 of the UK's United Nations Act 1946. Historically, this was the process used to implement UN measures within the Channel Islands and the Overseas Territories and at the time of the last evaluation, UNSCRs 1267 and 1373 had actually been implemented in this way. Since then the legislation has been replaced with domestic legislation to implement the UNSCRs.

1326. As discussed under SR.III above, the asset freezes required by UNSCR 1267 are implemented by the Al–Qaida Ordinances and the Afghanistan Ordinances, which were introduced using the

[156] Merchant Shipping (Bailiwick of Guernsey) (Amendment) Law, 2014

power to give effect to EU measures on a voluntary basis under the European Communities (Implementation) Law. The Ordinances give direct effect in the Bailiwick to the targeted asset freezes imposed by the Regulations (EC) No. 881/2002 and (EU) No. 753/2011 respectively, which implement the targeted financial sanctions required by UNSCR 1267 and its successor Resolutions. Measures other than asset freezes under 1267 are implemented by the Al–Qaida Ordinances and the Afghanistan Ordinances (restrictions on supplying technical assistance etc.) and also by the Al-Qa'ida and Taliban Order (arms embargo), the Air Navigation Law (power to refuse permission for flights etc.) and the Immigration (Guernsey) Order (travel bans).

1327. The asset freezes required by UNSCR 1373 are implemented by the Terrorist Asset-Freezing Law, which gives direct effect in the Bailiwick to EU Regulation (EC) No 2580/2001 imposing targeted financial sanctions on individuals or entities falling within the criteria set out in UNSCR 1373. It also gives direct effect to additional autonomous designations made by the UK Treasury under the UK's Terrorist Asset-Freezing etc. Act 2010, as well as giving the Stets of Guernsey Policy Council the power to make its own designations.

Additional element – Ratification or Implementation of other relevant international conventions

1328. The list of relevant international Conventions the ratification of which has also been extended to the Bailiwick, including the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the 1959 Council of Europe Convention on Mutual Assistance (but not the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism) is provided in the IMF report [157]. The evaluation team was not informed about any significant development in this field.

6.2.2 Recommendations and comments

1329. Palermo Convention has been extended to Guernsey. The date of entry into force of the Convention for the Bailiwick is December 17 2014.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**C**	
SR.I	**C**	

6.3 Mutual legal assistance (R. 36, SR. V)

6.3.1 Description and analysis

Recommendation 36 (rated LC in the IMF report***)***

Summary of 2011 factors underlying the rating

1330. In the previous report R. 36 was rated LC, based on the following conclusions:

- Prior to July 2010, the designation mechanism may have had a negative impact on the overall effectiveness of the MLA system.

Legal framework

1331. The legal framework for the provision of MLA in criminal cases remained largely the same as it was at the time of the 2011 IMF assessment. As it was noted in the IMF report [158] there is not a single piece of legislation to generally regulate the provision of MLA by the Bailiwick of Guernsey

[157] See paragraph 1223 page 298.
[158] See paragraph 1225 page 300.

and therefore reliance is placed on the provision of a number of laws relevant in the field of criminal procedure.

1332. Since the POCL, DTL and TL all apply, as a main rule, to criminal activity both within and outside the Bailiwick (in the context of ML and FT see above under R.1 and SR.II) the wide range of investigatory powers under these Laws is not limited to domestic investigations and they may thus be, and are regularly used to provide MLA as appropriate.

1333. The International Cooperation Law[159] contains investigatory and other powers that are specific to the provision of MLA (as it was noted already in the IMF report this piece of legislation is used mainly to restrain and confiscate instrumentalities of crime). The powers under the Civil Forfeiture Law, the Fraud Investigation Law, the Protection of Investors Law and the Insider Dealing Law, as discussed below, are also available for the provision of MLA.

1334. Apart from the laws mentioned above, there is secondary legislation in place (meaning a range of ordinances issued upon authorization by the aforementioned laws) specifically to permit the restraint and confiscation of assets and instrumentalities in criminal cases at the request of other jurisdictions. Some of these ordinances serve to provide such assistance in relation to assets that constitute proceeds of crime while others in relation to instrumentalities.

1335. As it will be discussed below under EC 36.1.f more in details, the first group consists of the following instruments (depending on the criminal offence in question)

- the Proceeds of Crime (Enforcement of Overseas Confiscation Orders) Ordinance[160] issued upon authorization by Section 35 POCL
- the Drug Trafficking (Designated Countries and Territories) Ordinance[161] issued upon authorization by Section 35 DTL
- and the Terrorism and Crime (Enforcement of External Orders) Ordinance[162] issued upon authorization by Section 18 and Schedule 2 TL

while the second group comprises:

- the International Cooperation (Enforcement of Overseas Forfeiture Orders) Ordinance[163] issued upon authorization by Section 8 of the International Cooperation Law
- and the Drug Trafficking Law (Enforcement of External Forfeiture Orders) Ordinance[164] issued upon authorization by Section 49 DTL.

1336. Until July 2010, this type of assistance could only be provided to countries so designated by way of these Guernsey Ordinances or through an "emergency ordinance" that could be issued in case of requests coming from non-designated countries (see paragraphs 1226-1227 of the IMF report for further details on this regime). This restriction was removed by a range of ordinances amending the relevant laws (and thus broadening the scope of the respective ordinances) by specifying that all countries which had not already been designated (including any country or territory which was to come into existence thereafter) were to be treated as designated with effect from 28 July 2010. The relevant instruments were the following:

[159] Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001
[160] Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999
[161] Drug Trafficking (Bailiwick of Guernsey) (Designated Countries and Territories) Ordinance, 2000
[162] Terrorism and Crime (Enforcement of External Orders) (Bailiwick of Guernsey) Ordinance, 2007
[163] Criminal Justice (International Co-operation) (Enforcement of Overseas Forfeiture Orders) (Bailiwick of Guernsey) Ordinance, 2007
[164] Drug Trafficking (Bailiwick of Guernsey) Law (Enforcement of External Forfeiture Orders) Ordinance, 2000

- the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010 which amended the POCL (new Section 35A)
- the Drug Trafficking (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010 which amended the DTL (new Section 35A)
- the Terrorism and Crime (Bailiwick of Guernsey) (Amendment) (No. 3) Ordinance, 2010 which amended the TL (new Section 10A)
- and the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010 which amended the International Cooperation Law (new Section 8A).

1337. As a result, all countries are now considered to be designated countries or territories for the purpose of providing MLA except in the case of enforcement of external forfeiture orders made in relation to instrumentalities of drug trafficking and related ML offences. This exception comes from the fact that Section 49 of the DTL, which gives authorization to the issuance of the Drug Trafficking Law (Enforcement of External Forfeiture Orders) Ordinance, was not amended in 2010 and is thus restricted to external orders made by a court either in the UK or in a "Convention state" (that is, a state party to the Vienna Convention) if the latter is designated for this purpose by a specific UK legislative act (that is, an Order in Council made according to the Criminal Justice (International Co-operation) Act 1990). The current legislation gives no room for domestic designation of countries and therefore it could not have been broadened to all countries.

1338. Under Section 10 of the Drug Trafficking Law (Enforcement of External Forfeiture Orders) Ordinance, the countries designated for the purposes of Section 49 of the DTL are those listed in the UK's Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 1991 as amended. The list of the designated countries can be found in Annex III to the MLA Handbook published on the States of Guernsey website[165]. Containing 128 countries, the list appears comprehensive although, at certain points, outdated (particularly as certain "Convention states" have since dissolved which is not reflected in the list). Nonetheless, the Guernsey authorities confirmed that this designation regime has never caused any difficulties in practice when providing MLA.

1339. No changes have taken place in that the Bailiwick, not being state party to international treaties in itself, may not provide MLA directly on the basis of international conventions but on domestic legislation. Nonetheless, as it was noted in the IMF report [166] the UK ratification of some of the most important treaties such as the 1959 Council of Europe Convention on Mutual Assistance, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime as well as the aforementioned Vienna Convention and the FT Convention, all of which contain provisions related to MLA, had already been extended to Guernsey at the time of the previous assessment and can therefore serve, indirectly, as a basis of international cooperation in criminal matters.

1340. As for the procedural aspects, the Attorney General's Chambers remained the designated central authority in the Bailiwick responsible for receiving and dealing with MLA requests from abroad, both in respect of the investigation and prosecution of crime and also in respect of civil forfeiture. The authorities added that applications for assistance are often received after preliminary contact has been made at an early stage in an investigation and advice given by law enforcement authorities.

Widest possible range of mutual assistance (c.36.1)

[165] "Mutual Assistance in Criminal Matters and the Bailiwick of Guernsey" at: http://www.gov.gg/CHttpHandler.ashx?id=4634&p=0

[166] See paragraph 1228 page 301.

1341. Generally, there are no rules of procedure or other legislation specifically governing the way in which MLA requests are executed. As it was outlined in other parts of this report, the Bailiwick legislation stipulates a wide range of investigative measures for the law enforcement agencies to gather evidence or information in criminal proceedings. These powers are not confined to investigations within the Bailiwick and the respective measures are regularly used to provide information, documents and evidence to other jurisdictions as follows.

Production, search and seizure of information, documents, or evidence (EC 36.1.a)

1342. Basically, there are no changes having taken place in the main provisions governing the production, search and seizure of documentary of other evidence for the purposes of MLA. As noted above, the investigatory powers under the POCL, DTL and the TL are available also for the execution of foreign requests, in which context reference can be made to the following investigative measures, all of which have already been discussed more in details under R.3 above:

- production orders requiring a specific person to deliver up specified material (Sections 45 POCL / 63 DTL)
- warrants for search and seizure (Sections 46 POCL / 64 DTL)
- customer information orders (Sections 48A POCL / 67A DTL)
- account monitoring orders (Sections 48H POCL / 67H DTL)

1343. The respective provisions are practically identical in both Laws and therefore the DTL will only be applied if the MLA request is related to a drug trafficking offence. The same powers are provided for by Schedules 5 to 7 to the TL for the purposes of terrorist investigation (including investigations into the resources of terrorist organisations).

1344. All of these powers are applicable ex parte and available for obtaining information from financial institutions (except for items subject to legal privilege). While customer identification orders and account monitoring orders are directly addressing financial services businesses to provide specified information on their customers and/or accounts, the production orders and, if necessary, the search and seizure warrants may also be applicable to financial institutions in respect of the affairs of their clients.

1345. The special investigatory powers of the Attorney General as provided by the Fraud Investigation Law, Insider Dealing Law and Protection of Investors Law in respect of specific offences, as discussed more in details under R.3 may also be used to assist AML investigations in another jurisdiction in cases where the predicate offence involved conduct covered by those Laws. In such cases the Attorney General may, without a court order, require the person under investigation or any other person to answer questions or to produce specified documents (including those covered by fiduciary or other duties of confidence) and may also seek a warrant from the Bailiff authorizing search and seizure.

1346. Under Section 7(1) of the International Cooperation Law, a police (or customs) officer may apply for a court order permitting entry, search and seizure in response to an overseas request for assistance. The court must be satisfied that (i) criminal proceedings have been, or are reasonably expected to be instituted against a person in the requesting country (ii) the conduct meets the dual criminality standard (it would constitute a criminal offence punishable by imprisonment under Guernsey law) and (iii) there are reasonable grounds for suspecting that evidence is located in the Bailiwick.

1347. In addition, assistance may also be given to overseas jurisdictions in respect of civil forfeiture investigations. Section 47 of the Civil Forfeiture Law provides that the investigatory powers under this Law may be used in respect of requests for information from overseas jurisdictions that have been designated by Regulations made by the Guernsey States Home Department under Section 53 of the same Law. Designation can only be granted on the basis of legislative

reciprocity, that is, if the other country appears to have legislation or law in force corresponding to the forfeiture provisions in Part III of the Civil Forfeiture Law. (As it was explained by the authorities, designations to date cover the UK and the USA only.) The investigatory powers cover production orders, customer information orders, account monitoring orders and disclosure orders, as referred to under Section 47.

Taking of evidence or statements from persons (EC 36.1.b)

1348. By virtue of the general authorization under Section 4 of the International Cooperation Law and the detailed procedural rules stipulated in its Schedule 1, the Attorney General has the power to compel a person to provide a voluntary witness statement, including under oath, if that person could be so compelled under the criminal law of the Bailiwick and the requesting jurisdiction. This applies to all categories of cases. Furthermore, under Sections 4A and 4B, a person in the Bailiwick may give evidence through a live television link or by telephone at the request of an external authority.

1349. In cases of fraud, market manipulation or insider dealing (and in ML cases where the relevant conduct constitutes both one or more of these offences and ML) the power to take statements under the Fraud Investigation Law[167] (Section 1[2]) the Protection of Investors Law (Section 41L[2]) and the Insider Dealing Law (Section 10[4]) respectively, may also be invoked. In such cases, the Attorney General may require the person under investigation or any other person to answer questions or to furnish information relevant to the investigation or to evidence produced by that person. In addition, in cases of civil forfeiture, disclosure orders under section 41 of the Civil Forfeiture Law may also be used to take such statements.

Providing originals or copies of relevant documents and records as well as any other information and evidentiary items (EC 36.1.c)

1350. As it was discussed more in details in the IMF report [168] information and evidence obtained pursuant to the International Cooperation Law must be forwarded to the Attorney General for transmission to the court, tribunal or other authority of the requesting state (Section 7[4]) in which context either the original document (or evidence) or a copy, description, photograph or other representation thereof may be transmitted, in accordance with the foreign request (Section 7[6]).

1351. As regards information and evidence obtained pursuant to any other laws, transmission to the requesting state is provided for at Section 8 of the Disclosure Law, which permits a police or a customs officer to disclose to any person any information obtained under any enactment or in connection with the carrying out of any of his functions, for purposes including the prevention, detection, investigation or prosecution of criminal offences in the Bailiwick or elsewhere.

Effecting service of judicial documents (EC 36.1.d)

1352. The service of judicial documents from another jurisdiction is covered by Section 1(1) of the International Cooperation Law, which provides that the Attorney General may grant the serving of summons or other processes issued in the course of criminal proceedings in the requesting state as well as any document issued by and recording the decision of a foreign court exercising criminal jurisdiction to be served in Guernsey.

Facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country (EC 36.1.e)

1353. This aspect of mutual legal assistance is covered by the aforementioned Section 1(1)(a) that permits the service of process requiring attendance as a witness in an overseas court on a person within the Bailiwick. Furthermore, Section 5(1) permits the transfer of any person serving a sentence in the States Prison to a jurisdiction outside the Bailiwick for the purposes of giving

[167] Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991
[168] See paragraph 1240 page 302.

evidence in criminal proceedings there or for being identified in or otherwise by his presence assisting, such proceedings or the investigation of an offence. The consent of the person concerned (or, if necessary, of an appropriate adult) is required by Section 5(2).

Identification, freezing, seizure and confiscation of criminal proceeds and instrumentalities (EC 36.1.f)

1354. As for the identification of assets subject to freezing, seizure and confiscation, the Guernsey authorities rely on and, as reported, do regularly apply the information-gathering powers referred to above. No particular obstacle in providing MLA was detected in this field. The procedural aspects of taking provisional measures based either on a foreign order or a foreign request, as well as giving effect to a foreign confiscation order have not changed since the time of the previous evaluation and are adequately described in the 2011 IMF report.[169]

1355. Assistance in freezing, seizing and confiscating assets that constitute proceeds in cases relating to ML, FT and predicate offences (meaning drug trafficking and generally all indictable offences) is provided upon the same legal basis as at the time of the previous assessment. The registration and enforcement of overseas confiscation and restraint orders is specifically covered by secondary legislation issued pursuant to Sections 35 of both the POCL and the DTL, and under Section 18 and Schedule 2 to the TL. As noted above, the secondary legislation issued in this field consists of the following instruments:

- the Proceeds of Crime (Enforcement of Overseas Confiscation Orders) Ordinance
- the Drug Trafficking (Designated Countries and Territories) Ordinance
- and the Terrorism and Crime (Enforcement of External Orders) Ordinance.

1356. The effect of the Ordinances under the POCL and DTL is to modify the relevant domestic powers in those laws as necessary so that these powers can be applied at the request of jurisdictions that are designated in the Ordinances. (As indicated above, under section 35A of both the POCL and DTL all countries are now considered to be designated.) The modifications put in place a regime for enforcing overseas orders that mirrors the regime for domestic orders. Such differences as exist are included to facilitate the enforcement of overseas orders.

1357. Whereas foreign restraint and confiscation orders in respect of FT offences come with the scope of Section 35 of the POCL (in the same way as other non-drug trafficking indictable offences) there are specific terrorism-related provisions in Schedule 2 to the TL (paragraphs 8 to 10) according to which orders in respect of the restraint or confiscation of assets relating to terrorism made elsewhere in the British Islands can be enforced in the Bailiwick and the same goes for external (non-British) restraint and forfeiture orders in respect of countries designated in the aforementioned Terrorism and Crime (Enforcement of External Orders) Ordinance. (Again, all countries are now considered to be designated under paragraph 10A of Schedule 2.) Schedule 2 applies to British and overseas orders in respect of "terrorist property" in general and not just to the proceeds of terrorist financing offences.

1358. As noted above, the enforcement of overseas forfeiture orders in respect of instrumentalities is regulated by secondary legislation issued pursuant to Section 8 of the International Cooperation Law and Section 49 of the DTL, namely:

- the International Cooperation (Enforcement of Overseas Orders) Ordinance
- and the Drug Trafficking Law (Enforcement of External Forfeiture Orders) Ordinance.

1359. Instrumentalities of FT offences are also included within the scope of the first ordinance above considering that Section 8(6) of the International Cooperation Law makes it applicable to any indictable offence except for drug trafficking (which is thus covered by the second ordinance).

[169] See paragraphs 1269 to 1272 page 307.

Although this Section 8 applies to designated countries only, all countries are now designated under the new Section 8A. As far as instrumentalities of drug trafficking and related ML offences are concerned, however, the designation regime remained (see above in details).

1360. Overseas forfeiture orders from designated countries can also be given effect under Section 49 of the Civil Forfeiture Law.

Provision of assistance in timely, constructive and effective manner (c. 36.1.1)

1361. Similarly to the time of the previous assessment, there are still no formal requirements in place to specifically govern response times. The governmental guidelines issued to the public on MLA matters in the form of the aforementioned MLA Handbook (which had already been mentioned in the IMF report and have not since been changed) contain, in very general terms, that procedures under either of the applicable laws (the POCL, DTL, Fraud Investigation Law etc.) should be completed "*speedily*" and that in case of extremely urgent requests *"every effort will be made to complete the procedure as quickly as possible"* but in cases where a large amount of material needs to be collated or where banks hold records in storage in another jurisdiction the execution of a request will take longer. No specific timeframes are however provided even for "speedy" or "extremely urgent" cases.

1362. Guernsey authorities claimed that the absence of any procedural requirements outside the context of legal proceedings facilitates the provision of timely, constructive and effective assistance and the Bailiwick aims to provide this in all cases. This statement, however, can only be partially demonstrated by the statistical data on turnaround times in MLA cases as it will be discussed more in details under effectiveness issues below.

Mutual legal assistance should not be prohibited or made subject to unreasonable, disproportionate or unduly restrictive conditions (c. 36.2)

1363. It was already noted in the previous assessment report[170] that there are no binding guidelines, policy statements or statutory provisions setting out grounds for refusal of foreign MLA requests. Indeed, there are very few conditions attached to the provision of mutual legal assistance which makes the regime rather flexible.

1364. All of the various powers set out above can be provided once a criminal investigation is under way in the requesting country. The investigatory powers in the POCL, DTL and TL as well as the Civil Forfeiture Law, the Fraud Investigation Law, the Insider Dealing Law and the Protection of Investors Law thus equally apply to domestic and overseas investigations and proceedings and there are no additional conditions attached for MLA requests.

1365. In general terms, reciprocity is not a prerequisite for the provision of MLA. The only exception, which is however beyond the standards of Recommendation 36, is the investigatory powers under the Civil Forfeiture Law the applicability of which is bound by designations based upon legislative reciprocity (see discussed above).

1366. Dual criminality is required for some but not all measures as outlined above. It does not apply in relation to 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. In the case of requests for assistance under the TL, the only requirement is that the request relates to a "terrorist investigation" defined by Section 31 as including an investigation into the commission, preparation or instigation of acts of terrorism, into an act that appears to have been done for the purposes of terrorism, and into the resources of a proscribed organisation. The wide definition of "terrorism" at Section 1 TL does not distinguish between acts carried out in and outside the Bailiwick (see paragraph (4)(a) of the same Section).

[170] See paragraph 1246 page 303.

1367. Notwithstanding that, some degree of dual criminality is required for the use of powers under other legislation. This is true of all requests for assistance under the POCL and the DTL because of the definitions of "criminal conduct" and "drug trafficking" respectively at Sections 1 of each law. In case of offences committed outside the Bailiwick, these provisions require that the act be able to constitute an indictable criminal offence (POCL) or a drug-related ML offence (DTL) under the laws of the Bailiwick "if it were to take place in the Bailiwick". Dual criminality is also required for the exercise of the search and seizure powers under Section 7 of the International Cooperation Law. As it was pointed out by the Guernsey authorities, neither of these references to dual criminality requires foreign offences to be named, categorised or worded in the same way as the respective domestic ones and all that is required is that the conduct underlying the offence is such as could be prosecuted on indictment had it occurred in the Bailiwick. The evaluators share the Guernsey authorities' opinion that the wide range of indictable offences in the Bailiwick (both under the customary law and under statute) means that the issue of dual criminality is not likely to present, and has not yet been reported to have presented, any particular difficulty in practice.

1368. Further pieces of relevant legislation that directly or indirectly require the same dual criminality test for the provision of MLA include Section 1 of the Fraud Investigation Law and Section 41L of the Protection of Investors Law (which equally require there to be a suspected offence involving serious/complex fraud or market abuse "wherever committed") as well as Section 10 of the Insider Dealing Law (which provides that the investigatory powers will be engaged if an offence under the laws of another country or territory relating to insider dealing may have been committed).

1369. The definitions of civil forfeiture investigation and unlawful conduct at Sections 18 and 61(2) of the Civil Forfeiture Law respectively mean that dual criminality is required. Again, however, the test is simply that the relevant conduct is contrary to the criminal law of both requesting state (where it was committed) and the Bailiwick (if it had occurred there). In this context, the term "unlawful conduct" is not limited to indictable offences.

1370. The Guernsey authorities underlined that the Attorney General always exercises his powers in a manner which complies with the Human Rights Law and therefore MLA will not be provided in connection with an offence that is subject to the death penalty in the other country (in the context of this assessment, it might only be relevant to terrorism-related offences) and, as matter of practice, assistance will not be provided in cases where it can be demonstrated that the request is politically motivated (the evaluators have no information whether it has ever happened in ML/FT related MLA cases).

Clear and efficient processes for the execution of mutual legal assistance requests in a timely way and without undue delays (c. 36.3)

1371. As there are no legislative provisions to govern this area, the Bailiwick authorities referred to the practice generally followed in such cases as they did at the time of the previous assessment as well.[171]

1372. As they described, in full similarity to what had already been noted in the previous report, the letters rogatory are addressed to the Attorney General. Urgent requests are dealt with immediately by one of the MLA lawyers (or in their absence by the Attorney General himself). Non-urgent requests are reviewed by the MLA paralegal to see whether there are any defects in the request, after which he/she prepares a note relating to the request and recommending a course of action, then the matter is reviewed by one of the MLA lawyers (or the Attorney General as above).

1373. A decision is taken as to whether to accede to the request, to reject it, to seek clarification or to undertake preliminary enquiries. It was underlined again that minor defects in a letter of request

[171] See paragraphs 1249 to 1252 of the IMF report.

do not generally preclude preliminary enquiries from being undertaken whilst the defect is resolved with the requesting jurisdiction. The letter of request is then forwarded to the FIS, which then prepares in draft the necessary notice or court application. A notice does not require a court order but may be executed once signed by a Law Officer. The draft notice or application is then returned to the Law Officers' Chambers and checked by the MLA lawyer, who forwards it to one of the Law Officers. In the case of a notice, once it has been signed by a Law Officer it is returned to the FIS for execution. In the case of a court application, the Law Officers will sign the same, indicating their consent to the application being put before the Court. If the application is successful and a court order is granted, the matter is returned to the FIS for execution. Any documents produced as a result of an order or notice are reviewed by the FIS and the Law Officers to ensure that the order or notice has been complied with. The documents are then copied or scanned as appropriate and forwarded to the Law Officers for onward transmission to the requesting state.

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

1374. None of the legislation referred to above contains any provision to exclude fiscal matters from the provision of MLA and, as it was already noted in the previous report and confirmed by Guernsey authorities in the present round of assessment, the Bailiwick would not refuse to provide MLA in such cases. Requests concerning fiscal offences are thus treated in exactly the same way as other types of crime and, as it was emphasized by the authorities, assistance had actually been provided on a regular basis, in a number of cases, to HM Revenue and Customs in the United Kingdom in connection with criminal investigations into tax fraud as well as to similar bodies in other jurisdictions, for several years. (This approach was emphasised by the extension to the Bailiwick in 2002 of the Fiscal Protocol to the Council of Europe Convention on Extradition.)

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

1375. There is no statutory legislation to impose secrecy or confidentiality requirements on either financial institutions or DNFBPs. The common law principle of confidentiality, however, does apply to financial institutions but it would not affect the provision of MLA because, as it was explained by the Guernsey authorities, any material disclosed pursuant to statute is not covered by common law confidentiality. In this context, the authorities quoted a court decision from the UK which is considered as a basis of interpretation also in the Bailiwick. The decision, brought by the English Court of Appeal in the case of Tournier v National Provincial & Union Bank of England, provides that in the case of banks, no duties of confidence may prevent disclosure where it is under compulsion of law, when an official of the bank is called on to give evidence in court relating to a customer's account or transactions, or where disclosure is necessary to prevent frauds or crimes.

1376. As it was pointed out by Guernsey authorities, the legislation governing the obtaining of evidence or information contains provisions that specifically override duties of confidentiality, and can likewise be applied when providing MLA, as follows:

- POCL (Sections 39(3)(b), 40(5)(b), 45(9)(b), 48(10), 48F and 48L)
- DTL (Sections 58(3)(a), 59(5)(a), 63(9)(b), 67(10), 67F and 67L)
- TL (Sections 12(10), 15(13) and 15A(8), Schedule 5 paragraph 5(4)(b), Schedule 6 paragraph 1(3)(b) and Schedule 7 paragraph 5 (2))
- Civil Forfeiture Law (Sections 23 (2), 33, 39, 45(5), 47(5) and 52(4))
- Disclosure Law (Sections 1(13), 2(8) and 3(10))
- Fraud Investigation Law (Section 2)
- Protection of Investors Law (Section 41M)

- Insider Dealing Law (Section 11(5))

1377. Nonetheless, items and information subject to legal privilege are precluded from the scope of the aforementioned provisions and their production may thus not be compelled.

1378. As for the disclosure of "personal data" (meaning data which relate to a living individual who can be identified from those data and other information in the possession of the data controller) the Data Protection Law[172] contains certain restrictions but these are subject to various exemptions, such as disclosure for the purposes of the prevention, detection or investigation of crime and the apprehension or prosecution of offenders within or outside the Bailiwick (Section 29) disclosure necessary for the exercise of any functions of a Law Officer of the Crown (Section 31) and disclosure required by law or made in connection with legal proceedings (Section 35) which are wide enough to cover any request for MLA.

Availability of Powers of Competent Authorities (applying R.28 in EC 36.6 and Additional Element 36.8)

1379. As it was already pointed out in the previous round of assessment, the full range of powers required under Recommendation 28 are available for use in response to MLA requests, in addition to specific MLA-related investigatory powers provided by the International Cooperation Law.

1380. All requests for assistance have to be made initially to the Attorney General which also includes direct requests coming from competent foreign judicial authorities (to which extent Additional Element 36.8is partially met). Nonetheless, requests from foreign law enforcement agencies cannot be directly sent to their respective counterparts in the Bailiwick.

Avoiding conflicts of jurisdiction (c. 36.7)

1381. There were no formal proceedings in place dealing with conflicts of jurisdiction at the time of the previous assessment[173] and no changes have since taken place in this respect. As it was explained by the Guernsey authorities, the matter had been considered but no formal mechanisms or procedures have been found to be necessary. If the case was to arise, the issue would be dealt with on a case-by-case basis.

Special Recommendation V (rated LC in the IMF report)

Summary of 2011 factors underlying the rating

1382. Guernsey was rated LC in the 2011 based on the following conclusions:

- Prior to July 2010, the designation mechanism may have had a negative impact on the overall effectiveness of the MLA system.

1383. Apart from provisions that relate to specific offences such as drug trafficking or fraud, the answers provided for under the Essential Criteria above apply equally to the financing of terrorism, terrorist acts, and terrorist organizations, as required by Special Recommendation V.

Recommendation 30 (Resources – Central authority for sending/receiving mutual legal assistance/extradition requests)

1384. The competent central authority for processing MLA requests and extradition is the Attorney General. In practice he is assisted in this work by other members of chambers, some of whom work solely in this area and others who have additional responsibilities. Like the members of the Criminal Prosecutions Directorate, those responsible for mutual legal assistance and extradition are employed by the Treasury and Resources Department of the States of Guernsey but have full operational independence and autonomy, subject to the superintendence of a Law Officer.

[172] The Data Protection (Bailiwick of Guernsey) Law, 2001
[173] See paragraph 1256 page 305 of the IMF report.

1385. The Attorney General is assisted in dealing with incoming mutual legal assistance requests by a dedicated mutual legal assistance lawyer who has day-to-day responsibility for most incoming requests. Some requests are also dealt with by a second mutual legal assistance lawyer who works partly in this area and partly on the policy and legislative aspects of AML/CFT and related issues. In the absence of either of the mutual legal assistance lawyers, requests for assistance are referred to the Attorney General. The mutual legal assistance lawyers and the Attorney General are supported by a paralegal and a personal assistant.

Recommendation 32 (Statistics – c. 32.2)

1386. Guernsey maintains statistics on MLA as required under 32.2(c). Please refer to the section below for an analysis of MLA statistics.

Effectiveness and efficiency

1387. The assessment team was provided with a significant volume of comprehensive and detailed statistical information on the performance of the Bailiwick authorities in executing foreign requests for MLA. Considering the size and complexity of the original tables, the evaluators decided not to attach them to the report in their original format. Instead of that, the relevant statistical information will be demonstrated below in a number of tables produced through the edition, transposition or amalgamation of the original tables without prejudice to their actual content but ignoring unnecessary or irrelevant data.

1388. The first table demonstrates the total number of foreign MLA requests (one request is counted once regardless of how many criminal offences are involved) and that how many of such requests were specifically related to ML offences. (No FT-related requests have ever been received hence the lack of data in this respect.)

Table 39

		Received	Status of execution			
			Executed		Pending	Unexecuted
			by staged execution	by standard execution		
2010*	**Total of MLA requests**	**46**	**6**	**23**	**4**	**13**
	➥ **ML-related requests**	24	5	13	2	4
2011*	**Total of MLA requests**	**42**	**5**	**16**	**9**	**12**
	➥ **ML-related requests**	30	4	12	7	7
2012*	**Total of MLA requests**	**50**	**7**	**24**	**8**	**11**
	➥ **ML-related requests**	33	5	20	5	3
2013*	**Total of MLA requests**	**56**	**6**	**16**	**19**	**15**
	➥ **ML-related requests**	27	2	8	10	7

2014 (until 10.04)	**Total of MLA requests**	**10**	**-**	**1**	**7**	**2**
	➥ **ML-related requests**	2	-	-	2	-

*** as at 10.04.2014**

1389. In cases where there have been a number of requests relating to the same matter in the period, each has been treated as a separate request. Some requests can only be executed in stages ("staged execution") e.g. where further evidence or clarification is necessary from the requesting state before a court order can be applied for.

1390. The number of MLA requests received each year is fairly stable and averages approximately 50 requests a year. As is demonstrated by the figures above, Guernsey remained to be active in the area of MLA which is, however, in line with the characteristics of the financial sector and the volume of assets channelled through or administered from the Bailiwick every year. The authorities gave a number of examples of significant cases in this field, both from the assessed time period (2011-2014) and from the preceding years. Cases where the restraint had been obtained in, or before 2010 (and in one case, where there was an existing domestic restraint in place in a case which then became the subject of an MLA request) were included because these pre-2010 restraints remained largely in place by the time of the onsite visit. Case examples include the following :

- Assistance given in respect of a serious fraud case led to a successful prosecution in the requesting country, in which 80% of the evidence at trial was supplied by Guernsey by using production notices, production orders and Commission Rogatoire hearings. In addition, Guernsey restrained assets in excess of £3 million.
- Production orders were served and assets in excess in £3 million were restrained in support of an overseas investigation into a major drug trafficking operation.
- Assets of over £112 million have been restrained and evidence has been obtained using a production order in support of an ongoing investigation into misappropriation of state funds, money laundering and bribery and corruption at the request of 2 jurisdictions.
- Evidence has been provided relating to a multi-jurisdictional investigation into bribery of foreign officials, forgery of documents and money laundering which is believed to involve millions of pounds. The evidence was obtained using production notices, production orders, Commission Rogatoire hearings and search warrants. The use of search warrants and the onward transmission of evidence was the subject of a legal challenge which Guernsey successfully defended in its appellate courts.
- Evidence has been provided using production notices and production orders and £97 million has been restrained in support of an investigation into serious tax fraud. The restraint order was subject to a legal challenge, which Guernsey successfully defended on appeal.
- The Bailiwick played an active part in a joint investigation relating to eGaming with two other jurisdictions, involving the restraint of £17 million.

1391. Assistance has been provided in relation to an international money laundering investigation into an organised crime syndicate utilising an online gambling platform to launder the proceeds of crime. Significant documentary and witness evidence was provided and the case is progressing to prosecution stage in the requesting jurisdiction.

1392. The principal types of underlying criminal offences are consistent year on year, with fraud (including tax evasion) being the most common offence followed by ML, corruption and forgery as follows:

Table 40

year	total requests (by reference to possible offences*)	fraud (out of which tax evasion)	ML	corruption	forgery
2010	82	31 (6)	24	11	10
2011	92	32 (5)	30	12	11
2012	92	33 (5)	33	10	8
2013	99	35 (4)	27	16	13

*and **not** to the number of requests as some requests involve more than one offence

1393. The vast majority of the requests (68.7%) involve the obtaining of documentary evidence including documentation and data from the banking sector and from the financial industry in general. By way of contrast, requests aimed at issuing a restraint or confiscation order represent less than 9% only.

Table 41

Nature of assistance involved	2010	2011	2012	2013	total (in 4 years)
Obtaining Documentary Evidence	19	15	25	18	77 (68,7%)
Obtaining Oral Evidence	2	1	4	5	12 (10,7%)
Restraint/Confiscation Order	3	3	1	3	10 (8,9%)
Service of Process	3	-	5	5	13 (11,6%)

1394. Examination of the principal sectors involved in the incoming requests shows that the banking sector is the one most frequently involved in requests, followed by the fiduciary sector. There is a marked difference between the number of requests for these sectors and the requests for any other sector. The investment sector comes third but with decreasing figures in the last two years while there seems to be an upward trend in the number of cases involving the e-gambling/e-gaming sector.

Table 42

Principal sectors involved in requests	2010	2011	2012	2013	total (in 4 years)
Banking	19	19	26	26	90 (51.7%)
Fiduciary	15	8	16	18	57 (32.7%)
Investment	2	6	4	2	14 (8%)

E-gambling/e-gaming	-	3	1	4	8 (4,5%)
Accountancy	1	1	1	1	4 (2,2%)
Legal	-	1	-		1 (0,5%)

1395. The Bailiwick's special relationship with the United Kingdom gives an obvious explanation as to why the greatest number of foreign requests comes from the latter jurisdiction (to the extent that the UK requests represented 40% of the total in the last four years). Other jurisdictions that have frequently submitted letters rogatory to the Bailiwick are listed in the following table:

Table 43

requesting jurisdiction	number of requests* 2010-2013	proportion within all requests 2010-2013
UK	**80**	**40 %**
Switzerland	13	6,5 %
USA	11	5,5 %
Portugal	9	4,5 %
France	8	4 %
Poland	7	3,5 %
Spain	6	3 %
Latvia	5	2,5 %
Russian Federation	5	2,5 %
Netherlands	5	2,5 %
...and so on		

***cumulated numbers for four years**

1396. This table only contains the most relevant countries, with minimum 5 requests in the time period between 2010 and 2013. These include countries (such as Portugal, Poland and Latvia) where most of the cases must have been related to crimes involving nationals of the respective countries residing in the Bailiwick. However, in the case of other jurisdictions (first of all Switzerland and the United States) the legal assistance was likely related to financial criminality and particularly to criminal assets passing through or administered from Guernsey.

1397. The next table demonstrates the time required for the execution of the foreign requests. Since it was not possible to give a meaningful figure for the time taken to execute the requests under the "staged execution" procedure, these are not included in the calculation of the average execution time.

Table 44

	2010*		2011*		2012*		2013*	
	Average execution time for standard execution (days)	number of relevant cases t	Average execution time for standard execution (days)	number of relevant cases t	Average execution time for standard execution (days)	number of relevant cases t	Average execution time for standard execution (days)	number of relevant cases t
Money laundering	**139**	**13**	**100**	**12**	**70**	**20**	**79**	**8**
Participation in an organised criminal group and racketeering	180	1	150	2	-	-	-	-
Illicit trafficking in narcotic drugs and psychotropic substances	120	2	90	1	30	1	14	2
Corruption and bribery	116	5	57	6	75	5	105	2
Robbery or theft	-	-	-	-	30	1	-	-
Fraud	72	13	141	10	72	16	122	11
Murder, grievous bodily injury	60	2	-	-	-	-	210	1

Forgery	170	3	44	5	69	5	45	2
Insider trading and market manipulation	-	-	-	-	60	1	-	-

*** as at 10.04.2014**

1398. Guernsey authorities claimed that the absence of any procedural requirements outside the context of legal proceedings facilitates the provision of timely, constructive and effective assistance and the Bailiwick aims to provide this in all cases. Nonetheless, this can only be partially demonstrated by the statistical data on turnaround times.

1399. The timeliness of the execution of the foreign requests is an area where the assessors can see some room for improvement. This is particularly true for requests related to the most typical offences (ML, fraud and corruption) the execution of which seems to take longer than in other cases (although it can be explained by the complexity of the respective cases). Whereas the figures for the average time consumption vary from year to year, the assessors can see no positive or negative trends or development in this field. Nonetheless, the latest figures are relatively favourable for ML-related requests (79 days meaning more than 2 ½ months as an average) but the 122 days (more than 4 months) indicated for fraud-related cases appear to imply some difficulties in the execution.

1400. In this respect, the Guernsey authorities pointed out that in most cases, where it is not possible to provide assistance promptly, this is attributable to the requesting state's failure to provide sufficient information to deal with the request. The authorities estimate that the need to obtain additional information from the requesting jurisdiction before assistance can be provided applies to between 30% and 40% of requests received, mainly from civil law jurisdictions. Most of these requests seek assistance in measures where dual criminality is required and they are typically deficient in describing the ML and/or the predicate offence as much in details as it would be necessary to decide on the dual criminality. The standard practice in all such cases is for the Guernsey authorities to contact the requesting jurisdiction explaining what further information is required and the form it should take.

1401. The typical grounds for not executing ML-related foreign MLA requests are summarized in the table below:

Table 45

ML related MLA requests unexecuted per year	**number of cases**	**Grounds for non-execution**		
		No evidence or person in jurisdiction	Did not meet legislative criteria	Request withdrawn
2010*	**4**	2	1	1
2011*	**7**	4	-	3

2012*	**3**	2	-	1
2013*	**7**	2	-	5

1402. The figures indicated in the table above are not really significant which is equally true to the general volume of the non-executed requests as well as to the reasons. The lack of evidence or person and the withdrawal of the request are objective factors that need no further explanation. The case that "did not meet legislative criteria" was a request for assistance in an administrative tax matter where there was no criminal investigation in the requesting jurisdiction and therefore the case did not come within the legislation governing MLA.

1403. The execution of foreign requests aimed at giving effect to external restraint and confiscation orders is demonstrated in the table below with a further breakdown of cases where the requests were eventually executed.

Table 46

	Incoming requests			
	Received	Executed	Pending	Unexecuted + reasons
2010	3	2	-	1 (no assets in the jurisdiction)
2011	3	2	-	1 (assets already restrained)
2012	1	-	-	-
2013	1	-	1	-
2014 (at 10.04)	-	-	-	-

	Breakdown of executed incoming requests				
	Restraint	Amount (€) (rounded)	Confiscation	Amount (€) (rounded)	Total (€) (rounded)
2010	1 (ongoing)	5,531,955	1	856,437	6,388,392
2011	2 (1 ongoing, 1 discharged)	1,947,357	-	-	1,947,357
2012	1 (ongoing)	384,550	-	-	384,550

6.3.2 Recommendations and comments

Recommendation 36

1404. Guernsey's legal framework for MLA was found to be comprehensive and addressing all criteria under the FATF standard already at the time of the previous assessment, which is generally true for the present round of evaluation too. The provision of MLA is not subject to any unreasonable, disproportionate or unduly restrictive conditions and the statistics demonstrate the Bailiwick's capability and activity in this field.

1405. The designation mechanism, the existence of which was mentioned in the IMF report as a potential issue of effectiveness, has almost completely been eliminated since 28th July 2010 except for the execution of external forfeiture orders in drug-trafficking and related ML cases which remained restricted to a list of designated countries. Considering, however, the

comprehensiveness of this list as well as the total lack of practical problems caused by the designation mechanism in this otherwise lesser important area (instrumentalities in drugs cases) the evaluators do not consider this feature as an issue of effectiveness.

1406. The statistics provided by the Bailiwick authorities are convincing as to the range of various sectors of the financial industry involved and the variety of investigative measures applied, nevertheless they leave some room for improvement in maintaining the timeliness of executing foreign MLA requests.

6.3.3Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3. underlying overall rating
R.36[174]	**C**	
SR.V[175]	**C**	

6.4 Other Forms of International Co-operation (R. 40 and SR.V)

6.4.1 Description and analysis

Recommendation 40 (rated c in the IMF report)

Summary of 2011 factors underlying the rating

1407. Recommendation 40 was rated C in the 3rd round mutual evaluation report and there were no rating points.

Legal framework

1408. The Bailiwick has in place a range of measures to facilitate various forms of international cooperation. The legal framework does not require reciprocity or MOUs before assistance can be provided (the Income Tax Law requires that there be an international agreement or arrangement governing the exchange of tax information in place). However, the practice is to sign MOUs if they are required or desired by a requesting state or an international instrument.

1409. The GFSC has the power under the Financial Services Commission Law and the various regulatory laws to cooperate with and conduct investigations on behalf of corresponding bodies in other jurisdictions. The Gambling (Alderney) Law permits the AGCC to transmit to other persons or bodies, in such manner as it considers appropriate, such information relating to its functions as it sees fit. The AGCC's functions include the countering of financial crime and the financing of terrorism, and its 2013 Annual Report affirms that the AGCC liaises with other international bodies and that it works with international and domestic regulatory bodies in connection with probity, due diligence investigations and international best practice.

Wide range of international co-operation (c.40.1); Provision of assistance in timely, constructive and effective manner (c.40.1.1);Clear and effective gateways for exchange of information (c.40.2); Spontaneous exchange of information (c. 40.3)

FIU

[174] The review of Recommendation 36 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendation 28.

[175] The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendations 37, 38 and 39.

1410. Section 8 of the Disclosure Law provides the legal framework for the information exchange.

1411. Section 8 of the DL permits a Police officer to disclose to any person any information obtained under any enactment or in connection with the carrying out of any of his functions, for the purposes set out at section 8(2). These purposes include the prevention, detection, investigation or prosecution of criminal offences outside the Bailiwick, the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of any country or territory outside the Bailiwick, the carrying out of it functions by a body equivalent to the GFSC in another country, and the carrying out of the functions of any intelligence service.

1412. Section 8 of the DL also permits a Police officer to disclose to any person any information for any civil forfeiture investigations within the meaning of section 18 of the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007.

1413. In addition, section 44 of the Proceeds of Crime Law permits disclosure of information for the purposes of the investigation of crime outside the Bailiwick or for the purposes of criminal proceedings outside the Bailiwick to designated competent authorities outside the Bailiwick. The definition of Police officer in both laws includes Customs officer, under section 17 of the Disclosure Law and section 51 of the Proceeds of Crime Law, so the disclosure powers are available to all members of the FIS.

1414. The FIS provides international co-operation to its counterparts via the Egmont Group of FIUs in accordance with the principles of information exchange endorsed by the Egmont Group. The principles are incorporated within the caveat that accompanies all intelligence disseminations. The FIS does not require an MOU to disseminate intelligence but is prepared to enter into such agreements where an operational need exists. The FIS has signed 23 MOUs.

1415. The FIS has at its disposal a number of secure systems available to facilitate fast and secure exchanges of information, including the Egmont Secure web, UK encrypted e-mail and an encrypted e-mail system provided by the States of Guernsey (EGRESS). The FIS monitors its efficiency in this respect as evidenced by the recording of the average time taken for requests to receive an initial response. The average response time to an intelligence request is:

	Egmont	**Other International**	**Local (within the Bailiwick)**	**CARIN**	**FIN-NET**
4 year Average	**17.75 days**	**11.75 days**	**8.25 days**	**27 days**	**22 days**

1416. In addition, the FIS has rarely received any repeat requests for information, which indicates that requests are dealt with in a satisfactory manner. All personnel are briefed in respect of the need for matters to be dealt with in a timely manner and supervisors are required to authorise all non-local disseminations.

1417. The legal framework for disclosure as outlined above permits the dissemination of information both spontaneously or on request. Approximately 80% of all subjects of STRs received over the last 4 years relate to non-local entities, and spontaneous dissemination to overseas agencies on the basis of this information has occurred on a regular basis, either further to develop the intelligence or to ascertain whether there is any current investigation within the subject's domestic jurisdiction.

1418. No problems were reported by foreign FIUs in their relations with the FIS.

Supervisory authorities

1419. The GFSC is able to – and does – provide co-operation to its foreign counterparts. Nothing in the legislation requires bilateral agreements such as a MoU to be in place before the GFSC exchanges information but it will sign them if required by a requesting party.

1420. The GFSC has signed 35 bilateral MoUs with 23 individual countries or territories, and 2 multilateral information agreements allowing it to participate in supervisory colleges. Guernsey is also a signatory to the IOSCO and IAIS multilateral memoranda of understanding.

1421. The legislative provisions permit the AGCC to provide information to other jurisdictions. In many cases this is with the benefit of a Memorandum of Understanding which provides for the exchange of information and co-operation during investigations and inspections. In addition, the AGCC has entered into Memoranda of Understanding with a number of international sports governing bodies, including the International Olympic Committee and the International Federation of Association Football to facilitate information sharing in relation to sports event based gambling.

1422. The GFSC's Supervision and Policy Divisions, and its intelligence team, maintain a policy concerning the disclosure of information for the purpose of co-operating with requests for assistance from foreign counterparts. The GFSC has also developed bilateral relationships with those regulatory bodies with which it most frequently exchanges information; more generally, relationships have also been fostered through the GFSC's membership and roles in international bodies. The GFSC has received positive feedback in a number of instances in relation to the timeliness and effectiveness of the cooperation and information it has provided (this will be elaborated further on under the effectiveness section).

1423. The AGCC's legal gateway to providing international cooperation to foreign counterparts such as other gambling regulators does not contain any specific requirements or processes that would delay the provision of assistance. The AGCC has forged relationships with foreign gambling regulators through its membership and involvement in international regulatory bodies such as the International Association of Gambling Regulators and the Gambling Regulators European Forum, which facilitate assistance to its foreign counterparts.

1424. There is a clear and effective gateway under the legislative framework which facilitates and allows for the exchange of information between the AGCC and GFSC and their counterparts.

Law enforcement authorities

1425. The GBA FI Unit is a member of the CARIN Group and facilitates all enquiries to the Bailiwick and is also an associate member of the UK financial Network (FFIN-Net).

1426. The Police Fraud Department, which has been assimilated into the GBA FI Unit, is the central point of contact for Interpol requests and actions.

Making inquiries on behalf of foreign counterparts (c.40.4);FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1)

FIU

1427. The FIS can make inquiries on behalf of foreign counterparts provided the FIS had received an STR on the subject of the request.

1428. When no STR has been received the FIS has to rely on receiving an STR from the relevant entity after having communicated with it and explained the facts behind the request or use the provisions of the Company law to request information from legal entities but that information will be related to ownership only.

Supervisory authorities

1429. There is provision allowing GFSC and AGCC to use investigatory powers to assist another jurisdiction in the legal framework of the Bailiwick

Law enforcement authorities

1430. The various investigatory powers under Recommendation 28 (see IMF report) 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 i.e. the prevention and detection of crime or to assist a lawful investigation.

1431. All of the specified categories of inquires may be made on behalf of foreign counterparts. The FIS as a joint law enforcement unit has direct access to all local law enforcement data. In addition, the FIS has direct access to the UK PNC system and several public and commercial databases, e.g.: Companies House, LexisNexis, Experian, Equifax etc. The FIS also has direct access to administrative information such as the local company registry. With respect to administrative and commercial databases, enquiries are made in accordance with the relevant agreements of the respective system which enable access for the prevention and detection of crime. The FIS has direct access to company information within the Bailiwick via the on-line Company registry, and under section 490 of the Companies Law may obtain ownership details directly from the company service provider.

1432. Access to all of these resources is available at the request of foreign counterparts, regardless of whether the criminality is suspected to have occurred within the Bailiwick or overseas. The same standard of justification is applied as for local related enquiry i.e. the prevention and detection of crime or to assist a lawful investigation.

Conducting of investigation on behalf of foreign counterparts (c. 40.5)

Supervisory authorities

1433. As indicated the GFSC and the AGCC can conduct investigations on behalf of a foreign counterpart.

Law enforcement authorities

1434. The Bailiwick law enforcement authorities are able to conduct inquiries on behalf of foreign counterparts, subject to the same standard of justification and proportionality as applied to a local inquiry, i.e. the prevention and detection of crime or to assist a lawful investigation, using the investigatory powers set out above.

No unreasonable or unduly restrictive conditions on exchange of information (c.40.6)

FIU

1435. The GBA FI Unit adopt the UK National Intelligence Model and all intelligence material is subject to the internationally recognised 5x5x5 intelligence grading systems and in respect of that disseminated by the FIS, the Egmont principles of information exchange. Other jurisdictions must handle the intelligence or information provided in conjunction with these principles. Such exchanges may only be affected where there are valid concerns over security of the information or human rights concerns as a result of a detailed, documented risk assessment.

Law Enforcement

1436. The Data Protection Law contains some conditions in respect of the transfer of information in respect of natural persons to other jurisdictions. Under paragraph 8 of part I of Schedule 1 of the Data Protection Law, personal data shall not be transferred to a country or territory outside the Bailiwick unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data. Schedule 1, part II, paragraph 13 sets out the factors that must be looked at when considering whether another state has an adequate level of protection in place. In addition, paragraph 15 of Schedule 1, part II specifies that any finding of the European Commission that a country or territory outside the European Economic Area does, or does not, ensure an adequate level of protection is

determinative. The effect of these provisions and the findings of the European Commission to date is that members of the EEA, Jersey, the Isle of Man and a number of other jurisdictions, together with organisations that subscribe to the US Safe Harbour agreement are deemed to adequate levels of protection in place.

1437. Disclosure to other jurisdictions is permissible if it comes within Schedule 4 to the Data Protection Law. This sets out certain exemptions to the restrictions at paragraph 8 of part I of Schedule 1 including cases where the transfer is necessary for reasons of substantial public interest. Specific provision has been made governing what constitutes substantial public interest for the purposes of disclosures by the GFSC in the Data Protection (Transfer in the Substantial Public Interest) Order. This specifies that such a disclosure is necessary or is taken to be necessary for reasons of substantial public interest if it is permissible under any other enactment and is made on condition that the recipient does not transfer the personal data concerned to any third party except with the consent of the GFSC, or with the consent of the data subject, or in order to comply with the order of a court having relevant jurisdiction.

1438. In addition to these provisions of general application, there are specific provisions and policies relating to the different authorities as set out below.

Supervisory authorities

1439. No such conditions would apply to both supervisory bodies (GFSC and AGCC).

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7)

FIU

1440. There is no restriction in respect of fiscal matters. Co-operation in respect of fiscal matters is provided in exactly the same way as for other types of crime. Offences such as tax evasion constitute a crime within the Bailiwick and intelligence is disseminated in support of requests that cover fiscal matters. The Bailiwick authorities have often provided assistance to other jurisdictions that are conducting enquiries into the fraudulent evasion of tax. This approach was emphasised by the extension to the Bailiwick in 2002 of the Fiscal Protocol to the Council of Europe Convention on Extradition.

1441. In cases where the fiscal matter in question does not amount to a crime, disclosure of information by the law enforcement agencies is possible under section 8 of the DL, which permits the disclosure of information to agencies that are able to impose non-criminal penalties or which carry out functions equivalent to those of the GFSC.

Supervisory authorities

1442. It does not appear that cooperation might be refused on the sole ground that a request is considered to involve fiscal matters.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

FIU

1443. There is no Bailiwick legislation that imposes secrecy or confidentiality requirements on either financial institutions or DNFBPs. There is a common law principle of confidentiality that applies to financial institutions, but this would only be relevant to a request for co-operation if it prevented the Bailiwick authorities from obtaining information from those institutions. This is not the case because the legislation governing the obtaining of evidence or information contains provisions that specifically override duties of confidentiality.

1444. In the case of banks, further circumstances in which confidentiality would not apply are set out in the decision of the English Court of Appeal in Tournier v National Provincial & Union Bank of England. This case establishes that duties of confidence do not prevent disclosure where it is under compulsion of law, when an official of the bank is called on to give evidence in court

relating to a customer's account or transactions, or where disclosure is necessary to prevent frauds or crimes.

1445. Any confidentiality provisions applicable to information once it is in the possession of the different authorities are overridden by the legal gateways set out under 40.2 above.

Supervisory authorities

1446. There is no Bailiwick legislation that imposes secrecy or confidentiality requirements on either financial institutions or DNFBPs. There is a common law principle of confidentiality that applies to financial institutions, but the legislation governing the obtaining of evidence or information contains provisions that specifically override duties of confidentiality.

Safeguards in use of exchanged information (c.40.9)

FIU

1447. All authorities are subject to the data protection principles set out in Part I of Schedule 1 to the Data Protection Law. In addition the different authorities have in place their own policies and practices as set out below.

1448. The FIS works in accordance with the Egmont principles of information exchange and all law enforcement departments utilise the UK National Intelligence Model intelligence to evaluate information and apply codes regarding how such information may be handled and distributed. The FIS obtains a written undertaking with regard to how intelligence may be used when dealing with new partners and the FIS staff handbook and supervision practice ensures compliance.

1449. When a foreign FIU requests information from a Bailiwick source, whose records the FIS cannot access directly, an enquiry will be conducted by an investigator.

Supervisory authorities

1450. Both supervisors are believed to hold all the information they obtain (without differentiation given the source of the information) in secrecy.

Additional elements – Exchange of information with non-counterparts (c.40.10 and c.40.10.1)

Supervisory authorities

1451. The provision mentioned in this section of the report also relate to the exchange of information with non-counterparts.

FIU and Law enforcement authorities

1452. The Bailiwick law enforcement authorities are able to undertake timely exchanges of information with non-counterparts in accordance with the provisions of section 8 of the DL and section 44 of the Proceeds of Crime Law. They regularly have direct and indirect exchanges of information with non-FIU agencies such as the UK's Financial Conduct Authority and HMRC for criminal investigation purposes. On an operational level, supervisory authorization is required for such dissemination, in accordance with the relevant department's guidance. The FIS, in accordance with Egmont principles, ensures information exchange is only requested or authorized when accompanied by sufficient grounds or explanation as to the basis for the request. Use of the Egmont request forms and internal pro formas ensures that such information is routinely included. In addition, all FIS spontaneous disseminations are accompanied by a dissemination caveat which, in addition to requesting feedback on the value of the information, states:

- "The Financial Intelligence Service is in possession of the attached intelligence, which is supplied subject to the following conditions;
- The information is for intelligence purposes only

- It must not be further disseminated without the prior written permission of the FIS.
- The contents must not be used in any court proceedings, or during the interview of any person, whether suspected of an offence or not."

1453. It is standard practice to require the requesting authority to disclose the nature and purpose of the enquiry and also to identify on whose behalf a request is made.…

Exchange of information to FIU by other competent authorities pursuant to request from foreign FIU (c.40.11)

1454. The FIU can obtain the relevant information from other competent authorities or other persons requested by a foreign counterpart FIU under the gateways set out under criterion 31.1 above.

Special Recommendation V (rated LC in the IMF report)

Summary of 2011 factors underlying the rating

1455. In the IMF report, Special Recommendation V was rated as Compliant regarding the aspects related to R.40.

International co-operation under SR.V (applying 40.1-40.9 in R.40, c.V.5)

Additional element under SR.V – (applying 40.10-40.11 in R.40, c.V.9)

1456. All information above related to international cooperation and information exchange outside MLA, equally applies in TF matters.

Recommendation 32 (Statistics – other requests made or received by the FIU, spontaneous referrals, requests made or received by supervisors)

1457. Authorities provided the evaluation team comprehensive set of statistics on the FIS and law enforcement agencies international cooperation.

Table 47

Egmont Incoming									Egmont Outgoing
	Total	**ML**	**TF**	**Information received spontaneously**	**Requests for assistance**	**Action granted** [176]	**Local checks** [177]	**In progress** [178]	**Requests for assistance**
2010	**79**	79	-	9	70	70	-	-	-
2011	**77**	75	2	8	69	62	7	-	23
2012	**55**	53	2	13	42	33	9	-	28
2013	**54**	52	2	5	49	38	7	4	31
Jan – Jun 2014	**32**	29	3	10	22	16	5	1	4

Table 48

FIN-NET Incoming

[176] Further analysis of the Request for Assistance was undertaken and substantive information disseminated to the requesting EGMONT Country.
[177] Request for Assistance answered - no substantive information found in Guernsey
[178] Figure will not be carried forward to following year

	Total	ML	TF	Information received spontaneously	Requests for assistance	Action granted	Local checks	In progress
2010	**227**	227	-	-	227	227	-	-
2011	**177**	176	1	8	169	4	165	-
2012	**169**	169	-	-	169	4	165	-
2013	**155**	155	-	2	153	6	146	1
Jan – Jun 2014	**55**	54	1	4	51	1	49	1

Table 49

CARIN Incoming									CARIN Outgoing
	Total	**ML**	**TF**	**Information received spontaneously**	**Requests for assistance**	**Action granted**	**Local checks**	**In progress**	**Requests for assistance**
2010	**3**	3	-	-	3	3	-	-	1
2011	**3**	3	-	-	3	3	-	-	1
2012	**2**	2	-	-	2	2	-	-	-
2013	**6**	6	-	-	6	3	3	-	1
Jan – Jun 2014	**2**	2	-	-	2	2	-	-	-

Table 50

Reference year	Incoming requests									Outgoing requests
	Total				**Breakdown of executed incoming requests**					
	Received	**Executed**	**Pending**	**Unexecuted**	**Restraint**	**Amount (Euro)**	**Confiscation**	**Amount (Euro)**	**Total (Euro)**	
2010										
ML	3	2	-	1 (no assets in the jurisdiction)	1 (ongoing)	5,531,954.98	1	856,436.64	**6,388,391.62**	-
TF	-	-	-	-	-	-	-	-	-	-

Predicate offences	-	-	-	forgery/acting as a director whilst disqualified	corruption	5,531,954.98	drug trafficking	856,436.64	6,388,391.62	-
2011										
ML	3	2	-	1 (assets already restrained)	2 (1 ongoing, 1 discharged)	1,947,357.08	-	-	**1,947,357.08**	-
TF	-	-	-	-	-	-	-	-	-	-
Predicate offences	-	-	-	corruption	corruption x 2	1,947,357.08	-	-	1,947,357.08	-
2012										
ML	1	-	-	-	1 (ongoing)	384,549.65	-	-	**384,549.65**	-
TF	-	-	-	-	-	-	-	-	-	-
Predicate offences	-	-	-	-	acting as a director whilst disqualified	384,549.65	-	-	384,549.65	-
2013										
ML	1	-	1	-	-	-	-	-	-	-
TF	-	-	-	-	-	-	-	-	-	-
Predicate offences	-	-	corruption	-	-	-	-	-	-	-
Jan – Jun 2014										
ML	-	-	-	-	-	-	-	-	-	-

TF	-	-	-	-	-	-	-	-	-	-
Predicate offences	-	-	-	-	-	-	-	-	-	-

Effectiveness and efficiency

FIU

1458. The FIS is quite efficient in exchanging information with foreign counterparts taking into account that a large part of STRs are related to activities abroad.

1459. In 2014 the Guernsey authorities undertook a comprehensive review of the effectiveness of their information exchange in relation to beneficial ownership information. The FIS was included as a crucial part of this review. The FIS obtains information from businesses for its own intelligence gathering purposes, to provide information requested by a foreign financial intelligence unit and serving a notice on behalf of the Law Officers Chambers in response to a mutual legal assistance request. In responding to requests from other FIUs, the FIS uses its powers not under the Disclosure Regulations and the Terrorism Regulations but also under section 490 of the Company Law (and may also use corresponding powers at section 152H of the Alderney Company Law and schedule 2 paragraph 7 of the Limited Liability Partnerships Law in appropriate cases). The Guernsey authorities confirmed that the legal framework under which the FIS operates has not been an impediment in any way to the provision of prompt information by the FIS. The evaluation team tested effectiveness of the FIS in exchanging information with other jurisdictions. The information provided by the FIS varies from specific information (i.e. beneficial owner of a Guernsey registered company) to more wide ranging information (e.g. bank account information, bank transfers, mandates, customer due diligence information). Six case studies since 2010 demonstrating that the FIS had been effective in providing information to its counterparts throughout Europe were also considered. The evaluation team could not find any examples where the FIS had failed to provide information promptly and fully to other FIUs. In fact, as noted in Recommendation 26, the FIS exchanges information freely, spontaneously and upon request with foreign FIUs, regardless of their status. Guernsey does not require an MOU in order to exchange information, which can be achieved through its existing legal framework. The team is not aware of any negative feedback internationally about the promptness or comprehensiveness of responses. The FIS therefore appears to be effective in providing information to third parties internationally

Supervisory authorities

1460. The GFSC has been approached on 45 occasions since the beginning of 2012 to provide assistance, predominantly under the IOSCO MMoU.

1461. Additionally the information gained from foreign supervisors requests are used by the GFSC in their on-going supervision.

1462. The AGCC did cooperate with a foreign country on an international money laundering investigation linked to a licensee of the AGCC, and as a result of this case has instigated serious changes to their supervisory regime to further improve the application and licensing process.

1463. It was discovered that the organised crime group situated in a foreign country had provided the AGCC with false information which enabled them to set up an online gambling platform to launder the proceeds of drug trafficking. The investigation established that the key individuals associated with the licensee provided false documentation to the AGCC at the application process. Therefore the internal control procedures and CDD process that the AGCC adopted could not identify any adverse information about the applicant. The AGCC had no mechanism in place to check the authenticity of the documents or confirm that the individuals had any criminal convictions. The

AGCC and the Guernsey FIU subsequently discussed the mechanisms that could be put in place. The two bodies have implemented a procedure by which the FIU check all key individual applicants previous criminal convictions to ascertain if they have any relevant previous conviction which may affect the application. It is worth to note that the AGCC's foreign counterpart was appreciative of the information provided in one of the cases. The AGCC has also provided intelligence to law enforcement of a foreign country as well as to the foreign supervisor in respect of a Category 1 eGambling licensee and a Category 2 Associate Certificate holder to assist on-going investigations. Both authorities were appreciative of the information provided.

1464. This is indicative of an effective international cooperation and assistance provided by both regulators to their foreign counterparts and other authorities.

6.5.2 Recommendation and comments

1465. There is one aspect that might influence the ability to render assistance. That is the limitation for the FIS to request information only in cases when there was an initial STR. That means that if the request from abroad refers to a subject in relation to whom there were no STRs the FIS has to find round-about ways to obtain information. That might be important in view of the international character of business in Guernsey.

1466. The Guernsey authorities should review the legal provisions and delete this limitation in the powers of the FIS to render assistance.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**LC**	• Assistance of the FIS is limited to the cases where there has been an STR in Guernsey on the subject of the request.
SR.V	**LC**	• Assistance of the FIS is limited to the cases where there has been an STR in Guernsey on the subject of the request.

7. OTHER ISSUES

7.1 Resources and Statistics

The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report should also contain brief description including the box showing the ratings and the factors underlying the rating.

7.1.1 Description and analysis

Recommendation 30 (rated C in the IMF report***)***

Summary of 2011 factors underlying the rating

1467. Recommendation 30 was rated 'C' in the IMF report.

FIU

1468. The expenditure for the FIS covers salaries, overtime, vehicles, specialist assistance, forensic accountants, furniture and equipment and training. It is coordinated through the GBA FI Unit budget, and is planned and authorised by the GBA FI Unit management team, which includes the head of the FIS. The FIS is staffed by members of both the GBA and the Police. It currently has an establishment of 8 staff, comprising a Senior Investigation Officer, a Detective Sergeant, an Acting Detective Sergeant; one GBA Investigator, one Dedicated Financial Investigator, one (part-time) Financial Crime Analyst and two administrative staff (including a Part Time Process Manager). The FIS also draws upon other resources of the GBA and Police staff to assist with major cases as required.

1469. The FIS maintains a high level of professional standards both in respect of the initial selection of personnel and through continuous development. Investigative personnel are selected from the GBA and Police, including from the other teams within the FIU, subject to their investigative experience and aptitude for financial investigation. All GBA investigators selected for the role are subject to successfully completing basic investigative training.

1470. Training is organised across the GBA FI Unit and training for the FIS comes within this. Training is planned on an annual basis, subject to departmental and individual staff needs.

Supervisory authorities

1471. Currently, the GFSC comprises four main Supervisory Divisions, each headed by a Director, namely the Fiduciary Supervision and Policy Division (12 staff), the Banking and Insurance Supervision and Policy Division (17 staff), the Investment Supervision and Policy Division (16 staff) and the Financial Crime Supervision and Policy Division (10 staff).

1472. A dedicated Enforcement Division was created in the summer of 2013 to investigate a range of enforcement matters, particularly those involving significant breaches of regulatory requirements and poor conduct. The Division commenced its work in earnest at the beginning of September 2013.

1473. In November 2012, the GFSC created the Anti-Money Laundering Unit (the AML Unit) as part of the implementation of the recommendations made in an independent evaluation review, commissioned by the GFSC in 2011. The AML Unit's primary responsibilities were the undertaking of on-site visits in order to verify compliance with the AML/CFT regulatory requirements and effective management by financial services and prescribed businesses of money laundering and terrorist financing risks to which those businesses could be exposed. The Unit was also responsible for industry enquiries and identifying appropriate and effective means by which to communicate and explain the AML/CFT regulatory requirements. In mid-2013, the GFSC underwent a further restructuring. This included the transformation in July 2013 of the

AML Unit into the Financial Crime and Authorisations Division (FCAD). The Division's responsibilities were expanded to include the broader area of financial crime and related policy activities, together with GFSC-wide training and awareness around ML/FT risks and trends, and industry engagement and education. In June 2014, the FCAD was entrusted with additional tasks: took the responsibilities of the former Supervision and Policy Division of the GFSC, and assumed responsibility for the AML/CFT supervision of prescribed businesses.

1474. The GFSC's staff is subject to comprehensive training programme. Contents of the training provided has included legislative and regulatory requirements, STR trends and typologies, corruption and ML risks, bribery and corruption, fraud, supervision of prescribed businesses, international sanctions, tax evasion, insider dealing, market manipulation, market abuse, cybercrime, mobile payments and virtual currencies.

Policy makers

1475. Ultimate responsibility for Bailiwick AML/CFT policy issues rests with the Policy Council of the States of Guernsey which comprises ministers and is chaired by the Chief Minister.

1476. All members of the Policy Council, the Home Department, the Treasury and Resources Department and the Commerce and Employment Department at a political level are bound by a Code of Conduct issued under article 20F of the Reform Law. The Code of Conduct prohibits members from placing themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties, and requires them to uphold the political impartiality of the civil service. There is an equivalent Code for political members of the States of Alderney and rules of procedure which cover matters such as declaration of interests.

1477. Officers of the Policy Council, the three departments of the States of Guernsey and the States of Alderney are bound by the Civil Service Code. This specifies that civil servants must not be influenced by pressures from others, and requires civil servants to act with personal and political impartiality.

1478. The Policy Council has an annual budget of over £8,000,000. The Treasury and Resources Department has an annual budget of £17,000,000. Within the Home Department, the development of legislation is the responsibility of the Central Services Support Division, which has an annual budget of over £3,500,000. The Commerce and Employment Department has an annual revenue budget of £10,625,000.00 net for 2014.

Recommendation 32 (rated C in the IMF report***)***

1479. Recommendation 32 was rated 'C' in the IMF report.

Review of the effectiveness of the AML/CFT system on a regular basis (c. 32.1)

1480. The Bailiwick AML/CFT Advisory Committee has overall responsibility for reviewing the effectiveness of the Bailiwick's AML/CFT regime.

1481. Any specific issues which require action are reported to the Advisory Committee, which also considers any specific issues which arise from statistics produced by the different authorities, jurisdictional risk assessments produced by law enforcement and the GFSC, and specific threat assessments that are usually produced by law enforcement. Action is then taken as necessary in response to that information.

1482. The Advisory Committee is also responsible for preparing and reviewing compliance with the Bailiwick's strategy for addressing financial crime. Work is currently ongoing to prepare a new strategy document. This work has been informed by an analysis of comprehensive statistics relating to all aspects of the AML/CFT framework which the authorities have been collating since the summer of 2013. The different authorities have carried out analysis of statistics in relation to their particular areas of responsibility and work is currently ongoing to bring these

separate pieces of analysis together in a single document in preparation for compiling a national risk assessment.

1483. A risk book providing information on aspects of potential money laundering and terrorist financing risk to the Bailiwick of Guernsey is developed by the authorities in September 2014. It will be updated periodically.

Statistics – c. 32.2

1484. Overall, statistics maintained by all Guernsey authorities are adequate.

7.1.2 Recommendations and comments

1485. The requirements of Recommendations 30 and 32 are fully met.

7.1.3 Compliance with Recommendations 30 and 32

	Rating	Summary of factors underlying rating
R.30[179]	**C**	
R.32[180]	**C**	

7.2 Other Relevant AML/CFT Measures or Issues

7.3 General Framework for AML/CFT System (see also section 1.1)

[179] The review of Recommendation 30 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on resources integrity and training of law enforcement authorities and prosecution agencies.

[180] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendations 16, 20, 27, 38 and 39 and Special Recommendation IX.

IV. TABLES

TABLE 1: RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS
TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

8. Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to Guernsey. *It includes ratings for FATF Recommendations from the IMF report that were not considered during the 4th assessment visit. These ratings are set out in italics and shaded.*

Forty Recommendations	Rating	Summary of factors underlying rating[181]
Legal systems		
1. Money laundering offence	**LC**	• Given the size of the Bailiwick's financial sector and its status as an international financial centre, the relatively limited number of cases involving third party ML by participants of the financial industry and the amounts of property laundered and confiscated, despite the increase in overall statistics, still indicates room for a more effective application of the ML provisions.
2. *Money laundering offence Mental element and corporate liability*	***LC***	• Given the size of the Bailiwick's financial sector and its status as an international financial center, the modest number of cases involving third party ML by financial sector participants and the disconnect between the number of ML cases investigated versus the number of cases prosecuted and eventually resulting in a conviction calls into question the effective application of the ML provisions.
3. Confiscation and provisional measures	**LC**	**Effectiveness** • While the confiscation and provisional measures regime is technically compliant with R.3 and it is used with regularity in criminal procedures, it still has not been applied with full effectiveness in ML-related cases, given the dimensions and characteristics of the financial industry and the moderate number of cases involving proceeds-generating economic crimes (and other matters beyond drug trafficking).
Preventive measures		

[181] These factors are only required to be set out when the rating is less than Compliant.

4. Secrecy laws consistent with the Recommendations	**C**	
5. Customer due diligence	**LC**	• The list of factors of to which EDD must be applied omits some higher-risk categories which are relevant to some financial institutions in Guernsey; • The FSB Regulations and the FSB Handbook provide for the discretion to refrain entirely from the application of certain CDD measures in defined circumstances, including on underlying beneficial owners of regulated collective investment schemes. Where a regulated or authorised collective investment scheme has only a very limited number of investors this discretion within the FSB regulations and handbook should not be available; • The application of simplified or reduced CDD measures (including intermediary provisions) to customers in another country is not limited in all instances to customers resident or domiciled in countries, that Guernsey is satisfied to be in compliance with and have effectively implemented the FATF Recommendations or not limited to listed to companies that are subject to adequate disclosure requirements. Effectiveness issues: • Customer risk assessments do not sufficiently take into account that the accumulation of risks (which appear to be relevant for a significant portion of the customer base of some financial institutions) are presenting overarching ML/TF risks; • CDD measures are not commensurate to the risk in some instances.
6. *Politically exposed persons*	***C***	
7. *Correspondent banking*	***C***	
8. *New technologies and non face-to-face business*	***C***	
9. *Third parties and introducers*	***LC***	• *The ability of FSBs to make a determination that a third party that is a group member but is not an Appendix C business is subject to requirements to prevent money laundering and supervised for compliance with such requirements so that it may be relied upon, as is now permitted pursuant to a recent amendment to the Bailiwick regulations, raises an effectiveness issue.*

		• *The inclusion of lawyers and accountants in Guernsey, Jersey, the Isle of Man, and the United Kingdom as Appendix C businesses is not appropriate as they have not been subject to, nor supervised for compliance with, AML/CFT regulation and supervision for a sufficient period, nor has such supervision been assessed.* • *The removal from Appendix C of a jurisdiction that is included in a recent public statement by the FATF as having deficiencies in its AML/CFT regime raises an effectiveness issue regarding existing introducer relationships.*
10. Record keeping	**C**	
11. *Unusual transactions*	***C***	
12. DNFBPS – R.5, 6, 8-11[182]	**LC**	***Applying Recommendation 5*** • The list of factors to which EDD must be applied omits some higher-risk categories which are relevant to some TCSPs and Prescribed Businesses in Guernsey; • The PB/ FSB Regulations and the PB/ FSB Handbook provide for the discretion to abstain entirely from the application of certain CDD measures in defined circumstances, including on underlying beneficial owners of regulated collective investment schemes. Where a regulated or authorised collective investment scheme has only a very limited number of investors this discretion within the FSB regulations and handbook should not be available; • The application of simplified or reduced CDD measures to customers in another country is not limited in all instances to customers resident or domiciled in countries, that Guernsey is satisfied to be in compliance with and have effectively implemented the FATF Recommendations or is not limited to listed companies that are subject to adequate disclosure requirements <u>Effectiveness issues:</u> • Customer risk assessments of TCSPs do not sufficiently take into account that the accumulation of risks can present overarching ML/TF risk; • CDD measures are not commensurate to the risk in some instances; • Effective compliance with AML/CFT requirements by persons acting as a director (for less

[182] The review of Recommendation 12 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendations 6, 8, 9 and 11.

		than six companies) without a personal fiduciary licence (but who are subject to the AML/CFT requirements) was not demonstrated.
13. Suspicious transaction reporting	**C**	
14. *Protection and no tipping-off*	***C***	
15. *Internal controls, compliance and audit*	***LC***	• *There is no requirement to maintain an adequately resourced independent audit function to test compliance with AML/CFT policies, procedures and controls.*
16. *DNFBPS – R.13-15 & 21*	***LC***	• *The number of suspicious transaction reports submitted by the eCasinos sector is insufficient.* • *Ecasinos were not specifically required to provide training to their employees on money laundering techniques or employee obligations regarding CDD and reporting.* • *The requirement to provide training does not apply to all eCasinos employees.*
17. Sanctions	**PC**	• Discretionary financial penalties for legal persons available to the GFSC are not dissuasive and proportionate. ***Effectiveness:*** • Use of financial penalties for legal persons cannot act as an effective deterrent to non-compliance; • Cases of STR non-reporting are rarely fined or in any other way sanctioned.
18. *Shell banks*	***C***	
19. *Other forms of reporting*	***C***	
20. *Other DNFBPS and secure transaction techniques*	***C***	
21. *Special attention for higher risk countries*	***C***	
22. *Foreign branches and subsidiaries*	***C***	
23. Regulation, supervision and monitoring	**C**	
24. *DNFBPS - Regulation, supervision and monitoring*	***LC***	• Police record checks are not conducted systematically on key individuals seeking an eGambling license. • The GFSC should increase the frequency of its onsite inspections for TCSPs.

25. *Guidelines and Feedback*	***LC***	• The AGCC should provide additional guidance with respect to AML requirements particularly CDD measures.
Institutional and other measures		
26. The FIU	**LC**	• Lack of legal safeguards for operational 'functioning"; • Insufficient information in public reports released; ***Effectiveness:*** • Lack of legal provisions for requesting additional information without an initial STR might limit the power of the FIS to render assistance to other FIUs.
27. *Law enforcement authorities*	*LC*	• Limited law enforcement effectiveness as reflected in the low number of cases resulting in prosecution.
28. *Powers of competent authorities*	*C*	
29. Supervisors	**C**	
30. Resources, integrity and training[183]	**C**	
31. National co-operation	**C**	
32. Statistics[184]	***C***	
33. Legal persons – beneficial owners	**LC**	• Insufficient measures are in place to ensure that accurate, complete, and current beneficial ownership information is available for legal persons in whose management or administration no licensed TCSP is involved. • Insufficient measures are in place to ensure that accurate, complete, and current beneficial ownership information is available on authorised or registered open-ended or closed-ended investment companies where reliance can be placed on intermediary provisions.
34. Legal arrangements – beneficial owners	**LC**	• Insufficient measures are in place to ensure that accurate, complete, and current beneficial ownership information is available for trusts and general partnerships that are not administered by a licensed

[183] The review of Recommendation 30 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on resources integrity and training of law enforcement authorities and prosecution agencies.

[184] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendations 16, 20, 27, 38 and 39 and Special Recommendation IX.

		TCSP. Given that the total number of these legal arrangements cannot be ascertained, the extent of this shortcoming remains unknown; • Insufficient measures are in place to ensure that accurate, complete, and current information is available regarding legal arrangements that are collective investment schemes where reliance can be placed on intermediary provisions.
International Co-operation		
35. Conventions	**C**	
36. Mutual legal assistance (MLA)[185]	**C**	
37. *Dual criminality*	***C***	
38. *MLA on confiscation and freezing*	***LC***	• Prior to July 2010, the designation mechanism may have had a negative impact on the overall effectiveness of the MLA system.
39. *Extradition*	*C*	
40. Other forms of co-operation	**LC**	• Assistance of the FIS is limited to the cases where there has been an STR in Guernsey on the subject of the request.
Nine Special Recommendations		
SR.I Implement UN instruments	**C**	
SR.II Criminalise terrorist financing	**C**	
SR.III Freeze and confiscate terrorist assets	LC	• Concerns about the practical applicability of criminal procedural rules to seize/freeze assets in the interim period between an UN and a EU designation • Further efforts are required to ensure the immediate communication of UN/EU designations to the obliged entities and thus the effectiveness of the freezing actions.
SR.IV Suspicious transaction reporting	**C**	
SR.V International	**LC**	• Assistance of the FIS is limited to the cases where there has been an STR in Guernsey on the subject of

[185] The review of Recommendation 36 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendation 28.

co-operation[186]		the request.
SR.VI AML requirements for money/value transfer services	***C***	
SR.VII Wire transfer rules	***C***	
SR.VIII Non-profit organisations	**LC**	• The NPO registration system is not comprehensive as manumitted NPOs of Guernsey and Alderney are still exempt from registration obligations; • There is no publicly available information on manumitted NPOs; • Sanctions for non-compliance with registration requirements are still not effective and dissuasive.
SR.IX Cross Border declaration and disclosure	*LC*	• (Before 29 July 2010) Cash control system in relation to post parcels deviate from international standards (e.g., authority to make further enquiries, temporary restraint, and low sanctions). • No unified regime for all cross-border cash transportation. (effectiveness)

[186] The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the IMF report on Recommendations 37, 38 and 39.

9. Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1)	The authorities should continue to focus their attention on identifying ML crimes within the domestic financial sector and take measures to overcome any identified obstacles in order to ”protect the name of this island as a reputable, international, financial centre” (quoted from the Ludden verdict).
2.2 Criminalisation of Terrorist Financing (SR.II)	This recommendation is fully observed.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	The Guernsey authorities should examine and analyse why the said measures have not been able to yield more results in tracing and identifying illicit proceeds being introduced into the financial industry of the Bailiwick and what measures can be taken, either by increasing and further training of the staff, or by enhancing international cooperation. Given that the Guernsey authorities have assured the evaluators that assets held in a separate cell of a PCC would be susceptible to confiscation the examiners only make a recommendation on this whole issue in respect to lack of enforceable guidance to clarify that the administrating FSB has to identify and to take reasonable measures to verify the identities of the beneficial owners of the cells.
2.4 Freezing of funds used for terrorist financing (SR.III)	• The immediateness of the freezing actions is a key factor and the Guernsey authorities should strengthen their efforts to minimize delays in communicating UN and/or EU designations to the financial sector and other obliged entities so as to ensure the immediateness of the freezing actions. • While the evaluators appreciate that the Guernsey authorities seek for solutions to reach terrorist-related funds even before the designation is made by the EU (i.e. in the interim period between the UN and the EU designation) they harbour concerns whether the rules of criminal procedure could be a sound legal basis for this purpose particularly as the conversion from criminal to administrative freezing is concerned. Uncertainty should ideally be eliminated by adopting legislation either to extend the scope of administrative freezing to assets belonging to persons or entities that had already been designated by the UN Security Council but their respective EU designation has not yet taken place (e.g. by means of an interim domestic designation) or to expressly provide for the applicability of criminal provisional

	measures for the same time period.
2.5 The Financial Intelligence Unit and its functions (R.26)	• The authorities should introduce terms of reference or other formal safeguards to ensure the FIS's operational functioning. • The evaluation team recommends the Guernsey authorities to issue guidance on the procedure for information requests and to update the FIS Handbook regularly to reflect the legislation currently in force[187]. • Although information from the FIS on trends, statistics and case studies is available on THEMIS for the reporting institutions (but not always publicly available), the authorities are recommended to periodically release reports on FIS activities, statistical data, guidance and typologies and trends. • While the FIS exchanges information freely, spontaneously and upon request with foreign FIUs, regardless of their status, the need for the FIS to have received an initial disclosure in order to be able to request information from third parties limits possibilities of cooperation. Although in cases without an initial disclosure the FIS can use the provisions of the Company law and other similar laws (see paragraph 419) to request information from legal entities that information will be related to ownership only. All this raises concern in this section as well as under the section on international cooperation due to the international character of the financial business in Guernsey. The FIS should study the practice of the exchange of information and introduce the needed mechanisms to liquidate this impediment.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• As already recommended by the IMF in their report authorities should expand the list of higher-risk customers to which enhanced due diligence must be applied and include higher-risk categories relevant to some financial institutions in Guernsey. • Authorities should amend the FSB Handbook rules regarding simplified or reduced CDD (including intermediary provisions). The rules should not provide for the discretion to refrain entirely from any of the mandatory CDD measures (including identification of the ultimate beneficial owner) in respect of a regulated or authorised collective investment scheme that has only a very limited number of investors. • Financial institutions should be required to identify the beneficial owners of a corporate trustee, even if they establish that the corporate trustee is subject either to the Handbook or

[187] The Guidance was issued after the on-site mission.

	that it is an Appendix C business (see Rule 139 of the FSB Handbook); • Authorities should amend the FSB Handbook to ensure that the application of simplified or reduced CDD measures to customers resident in another country should be limited to customers resident or domiciled in countries, that Guernsey is satisfied to be in compliance with and have effectively implemented the FATF Recommendations or legal bodies that are listed on a regulated market that has been assessed by the GFSC as having adequate disclosure requirements (see paragraphs 577 and 578). • Authorities should amend Regulation 19 in order to cover any person that is the object of a power. Effectiveness: • The authorities should ensure that the customer risk assessments take sufficiently into account that the accumulation of risks in a relationship (which appear to be relevant for a significant portion of the customer base) can present overarching ML/TF risks. • Financial institutions should be required to have sight of the trust deed and (if appropriate) letter of wishes (or the trustees memo or file note of the settlors wishes) in their entirety, and subsequent deeds at least in instances where the relationship has been assessed as high risk and effective compliance with this requirement should be examined. Authorities should ensure (through guidance and supervisory measures) that financial institutions enhance their CDD records regarding the economic or other commercial rationale of a business relationship, including the rationale for conducting this business in or through Guernsey, to ensure that records facilitate the undertaking of an adequate customer risk assessment and a meaningful on-going monitoring of the business relationship. The review of existing records should not be limited to high-risk customers. • Where the rationale of a business relationship is tax planning or tax mitigation, authorities should consider promoting the best practice applied by some financial institutions that are requesting a copy of the tax opinion or advice to ascertain the compliance with relevant tax laws. • The authorities should consider promoting the practice applied by some financial institutions by establishing the source of wealth and the source of funds also for their medium risk relationships, and not only for PEP and higher risk business relationships. • The authorities should ensure through clarifications in the Handbook and supervision that financial institutions require documentary evidence more frequently when establishing the source of wealth and the source of funds of high-risk customers. • The authorities should encourage financial institutions to define more clearly in their overall risk appetite statements

	where they would find it appropriate, based on an assessment of risk, to reject or terminate a business relationship. • In order to have legal certainty, authorities should clarify in the Regulations and the FSB Handbook that o the underlying individual persons (ultimate beneficial owners) have to be identified where a settlor is a legal entity (corporate settlor); o the true settlor (as opposed to a nominee settlor) has to be identified, verified and recorded in the CDD files in all cases; o the identity of any person subsequently settling funds into the trust has to be identified, verified and recorded in the CDD files in all cases. • Authorities should clarify in the FSB Handbook that that the administrating FSB has to identify and to take reasonable measures to verify the identities of the beneficial owners of the cells. • Authorities should consider incorporating the statements on certification of copy documentation published on the FAQ section of the GFSC website into the Handbook to ensure their enforceability and effective compliance with these requirements by all financial institutions should be examined.
3.4 Financial institution secrecy or confidentiality (R.4)	In the absence of a clear statute for respondent institutions and third parties (introducers) to disclose necessary information, the sharing of information between financial institutions where this is required by R.7 and R.9 is not clearly exempted from the common law principle of confidentiality. While the assessors acknowledge that the duty of confidentiality can be waived by consent and that this consent is usually obtained by Guernsey financial institutions, problems can arise where this consent was not obtained. Accordingly, the authorities should introduce a clear statute that requires respondent institutions and third parties (introducers) to disclose information necessary under R.7 and R.9.
3.5 Record keeping (R.10)	This recommendation is fully observed.
3.7 Suspicious transaction reports and other reporting (R.13 & SR.IV)	• For the integrity of the statistics there should be clear data on the number of those STRs that were received by the FIS *"upon FIS's request"* (e.g. to obtain information in case of a foreign request when there was no STR on the subject of the request).
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29 and 17)	***Recommendation 17*** • The Guernsey authorities should take actions to introduce legislation in order to increase the maximum discretionary fine for legal persons available to the GFSC, and is encouraged to do this as a priority, given the fact that this shortcoming has not been mitigated by legislation since the last evaluation report • Cases of STR non-reporting should be fined or brought to other enforcement actions, which at this stage is happening in

	limited situations (one case), which undermines the effectiveness both of the reporting and sanctioning regimes.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• As already recommended by the IMF in 2011 the authorities should expand the list of higher-risk customers to which enhanced due diligence must be applied and include higher-risk categories relevant to some TCSPs and Prescribed Businesses in Guernsey. • Authorities should amend the PB Handbook rules regarding simplified/ reduced CDD. The rules should not provide for the discretion to abstain entirely from any of the mandatory CDD measures (including identification of the ultimate beneficial owner in respect of a regulated or authorised collective investment scheme that has only a very limited number of investors. • Authorities should amend the PB Handbook to ensure that the application of simplified or reduced CDD measures should be limited to customers resident or domiciled in countries, that Guernsey is satisfied to be in compliance with and have effectively implemented the FATF Recommendations. Effectiveness • The authorities should ensure that the customer risk assessments of TCSPs take sufficiently into account that the accumulation of risks can present overarching ML/TF risks. • The GFSC should take measures to ensure effective compliance with the AML/CFT requirements in respect of persons acting as a director (for less than six companies) without a personal fiduciary licence but who are subject to the AML/CFT requirements through effective supervision of these directors. • Authorities should ensure (through guidance and supervisory measures) that TCSPs enhance their CDD records regarding the economic or other commercial rationale of a business relationship, including the rationale for conducting this business in or through Guernsey, to ensure that records facilitate the undertaking of adequate customer risk assessments and meaningful on-going monitoring of the business relationship. • Where the rationale of a business relationship is tax planning or tax mitigation, authorities should promote the practice applied by some TCSP businesses that are requesting a copy of the tax opinion or advice to ascertain the compliance with relevant tax laws.

	• The authorities should consider promoting amongst TCSPs the practice applied by some businesses by establishing the source of wealth and the source of funds also for their medium risk relationships, and not only for PEP and higher risk business relationships. • The GFSC FAQ guidelines regarding establishing and obtaining documentary evidence for source of funds and source of wealth for medium and high risk relationships should be more widely encouraged through clarifications in the Handbook and supervision. This best practice has already been adopted by some businesses. • The authorities should encourage TCSPs to define more clearly in their overall risk appetite statements where they would find it appropriate, based on an assessment of risk, to reject or terminate a business relationship. • In order to have legal certainty, authorities should clarify in the PB Regulations and the PB Handbook that o the underlying individual persons (ultimate beneficial owners) have to be identified where a settlor is a legal entity (corporate settlor); o the true settlor (as opposed to a nominee settlor) has to be identified, verified and recorded in the CDD files in all cases; o the identity of any person subsequently settling funds into the trust has to be identified, verified and recorded in the CDD files in all cases. • Authorities should clarify in the PB Handbook that in the case of PCCs and ICCs the identity of the beneficial owner has to be identified and verified with respect to each cell. • Authorities should consider incorporating the statements on certification of copy documentation published on the FAQ section of the GFSC website into the PB Handbook to ensure their enforceability.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal persons – Access to beneficial ownership and control information (R.33)	• The authorities should put in place specific measures to ensure the availability of accurate and complete beneficial ownership information for legal persons in whose management or administration no licensed TCSP is involved, given that the existing requirements for resident agents do not provide an equivalent mechanism as there they are not clearly required to identify and to take reasonable measures to verify the beneficial owner of legal persons (see paragraphs 1072 and 1101). • The authorities should put in place specific measures to ensure the availability of accurate and complete beneficial

	ownership information on authorised or registered open-ended or closed-ended investment companies. • The authorities should clarify in the FSB Handbook that the administrating FSB has to identify and to take reasonable measures to verify the identities of the beneficial owners of the cells. • The authorities should put in place measures to ensure effective supervision of persons acting as resident agents for not more than 6 companies, who are therefore exempt from prudential regulation but are nonetheless subject to the AML/CFT obligations. • Guernsey authorities should consider measures to facilitate access by financial institutions to beneficial ownership and control information, so as to allow them to verify more easily the customer identification data.
5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)	• The authorities should urgently put in place a specific mechanism that enables Guernsey authorities to have knowledge of the number of trusts and general partnerships governed under Guernsey law (at least where a Guernsey resident trustee or partner is involved). • As already recommended by the IMF during the assessment in 2011, the authorities should put in place specific measures to ensure the availability of accurate and complete beneficial ownership information for trusts and general partnerships that are not administered by a licensed TCSP. • Guernsey authorities should consider introducing a requirement for trustees to disclose their status to financial institutions and DNFBPs when forming a business relationship or carrying out an occasional transaction. • Guernsey authorities should consider measures to facilitate access by financial institutions to beneficial ownership and control information, so as to allow them to more easily verify the customer identification data.
5.3 Non-profit organisations (SR.VIII)	The evaluators recommend the following actions to be taken by Bailiwick authorities: • manumitted organizations should be subject to registration requirements under the Charities and NPO Registration Law; • and the sanctions for non-compliance with registration requirements should be strengthened in line with the recommendations made in the previous round.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31 and 32)	This recommendation is fully observed.

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	This recommendation is fully observed.
6.3 Mutual Legal Assistance (R.36 & SR.V)	This recommendation is fully observed.
6.5 Other Forms of Co-operation (R.40 & SR.V)	• The Guernsey authorities should review the legal provisions and delete the limitation in the powers of the FIS to render assistance.
7. Other Issues	
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

10. Table 3: Authorities' Response to the Evaluation (if necessary)

COUNTRY COMMENTS
The Guernsey authorities welcome this report by Moneyval. We were pleased to confirm our commitment to an early evaluation when joining Moneyval and the publication of the report is an important milestone in the relationship between Guernsey and Moneyval. The Guernsey authorities are committed to the continual enhancement of the AML/CFT framework. All of the report's recommendations will be taken into account as part of the process for enhancing the framework and ensuring that it is as effective as possible.

V. Compliance with the 3rd EU AML/CFT DIRECTIVE

The Bailiwick of Guernsey is not a member country of the European Union. It is not directly obliged to implement **Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing** (hereinafter: "the Directive") and the **Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis**.

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations.

1.	**Corporate Liability**
Art. 39 of the Directive	Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive.
FATF R. 2 and 17	Criminal liability for money laundering should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.
Key elements	The Directive provides no exception for corporate liability and extends it beyond the ML offence even to infringements which are based on national provisions adopted pursuant to the Directive. What is the position in your jurisdiction?
Description and Analysis	Legal entities can be held criminally liable for ML/FT offences and all related infringements under the POCL, the DTL, and the TL which equally apply to any person without differentiating between natural and juridical persons. The statutory basis for this interpretation is provided by Section 9 of the Interpretation (Guernsey) Law 1948 according to which the term "person" shall include, in every enactment passed before or after the commencement of that law "any body of persons corporate or unincorporate" unless it is stated otherwise. Although the Interpretation Law, by its terms, applies only to Guernsey, its provisions expressly apply to the interpretation of the POCL, the DTL, and the TL throughout the Bailiwick (see under Section 51(2) Section 69(2) and Section 79(3), respectively). In addition, both the POCL and the DTL provide that where an offence under any of these statutes is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly (see under Section 49E and Section 67O respectively). Apart from this statutory basis, it is also a well-established common law principle that a legal person is liable for the acts of its controlling minds and therefore corporate liability can be applied in all cases where an

	infringement for the benefit of a legal person was committed by a person who occupies a leading position within it. Although to date there has been no ML/TF prosecution against a legal person, there have been successful prosecutions of legal persons for other offences (e.g. health and safety breaches) where the legal position is the same as that set out above for ML/TF offences.
Conclusion	The Bailiwick law provides no exception for corporate liability. While it is a generally applicable rule by statutory interpretation, it is expressly extended beyond the ML offence to cover all offences under the POCL and DTL "or any Ordinance, regulation or rule made under it" including infringements of AML/CFT requirements set out under these laws.
Recommendations and Comments	None

2.	**Anonymous accounts**
Art. 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
FATF R. 5	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
Key elements	Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
Description and Analysis	Financial services businesses are prohibited from keeping anonymous accounts or anonymous passbooks. Regulation 8 of the FSB Regulations provides that a financial services business must, in relation to all customers, not set up anonymous accounts or accounts in fictitious names (which includes passbooks) and must maintain accounts in a manner which facilitates the meeting of the requirements of the Regulations. Also see the text at criterion 5.1 of Recommendation 5 in the evaluation report.
Conclusion	The requirements set out in the FSB Regulations are consistent with Art. 6 of the Directive.
Recommendations and Comments	None

3.	**Threshold (CDD)**
Art. 7 b) of the Directive	The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions amounting to EUR 15 000 or more.

FATF R. 5	Financial institutions should undertake CDD measures when carrying out occasional transactions above the applicable designated threshold.
Key elements	Are transactions and linked transactions of EUR 15 000 covered?
Description and Analysis	For financial services businesses, the requirement to undertake CDD is set out in the FSB Regulations. Regulations 4(1) and 4(2) of the FSB Regulations require financial services businesses to undertake CDD when establishing a business relationship or carrying out an occasional transaction (a transaction involving more than £10,000 (approximately EUR 14,130) where no business relationship has been proposed or established and includes such transactions carried out in a single operation or two or more operations that appear to be linked). Also see the text at criterion 5.2 of the MER. The same requirements are contained in the PB Regulations. Also see criterion 5.2 for PBs (Recommendation 12) in the evaluation report. See section 13 below for eCasinos.
Conclusion	At the current Pound exchange rate, the requirements set out in the FSB Regulations go beyond Art. 7 b) of the Directive.
Recommendations and Comments	None

4.	**Beneficial Owner**
Art. 3(6) of the Directive *(see Annex)*	The definition of 'Beneficial Owner' establishes minimum criteria (percentage shareholding) where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements
FATF R. 5 (Glossary)	'Beneficial Owner' refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement.
Key elements	Which approach does your country follow in its definition of "beneficial owner"? Please specify whether the criteria in the EU definition of "beneficial owner" are covered in your legislation.
Description and Analysis	Regulation 19 of the FSB Regulations and Regulation 30 of the PB Regulations state that "beneficial owner" means, in relation to a business relationship or occasional transaction - "(a) the natural person who ultimately owns or controls the customer, and (b) a person on whose behalf the business relationship or occasional

	transaction is to be or is being conducted and, in the case of a foundation or trust or other legal arrangement, this shall mean (i) any beneficiary in whom an interest has vested, and (ii) any other person who benefits from that foundation or trust or other legal arrangement." In addition, rule 113 in the FSB Handbook and rule 127 in the PB Handbook require businesses to identify and verify individuals ultimately holding a 25% or more interest in the capital or net assets of a legal body and also any individual with ultimate effective control over the capital or assets of the legal body. Regulation 265(1) of the Alderney eGambling Regulations, 2009, defines the term "beneficial owner", in relation to a customer relationship, as follows: "(a) the natural person who ultimately owns or controls the customer; and (b) a person on whose behalf the customer relationship is to be or is being conducted and, in the case of a trust or other legal arrangement, this shall mean - (i) any beneficiary in whom an interest has vested, and (ii) any other person who appears likely to benefit from that trust or other legal arrangement". Section 4.2.4 of the AML/CFT Guidance issued by the AGCC provides for identification and verification of individuals ultimately holding a 25% or greater interest in the capital or net assets of a legal body or with ultimate effective control over the capital assets of the legal body. eCasinos are under an obligation under paragraph 9A(1)(f) of Schedule 16 to the eGambling Regulations to have regard to, and meet the requirements of, any relevant guidance, notice, instruction or counter-measures which relates to AML/CFT.
Conclusion	In line with Art. 3(6) of the Directive the FSB Handbook, the PB Handbook and the AML/CFT Guidance issued by the AGCC establishes minimum criteria (percentage shareholding) where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements.
Recommendations and Comments	None

5.	**Financial activity on occasional or very limited basis**
Art. 2 (2) of the Directive	Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring do not fall within the scope of Art. 3(1) or (2) of the Directive.

	Art. 4 of Commission Directive 2006/70/EC further defines this provision.
FATF R. concerning financial institutions	When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially (2004 AML/CFT Methodology para 23; Glossary to the FATF 40 plus 9 Special Recs.).
Key elements	Does your country implement Art. 4 of Commission Directive 2006/70/EC?
Description and Analysis	The business specified in part I of Schedule 1 to the Proceeds of Crime Law is financial activity for the purposes of the AML/CFT obligations when carried on by way of business for or on behalf of a customer. Only financial activity carried out on an occasional or very limited basis and where there has been an assessment that there is little risk of money laundering or financing of terrorism occurring is not within scope. This is: Any business which is not a regulated business carried out in the course of carrying on the profession of an actuary where such business is incidental to the provision of actuarial advice or services. For the purposes of this paragraph, business is incidental to the provision of such advice or services, if: (a) separate remuneration is not being given for the business as well as for such advice or services; (b) such advice or services is not itself business falling within part I; and (c) the business being carried out is incidental to the main purpose for which that advice or services is provided. The carrying on of any business in part I: (a) by way of the provision of in-house legal, accountancy or actuarial advice or services to any business referred to in part I; or (b) in the course of carrying on the profession (respectively) of a lawyer, accountant or actuary for any client carrying on such a business. Activities constituting the restricted activities of dealing, advising and promotion for the purposes of Schedule 2 to the Protection of Investors Law provided that: (a) such activities are carried on by a person who is not incorporated or registered in the Bailiwick; (b) such activities are carried on by a person who does not maintain a physical presence in the Bailiwick; (c) such activities are carried on from a country or territory listed in Appendix C to the Handbook;

	(d) the conduct of such activities is subject to requirements to forestall, prevent and detect money laundering and terrorist financing that are consistent with those in the Financial Action Task Force Recommendations on Money Laundering in respect of such activities; and (e) the conduct of such activities is supervised for compliance with the requirements referred to in item (d), by an overseas regulatory authority. Any business falling within the definition of long term business or insurance intermediary in terms of long term business which is: (a) carried on by a person who is licensed in the Bailiwick solely to carry on general insurance business under the Insurance Business Law; (b) carried on by a person who is not incorporated or registered in the Bailiwick; (c) carried on by a person who does not maintain a physical presence in the Bailiwick; (d) not managed in or from within the Bailiwick; and (e) subject to authorisation and supervision by the United Kingdom Financial Services Authority. A business which is not a regulated business provided that: (a) the total turnover of that business, plus that of any other business falling within part I carried on by the same person, does not exceed £50,000 per annum; (b) no occasional transactions are carried out in the course of such business, that is to say, any transaction involving more than £10,000, where no business relationship has been proposed or established, including such transactions carried out in a single operation or two or more operations that appear to be linked; (c) the turnover of such business does not exceed 5% of the total turnover of the person carrying on such business; (d) the business is ancillary, and directly related, to the main activity of the person carrying on the business; (e) in the course of such business, money or value is not transmitted or such transmission is not facilitated by any means; (f) the main activity of the person carrying on the business is not that of a business falling within part I; (g) the business is provided only to customers of the main activity of the person carrying on the business and is not offered to the public; and (h) the business is not carried on by a person who also carries on a regulated business. Also see paragraph 501 in the evaluation report.

Conclusion	The requirements set out in the Proceeds of Crime Law are not fully in consistent with Art. 4 of Commission Directive 2006/70/EC. For example, the maximum threshold per customer and single transaction (£10,000) is significantly higher than the maximum threshold set out in Art. of Commission Directive 2006/70/EC (EUR 1 000).
Recommendations and Comments	The requirements should be brought in line with the Art. 4 of the Commission Directive 2006/70/EC.
6.	**Simplified Customer Due Diligence (CDD)**
Art. 11 of the Directive	By way of derogation from the relevant Article the Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient CDD information remains.
FATF R. 5	Although the general rule is that customers should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
Key elements	Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?
Description and Analysis	The provisions on simplified due diligence are described in detail under c.5.9 of the evaluation report. The FATF Methodology clearly establishes that "the general rule is that customers must be subject to the full range of CDD measures, including the requirement to identify the beneficial owner." Accordingly, simplified CDD (in terms of the FATF Recommendations) does not mean an exemption from any of the CDD measures, but financial institutions can adjust the amount or type of each or all of the CDD measures in a way that is commensurate to the low risk identified. In the case of beneficial ownership identification, this could consist for example in obtaining less detailed identification information. However, based on some of the SDD provisions described under c.5.9 financial institutions are fully exempted from some of the CDD measures (e.g. the identification of the identity of the beneficial owner). This applies also to some of the intermediary provisions described under c.5.9, whereby a financial institution may treat a regulated financial intermediary, acting on behalf of another, (supervised in certain FATF compliant jurisdictions) as a client to undertake CDD. This is in line with the Directive
Conclusion	Some of the SDD and intermediary provisions are not in line with criterion 5.9.
Recommendations and	Some of the SDD and intermediary provisions must be brought in line

Comments	with criterion 5.9

7.	**Politically Exposed Persons (PEPs)**
Art. 3 (8), 13 (4) of the Directive *(see Annex)*	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions (Art. 2(4)).
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.
Key elements	Does your country implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive?
Description and Analysis	PEPs are not subject to a one year time limit after ceasing to be entrusted with prominent public functions. Regulation 19 of the FSB Regulations states that "politically exposed person" shall be construed in accordance with regulation 5(2)(b). Regulation 5(2)(b) states that "politically exposed person" means: "*(i) a person who has, or has had at any time, a prominent public function or who has been elected or appointed to such a function in a country or territory other than the Bailiwick including, without limitation -* *(A) heads of state or heads of government,* *(B) senior politicians and other important officials of political parties,* *(C) senior government officials,* *(D) senior members of the judiciary,* *(E) senior military officers, and* *(F) senior executives of state owned body corporates,* *(ii) an immediate family member of such a person including, without limitation, a spouse, partner, parent, child, sibling, parent-in-law or grandchild of such a person and in this subparagraph* "*partner*" *means a person who is considered by the law of the country or territory in which the relevant public function is held as being equivalent to a spouse, or* *(iii) a close associate of such a person, including, without limitation -* *(A) a person who is widely known to maintain a close business relationship with such a person, or* *(B) a person who is in a position to conduct substantial financial transactions on behalf of such a person.*" Regulation 30 of the PB Regulations states that "politically exposed person" shall be construed in accordance with regulation 5(2)(b). The

	definition is identical to that for financial services businesses as specified immediately above. Paragraph 10(1) of Schedule 16 to the Alderney eGambling Regulations, 2009, defines the term "politically exposed person" as: "*(a) a person who has, or has had at any time, a prominent public function or who has been elected or appointed to such a function in a country or territory other than the Bailiwick of Guernsey including, without limitation —* *(i) heads of state or heads of government,* *(ii) senior politicians and other important officials of political parties,* *(iii) senior government officials,* *(iv) senior members of the judiciary,* *(v) senior military officers, and* *(vi) senior executives of state owned body corporates,* *(b) an immediate family member of such a person including, without limitation, a spouse, partner, child, sibling, parent-in-law or grandchild of such a person and, for the purposes of this definition, "partner" means a person who is considered by the law of the country or territory in which the relevant public function is held as being equivalent to a spouse, or* *(c) a close associate of such a person, including, without limitation —* *(i) a person who is widely known to maintain a close business or professional relationship with such a person, or* *(ii) a person who is in a position to conduct substantial financial transactions on behalf of such a person*".
Conclusion	The PEP regime in Guernsey follows the FATF requirements and definition. Guernsey has not implemented provisions that are comparable to Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does not apply Art. 13(4) of the Directive.
Recommendations and Comments	None

8.	**Correspondent banking**
Art. 13 (3) of the Directive	For correspondent banking, Art. 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
FATF R. 7	Recommendation 7 includes all jurisdictions.
Key elements	Does your country apply Art. 13(3) of the Directive?
Description and	There is no limitation of the application of ECDD to institutions

Analysis	from non-member countries. Regulation 5(1)(b) of the FSB Regulations applies enhanced customer due diligence to all correspondent banking relationships.
Conclusion	The derogation for EU member countries, as set out in Art. 13 (3) of the Directive has not been applied by Guernsey.
Recommendations and Comments	None

9.	**Enhanced Customer Due Diligence (ECDD) and anonymity**
Art. 13 (6) of the Directive	The Directive requires ECDD in case of ML or TF threats that may arise from products or transactions that might favour anonymity.
FATF R. 8	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity [...].
Key elements	The scope of Art. 13(6) of the Directive is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation?
Description and Analysis	Regulation 5 of the FSB Regulations requires ECDD to be undertaken for every business relationship or occasional transaction which the financial services business considers to be high risk. Rule 28 of the FSB Handbook states that financial services businesses must take appropriate measures to keep abreast of and guard against the use of technological developments and new methodologies in money laundering and terrorist financing schemes. This provision would include products or transactions which might favour anonymity. Under chapter three of the FSB Handbook, when assessing the risk of a proposed business relationship or occasional transaction a financial services business must ensure that all the relevant risk factors are considered before making a determination on the level of overall assessed risk. Rule 56 of the FSB Handbook and an identical rule 69 in the PB Handbook include measures preventing provision of products or transactions which might favour anonymity. Rule 194 of the FSB Handbook requires FSBs to undertake enhanced due diligence to address issues relating to legal persons who have issued, or have the power to issue, bearer instruments. The Handbook also provides examples of high risk indicators for customers and for products and services, which include requests to adopt undue levels of secrecy with a transaction and bearer shares and other bearer instruments. Regulation 5 of the PB Regulations, and rule 44 and chapter three of the PB Handbook, contain identical provisions.

	Paragraph 3 of Schedule 16 to the eGambling Regulations requires ECDD to be undertaken for every customer relationship which has been assessed by the eCasino to be high risk. Section 2.3.2 of the AML/CFT Guidance provides that this customer risk review should take into account the factors applicable to business risk assessment reviews. Under paragraph 1(1) of Schedule 16 to the eGambling Regulations, business risk assessments must document an eCasino's exposure to any ML/TF risks and vulnerabilities, including those risks that may arise from new or developing technologies that might favour anonymity, taking into account its customers, products and services, and the way in which it provides those services. This includes products or transactions which might favour anonymity. Regulation 175 of the eGambling Regulations requires that the eCasino's internal control system must describe the policies, procedures and controls it has developed in order to mitigate any ML/TF risks identified in its business risk assessment, including measures to keep abreast of and guard against the use of technological developments and new methodologies in money laundering and terrorist financing schemes. This includes products or transactions which might favour anonymity. In addition, paragraph 9A(1)(b) of Schedule 16 to the eGambling Regulations requires that eCasinos take appropriate measures to keep abreast of and guard against the use of technological developments and new methodologies in money laundering and terrorist financing schemes.
Conclusion	The scope of the FSB Handbook and the PB Handbook requirements are broader than that of FATF R. 8, because they include measures preventing the provision of products or transactions which might favour anonymity regardless of the use of technology. The requirements appear to be in line with article 13 (6) of the Directive.
Recommendations and Comments	None

10.	**Third Party Reliance**
Art. 15 of the Directive	The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.
FATF R. 9	Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify as third parties.
Key elements	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
Description and	The Guernsey framework permits reliance on professional and

Analysis	qualified third parties for the performance of some customer due diligence under specified conditions. Regulation 10 of the FSB Regulations sets out the basic conditions for reliance on third parties (introduced business). Persons on whom some reliance might be placed must be an Appendix C business or an overseas branch of, or a member of the same group of bodies corporate, as the financial services business. Where reliance is placed on the third party (the introducer), the responsibility for meeting the regulations remains with the financial services business. An Appendix C business is defined in the regulation 19 of the FSB Regulations as: (a) a financial services business supervised by the Commission; or (b) a business which is carried on from - (i) a country or territory listed in Appendix C to the Handbook and which would, if it were carried on in the Bailiwick, be a financial services business; or (ii) the United Kingdom, the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man by a lawyer or accountant; and, in either case is a business: (A) which may only be carried on in that country or territory by a person regulated for that purpose under the law of that country or territory; (B) the conduct of which is subject to requirements to forestall, prevent and detect money laundering and terrorist financing that are consistent with those in the FATF Recommendations in respect of such a business; and (C) the conduct of which is supervised for compliance with the requirements referred to in subparagraph (B), by the Commission or an overseas regulatory authority. Appendix C refers to Appendix C of the FSB Handbook, which was established to reflect those countries or territories which the GFSC considers require regulated financial services businesses and regulated prescribed businesses to have in place standards to combat money laundering and terrorist financing consistent with the FATF Recommendations and where such businesses are supervised for compliance with those requirements. No requirements have been imposed on the specific documents or data to be provided by a person on whom some reliance has been placed. Equivalent provisions are included in regulations 10 and 30 of the PB Regulations and Appendix C of the PB Handbook. eCasinos do not permit reliance on professional and qualified third parties for customer due diligence. Where eCasinos receive introduced business, the eCasino is required when establishing the customer relationship to undertake its own customer due diligence. eCasinos are not permitted to rely on any customer due diligence undertaken by the introducer. eCasinos may outsource their customer due diligence functions to a business associate in accordance with article 19 of the EU Directive. Article 15 of the EU Directive does not apply to outsourcing relationships where, "on the basis of a contractual arrangement, the outsourcing service provider or agent is to be regarded as part of the institution or person covered by the Directive".

	Article 15 of the EU Directive does not therefore apply as the eCasinos' outsourcing relationships are governed by a contractual arrangement whereby the business associate is regarded as synonymous with the eCasino.
Conclusion	Similar to the EU Directive the FSB Regulations set out special conditions or categories of persons who can qualify as third parties. eCasinos are not permitted to rely on professional and qualified third parties for customer due diligence. The requirements appear to be in line with article 15 of the Directive.
Recommendations and Comments	None

11.	**Auditors, accountants and tax advisors**
Art. 2 (1)(3)(a) of the Directive	CDD and record keeping obligations are applicable to auditors, external accountants and tax advisors acting in the exercise of their professional activities.
FATF R. 12	CDD and record keeping obligations 1. do not apply to auditors and tax advisors; 2. apply to accountants when they prepare for or carry out transactions for their client concerning the following activities: • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • organisation of contributions for the creation, operation or management of companies; • creation, operation or management of legal persons or arrangements, and buying and selling of business entities (2004 AML/CFT Methodology criterion 12.1(d)).
Key elements	The scope of the Directive is wider than that of the FATF standards but does not necessarily cover all the activities of accountants as described by criterion 12.1(d). Please explain the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.
Description and Analysis	With reference to section 49A of the Proceeds of Crime Law and section 5 of Schedule 2 to the law, auditors, external accountants and tax advisors acting in the course of their professional activities are subject to the AML/CFT obligations, including customer due diligence and record keeping obligations, in the PB Regulations and PB Handbook. See regulation 1A and the definition of prescribed business in regulation 30 of the PB Regulations All activities in criterion 12.1(d) are covered. The actual wording in

	the law is "by way of business" and its effect is that all activity carried out by auditors, external accountants and tax advisors is covered unless it is being done on an entirely unremunerated basis (e.g. by a person acting as the accountant for a sports club to which he belongs). Auditors, external accountants and tax advisors are subject to the reporting obligations at section 3 of the Disclosure Law and section 12 of the Terrorism and Crime Law.
Conclusion	Guernsey is in line with the directive
Recommendations and Comments	

12.	**High Value Dealers**
Art. 2(1)(3)e) of the Directive	The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.
FATF R. 12	The application is limited to those dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
Description and Analysis	With reference to section 49A of the Proceeds of Crime Law and section 1 of Schedule 2 to the law, regulation I of the Criminal Justice (Proceeds of Crime) (Restriction on Cash Transactions) (Bailiwick of Guernsey) Regulations, 2008 provides that, with regard to trading in goods, it is an offence when there is received, in respect of any transaction, a payment or payments in cash of at least £7,500. Under the law there is the power to make regulations governing payments in cash of at least £7,500 in total. To date this power has been exercised under the 2008 Regulations in respect of payments of £10,000 or more in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked. Regulation 3 of the regulations defines trading in goods as dealing in precious metals, precious stones or jewellery. In addition, AML/CFT obligations have been extended to persons buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion or buying or selling postage stamps (see paragraph 4A of Schedule 1 to the Proceeds of Crime Law). This means that the FSB regulations and FSB Handbook applies to such persons.
Conclusion	The above described restriction on cash transactions goes beyond the requirements of the FATF and the EU Directive. The restriction is however limited to those dealing in precious metals, precious stones, bullion or postage stamps.

Recommendations and Comments	None

13.	**Casinos**
Art. 10 of the Directive	Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2 000 or more. This is not required if they are identified at entry.
FATF R. 16	The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above EUR 3 000.
Key elements	In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
Description and Analysis	There are no occasional transactions in Alderney's online gambling framework as an eCasino must always establish a customer relationship with each customer who wishes to gamble. Paragraph 2(a) of Schedule 16 to the eGambling Regulations requires that customer due diligence measures are undertaken before a customer is registered. Regulation 226 of the eGambling Regulations requires that every customer is registered before any gambling transactions are effected. In relation to registered customers (who have therefore already been identified and verified prior to registration), paragraph 2(b) of Schedule 16 to the eGambling Regulations require eCasinos to undertake CDD if a customer makes a deposit of €3,000 or more, or that results in the total value of the deposits in the course of any period of 24 hours reaching or exceeding €3,000. As the customer has already been identified at entry, it is not required by Article 10 of the Directive for the value to be set at €2,000. In addition, paragraphs 2(c) and 2(d) of Schedule 16 to the eGambling Regulations requires eCasinos to undertake CDD measures when an eCasinos knows or suspects or has reasonable grounds for knowing or suspecting that a person is engaged in money laundering or terrorist financing; and where the eCasino has doubts about the veracity or adequacy of previously obtained customer identification data. Paragraph 3 of Schedule 16 to the eGambling Regulations provides the circumstances in which an eCasino is also required to carry out enhanced customer due diligence in relation to a customer relationship. Also see the text at criterion 5.2 of Recommendation 12 of the MER for eCasinos for further detail.
Conclusion	Guernsey is in line with the directive
Recommendations and Comments	

14.	Reporting by accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU
Art. 23 (1) of the Directive	This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body, which shall forward STRs to the FIU promptly and unfiltered.
FATF Recommendations	The FATF Recommendations do not provide for such an option.
Key elements	Does the country make use of the option as provided for by Art. 23 (1) of the Directive?
Description and Analysis	The Guernsey framework does not provide an option for accountants, lawyers and tax advisers to report to any person other than the FIS.
Conclusion	Reporting to self-regulatory bodies is not permitted in Guernsey.
Recommendations and Comments	None

15.	Reporting obligations
Arts. 22 and 24 of the Directive	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Art. 22). Obliged persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Art. 24).
FATF R. 13	Imposes a reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
Key elements	What triggers a reporting obligation? Does the legal framework address *ex ante* reporting (Art. 24 of the Directive)?
Description and Analysis	Sections 1 to 3 of the Disclosure Law and sections 12, 15 and 15A of the Terrorism Law contain reporting obligations in respect of money laundering and terrorist financing respectively, which are couched in identical terms. The reporting obligations are triggered by a person's knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering or terrorist financing or that certain property is or is derived from the proceeds of crime or terrorist property, as the case may be. The obligations apply to

	any person if the relevant knowledge, suspicion or reasonable grounds for knowledge or suspicion is acquired in the course of a business. Reports must be made as soon as possible to the FIS (or, in the case of a financial services business or a prescribed business, to a nominated officer, i.e. a person within a business nominated for the purpose by the employer). Breach of these requirements is a criminal offence. The reporting obligations address ex ante reporting attempted transactions because they cover any activity that may constitute money laundering, terrorist financing, attempted money laundering or attempted terrorist financing, irrespective of whether a particular transaction is in fact carried out. The money laundering offences at sections 38 to 40 of the Proceeds of Crime Law and sections 57 to 59 of the Drug Trafficking Law are applicable to any person who carries out a transaction knowing or suspecting it to be related to money laundering. The same is true of the terrorist financing offences at sections 8 to 11 of the Terrorism Law in relation to any person who carries out a transaction knowing or suspecting it to be related to terrorist financing. The consent of the FIS to a particular transaction constitutes a defence to the money laundering or terrorist financing offences in certain circumstances. The practical effect of the withholding of consent by the FIS is to prevent the transaction from taking place.
Conclusion	Although there is no explicit requirement to report attempted transactions (only mentioned in the reporting form which is attached to the Regulations), the requirement to report suspicious activity includes attempted transactions).
Recommendations and Comments	None

16.	**Tipping off (1)**
Art. 27 of the Directive	Art. 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.
FATF R. 14	No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for "tipping off", which is reflected in Art. 26 of the Directive)
Key elements	Is Art. 27 of the Directive implemented in your jurisdiction?
Description and Analysis	Disclosures by financial institutions and all directors, officers and employees of such institutions are protected by sections 1(13) and 2(8) of the Disclosure Law, which provide that disclosures made in good faith do not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise. The Terrorism Law contains equivalent provisions in

	identical terms at sections 15(13) and 15A(8). The protection under the various sections applies to legal and natural persons and is sufficiently widely framed that it is not necessary to know the precise nature of the suspected underlying criminal activity or for any illegal activity to have occurred. In addition, in the event that an employer sought to dismiss an employee for making a report, the employee would be entitled to bring proceedings for unfair dismissal under the Employment Protection (Guernsey) Law, 1998.
Conclusion	Art. 27 of the Directive is not implemented by Guernsey
Recommendations and Comments	The authorities of the Bailiwick of Guernsey should take steps to implement the provisions of art. 27

17.	**Tipping off (2)**
Art. 28 of the Directive	The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where the prohibition is lifted.
FATF R. 14	The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FIU.
Key elements	Under what circumstances are the tipping off obligations applied? Are there exceptions?
Description and Analysis	Tipping off in relation to money laundering is covered by section 4 of the Disclosure Law. This provides that a person commits an offence if, in the knowledge or suspicion that a required disclosure has been or will be made or any related information or other matter has been or will be communicated to the FIS or to a nominated officer, he discloses to any other person information or any other matter about, or relating to, that knowledge or suspicion. Section 4 contains some limited exceptions to these offences. These are disclosures of information made for certain specified purposes, namely • the prevention, detection, investigation or prosecution of domestic or overseas criminal offences • the prevention, detection, investigation or prosecution of domestic or overseas conduct which is subject to non-criminal penalties • the carrying out of its functions by the GFSC or by its overseas counterparts • the carrying out of any functions of any intelligence service. There is also an exception in section 4 for disclosures made by a legal advisor for the purposes of giving legal advice or in connection with legal proceedings, for disclosures made by a client to a legal advisor for

	the purposes of seeking legal advice, and disclosures made to any person for the purposes of legal proceedings. This is to ensure that a person may give instructions to and receive advice from his legal representatives or expert witnesses (e.g. accountants), but the exception does not apply to disclosures of this kind where they are made with a view to furthering any criminal purpose. Tipping off in relation to terrorist financing is covered by section 40 of the Terrorism Law. This provides that a person commits an offence if, having knowledge, suspicion or reasonable grounds to suspect that a disclosure has been made or will be made under various sections of the Terrorism Law, including sections 12 to 15A, he discloses to any other person information or any other matter relating to that knowledge or suspicion, or interferes with material which is likely to be relevant to an investigation resulting from the relevant disclosure. Section 40 also contains exceptions to the tipping off offences that mirror those in section 4 of the Disclosure Law.
Conclusion	The legal provisions do not extend to situations where a money laundering or terrorist financing investigation is being or may be carried out. This is not the case in respect of ML or TF investigations that are carried out following the making of an STR. In those circumstances the tipping off offences are applicable as they extend to disclosures of any information or other matter about or relating to the STR, and this would include a subsequent investigation.
Recommendations and Comments	The authorities of the Bailiwick of Guernsey should take steps to implement the provisions of art. 28

18.	**Branches and subsidiaries (1)**
Art. 34 (2) of the Directive	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures where applicable on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries.
FATF R. 15 and 22	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Art. 34 (2) of the EU Directive.
Key elements	Is there an obligation as provided for by Art. 34 (2) of the Directive?
Description and Analysis	Under regulation 15 of the FSB Regulations a financial services business must establish policies, procedures and controls as may be appropriate and effective for the purposes of forestalling, preventing and detecting money laundering and terrorist financing and establish and maintain an effective policy, for which responsibility must be taken by the board, for the review of its compliance with the requirements of the Regulations. Regulation 15 also requires financial services businesses to ensure that those branches and subsidiaries which are financial services

	businesses outside the Bailiwick comply with the requirements of the Regulations and any requirements under the law applicable in that country or territory which are consistent with the FATF Recommendations; where the requirements differ, a financial services business must ensure that the requirement which provides the highest standard of compliance by reference to the FATF Recommendations is complied with. Guernsey is a host rather than a home jurisdiction. Its credit and financial institutions have very few branches and subsidiaries outside Guernsey and these are in jurisdictions with developed AML/CFT frameworks and positive mutual evaluation reports which provide no evidence of legislation preventing a lack of equivalence with Guernsey's standards. Rule 28 of the FSB Handbook requires that a financial services business must also ensure that there are appropriate and effective policies, procedures and controls in place which provide for the Board to meet its obligations relating to compliance review and ensure that the financial services business is meeting its obligation that its branches and subsidiaries operating outside the Bailiwick comply with the Regulations and applicable local law which is consistent with the FATF Recommendations. Rule 28 cannot be met unless the financial services business has communicated its AML/CFT policies and procedures to branches and subsidiaries. In order to comply with Regulation 15 and rule 28 the relevant AML/CFT policies and procedures must be communicated to branches and subsidiaries. This is the only way in which the FSB Regulations and rules can be satisfied in relation to branches and subsidiaries.
Conclusion	Art. 34 (2) of the Directive is not implemented in Guernsey.
Recommendations and Comments	In order to comply with Article 34 (2) of the Directive, Guernsey should introduce a positive obligation for credit and financial institutions to communicate the relevant internal policies and procedures where applicable on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries.

19.	**Branches and subsidiaries (2)**
Art. 31(3) of the Directive	The Directive requires that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions should take additional measures to effectively handle the risk of money laundering and terrorist financing.
FATF R. 22 and 21	Requires financial institutions to inform their competent authorities in such circumstances.

Key elements	What, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?
Description and Analysis	Guernsey meets this article through prevention of the problem envisaged by article 31 of the directive and the regulatory framework administered by the GFSC, with the starting point being the minimum criteria for licensing in the regulatory laws and the GFSC's polices in applying these minimum criteria. No branch or subsidiary can be established by a financial services business without the GFSC first considering a proposal to establish such an entity from an AML/CFT perspective and whether or not there is any aspect of the wider context to do with the proposed branch/subsidiary, including whether there is any legislation which would prevent the application of equivalent AML/CFT measures, which might hinder full compliance with the FSB Regulations and the FATF Recommendations (i.e. compliance without exceptions of the kind envisaged by article 31). The minimum criteria for licensing provide the GFSC with the ability to prevent branches and subsidiaries from being established. Guernsey is a host rather than a home jurisdiction. Its credit and financial institutions have very few branches and subsidiaries outside Guernsey and these are in jurisdictions with developed AML/CFT frameworks and positive mutual evaluation reports which provide no evidence of legislation preventing a lack of equivalence with Guernsey's standards. In the highly unlikely event of an article 31 issue, section 5.5 (countries insufficiently applying the FATF Recommendations) in the high risk chapter of the FSB Handbook is applicable and would lead to additional measures being taken to mitigate the risk. In addition, the GFSC would be alerted to the issue by the financial services business under rule 31 of the FSB Handbook, which requires that, where a branch or subsidiary of a financial services business is unable to observe the appropriate AML/CFT measures because local laws, Regulations or other measures prohibit this, the financial services business must inform the GFSC. This has never happened to date. Were it to happen, the GFSC would obtain information from the FSB on the risk mitigation measures it is undertaking Measures can also be taken by the GFSC using its powers (for example, the imposition of conditions.
Conclusion	Art. 31 (3) of the Directive is not implemented directly in Guernsey.
Recommendations and Comments	In order to comply with Article 31 (3) of the Directive, Guernsey should introduce a requirement that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions should take additional measures to effectively handle the risk of money laundering and terrorist financing.

20.	**Supervisory Bodies**

Art. 25 (1) of the Directive	The Directive imposes an obligation on supervisory bodies to inform the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
FATF R.	No corresponding obligation.
Key elements	Is Art. 25(1) of the Directive implemented in your jurisdiction?
Description and Analysis	The necessary legal gateways exist to permit the GFSC and the AGCC to pass information on to the FIS at section 21(2) of the Financial Services Commission Law and paragraph 12(2)(c) of Schedule 1 to the Gambling (Alderney) Law respectively. The gateways are underpinned by agreements to facilitate effective information sharing between both supervisory bodies and the FIS.
Conclusion	Art. 25 (1) of the Directive is implemented in Guernsey.
Recommendations and Comments	None

21.	**Systems to respond to competent authorities**
Art. 32 of the Directive	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
FATF R.	There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	Section 49(3) of the Proceeds of Crime Law requires the States of Guernsey Policy Council to make regulations in respect of the duties and requirements to be complied with by FSBs for the purposes of forestalling and preventing money laundering (defined as including terrorist financing for these purposes). Under section 49(4)(a), the regulations must prescribe the procedures in respect of identification, verification, monitoring, record-keeping, internal reporting and training to be established and maintained by FSBs, and under section 49(4)(c), the regulations may authorise or require any person who obtains information in the course of the application of any procedure under the regulations, or in the course of performing any function under the regulations or under any other enactment to which the regulations refer, to disclose that information to a police officer or to any other person or body specified in the regulations.

	Record keeping requirements are included in regulation 14 of the FSB Regulations. Regulation 14(4) requires documents and customer due diligence information to be made available promptly to any police officer, the FIS the GFSC or any other person, where such documents or customer due diligence information are requested pursuant to the Regulations or any relevant enactment. Chapter 12 of the FSB Handbook contains the systems required to enable financial services businesses to respond fully and promptly to such requests.
Conclusion	Art. 32 of the Directive is implemented in Guernsey.
Recommendations and Comments	None

22.	**Extension to other professions and undertakings**
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
Description and Analysis	Guernsey authorities informed that they are fully aware of the importance of extending AML/CFT obligations to professionals and categories of undertaking other than those referred to in article 2(1) of the Directive on the basis of risk. Most recently, on the basis of risk AML/CFT obligations have been extended to persons buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion or buying or selling postage stamps (see paragraph 4A of Schedule 1 to the Proceeds of Crime Law).
Conclusion	In line with the FATF R. 20 Guernsey has considered extensions and has actually extended the AML/CFT obligations to persons buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion or buying or selling postage stamps. Guernsey has not implemented a mandatory requirement that is similar to Art. 4 of the Directive. No comprehensive risk assessment been undertaken in this regard yet.
Recommendations and Comments	None
23.	**Specific provisions concerning equivalent third countries?**

Art. 11, 16(1)(b), 28(4),(5) of the Directive	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
FATF R.	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
Key elements	How, if at all, does your country address the issue of equivalent third countries?
Description and Analysis	With reference to article 11 of the directive, please see the provisions on SDD which are described under criterion 5.9 and 5.10 of the report. Criterion 5.10. requires that, where financial institutions are permitted to apply simplified or reduced CDD measures to customers resident in another country, this should be limited to countries that the original country (and not only the financial institution) is satisfied are in compliance with and have effectively implemented the FATF Recommendations. For this purpose the GFSC has drawn up Appendix C to the Handbook. Appendix C reflects those countries or territories which the Commission considers require regulated FSB to have in place standards to combat money laundering and terrorist financing consistent with the FATF Recommendations and where such financial institutions are supervised for compliance with those requirements. It was also designed as a mechanism to recognise the geographic spread of the customers of the Guernsey finance sector and is reviewed periodically with countries or territories being added as appropriate. Turning to article 16(1)(b), see Section 8 above in relation to article 15 of the directive (third party reliance) and Guernsey's equivalence criteria. For disclosures permitted under articles 28 (4) and (5) of the Directive see the responses to FATF Recommendation 4.
Conclusion	Guernsey has addressed the issue of equivalent third countries similar to the approach taken in the EU Directive.
Recommendations and Comments	None

Annex to Compliance with 3rd EU AML/CFT Directive Questionnaire

Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3rd Directive):

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

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is

subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

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

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

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

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

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

Article 3 (8) of the EU AML/CFT Directive 2005/60EC (3rd Directive):

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

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

Article 2

Politically exposed persons

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

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

(b) members of parliaments;

(c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;

(d) members of courts of auditors or of the boards of central banks;

(e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;

(f) members of the administrative, management or supervisory bodies of State-owned enterprises.

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

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

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

(a) the spouse;

(b) any partner considered by national law as equivalent to the spouse;

(c) the children and their spouses or partners;

(d) the parents.

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

(a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;

(b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

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

VI. List of ANNEXES

See MONEYVAL(2015)18ANN