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FINANCING OF TERRORISM  
(MONEYVAL)

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# Report on Fourth Assessment Visit – *Executive Summary*

## 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

## 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 4<sup>th</sup> 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 4<sup>th</sup> 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 (DNFBPs) 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 entities 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<sup>1</sup> 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.<sup>2</sup> 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

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

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<sup>1</sup> 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.

<sup>2</sup> In the absence of shareholders or members, this requirement is not applicable to Foundations.

- 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.

**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 4<sup>th</sup> assessment visit. These ratings are set out in italics and shaded.*

<b>Forty Recommendations</b>	<b>Rating</b>	<b>Summary of factors underlying rating<sup>3</sup></b>
<b>Legal systems</b>		
1. Money laundering offence	<b>LC</b>	<ul style="list-style-type: none"> <li>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.</li> </ul>
2. <i>Money laundering offence Mental element and corporate liability</i>	<i>LC</i>	<ul style="list-style-type: none"> <li>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.</li> </ul>
3. Confiscation and provisional measures	<b>LC</b>	<p><b>Effectiveness</b></p> <ul style="list-style-type: none"> <li>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).</li> </ul>
<b>Preventive measures</b>		

<sup>3</sup> 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	<ul style="list-style-type: none"> <li>• 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;</li> <li>• 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;</li> <li>• The application of simplified or reduced CDD measures (including intermediary provisions) to <u>customers</u> in another country is not limited in all instances to <u>customers</u> 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.</li> </ul> <p><u>Effectiveness issues:</u></p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• CDD measures are not commensurate to the risk in some instances.</li> </ul>
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	<ul style="list-style-type: none"> <li>• 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.</li> <li>• The inclusion of lawyers and accountants in Guernsey, Jersey, the Isle of Man, and the United Kingdom as Appendix C businesses is not</li> </ul>



		<p><i>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.</i></p> <ul style="list-style-type: none"> <li>• <i>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.</i></li> </ul>
10. Record keeping	<b>C</b>	
11. Unusual transactions	<b>C</b>	
12. DNFBPS – R.5, 6, 8-11 <sup>4</sup>	<b>LC</b>	<p><b><i>Applying Recommendation 5</i></b></p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• 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;</li> <li>• 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></li> <li>• Customer risk assessments of TCSPs do not sufficiently take into account that the accumulation of risks can present overarching ML/TF risk;</li> <li>• CDD measures are not commensurate to the risk in some instances;</li> <li>• 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.</li> </ul>

<sup>4</sup> 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.

13. Suspicious transaction reporting	<b>C</b>	
14. <i>Protection and no tipping-off</i>	<b>C</b>	
15. <i>Internal controls, compliance and audit</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>• <i>There is no requirement to maintain an adequately resourced independent audit function to test compliance with AML/CFT policies, procedures and controls.</i></li> </ul>
16. <i>DNFBPS – R.13-15 &amp; 21</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>• <i>The number of suspicious transaction reports submitted by the eCasinos sector is insufficient.</i></li> <li>• <i>Ecasinos were not specifically required to provide training to their employees on money laundering techniques or employee obligations regarding CDD and reporting.</i></li> <li>• <i>The requirement to provide training does not apply to all eCasinos employees.</i></li> </ul>
17. Sanctions	<b>PC</b>	<ul style="list-style-type: none"> <li>• Discretionary financial penalties for legal persons available to the GFSC are not dissuasive and proportionate.</li> </ul> <p><b>Effectiveness:</b></p> <ul style="list-style-type: none"> <li>• Use of financial penalties for legal persons cannot act as an effective deterrent to non-compliance;</li> <li>• Cases of STR non-reporting are rarely fined or in any other way sanctioned.</li> </ul>
18. <i>Shell banks</i>	<b>C</b>	
19. <i>Other forms of reporting</i>	<b>C</b>	
20. <i>Other DNFBPS and secure transaction techniques</i>	<b>C</b>	
21. <i>Special attention for higher risk countries</i>	<b>C</b>	
22. <i>Foreign branches and subsidiaries</i>	<b>C</b>	
23. Regulation, supervision and monitoring	<b>C</b>	
24. <i>DNFBPS - Regulation, supervision and monitoring</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Police record checks are not conducted systematically on key individuals seeking an eGambling license.</li> <li>• The GFSC should increase the frequency of its onsite inspections for TCSPs.</li> </ul>
25. <i>Guidelines and Feedback</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>• The AGCC should provide additional guidance with respect to AML requirements particularly CDD measures.</li> </ul>

Institutional and other measures		
26. The FIU	LC	<ul style="list-style-type: none"> <li>• Lack of legal safeguards for operational ‘functioning’;</li> <li>• Insufficient information in public reports released;</li> </ul> <p><b>Effectiveness:</b></p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> <li>• Limited law enforcement effectiveness as reflected in the low number of cases resulting in prosecution.</li> </ul>
28. Powers of competent authorities	C	
29. Supervisors	C	
30. Resources, integrity and training <sup>5</sup>	C	
31. National co-operation	C	
32. Statistics <sup>6</sup>	C	
33. Legal persons – beneficial owners	LC	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>
34. Legal arrangements – beneficial owners	LC	<ul style="list-style-type: none"> <li>• 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;</li> <li>• Insufficient measures are in place to ensure that</li> </ul>

<sup>5</sup> 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.

<sup>6</sup> 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.

		accurate, complete, and current information is available regarding legal arrangements that are collective investment schemes where reliance can be placed on intermediary provisions.
<b>International Co-operation</b>		
35. Conventions	<b>C</b>	
36. Mutual legal assistance (MLA) <sup>7</sup>	<b>C</b>	
37. <i>Dual criminality</i>	<b>C</b>	
38. <i>MLA on confiscation and freezing</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Prior to July 2010, the designation mechanism may have had a negative impact on the overall effectiveness of the MLA system.</li> </ul>
39. <i>Extradition</i>	<b>C</b>	
40. Other forms of co-operation	<b>LC</b>	<ul style="list-style-type: none"> <li>• Assistance of the FIS is limited to the cases where there has been an STR in Guernsey on the subject of the request.</li> </ul>
<b>Nine Special Recommendations</b>		
SR.I Implement UN instruments	<b>C</b>	
SR.II Criminalise terrorist financing	<b>C</b>	
SR.III Freeze and confiscate terrorist assets	<b>LC</b>	<ul style="list-style-type: none"> <li>• Concerns about the practical applicability of criminal procedural rules to seize/freeze assets in the interim period between an UN and a EU designation</li> <li>• 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.</li> </ul>
SR.IV Suspicious transaction reporting	<b>C</b>	
SR.V International co-operation <sup>8</sup>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Assistance of the FIS is limited to the cases where there has been an STR in Guernsey on the subject of the request.</li> </ul>

<sup>7</sup> 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.

<sup>8</sup> 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.

<i>SR.VI AML requirements for money/value transfer services</i>	<b>C</b>	
<i>SR.VII Wire transfer rules</i>	<b>C</b>	
<b>SR.VIII</b> Non-profit organisations	<b>LC</b>	<ul style="list-style-type: none"> <li>• The NPO registration system is not comprehensive as manumitted NPOs of Guernsey and Alderney are still exempt from registration obligations;</li> <li>• There is no publicly available information on manumitted NPOs;</li> <li>• Sanctions for non-compliance with registration requirements are still not effective and dissuasive.</li> </ul>
<i>SR.IX Cross Border declaration and disclosure</i>	<b>LC</b>	<p><input type="checkbox"/><input type="checkbox"/>(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).</p> <p><input type="checkbox"/><input type="checkbox"/>No unified regime for all cross-border cash transportation. (effectiveness)</p>