

**Guernsey: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism**

This Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism for Guernsey was prepared by a staff team of the International Monetary Fund using the assessment methodology adopted by the FATF in February 2004 and endorsed by the Executive Board of the IMF in March 2004. The views expressed in this document, as well as in the full assessment report, are those of the staff team and do not necessarily reflect the views of the Government of Guernsey or the Executive Board of the IMF.

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**International Monetary Fund**  
**Washington, D.C.**

GUERNSEY

DETAILED ASSESSMENT  
REPORT ON ANTI-MONEY  
LAUNDERING AND  
COMBATING THE FINANCING  
OF TERRORISM

DECEMBER 2010

INTERNATIONAL MONETARY FUND  
LEGAL DEPARTMENT

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**ACRONYMS**

AG	Attorney General
AGCC	Alderney Gambling Control Commission
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
BSSN	Business from Sensitive Sources Notices
CC	Criminal Code
CDD	Customer Due Diligence
CFL	Civil Forfeiture Law
CL	Company Law
COBO	Control of Borrowing Ordinance
CPC	Criminal Procedure Code
CSP	Company Service Provider
DL	Disclosure Law
DNFBP	Designated Non-Financial Businesses and Professions
DPMS	Dealers in Precious Metals and Stones
DTL	Drug Trafficking Law
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FIS	Financial Intelligence Service
FSAP	Financial Sector Assessment Program
FSB	Financial Services Businesses
FSRB	FATF-style Regional Body
GFSC	Guernsey Financial Services Commission
IAIS	International Association of Insurance Supervisors
ICS	Internal Control Systems
KYC	Know your customer/client
LEA	Law Enforcement Agency
LEG	Legal Department of the IMF
ML	Money Laundering
MLA	Mutual Legal Assistance
MLRO	Money Laundering Reporting Officer
MMoU	Multilateral Memorandum of Understanding
MOU	Memorandum of Understanding
MVTS	Money or Value Transfer Services
NPO	Nonprofit Organization
PB	Prescribed Businesses
PEP	Politically-exposed person
PCFD	Police Commercial Fraud Department
POCL	Proceeds of Crime Law
ROSC	Report on Observance of Standards and Codes
STR	Suspicious Transaction Report
TCSP	Trust and Company Service Providers
TF	Terrorism Financing

TL	Terrorism and Crime Law
UN	United Nations Organization
UNSCR	United Nations Security Council Resolution
WTO	Wire Transfer Order



## PREFACE

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Guernsey is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology 2004, as updated in June 2006. The assessment team considered all the materials supplied by the authorities, the information obtained on site during their mission from May 17, 2010 through June 1, 2010, and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 1 to the detailed assessment report.

The assessment was conducted by a team of assessors composed of three staff of the International Monetary Fund (IMF) and three expert(s) acting under the supervision of the IMF. The evaluation team consisted of: Francisco R. Figueroa (LEG, team leader); Margaret Cotter, Marilyne Landry, (LEG, legal and financial sector experts, respectively); and Gabriele Dunker (legal expert under LEG supervision), Boudewijn Velherst (financial intelligence unit expert under LEG supervision), and Gary Sutton (financial sector expert under LEG supervision). The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Guernsey at the time of the mission or shortly thereafter. It describes and analyzes those measures, sets out Guernsey's levels of compliance with the FATF 40+9 Recommendations (see Table 1) and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). The report was produced by the IMF in the context of the Financial Sector Assessment Program (FSAP) of Guernsey.

The assessors would like to express their gratitude to the Guernsey authorities for their excellent cooperation and assistance throughout the assessment mission.

## EXECUTIVE SUMMARY

### Key Findings

Guernsey's comprehensive AML/CFT legal framework provides a sound basis for an effective AML/CFT regime. Most shortcomings identified during the assessment are technical in nature. Some of the deficiencies were addressed by the authorities immediately after the onsite visit. Money laundering (ML) and the financing of terrorism (FT) are criminalized fully in line with the FATF standard and the legal framework provides an ability to freeze and confiscate assets in appropriate circumstances. As of the assessment date, there had been no prosecutions or convictions for terrorist financing. Guernsey is able to freeze the assets of those covered by UN Security Council Resolutions 1267 and 1373 and successor regulations through administrative orders issued by the Attorney General.

The Financial Intelligence Unit (FIU) for the Bailiwick of Guernsey, a law enforcement type of FIU, is the Financial Intelligence Service (FIS). The FIS primarily performs a pre-investigative and intermediary role before disseminating relevant information not only to domestic authorities but also to counterpart FIUs. There is clear separation between the intelligence and the investigative side of the handling of the suspicious transaction reports, enhancing the transparency of the process. However, the FIS and the other law enforcement agencies should endeavor to enhance their performance in terms of cases for investigation for money laundering activity, particularly as a stand-alone offense.

Guernsey, through the Financial Services Commission (GFSC), has established a risk-based approach to AML/CFT. The preventive measures are largely in line with the FATF Recommendations. The GFSC has adequate authority and powers to supervise financial institutions, including money transfer systems with respect to compliance with existing AML/CFT laws, regulations, and rules. However, powers to sanction financial institutions for noncompliance issues, particularly applying discretionary financial penalties regime could be enhanced to ensure that the penalties are dissuasive and proportionate to the severity of the violation or level of noncompliance.

The preventive measures for DNFBPs mirror those for financial institutions. Supervision and regulation of DNFBPs, with the exception of eCasinos, is conducted by the GFSC. ECasinos are regulated and supervised by the Alderney Gambling Control Commission (AGCC). Shortcomings noted within the DNFBPs were related to CDD, recordkeeping, risks associated to non face-to-face transactions, licensing measures, and effectiveness issues in the eCasinos sector. There were also a number of shortcomings noted within the legal framework applicable to DNFBPs dealing with exemptions to the sectors.

Sound measures are in place to ensure that legal persons incorporated in the Bailiwick are transparent and that accurate, adequate and current information concerning beneficial ownership is available to law enforcement and other competent authorities. Trusts are recognized and well established under Guernsey law but are not subject to any registration or filing requirements. In most cases trusts require involvement of a regulated trustee who is subject to the full range of AML/CFT requirements. For trust arrangements that are not

administered by a licensed TCSP some concerns remain with respect to the availability of accurate and complete beneficial ownership information. A registration regime for NPOs has been established although it does not apply to all charitable organizations. Information on the purpose and objectives of the NPO and the identity of the persons who own, control or direct their activities is not publicly available. Sanctions for non-compliance with registration requirements are not effective and dissuasive.

Guernsey has effective mechanisms for coordination and cooperation among all domestic AML/CFT stakeholders including an active policy coordination committee. The legal framework for mutual legal assistance (MLA) and extradition is sound and the majority of requests seem to be processed in a timely and constructive manner. Bailiwick law allows for the provision of all types of assistance as required by the Vienna and Palermo Conventions in money laundering, terrorism financing or predicate offense cases.

Both money laundering and terrorism financing are extraditable offenses. The Guernsey extradition regime is still managed by the UK authorities by virtue of the UK Extradition Act 1989. No extraditions are on record under that Act, but formally the legal framework is comprehensive and solid. As for non MLA related assistance, although limited in its possibilities to directly collect financial information at intelligence level, the cross-border cooperation at FIS and police level constitutes an essential part of their assignment. The FIS and police follow a constructive approach to all serious requests and consent to use the supplied information for intelligence purposes has never been refused.

## **Legal Systems and Related Institutional Measures**

### **Money Laundering Provisions**

The Bailiwick has taken a two strand approach to criminalizing money laundering, differentiating between drug trafficking offenses and all other predicate offenses. In both cases, money laundering is criminalized fully in line with the international standard. The Bailiwick is a party to the Vienna but not to the Palermo Convention and all technical aspects of the ML offenses as defined in the Vienna and Palermo Conventions are complied with. In particular, all categories of predicate offences listed in the international standard are covered. The money laundering offenses extend to any type of property that represents the proceeds of crime by the money laundering provisions and all acts constituting money laundering or ancillary offences to money laundering are criminalized in line with the international standard. The *mens rea* requirement varies depending on the money laundering offences applicable in the specific case. At a minimum and with respect to all money laundering offenses, a person may be held criminally liable if he acted intentionally and with the knowledge that the property involved stems from a criminal source. Based on an English common law principle, intent may be inferred from objective factual circumstances. Criminal liability also extends to legal persons.

While no shortcomings have been identified in the legal framework, concerns remain with respect to the implementation of the money laundering provisions. Given the size of the Bailiwick's financial sector and its status as an international financial center, the modest number of cases involving money laundering by financial sector participants and the disconnect between the number of money laundering cases investigated versus the number of cases

prosecuted and eventually resulting in a conviction calls into question the effective application of the ML provisions.

### **Financing of Terrorism Provisions**

Guernsey is a party to the International Convention for the Suppression of the Financing of Terrorism and has criminalized terrorism financing fully in line with the international standard. The provisions of the Terrorism law and the Terrorism (UN Measures) (Channel Islands) Order 2001 allow for a prosecution of the provisions or collection of funds with the unlawful intention or in the knowledge that they are to be used in full or in part to carry out a terrorist act, by a terrorist organization or by an individual terrorist. At the time of the on-site visit, there had been no prosecutions or convictions for terrorist financing.

### **Confiscation**

Guernsey has a comprehensive legal framework to identify, freeze, seize and confiscate criminal assets. As additional financial sector money laundering and predicate activity is detected, the legal provisions should be used to secure and confiscate proceeds of such criminal activities.

### **Freezing of Funds**

Guernsey's legal framework and procedures for implementing UNSCRs 1267 and 1373 are largely sufficient but it is too soon to assess the effectiveness of recent enhancements in the guidance that the authorities provide to the financial sector and others. The legal framework should more clearly reflect that designated persons are not to receive prior notice of freezing actions.

### **Financial Intelligence Unit**

The Financial Intelligence Unit (FIU) for the Bailiwick of Guernsey is the Financial Intelligence Service (FIS), specifically designated as such by law on May 17, 2010, officially recognizing the long-standing practice of channeling all STRs to the Financial Intelligence Service as a subdivision within the Financial Investigation Unit of the Customs and Immigration Service. Although a law enforcement type Financial Intelligence Unit, the FIS primarily performs a pre-investigative and intermediary role before disseminating relevant information not only to domestic authorities but also to counterpart FIUs. Consequently the dissemination rate is rather high, ranging from 70 percent to 86 percent of the total number of STRs received.

The FIS has access to a whole range of law enforcement, administrative and commercial information but makes little use of the administrative sources. Direct access to financial information is quite restricted: there is only a legal permission to query the reporting entity for information complementary to the initial disclosure and the possibility to request the supervisory authorities for information in their possession. Access to other additional financial information is only available through a court order. The FIS is quite active in the international scene and systematically shares information for intelligence purposes with its counterpart FIUs.

Overall, the FIU/FIS is adequately performing its role as a key player in the AML/CFT system. It has developed a relation of trust and openness with the financial sector. The system is geared to ensure that the STRs are appropriately dealt with in a focused and professional manner. The clear separation between the intelligence and the investigative side of the handling of the reports particularly enhances the transparency of the process. The FIS should however endeavor to enhance its performance in terms of cases for investigation for money laundering activity, particularly as a stand-alone offense. The system is still predominantly geared to take on the local predicate criminality and related money laundering. The challenge of investigating and prosecuting foreign predicated money laundering as an autonomous offense working on the basis of the evidence gathered in its own jurisdiction still has to be met.

The law enforcement authorities are adequately resourced and trained and have a sufficient legal arsenal at their disposal to effectively conduct a money laundering investigation, but still the results are modest. Great emphasis is placed on making information available to the overseas agencies, which is commendable in itself but carries the risk of overreliance on foreign law enforcement taking the initiative, while the money laundering activity in the Bailiwick continues to take place. As for the judicial side progress is being made, as witnessed by the pending autonomous money laundering case. Still, the judicial authorities should further develop their expertise in this domain by putting more effort and emphasis on the development of case law on stand-alone money laundering based on evidence collected in and by its own jurisdiction.

The cross-border cash declaration regime installed by the Cash Controls Law 2007 brought the Bailiwick in line with the corresponding EC Regulation 1889/2005 and adequately covers the physical and freight cross-border cash transportation. The controls are effectively implemented, with frequent declarations and STRs filed by the Post Office which actually resulted in a sizable amount seized and confiscated. As for cash transported by post the Bailiwick authorities have taken corrective action to address the deficiencies in the declaration regime by bringing the mail declaration system in line with the cash importation regime by freight.

### **Preventive Measures—Financial Institutions**

The primary legislative foundation for customer due diligence (CDD) and other preventive measures is the Proceeds of Crime (Bailiwick of Guernsey) (POC) Law 1999. The specific requirements are set out in detail in secondary legislation in the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 (FSB Regulations). This is supplemented by a Handbook issued by the GFSC in 2007 which includes further requirements—which qualify as other enforceable means (OEM)—as well as guidance. The updating of the requirements in 2007 followed extensive consultations with industry and sought to address all the requirements of the international standard.

Guernsey's Financial Services Commission (GFSC) has established a risk-based approach to AML/CFT, including for preventive measures for financial institutions that address a vast majority of the CDD elements of the international standards in almost all respects and shortcomings identified during the assessment are largely technical. Customers and beneficial

owners are required to be identified in all cases; detailed requirements apply to legal entities and trusts; enhanced due diligence is required for higher risk customers, including politically exposed persons (PEPs); records of customer identification must be kept up-to-date and all documentation, including transactions and customer information, must be retained for at least five years; and suspicious activity is effectively required to be reported to the FIU.

With respect to financial secrecy, there are no legal impediments that could inhibit the implementation of the FATF Recommendations. There are effective mechanisms in place to provide for the right of confidentiality of financial information as well as access to information by the competent authorities. There are requirements in place for financial institutions to pay special attention to all complex, unusual large transactions and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The same applies to the requirements to give special attention to business relations and transactions from countries which do not follow or insufficiently apply the FATF Recommendations.

All categories of financial institutions appear to be reporting suspicious transactions. The laws providing legal protection for those filing were recently amended to be limited to those acting in good faith and the tipping-off offence was also amended to eliminate any technical noncompliance with the international standard.

Financial institutions are required to establish internal programs and controls to implement the requirements of the AML/CFT laws, regulations, and rules; however, there is no requirement for maintaining an adequately resourced and independent audit function in financial institutions. Measures to prevent the establishment of shell banks and to prevent financial institutions from dealing with shell banks are adequate.

The GFSC has been given adequate authority and powers to supervise financial institutions, including money transfer systems, and ensure compliance with existing AML/CFT laws, regulations, and rules. At the time of the visit, inspections of AML/CFT matters were risk-based and considered adequate in scope. Some financial institutions, as a result of the inspections, have been required to implement remedial measures to strengthen their overall AML/CFT preventive regime, including bringing their CDD information (including on beneficial owners) into line with the latest requirements, improving their internal control systems, and providing additional training.

The GFSC has also broad powers to sanction financial institutions for noncompliance issues and has used these powers in numerous occasions; however, the discretionary financial penalties available to the GFSC are not considered dissuasive and proportionate given that the GFSC can only impose fines for up to £200,000; which is considered too low, for violations of any provisions of the prescribed laws.

Nevertheless, the GFSC authorities need to exercise additional oversight to further strengthen the existing regime, particularly in certain aspects related to CDD. In this area, the authorities need to expand the list of higher-risk customers to which enhanced due diligence must be applied and consider including private banking and non-resident customers.

There are also shortcomings with respect to:

- introducers or third parties – where the authorities should not include third parties from neighboring jurisdictions before satisfying themselves that the third parties are adequately regulated and supervised; and ensure that jurisdictions listed by the FATF as having deficiencies in its AML/CFT are not included in the list of permitted introducers or third parties;
- internal policies, controls, and audit establish an obligation for FSBs to maintain an adequately resourced and independent audit function to test compliance with the AML/CFT policies, procedures, and controls.

### **Preventive Measures—Designated Non-Financial Businesses and Professions**

The preventive measures for lawyers, accountants and estate agents are outlined in the Proceeds of Crime (Bailiwick of Guernsey) (POC) Law, 1999. The specific requirements are set out in the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) Regulations, 2008 (PB Regulations). This is supplemented by a Handbook issued by the GFSC in 2008 which includes further requirements—which qualify as other enforceable means. Requirements for eCasinos are outlined in the Alderney eGambling Ordinance, 1999 and supported by the Alderney eGambling Regulations, 2009. Trust Company and Service Providers (TCSPs) and bullion dealers have the same requirements as financial services businesses.

The Guernsey Financial Services Commission (GFSC) is responsible for supervising lawyers, accountants, estate agents, TCSPs and bullion dealers. The Alderney Gambling Control Commission (AGCC) supervises eCasinos. Substantial efforts have been made in implementing preventative measures for all DNFBPs. However, risks in the eCasinos sector are not fully mitigated and some shortcomings exist in the implementation of preventive measures for DNFBPs supervised by the GFSC.

Customer due diligence measures are applied to all customers and beneficial owners; detailed requirements apply to legal entities and TCSPs; ongoing due diligence is conducted on ongoing business relationships; enhanced due diligence is conducted for higher risk categories including PEPs; records of customer identification are kept up to date and all documentation is retained for at least five years.

A number of shortcomings have been identified with respect to CDD and record keeping requirements for DNFBPs. On-line verification methods used by eCasinos are not sufficiently reliable; requirements to mitigate against the risk associated with non face-to-face transactions in the eCasinos sector are not in line with the standard; and eCasinos have not effectively implemented the requirement to pay special attention to complex and unusual transactions.

The statutory framework and its implementation by DNFBPs supervised by the GFSC also had a number of shortcomings. The exemption for individuals who act as a director for six companies or less is not in line with the standard; lawyers, accountants and estate agents are not required to determine whether potential customers are PEPs; guidance provided by the GFSC on low and high risk jurisdictions is contradictory; the GFSC has not identified legal

arrangements and TCSPs as high risk; and reliance should not be placed on introducers or intermediaries who are DNFBPs.

Substantial efforts have also been made in implementing STR reporting and internal control requirements. Entities are required to report STRs to the FIU including attempted transactions; adequate protections exist for STR reporting and tipping off; entities are required to establish and maintain internal procedures to prevent ML and TF; policies and procedures are tested; compliance officers must be appointed and screening procedures are in place when hiring employees.

A number of improvements could be made to enhance the effectiveness of STR reporting and internal controls. The number of reports submitted by the eCasinos sector could be increased to better reflect the ML risk and the size of the industry. ECasinos should provide training to all their employees.

The GFSC and the AGCC have the necessary powers and authority to supervise the DNFBP sector. Both commissions have implemented robust supervisory programs that, with one exception, have the necessary resources to provide comprehensive oversight of the DNFBP sectors including the necessary sanctions and penalties to address non-compliance. Guidance issued by the commissions receives positive feedback from industry.

Although the AGCC does conduct extensive background checks on individuals seeking an eGambling license the absence of consistent police record checks creates a risk that the industry may be infiltrated by criminals. Also, the resources dedicated to the supervision of TCSPs should be increased to address the reduced number of examination in this high risk sector.

### **Legal Persons and Arrangements & Non-Profit Organizations**

Guernsey and Alderney laws allow for the incorporation of limited, unlimited or mixed liability companies as well as of limited liability partnerships (LLPs), subject to registration with the Guernsey or Alderney companies registries. More than 18,000 companies were registered in Guernsey and 530 in Alderney at the time of the assessment. Sark does not provide for the incorporation of companies on the island.

The Bailiwick has three measures in place to obtain, maintain, and verify beneficial ownership information for companies and LLPs, namely: for the majority of Guernsey companies, the requirement to have a registered agent, who in turn has an obligation to “take reasonable steps” to ascertain the identity of persons who are beneficial owners of the company; for the majority of Bailiwick companies (Guernsey and Alderney) and limited partnerships, the requirement to utilize a licensed Trust and Company Service Provider (TCSP), who in turn is subject to and in most cases supervised for compliance with the CDD obligations under the AML/CFT regime; for all Bailiwick companies (Guernsey and Alderney) and limited partnerships, the obligation to provide certain beneficial ownership information to the relevant registry (Alderney companies registry, Guernsey company registry or Guernsey partnership registry) and to update such information.



In addition, all Bailiwick companies (Guernsey and Alderney) and limited partnerships have a legal obligation to maintain shareholder, director and partner registers and to file annual returns with the Alderney and Guernsey Company Registrars.

The above mentioned measures are supported by investigative and other powers of LEAs and the GFSC to obtain access to information held by FSBs, TCSPs and other entities and persons.

In sum, those measures put the Bailiwick in a very strong position to ensure that legal entities are transparent and that accurate, adequate and current information concerning beneficial ownership and control of all legal persons is available to law enforcement and other competent authorities.

Trusts have been recognized under Guernsey law for many years and the trust concept is well established in the island. The Trust (Guernsey) Law 2007 is the main piece of legislation governing such legal arrangements. No statistics are maintained on the number of Guernsey trust arrangements or the volume of trust assets administered in Guernsey. Alderney and Sark laws do not provide for the creation of trusts.

Trusts are not subject to any registration or filing requirements. However, with few exceptions, acting as a trustee is a regulated activity and, as such, is subject to the full range of AML/CFT requirements, including the obligation to identify and verify the identity of beneficial owners and to keep such information complete, accurate and updated. Concerns remain with respect to the availability of accurate and complete beneficial ownership information for trust arrangements that are not administered by a licensed TCSP.

Substantive efforts have been made to mitigate the terrorism financing risks associated with NPOs although a number of changes are required to enhance the effectiveness of the regime. A registration regime for NPOs has been established although it does not apply to all charitable organizations. Information mechanisms both domestically and internationally are robust and the authorities have the capacity to undertake investigations relating to terrorism financing and NPOs. Efforts have been made to protect the NPOs sector from terrorism financing through outreach and oversight but the outreach was not provided to the entire sector and oversight has been limited to manumitted organizations administered by TSCPs. Information on the purpose and objectives of the NPOs and the identity of the persons who own, control or direct their activities is not publicly available. Furthermore, sanctions for non-compliance with registration requirements are not effective and dissuasive.

### **National and International Co-operation**

Guernsey has effective mechanisms for coordination and cooperation among all domestic AML/CFT stakeholders including an active policy coordination committee. There is regular consultation and coordination on both policy and operational levels, and the ongoing development and refinement of a common vision and strategy including regular internal assessments against the strategy.

### **Mutual Legal Assistance and Extradition**

The legal framework for mutual legal assistance (MLA) and extradition is sound and the majority of requests seem to be processed in a timely and constructive manner. Bailiwick law allows for the provision of all types of assistance as required by the Vienna and Palermo Conventions in money laundering, terrorism financing or predicate offense cases. The provision of MLA is not subject to any unreasonable, disproportionate or unduly restrictive conditions and the statistics provided by the authorities indicate that since 2007 the majority of requests have been implemented in an efficient and timely manner. Both money laundering and terrorism financing are extraditable offenses.

The Guernsey extradition regime is still managed by the UK authorities by virtue of the UK Extradition Act 1989, the Bailiwick being only marginally involved in the process. No extraditions are on record under that Act, but formally the legal framework is comprehensive and solid.

As for non MLA related assistance, although limited in its possibilities to directly collect financial information at intelligence level, the cross-border cooperation at FIS and police level constitutes an essential part of their assignment, as shown by relatively high volume of information exchange traffic. Of the STRs disseminated, some 60 percent have an overseas destination. The FIS and police follow a constructive approach to all serious requests and consent to use the supplied information for intelligence purposes has never been refused.

## 1. GENERAL

### 1.1. General Information on Guernsey

#### Geography and Population

1. The Bailiwick of Guernsey is located in the English Channel, in the gulf of St. Malo off the north-west coast of France. Although geographically the islands form part of the British Isles, politically they do not form part of the United Kingdom. The Bailiwick comprises the principal islands of Guernsey (population 62,000), Alderney (population 2,000) and Sark (population 600), together with other smaller islands.

#### The Government

2. The island of Guernsey's legislative assembly is the States of Deliberation, also known as the States of Guernsey. It comprises the President of the Royal Court of Guernsey (the Bailiff) as ex-officio Presiding Officer, 45 People's Deputies, two Representatives of the States of Alderney, and the two Law Officers of the Crown. The People's Deputies are elected by universal adult suffrage. The island is divided into seven constituencies, each electing either six or seven members. The Alderney representatives are elected annually by the States of Alderney. The States of Deliberation sit for a term of four years, after which there is a general election. The Chief Minister is elected by the People's Deputies. He chairs the Policy Council, which comprises the Ministers of the 10 Government Departments.

3. 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. The President convenes and chairs the monthly States meetings and holds office for four years. States members also hold office for a period of four years. Elections are held every two years, when half the 10 States members become eligible for re-election. There is no bar on a retiring States member seeking re-election. Thus, continuity at all levels is maintained. Routine matters of government are performed by three committees: Policy and Finance, General Services and Building and Development Control. Between them, they deal with all aspects of the island's finances and day-to-day administration. The Policy and Finance Committee, consisting of all 10 States members, has responsibility for eGambling.

4. As a consequence of arrangements in 1948 for some key services to be provided in Alderney by the States of Guernsey, Alderney falls under the fiscal authority of Guernsey and Guernsey's provisions on taxation apply in Alderney. The States of Alderney has no authority to raise revenue itself through such taxes.

5. The Chief Pleas is Sark's legislative body. It consists of 28 elected members (Conseillers) who are elected for a four-year term, half of the Conseillers being elected every two years. The Chief Pleas is required by statute to meet four times a year with extraordinary meetings called when necessary. Meetings are chaired by the President (who is currently also the Seneschal, the

judge/magistrate) or his deputy and must be in the presence of the Seigneur (who holds the island in Fief to the Crown) or his deputy. The General Purposes and Advisory Committee and the Finance and Commerce Committee of the Chief Pleas have responsibility for the finance sector and AML/CFT. Sark does not have a civil service and this function is carried out by unpaid elected Conseillers.

### **Relationship with the United Kingdom**

6. The Bailiwick is a Crown Dependency (i.e., a dependency of the English Crown). The Queen of England in Council exercises supreme legislative and judicial powers in the Bailiwick and has ultimate responsibility for the good government of the islands. The Crown acts through the Privy Council on the recommendations of the Ministers of Her Majesty's Government in their capacity as Privy Counsellors. The U.K. Ministry of Justice acts as the point of contact between the political authorities in the Bailiwick and the Crown but is not otherwise involved in the islands' internal affairs. The Ministry of Justice is responsible for ensuring that laws approved by the parliament in the Bailiwick are placed before the Privy Council for Royal Sanction. The U.K. Parliament does not legislate on behalf of the Bailiwick without first obtaining its consent. The extension of an Act of Parliament to the Bailiwick is exceptional. Where uniform legislation is required, the ordinary practice is for the Bailiwick to enact its own "mirror" legislation.

7. The Bailiwick is not, and has never been, represented in the U.K. parliament. The Bailiwick is, and always has been, legislatively independent from the United Kingdom with the full capacity to legislate for the islands' insular affairs. The Bailiwick's right to raise its own taxes is a long recognized constitutional principle. The Government of the United Kingdom does not provide any direct financial assistance to the Bailiwick.

8. The United Kingdom is responsible for the Bailiwick's international relations and for its defense. In recent years, the U.K. has recognized the appropriateness of the Bailiwick having greater independence with respect to international relations, particularly where those affairs relate to matters within the competence of the Bailiwick political authorities. The Bailiwick has never been an overseas territory nor a colony and the constitutional relationship is distinctly different from that of the British Overseas Territories.

### **Legal System and the Role of the Law Officers**

#### **Criminal law system**

9. The criminal law of the Bailiwick of Guernsey is substantially similar but not identical to English law.

#### **Criminal courts**

10. 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.

11. Appeals lie from the Royal Court to the Guernsey Court of Appeal, the majority of the judges of which are English Queen's Counsel. All judges are appointed by the Crown. From the Guernsey Court of Appeal there is an appeal to the Judicial Committee of the Privy Council in London.

12. Judges in the Bailiwick of Guernsey are independent of the governments in the islands. The President of the Royal Court of Guernsey is the Bailiff of Guernsey. He and the Deputy Bailiff are appointed by the Crown. The senior judges in the other islands are the Chairman of the Court of Alderney and the Seneschal of the Court of Sark.

### **Law Officers of the Crown**

13. 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").

14. The Law Officers' Chambers is, in effect, a non-political "Department of Justice" for the entire Bailiwick. The Chambers' duties embrace work which in England would be carried out by the Home Secretary, the Attorney General, the Director of Public Prosecutions, and the Director of the Serious Fraud Office.

15. They supervise all prosecutions throughout the Bailiwick. In making decisions on prosecutions, the Law Officers act as independent officers—independent of the islands' parliamentary assemblies and independent of the Courts before which they prosecute. All prosecutions in the Bailiwick of Guernsey are brought in the name of the Law Officers.

16. The Law Officers are the central authority in the Bailiwick dealing with agencies in the United Kingdom and other countries requesting assistance in investigating and prosecuting crime. Such applications will often be made after preliminary contact has been made at an early stage in an investigation and advice given by law enforcement. Such preliminary contact is encouraged.

17. When formal requests for assistance need to be made to the Law Officers, such requests must be sent to them directly and not through the U.K. Central Authority.

### **Legislation**

18. There are three types of legislation: Laws, Ordinances, and Statutory Instruments. Laws are primary legislation and can apply across the Bailiwick as a whole or specifically to Guernsey, Alderney and/or Sark. They require the approval of the relevant Bailiwick parliaments (the States of Guernsey, the States of Alderney and the Chief Pleas of Sark) and require approval by the Privy Council. Ordinances are secondary legislation made by one or more of the Bailiwick parliaments. Many laws contain provisions that permit the making of Statutory Instruments (regulations) by the relevant political committees in the Bailiwick and sometimes by other bodies in the Bailiwick such as the GFSC and the AGCC.

## **Economy**

19. The currency of the Bailiwick is the pound sterling (£). The States of Guernsey issues Guernsey bank notes and coin. The Guernsey note issue and other notes denominated in pound sterling (for example, those issued by the Bank of England and the Jersey note issue) can be used in the Bailiwick. The bank base rate in Guernsey is that set by the Bank of England.

20. Guernsey's total gross domestic product for 2008 was £1.9 billion (estimated), an increase of 7.6 percent over 2007. The finance sector accounts for the biggest contribution to GDP, representing 39.9 percent of total GDP.

21. At the end of 2009, there were 32,171 employed and self-employed people in the Guernsey workforce, with 7,048 (21.9 percent) in employment in the finance sector. The total workforce was 0.9 percent (299 people) smaller than at the end of 2008. At the end of 2009, there were 423 people registered as unemployed, which represents 1.3 percent of the total workforce. Of those people, 325 would fit the International Labour Organisation (ILO) definition of being unemployed, giving an unemployment rate of 1.0 percent. There were 2,265 employing organizations in Guernsey, 90 fewer than the previous year. Financial services continue to be Guernsey's largest employing sector.

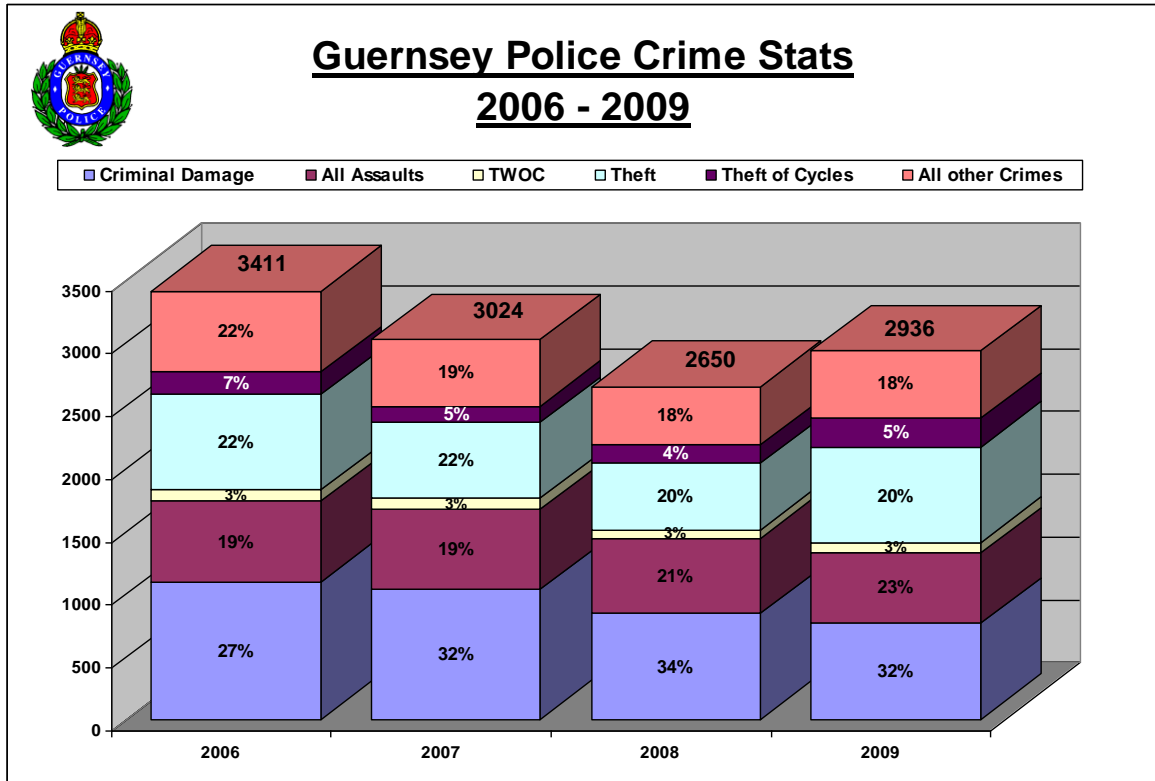
22. The annual rate of inflation (RPI) as at the end of 2009 was 2.2 percent, compared to -1.2 percent in September 2009 and 1.2 percent at the end of 2008. The large decreases in the Bank of England interest rate during the last quarter of 2008, which had a significant impact on RPI, no longer falls within the 12-month period over which the annual change in RPI is calculated. This has resulted in a return to positive annual inflation in December 2009, despite the continued downward effect of a further decrease in the base rate in the first quarter of 2009. The RPIX ("core" inflation excluding mortgage interest payments) annual inflation rate stood at 2.9 percent at the end of 2009, compared to 4.6 percent at the end of the previous year. This implies that core inflationary pressures in Guernsey were less during 2009 than in 2008.

23. Alderney has a mixed and balanced economy generated by a growing eCommerce industry as well as its traditional tourism, building and finance industries. eGambling plays a significant role in the economy, eGambling being the term given to regulated remote gambling activity taking place from Alderney, including all forms of gambling and betting. In addition, Alderney has been identified as a suitable site for the development of a renewable tidal energy system and it is expected that this will, in time, play a valuable role in the island's economy.

24. Sark's largest export is seafood, followed by lamb, eggs and other agricultural produce. Several residents are involved with internet-based enterprises including employment agencies, business management or accountancy services and educational publishing. Tourism occupies the greatest number of residents. Since 2008, Sark has experienced a building surge with several new builds and renovations taking place—a significant number of residents are engaged in the building trade.

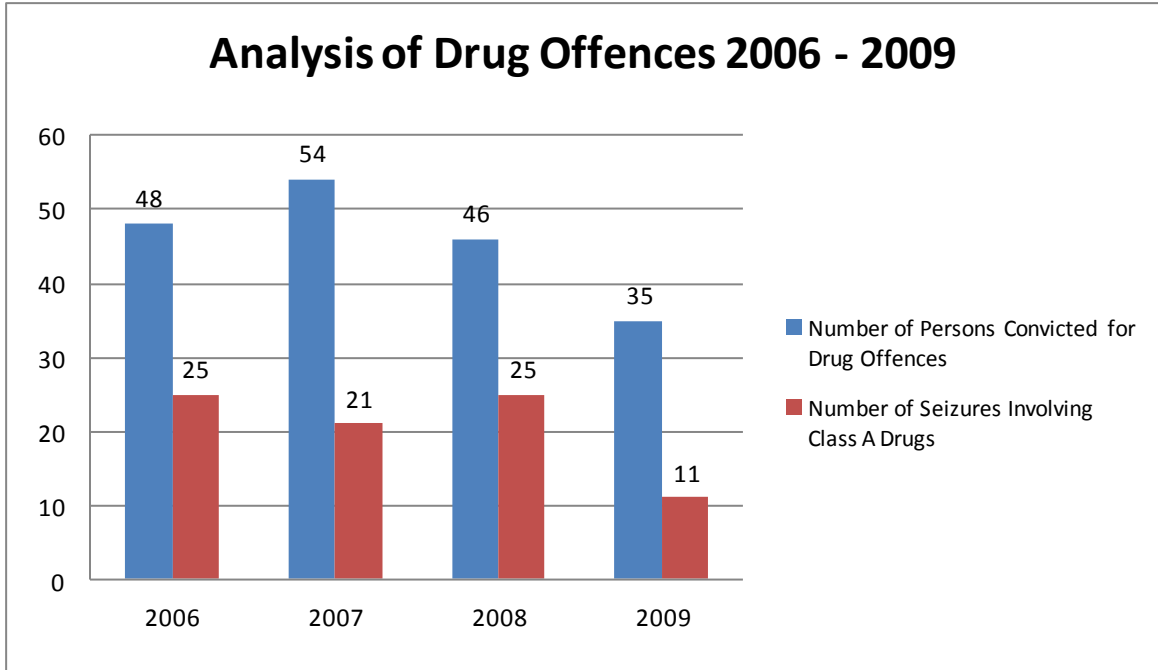
## 1.2. General Situation of Money Laundering and Financing of Terrorism

25. Guernsey is a politically-stable, low-crime environment. The Bailiwick has a low crime rate in comparison with other areas of a similar size in jurisdictions such as the United Kingdom. The statistics for the period 2006 to 2009 are as follows:



26. The majority of crimes committed within the Bailiwick are not of a type that generate proceeds, so can neither lead to money laundering offenses nor enable an individual to maintain a lifestyle funded solely or principally on the proceeds of crime. In 2006, nearly 50 percent of recorded crimes comprised criminal damage and assault, with that percentage rising to over 50 percent in each of the following years. A further 30 percent or so of annual recorded crime in this period consisted of theft and the unauthorized taking of motor vehicles. The remaining 18 percent–22 percent of recorded crime covers a range of different offenses, the most prominent categories being burglary, deception, drug-related and sexual offenses. Four cases of unlawful homicide have been recorded and solved in the past four years in Guernsey.

27. Drug trafficking is the most serious acquisitive crime committed within the Bailiwick. The Guernsey authorities have particularly targeted drug importation and have been successful in reducing this. The statistics for drug-related offenses for the period 2006 to 2009 are as follows:



28. The greatest money laundering threat to the Bailiwick arises from its status as a significant financial center. This gives rise to an inevitable risk that the proceeds of crime will be invested in or pass through the Bailiwick. As the majority of customers of Bailiwick businesses are based elsewhere, any such proceeds are likely to arise from foreign predicate offenses. For these reasons, historically, the Bailiwick's AML efforts were directed primarily at restraint and confiscation of assets as the most effective way to attack the proceeds of crime. Currently, there is approximately £220 million under restraint, mainly at the request of other jurisdictions. This relates principally to offenses of fraud, drug trafficking, corruption, and tax evasion.

29. The banking and fiduciary sectors are considered to be the areas with the greatest vulnerability to money laundering. Analysis of mutual legal assistance requests made to Guernsey in respect of the proceeds of crime indicates that in 2009, 40 percent of requests for evidence related to private banking business and 23 percent to community banking. Other business areas or institutions that were identified as possible conduits for money laundering were the post office and investment and securities businesses. This is consistent with an analysis of STRs, which identified the private banking and the fiduciary sectors as the main sources of STRs. Any money laundering in the Bailiwick would be most likely to occur at the layering or integration stage of the laundering cycle. There is no evidence of specific criminal groups involved with laundering operations operating within the Bailiwick. Instead, it is likely that the Bailiwick would be used by criminals in a similar way to legitimate investors, in order to maximize their investment performance and to spread their risk.

30. The present money laundering situation is stable, no significant changes to patterns of offending or to the structure of the financial sector having been identified in the last four years. In that time, the Bailiwick has recognized that greater emphasis needs to be placed on the investigation and prosecution of money laundering, and it now takes the same zero tolerance



approach to money laundering and terrorist financing offenses as it has long taken to confiscating the proceeds of crime. This has been underpinned by a number of measures. There has been an increased focus on training and resources in this area, and the legislation governing money laundering offenses was reviewed in 2007, leading to amendments to the Proceeds of Crime Law and the Drug Trafficking Law to facilitate prosecution. These initiatives have led to an increase in the number of money laundering investigations. From 2006 to 2009, there were 26 money laundering investigations, with annual numbers rising from four in 2006 to nine in 2009. The upward trend is continuing, with three new investigations having been instigated in the first two months of 2010. This has meant in turn that the Bailiwick has begun to develop its own jurisprudence on money laundering. There have been four money laundering prosecutions to date, two of which led to convictions. These cases involved self launderers. A further prosecution, involving autonomous money laundering, is awaiting trial. In 2009, the Law Officers recruited a dedicated economic crime prosecutor with specific responsibility for money laundering and he advises the law enforcement agencies on investigations and preparation of cases for trial.

31. There have been no identified cases of terrorist activity or terrorist financing in the Bailiwick. Only five requests for assistance relating to suspected terrorist financing have been recorded for the last four years, and a total of 23 STRs with a terrorist financing element were made in the same period. This is consistent with advice received from the counter-terrorism unit at New Scotland Yard to the effect that there are no indications of terrorist financing activity within the Bailiwick, and the Bailiwick is likely to remain categorized as an area with a very low risk of terrorist financing activity for the foreseeable future. At present, the principal threat of terrorist activity in Western Europe is thought to come from Islamic fundamentalist groups. Experience in the United Kingdom has shown that such groups perpetrate terrorist acts that can be organized without the need for significant funds. For example, the bombings on the transport system in London in July 2005 and the attempted attack on Glasgow airport in June 2007 were both achieved using funds of less than £10,000. Such funds as are required are typically raised by low level criminal activities, normally benefit fraud, carried out by the members of the terrorist cell who are planning the terrorist act in question. The cell members are usually young men of Asian origin. In the view of New Scotland Yard's counter-terrorism unit, it is extremely unlikely that any such cell would choose to operate within the Channel Islands for two reasons. Firstly, the absence of a significant Asian population would make the presence of any cell members highly conspicuous and, secondly, fund raising would be more difficult as the benefits system is less extensive than that in the United Kingdom and so would generate fewer opportunities to make fraudulent claims.

### **1.3. Overview of the Financial Sector**

32. The following table sets forth the types of institutions that fall within the definition of "financial institution" as defined in the FATF Glossary of Definitions. They are all registered with, and subject to the supervision for AML/CFT purposes of, the Guernsey Financial Services Commission.

**Types of financial institutions in the Bailiwick as at December 31, 2009:**

<b>Type of institution and activities regulated for AML/CFT</b>	<b>Financial activities</b>	<b>Number regulated/registered</b>	<b>Size of sector</b>
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	44	Deposits – £114.7 billion
Insurers, insurance managers and insurance intermediaries: Life and general insurance	Underwriting and placement of life insurance and other investment related insurance Underwriting and placement of non-life insurance	699 insurers 21 insurance managers 40 insurance intermediaries	Gross assets – £21.0 billion Gross written premiums – £3.3 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	661 licensed institutions 884 Guernsey collective investment schemes 1 stock exchange	Assets under management or administration – £184.2 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 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 strategy, mergers or purchase of undertakings Money broking and money	43	Small

	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		
Money service businesses: Money and currency changing and transfer of money	Money and currency changing Transfer of money	35 (29 included in figures for banks and 6 included in registered non-regulated financial services businesses)	Small

### **Banking Sector**

33. Banks are supervised by the GFSC under the Banking Supervision Law. Banking is central to the Bailiwick of Guernsey's success as an international finance center and is a major source of employment in the Bailiwick.

There are three main elements to the banking sector:

- community banking (principally U.K. clearing banks), which provide current accounts, overdrafts, saving deposits, mortgages and term lending to Bailiwick residents and local businesses (small and medium enterprises - SMEs);
- deposit takers or gatherers who raise funding from retail savers and institutional customers with liquid funds and who also gather deposits from expatriate savers around the world. These banks have historically been the subsidiaries of U.K. building societies and demutualized societies; and
- international private banks which take deposits from high net worth individuals, trust and fiduciary companies and the liquid uninvested balances of fund administration companies.

34. The Bailiwick is principally a private banking and deposit gathering center. It is liability driven and not a big credit center. Nevertheless, it 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 virtually no proprietary trading and position taking. Hence, there are only very small dealing rooms, catering to private client instructions and employment of group liquidity portfolios.

35. Although the GFSC identifies three elements to the sector—clearing banks, deposit takers and international private banks—there is some overlap, particularly by two clearing banks which are also active in taking deposits from fiduciary companies as well as community banking for individuals and the mass affluent. Historically, these banks had multiple subsidiaries and licenses but over the last decade consolidation has progressively reduced the number of legal entities through which they provide banking services.

36. The key feature of the banking industry in relation to the Bailiwick's overall finance sector is that it is complementary to the other parts. Banking supports the trust and fiduciary sector by taking deposits and providing a range of services to the trust structures established in the Bailiwick. It supports the collective investment fund sector by providing overdraft and liquidity facilities to funds to enable them to finance the timing differences between the purchase and sale of securities and the flows of subscriptions and redemptions by investors. The insurance sector is supported by the provision of standby letters of credit to captive insurance companies.

37. There are no domestically-owned banks in the Bailiwick—all such banks are subsidiaries or branches of banks from other jurisdictions. Indeed, the vast majority of current account and clearing bank transactions for the Bailiwick are provided by the U.K.'s clearing banks.

### **Retail Banking Sector**

38. The Guernsey banking sector is predominantly wholesale and not retail. The vast majority of deposits in Guernsey banks are corporate, inter-bank, wholesale, or fiduciary deposits. Guernsey is not a large retail deposit taker and its businesses are not focused on gathering deposits from individuals. The bulk of deposits in Guernsey banks are deposits with the international private banks, accounting for some 86.2 percent of total deposits, while clearing banks and deposit takers together account for 13.8 percent of total deposits.

39. Within the retail banking sector, deposits from households and individual trusts in Guernsey remain the most important. In total, deposits from the United Kingdom, Guernsey, Jersey, and Isle of Man households and individual trusts represent 8.1 percent of total deposits. Deposits from households and individual trusts in Guernsey account for 3.8 percent of total deposits. These deposits from Guernsey households and individual trusts are proportionately more important in the deposit base of the deposit takers (representing 19 percent) and of the deposit base of the clearing banks (representing 13.2 percent). Deposits from households and individual trusts in Guernsey held with the international private banks form only a small part of their deposit base (representing 2.1 percent), reflecting the international focus of their business.

As at December 2009, the segmental analysis was as follows:

<b>Type of bank</b>	<b>No. of banks</b>	<b>Deposits in £ millions</b>	<b>Percentage of total</b>	<b>Bailiwick households and individual trusts in £ millions</b>	<b>Bailiwick households and individual trusts as a percentage of segment deposits</b>
<b>Clearing banks</b>	8	13,137	11.4%	1,732	13.2%
<b>Deposit takers</b>	5	2,732	2.4%	518	19.0%
<b>International Private Banks</b>	31	98,833	86.2%	2,057	2.1%
<b>Totals</b>	<b>44</b>	<b>114,702</b>	<b>100%</b>	<b>4,307</b>	<b>3.8%</b>

### **Insurance Sector**

40. Insurance business in the Bailiwick can be divided into three distinct sectors: domestic insurance, international insurance and insurance intermediaries. The GFSC supervises insurance business under the Insurance Business Law and the Insurance Managers and Insurance Intermediaries Law.

#### **Domestic insurance business**

41. As at December 31, 2009, there were 21 insurers engaged in domestic business:

- there were four local insurers writing domestic insurance business in the Bailiwick;
- there were 17 other domestic 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) which are incorporated and authorized to write business within a Member State of the European Union.

#### **International insurance business**

42. International insurance in the Bailiwick can be categorized as either captive insurance, commercial insurance or international life and employee benefits. On December 31, 2009, there were 355 licensed international insurers (captives and life companies), including 63 protected cell companies (“PCCs”), five incorporated cell companies (“ICCs”), and six incorporated cells (“ICs”). The majority of these international insurance companies have been established by United Kingdom-based groups but 143 were established by non-United Kingdom-based groups from a wide range of jurisdictions. In addition, within the PCCs there were 323 cells.

43. A PCC is a single legal entity with separate and distinct cells within it. A cell of a PCC cannot contract in its own name; it is the PCC which will be the contracting party, in respect of

the relevant cell which must be identified. Assets and liabilities in a PCC cell are, by law, segregated from those of other cells and those assets are not available to creditors of other cells in insolvency. By law, a cell does not have access to the assets of the PCC core unless a recourse agreement has been put in place. An ICC is a legal entity as are each of the ICs associated with it. An ICC and each of its ICs will have directors, secretary and registered office in common. ICCs are seen as versatile structures due to having a lower cost base, compared to a stand-alone company, which is attractive for start-up operations and the ability to “spin off” an IC or convert it into a stand-alone company. Legal segregation is achieved by the fact that an ICC and an IC are each distinct corporate entities.

44. 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 written. 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. Captives originally set up to insure the risks of their parent group sometimes find themselves with a wealth of specialist insurance and risk management knowledge within their own industries and offer these facilities to third parties. After moving from a pure captive to a broad captive, they occasionally write much more third party business than that of their group and are then true commercial insurers.

45. Specialist insurance management companies manage most of the international insurers. The GFSC requires such insurance managers to be licensed and, on December 31, 2009, 21 were licensed.

46. As at December 31, 2009, of the 355 licensed international insurers, there were 29 life and employee benefits insurers, including eight PCCs and two ICCs licensed in respect of life business, operating in the Bailiwick. These provide insurance for nonresidents, 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.

### **Insurance intermediaries**

47. Insurance intermediaries comprise insurance brokers and insurance agents who, in or from within the Bailiwick, advise others on their insurance requirements for direct or indirect reward. Such intermediaries need to be registered with the GFSC. As at December 31, 2009, there were 40 such intermediaries registered.

### **Investment Sector**

48. Investment and securities business is supervised by the GFSC under the Protection of Investors Law. The types of investment business carried out in the Bailiwick include:

- management, administration, and custody of open and closed-ended collective investment funds. These collective investment schemes are either domiciled in the Bailiwick, in which case they have to be either authorized by, or registered with, the GFSC under the

Protection of Investors Law or, if they are open-ended and domiciled outside the jurisdiction, the regulated service provider in the Bailiwick must obtain the GFSC's formal approval before it can commence to act for the fund;

- discretionary and non-discretionary asset management. This sector includes subsidiaries of large multinational groups as well as independent and locally-owned firms. The sector services a range of clients, from private individuals to professional and corporate clients, including regulated firms operating in the Bailiwick such as fiduciaries and insurance companies;
- stock broking. There is a small but growing number of stock broking firms established in the Bailiwick providing what would be considered to be traditional stock broking services for a range of clients, together with wider asset management services for high net worth individuals, and professional and corporate clients located on a global basis;
- provision of investment advice. Firms in this sector provide advice on a range of investment products and may be advising collective investment schemes, both domiciled in the Bailiwick and elsewhere, or non-fund clients including private individuals on a one-off basis, high net worth individuals, and professional and corporate clients;
- investment performance monitoring. This sector has been established over the last half a decade and recognizes the needs of regulated firms to monitor the performance of client investment portfolios. Licensees in this sector are mainly monitoring the performance of investments held by regulated firms on behalf of their clients, mainly in the fiduciary sector, together with corporate accounts; and
- intermediaries. There are a number of firms providing intermediary services, mainly to the local population within the Bailiwick, including the provision of investment advice to individual clients. Firms operating in this sector also provide equivalent services in respect of insurance-based products.

49. The total assets of the collective investment funds under management or administration (including non-Guernsey collective investment schemes administered within the Bailiwick) on December 31, 2009 were £184.2 billion.

50. As of that date, there were 134,509 registered holders of shares/units/partnership interests in Guernsey open- and closed-ended collective investment schemes. These were 276 authorized or registered open-ended collective investment schemes (of which 208 were umbrella or multi-class schemes resulting in a total 1,904 pools of assets) and 608 closed-ended investment schemes (of which 77 were umbrella schemes resulting in a total of 1,223 pools of assets). These collective investment schemes were sponsored by institutions in 51 countries. Within these totals, 98 open-ended and 37 closed-ended investment funds were established as PCC structures and another 9 open-ended and 4 closed-ended investment funds were established as ICCs. The legislation governing PCCs and ICCs provides statutory protection for the business written in particular cells so that each cell does not suffer contagion from, for example, any financial problems affecting any other cell. PCCs are used extensively in collective investment schemes structures with nearly all umbrella or multi-class corporate structures being established as such.

51. Clients of investment businesses include local residents, overseas residents, and local and overseas institutions and professional firms. 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.

52. On December 31, 2009, there were 661 institutions licensed to carry on investment business. Licensees comprise administrators/managers and custodians/trustees of collective investment funds, stock brokers, discretionary and non-discretionary asset managers, investment advisers, and one stock exchange.

### **Stock exchange**

53. The Channel Islands Stock Exchange (“CISX”), which is based in Guernsey, is the only stock exchange in the Channel Islands. It commenced operations in the autumn of 1998. The CISX offers a listing facility and provides screen-based trading. The CISX concentrates on its core products, which are collective investment funds; structured debt instruments; primary and secondary listings of securities and shares issued by Channel Islands companies; and secondary listings of securities and shares issued by overseas companies. The CISX has been recognized by the United States Securities and Exchange Commission, the United Kingdom Financial Services Authority and the United Kingdom Inland Revenue. As of December 31, 2009 there were 2,434 listed securities on the CISX.

### **Independent money services sector**

54. The independent (i.e., non-bank) money services sector in the Bailiwick 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 services providers. Some hotels offer limited exchange services and fall within the exemption for registration. Other than through banks, money transmission services are provided by two agents of Money Gram. Until recently, there was an agent of Western Union in the Bailiwick; Western Union no longer has local representation. The large independent provider offers Money Gram 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.

55. These firms are registered and supervised for AML/CFT purposes only under the Registered FSBs Law.

## **1.4. Overview of the DNFBP Sector**

56. The Guernsey legislative framework provides comprehensive coverage of the designated non-financial businesses and professionals (DNFBP) sectors. All categories outlined in the FATF standard are covered. These sectors play an important part in the Guernsey economy. Guernsey is seen as a primary jurisdiction for the provision of TCSP services with many lawyers and accountants providing support services to these activities. Guernsey has also taken a leadership role in the emerging eCasinos sector. TCSPs represent the biggest DNFBP sector in Guernsey followed by eCasinos.



57. Requirements outlined in the relevant legislation apply to both individuals and companies/firms though the vast majority of obligated entities are companies and firms.

58. The following table outlines the types of DNFBPs in Guernsey as of December 31, 2009. A description of each DNFBP sector can be found in the section below.

<b>Category of DNFBP</b>	<b>DNFBP activity</b>	<b>Number regulated/ registered</b>	<b>Authority responsible for AML/CFT supervision</b>
Lawyers, notaries, and other independent legal professionals	Business of providing services under the FATF definition by independent legal professionals. Schedule 2 to the Proceeds of Crime Law.	19	Guernsey Financial Services Commission
Accountants	Business of providing services under the FATF definition by accountants. Schedule 2 to the Proceeds of Crime Law.	7	Guernsey Financial Services Commission
Real estate agents	Business of providing real estate agency services concerning the buying or selling of property. Schedule 2 to the Proceeds of Crime Law.	28	Guernsey Financial Services Commission
Dealers in precious metals and dealers in precious stones	Services provided by bullion dealers who engage in the buying or selling of bullion and conduct transactions of £10,000 Schedule 2 to the Proceeds of Crime Law.	3 bullion dealers	Guernsey Financial Services Commission
Casinos	eGambling business including all forms of betting, gaming, wagering and any lottery. eGambling Ordinance.	44	Alderney Gambling Control Commission
Trust and company service providers	Business of providing services to companies and trusts. Schedule 1 to the Proceeds of Crime Law.	197	Guernsey Financial Services Commission

#### **Trust and Company Service Providers**

59. Fiduciary services principally relate to trust management and administration, company management and administration and, to a much lesser degree, the provision of executorships

services. 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 197 full and personal fiduciaries on December 31, 2009 licensed by the GFSC under the Regulation of Fiduciaries Law, providing a variety of services in the Bailiwick. Full fiduciary licenses are available to companies and partnerships. A personal fiduciary license 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. The Regulations of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law 2000, outlines which TCSPs are required to be licensed. An extensive list of activities are exempted at Section 3 of the Law and most are in line with the standard. Many of these exemptions outline company management activities that would be undertaken in the regular management of a business or activities relating guardianship of children and the administration of wills. Exempt activities include acting as a director of a company which is quoted on a stock exchange, acting as the executor of a will, or acting as the guardian of a minor. All activities outlined by the standard are covered with one minor exception that is discussed in greater detail in Section 4.

#### **Legal Professionals—Solicitors, Advocates, and Notaries**

61. The legal profession in Guernsey comprises solicitors, advocates, and notaries. There are five firms of overseas solicitors operating in Guernsey but they are not able to represent cases in court. Solicitors provide advice on English, Welsh, Scottish, or Northern Irish law. Two firms of solicitors are registered with the GFSC.

62. To qualify as a Guernsey advocate, a person must first qualify as a barrister or solicitor in England and Wales, Northern Ireland, or Scotland or another commonwealth jurisdiction, and then undertake a minimum period of pupillage in Guernsey, attain French legal qualifications and pass the Guernsey bar examinations. Seventeen firms of advocates are registered with the GFSC. Guernsey advocates are able to present cases in court.

63. Notaries in Guernsey play a very different role to that of a notary in civil law jurisdictions. Guernsey notaries do not prepare transaction documents or contracts, assist with contracts for the sale of land or manage conveyance 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. These are practices which have developed in civil law jurisdictions and in Guernsey these matters are conducted by advocates or solicitors. In essence, the main function of the notary in Guernsey is to physically authenticate documents and certify matters of fact.

64. The Guernsey notary spends the majority of his time authenticating copy documents or signatures for regulated financial services businesses. This is done by presentation of the originals and copies to the notary, or by the person signing a document or swearing an oath in his presence. The notary's role is purely to authenticate a document by ensuring it is a copy of

an original or to confirm the identity and signature of the person executing the document or swearing an affidavit.

65. 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. This was a requirement for notaries long before the advent of AML legislation. 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.

66. 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).

67. There are no separate firms of notaries; only Guernsey advocates may become Guernsey notaries. 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. In total, 19 law firms (17 firms of advocates and 2 firms of solicitors) are registered with the GFSC. Some law firms are also licensed fiduciaries and carry out trust and company services.

### **Accountants**

68. Guernsey accountancy firms, even those operating as branches of the U.K. firms, were required to comply with Guernsey AML/CFT legislation from 2008 with the introduction of the PB Regulations. Seven firms of accountants have registered with the GFSC. The changes to the Proceeds of Crime Law in March 2010 extend the AML/CFT framework from the FATF standards to the EU standards and will include any activity carried out by external accountants, tax advisers, auditors, and insolvency practitioners. This will result in the entire sector being subject to AML/CFT regulation by October 2010.

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

### **Real Estate Agents**

70. The main business of estate agents in Guernsey is sale and letting of local market properties. Of the 28 registered firms, only the larger firms are significantly involved in open-market property sales and commercial business.

### **Guernsey housing market**

71. There are two residential housing markets in Guernsey, one for local inhabitants, known as the "Local Market," and one for newcomers called the "Open Market." There are about

21,000 dwellings on the island of which approximately 1,750 are available for occupation by newcomers. In each market, the sale price is set by the interaction of supply and demand. Prices are relatively high, principally because the island is an attractive place to live and work.

72. Only local inhabitants and newcomers in possession of housing licenses are able to occupy Local Market houses. The States of Guernsey is responsible for granting housing licenses. When an employer is unable to fill a vacancy from the local workforce and wishes to recruit a newcomer, it will apply to the States for an essential worker license. These licenses allow newcomers to lawfully occupy Local Market property subject to certain conditions. Licenses are granted subject to a rateable value limit (essentially controlling the minimum size and value of dwelling license holders can lawfully occupy). This is a helpful way of providing labor. About 5,000 licenses are currently in existence. The granting of housing licenses has some impact upon the demand for housing and hence the prices in both markets. This coupled with the fixed supply of Open Market housing stock, means that government policy has a very direct impact on the markets.

### **Buying and selling property in Guernsey**

73. In Guernsey, Local and Open Market dwellings can be sold by private treaty, auction, or by share transfer. In each case, conditions of sale are used. These contain standard terms agreed by the Bar Council, the governing body of the Bar, and acceptable to the Royal Court for use when transferring the ownership of property located in Guernsey.

### **Real Estate in Sark**

74. 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**

75. In the Bailiwick, there are 16 jewelry retailers and 3 bullion dealers. The client base of the jewelry retailers includes a significant proportion of international visitors who are attracted to the availability of high-quality products and international brands at low-tax prices. High-value sales are paid for using debit and credit cards.

76. The Proceeds of Crime Law designates bullion dealers who engage in the buying or selling of bullion and conduct transactions of £10,000 as a financial services business under the supervision of the GFSC. As such, the bullion dealers have the same obligations as other FSBs.

77. The Proceeds of Crime (Restriction on Cash Transactions) Regulations came into force in December 2008 and prohibit the use of cash for the sale or purchase of precious metals, precious stones, or jewelry where the payment exceeds £10,000. Other than reporting suspicions on money laundering or terrorist financing, no other AML/CFT obligations apply to jewelry retailers.

## **Casinos**

78. 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.

79. The AGCC is responsible for the regulation of eGambling licensees. The Gambling (Alderney) Law defines gambling as including all forms of betting, gaming, wagering, and any lottery. The holder of an eGambling license can offer these products or any combination of them under their license.

80. The eGambling sector in Alderney covers a broad spectrum of activity. EGambling licensees and certificate holders are permitted to carry out different forms of eGambling activity depending on the category of license or certificate held. Category 1 eGambling licensees organize and prepare the customer for gambling. This includes (but is not limited to) entering into an agreement with the customer, registering and verifying the customer's identity, and managing the customer's funds. Category 2 eGambling licensees and Foreign Gambling Associate Certificate Holders effect the gambling transaction. 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. These Category 2 licensees have no direct relationship/contact with the player. The types of gambling offered by Category 1 licensees include both traditional bookmaking and betting exchanges, as well as traditional casino games, bingo networks, and poker rooms. Alderney licensees have included small start-up ventures, the internet operations of land-based operators and some of the larger and more familiar eGambling brands.

81. At the end of the first quarter of 2010, there were 44 eGambling licensees, 23 licensees holding both Category 1 and Category 2 eGambling licenses, 18 holding a Category 1 eGambling license only and 3 holding a Category 2 eGambling license. There were, therefore, 41 licensees with licenses permitting them to organize and prepare customers to gamble i.e., undertaking the registration and verification of customers. Not all of these licensees have commenced operations under their license. In addition, at the end of the fourth quarter of 2009, there were 13 holders of associate certificates supplying services to eGambling licensees.

82. As of the end of the fourth quarter of 2009, the smaller licensees had fewer than 2,000 active players (defined as a customer who has logged in within the preceding 12 months) whereas the licensee with the greatest number of active players had over a million active players. There has been some fluctuation in the number of active players registered with Alderney licensees over the past 12 months because of the recession. The number now stands at

around three million, with in excess of two million being registered with the four largest licensees. These four licensees are the largest in terms of the number of active players, whereas others may have higher net asset values or higher net profits.

83. EGambling license holders in Alderney had over 3 million customers and conducted £2.1 billion worth of transactions in 2009. Net profits in the sector peaked in the first quarter of 2009 at £43.1 million due to a combination of factors including a number of new licensees commencing operation and existing licensees rolling out new products. In light of the financial crisis and recession, there was a reduction in profits to £35.6 million in the fourth quarter of 2009.

### **Non-Profit Organizations**

84. Guernsey's NPO sector will, generally, mirror that found in the United Kingdom and other similar jurisdictions, in that it consists of a number of charities operating in varying areas, together with other NPOs whose activities range from professional associations to social and sports clubs. Charities fall broadly into three categories:

- (a) purely locally-based charities (such as Les Bourgs Hospice);
- (b) those which are branches of large U.K. charities (such as Oxfam, Red Cross, etc); and
- (c) a number of 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.

85. Charities and non-profit organizations are required under the Charities and NPOs Registration Law to register with the Director of Income Tax if their gross annual income is over £5,000 or if their gross assets and funds are £10,000 or more. There are 405 bodies (299 charities and 106 other NPOs) registered. The tables below provide details of the types of charities and NPOs:

<b>Charity</b>	<b>Number registered</b>
Social welfare/community support	82
Health/medical/care of the elderly	64
Religious	50
Arts/music/sports	33
Educational	31
Other/general	18
Overseas development	15
Animal welfare	6
<b>Total</b>	<b>299</b>
<b>NPO</b>	<b>Number registered</b>
Sport	36
Arts	15

<b>Charity</b>	<b>Number registered</b>
Professional/business	15
Social	12
Residence/housing associations	6
Heritage/historical	6
Education	4
Other	4
Religious	3
Animal	3
Uniformed organisations	2
<b>Total</b>	<b>106</b>

86. These figures include 8 NPOs based in Alderney—3 arts/music/sports, 2 other/general, and one of each of social welfare/community support, health/medical/care of the elderly and animal welfare.

87. Manumitted organizations, defined as charities that are managed by fiduciaries regulated by the GFSC, are not required to register with the Director of Income Tax. They do, however, have record-keeping obligations.

### **1.5. Overview of commercial laws and mechanisms governing legal persons and arrangements**

#### **Companies and Limited Partnerships**

88. Bailiwick companies are governed by the Companies (Guernsey) Law 2008 (“the Guernsey CL”), which allows for the incorporation of companies in Guernsey, and the Companies (Alderney) Laws 1994 (“the Alderney CL”), which regulates companies incorporated in Alderney. Sark does not provide for the incorporation of companies on the island. 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).

89. The Guernsey and Alderney CL do not differentiate between different types of companies and all ownership and management requirements as outlined below apply equally to all companies. All Bailiwick companies obtain legal personality upon registration with the Guernsey or Alderney companies’ registries. Guernsey companies may only be incorporated by a licensed TCSP whereas Alderney law requires involvement of an advocate.

90. Members of a Bailiwick company may have limited, unlimited, or “mixed” liability. All Bailiwick companies may be incorporated or later be converted into “cell companies,” allowing for a segregation of assets. Bailiwick companies have to have at least one (natural or legal person) founder, one natural or corporate director and a local registered office. In addition, most Guernsey (but not Alderney) companies require a registered agent, who must be either a licensed TCSP or a Guernsey resident director, and all Alderney companies require a registered secretary.

91. The use of “nominee shareholders” and corporate directors is permissible. All Bailiwick companies are subject to stringent accounting and record-keeping requirements and are obliged to maintain shareholder and director registries at the local registered office.

92. In addition to companies established pursuant to the Guernsey and Alderney CL, Guernsey (but not Alderney or Sark) law also allows for the establishment of limited partnerships, either with or without legal personality, pursuant to the Limited Partnership (Guernsey) Law 1995. Limited partnerships require at least one limited and one general (natural or legal person) partner and a registered office in Guernsey. All limited partnerships are under an obligation to register with the partnership registry maintained by the HM Greffier.

93. Guernsey has a wide range of measures in place to obtain and maintain beneficial ownership information as outlined under Recommendation 33 of this report. Most notable, such information is maintained by the relevant registries, by licensed TCSPs in the Bailiwick and at the local registered company or partnership offices. The measures are supported by strong law enforcement and supervisory powers to obtain and gain access to any information sought as outlined under Recommendations 27 and 28 of this report.

94. At the time of the assessment, about 18,000 companies were registered in Guernsey and 530 in Alderney. Of these, about 12,700 are managed by licensed TCSPs. Furthermore, about 1,290 limited partnerships were registered in Guernsey of which around 200 have legal personality. The authorities stated that the majority of Guernsey companies would be asset holding companies and the majority of Alderney companies would be e-Casinos. The authorities stated that those companies not administered by a licensed TCSP would mostly be local trading and service companies.

### **Trusts and General Partnerships**

95. Trusts constitute an important part of and are widely used in the Guernsey financial services industry. Trusts may be established under Guernsey but not Alderney or Sark law and are governed by the Trusts (Guernsey) Law 2007 (“Trusts Law”). In addition, Guernsey allows for the establishment of general partnerships pursuant to the Partnership Law 1995. Neither trusts nor general partnerships are subject to any registration requirement.

96. A trust under Guernsey law is a legal arrangement in which a person (trustee) holds or has 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 (beneficiary), whether or not yet ascertained or in existence, and/or for any purpose other than a purpose for the benefit only of the trustees. Guernsey trusts are generally set up by way of deed, declaration, or will, even though the Trusts Law allows for a trust to be created in any manner, including through oral declaration or merely conduct.

97. Guernsey trusts are highly flexible and allow for the settlor to maintain a wide range of direct powers over the management and administration of the trust property. Guernsey law allows for both the settlor and the trustee to be a trust beneficiary, including the sole beneficiary. The settlor may also reserve a wide range of powers with respect to the trust, including to amend or revoke the trust terms, to give binding instructions with respect to



management of the trust property, to appoint or remove trustees, beneficiaries, enforcers, and protectors, to change the law of the trust, and to restrict any powers or discretion of the trustee through requiring consent of the settlor or any third person before any action may be taken.

98. Protectors, enforcers, as well as flee clauses are allowed under Guernsey law although according to the authorities and private sector participants the assessors met with stated that all of these instruments are used to a very limited extent only. The Convention on the Law Applicable to Trusts and on their Recognition has been extended to Guernsey and Guernsey law recognizes foreign trusts.

99. The authorities do not maintain statistics or information pertaining to the number of trust arrangements but it is estimated that about 30,000 Guernsey trusts would exist. Of the total number of Guernsey trusts, 27,000 were administered by licensed fiduciaries. The amount of assets held by Guernsey trusts could not be ascertained. In addition, the authorities could not provide the assessors with a total number of general partnerships established under Guernsey law and the number of partnerships linked to a licensed TCSP is 496.

## **1.6. Overview of strategy to prevent money laundering and terrorist financing**

### **AML/CFT Strategies and Priorities**

100. In early 2004, the President of the States of Guernsey Advisory and Finance Committee (the predecessor to the States of Guernsey Policy Council) wrote to the President of the FATF providing a Ministerial commitment to the FATF's Recommendations and Special Recommendations.

101. The current AML/CFT strategy and priorities are set out in a document entitled "Bailiwick of Guernsey Financial Crime Strategy" ("Strategy document")<sup>1</sup>. It identifies seven strategic imperatives, together with specific objectives and supporting measures to achieve them:

- to build knowledge and understanding about the cause and effects of financial crime on the economy of Guernsey;
- to increase the amount of criminal proceeds recovered and increase the proportion of cases in which they are pursued;
- to make innovative use of the criminal and civil forfeiture legislation;
- to continue to collaborate with international partners to ensure together the effective prosecution of those responsible for financial crimes and/or recover the proceeds;

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<sup>1</sup> Statement issued by The Bailiwick Anti Money Laundering and Countering the Financing of Terrorism Advisory Committee.

- to build upon the risk assessment culture which identifies the threats and vulnerabilities posed by financial crime;
- to maintain an appropriate overarching strategy to counter financial crime, involving all partners, to enable sustained confidence and growth in Guernsey's economic future; and
- to support inter-agency working and value the contribution of partners concerned with mitigating the impact of financial crime within the Bailiwick.

102. In March 2010, the States of Guernsey endorsed the financial crime strategy and the strategic imperatives that had already been identified by the AML/CFT Advisory Committee as part of an ongoing process that began in October 2008. The financial crime strategy and strategic imperatives for AML/CFT (excerpt) are:

“[T]he Policy Council considers it important to endorse the Committee's coordinated approach towards achieving its strategic imperatives and outlines the overarching major AML/CFT strategies which are in place and to also ask the States of Guernsey to endorse them. In summary the strategies are to:

- build knowledge and understanding about the cause and effects of financial crime on the economy of Guernsey;
- prevent Guernsey businesses from being used for money laundering or the financing of terrorism;
- have an effective suspicious activity reporting regime, which includes the effective development of intelligence from reports of suspicion;
- ensure that money laundering, financial crime and financing of terrorism offences are effectively identified and rigorously investigated;
- provide effective enforcement measures to identify, trace, restrain, seize, and confiscate the proceeds of crime and terrorist assets, including effective application of the civil forfeiture regime in nonconviction-based asset forfeiture;
- undertake the prosecution of money laundering and financing of terrorism offences swiftly and effectively;
- promote and provide comprehensive and effective international cooperation and the widest possible assistance to other jurisdictions in the investigation and prosecution of money laundering, financial crime and the financing of terrorism, and in securing the confiscation or other restraint of the proceeds and instruments of such criminal conduct;
- participate in and contribute to international initiatives to prevent and combat financial crime;

- have effective measures to detect physical cash movements;
- provide for effective training and professional development of those engaged in AML/CFT activities;
- ensure that sufficient resources are directed to meeting the strategies; and
- maintain an appropriate overarching AML/CFT strategy coordinated by the Advisory Committee to counter financial crime, involving all partners, that enables sustained confidence and growth in the Bailiwick's economic future [...]"

103. In 2008, the States of Alderney Policy and Finance Committee issued a similar statement confirming Alderney's commitment to the establishment and maintenance of AML/CFT standards.

104. The Strategy document and its implementation are subject to regular review by the Bailiwick AML/CFT Advisory Committee ("Advisory Committee"). The Strategy document was most recently updated in the first quarter of 2010. The Advisory Committee considered as a higher priority the prosecution of money laundering and the development of the civil forfeiture regime.

105. Efforts in both of these areas have been strengthened by the creation of specialist posts within the Attorney General's Chambers. A highly-experienced specialist economic crime prosecutor has been recently recruited. A dedicated asset recovery lawyer joined the Attorney General's Chambers.

106. In addition, the FIU has a continuing recruitment program and is soon to move to new premises. A new computer system to facilitate processing of STRs is expected to be in use by June 2010. Further amendments to the AML/CFT legislative framework will soon come into force.

107. The States of Alderney AML/CFT strategies and priorities are allied to and indivisible from those of the Bailiwick of Guernsey as a whole.

### **Institutional Framework for Combating Money Laundering and Terrorist Financing**

108. Since the last evaluation, existing law enforcement responsibilities in respect of AML/CFT were centralized and streamlined. In 2008, the Financial and Economic Crime Branch (FECB) of the customs service was established, its head joined the BFCC. The FECB is made up of 3 distinct divisions. These are the FIS (Financial Intelligence Service), incorporated within the FECB with continuing responsibility for the collection, analysis and dissemination of STRs and also for processing MLA requests; the criminal division responsible for criminal investigations, seizures and confiscations; and the civil division with equivalent responsibilities in civil matters. The FECB was rebranded as the FIU in 2009. In December 2008, the BFCC was renamed the Bailiwick AML/CFT Advisory Committee. Its membership was expanded from that of the BFCC to include representatives from other agencies with AML/CFT

responsibilities. These are the Director of Income Tax, the Chief Executive Officer of the AGCC and, more recently, the Registrar of Companies.

### **Political/Policy level**

109. The Policy Council of the States of Guernsey (PCSG) comprises departmental ministers and is chaired by the Chief Minister. It has overall political responsibility for the Bailiwick's AML/CFT strategy, with the assistance and advice of the Advisory Committee.

110. The Advisory Committee (AC) is responsible at a strategic level for all aspects of policy coordination, development, and cooperation on AML/CFT issues. It liaises with politicians to ensure that AML/CFT policies and strategies have political support. Members of the Advisory Committee participate in regular Crown Dependency AML/CFT meetings with representatives from Jersey and the Isle of Man. The Financial Crime Group (FCG) continues to have responsibility for AML/CFT issues at an operational level, and it reports to the Advisory Committee.

111. The Home Department of the States of Guernsey (HDSG) is politically responsible for the police force and the customs service. It develops criminal justice legislation and policy together with the Attorney General. The Bailiwick will introduce a new independent statutory body, the Law Enforcement Commission, to oversee law enforcement and allocate resources to the LEAs, who's Chief Officers, will report to the Commission, rather than as now to the Home Department. The Law Enforcement Commission is expected to be in place by the middle of 2011.

112. The Treasury and Resources Department of the States of Guernsey (TRDSG) has political responsibility for the registration framework for charities and NPOs.

113. The Commerce and Employment Department of the States of Guernsey (CEDSG) has political responsibility for the registration framework for companies.

114. The States of Alderney, also represented in the States of Guernsey, has political responsibility for the AGCC (see below). The AGCC reports annually to the States of Alderney and meets regularly with the Policy and Finance Committee of the States of Alderney (PFCSA)—this committee has day-to-day political responsibility for the AGCC and for the eGambling sector.

### **Criminal justice/operational level**

115. The criminal division of the FIU within the customs service is responsible for cross-border investigations. It also has responsibility for criminal restraint and confiscation orders. Civil forfeiture investigations, seizures, restraint and forfeiture orders are dealt with by the civil division of the FIU. The customs service is to change to the Guernsey Border Agency, expected to be in place by the middle of 2011, but this will not affect the functions and responsibilities of the FIU or any of its three divisions. The Fraud Department of the police force is responsible for the investigation and detection of domestic fraud and other possible predicate offenses without a cross-border element.

116. The FIS division of the FIU is the Bailiwick's designated national body responsible for the collection, analysis, and dissemination of all STRs.

117. The Attorney General and the Solicitor General are the Bailiwick's Law Officers. They are the designated recipients of letters of request for MLA. There is a dedicated prosecution directorate, a dedicated mutual legal assistance lawyer, and a dedicated asset recovery lawyer.

### **Financial Sector and DNFBP**

118. The Guernsey Financial Services Commission (GFSC), established in 1988, is the prudential regulator of banks; collective investment schemes and their service providers; TCSPs; insurers and insurance intermediaries; investment firms and investment intermediaries; and the stock exchange. It is also responsible for the AML/CFT regulation of the other businesses included in the FATF definition of financial institution and much of the DNFBP sector (TCSPs—note that in Guernsey such service providers are included as financial services businesses—legal professionals, accountants and estate agents).

119. The GFSC issues AML/CFT rules and guidance in two handbooks: the Handbook for Financial Services Businesses on Countering of Financial Crime and Terrorist Financing ("FSB Handbook") and the Handbook for Legal Professionals, Accountants and Estate Agents on Countering of Financial Crime and Terrorist Financing ("PB Handbook").

120. The Alderney Gambling Control Commission (AGCC) licenses and regulates those forms of gambling in Alderney that are made lawful by way of an Ordinance. Under the Gambling Law all forms of gambling are unlawful, unless authorized under an Ordinance of the States of Alderney such as the eGambling Ordinance.

121. Most practicing professionals such as lawyers and accountants are also subject to regulation and oversight by self-regulatory organizations in larger jurisdictions, such as the Institute of Chartered Accountants in England and Wales and the Law Society of England and Wales. Lawyers qualified to practice as Guernsey Advocates are also subject to regulation and oversight by the Guernsey Bar. Its Chambre de Discipline has specific jurisdiction in respect of AML/CFT related issues, in addition to the GFSC's own role as the AML/CFT authority for lawyers.

122. The Director of Income Tax is Registrar of NPOs with responsibility for establishing and maintaining a register of NPOs, which is separate from his functions under the income tax legislation. Legislation to formalize the separation of these responsibilities, by creating a statutory office of Registrar, is currently awaiting royal sanction by the Privy Council.

### **Approach Concerning Risk**

#### **Criminal justice**

123. According to the authorities, the law enforcement agencies are required to undertake continuous risk and threat assessments in all areas. More specifically, the Financial Crime Group has an ongoing mandate from the Advisory Committee to monitor current and emerging

AML/CFT threats and risks. The Financial Crime Group reports back to the Advisory Committee for strategic direction and priority on these issues.

## **GFSC**

124. The GFSC does not differentiate between prudential regulation and AML/CFT regulation. The GFSC adopts a risk-based approach to AML/CFT regulation but, nevertheless, all businesses subject to its regulatory framework are subject to the on-site inspection regime.

125. All financial institutions are subject to inspection within a timeframe of three years. Those considered high risk receive more frequent inspections, which are driven by the assigned risk profile. To this end the GFSC considers the type of customer base; where there is significant reliance on CDD undertaken by introducers by a business compared with other businesses in the sector; whether the types of products/services offered are particularly vulnerable to being used for ML/FT; the quality of corporate governance or internal controls; and receipt of intelligence suggesting high risk. Ad hoc and follow up inspections are undertaken when necessary.

126. The GFSC considers the private banking and TCSP sectors to pose the highest potential ML and FT risk. High-risk business can flow from both private banking and from the TCSP sector. The wide range of TCSP business, combined with the attractiveness of trust and company structures to criminals and the use of the sector by high-risk customers, means that this sector must be considered as high risk.

127. 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. The GFSC found that the quality of the initial assessments varied from cogent and comprehensive to overly generic. The GFSC reviewed the assessments and commented where necessary. Following this initial exercise the quality of risk assessments has improved.

128. There are limited exceptions to the coverage of AML/CFT requirements that are contained either in legislation or in the rules in the GFSC's handbooks. The exceptions are based on a consideration of their risk such as the effects of the exemption; the size of the affected sector or sub-sector; the size of the affected businesses; their customer bases; and whether there are any mitigating factors to offset any ML/FT risk.

129. The GFSC regularly reviews its administration of the AML/CFT framework for financial services businesses and prescribed businesses as well as the framework itself. Such review have showed that early in 2009, the GFSC fell behind on the on-site inspections' schedule as resources were diverted to deal with the effects of the financial crisis on the banking sector. The program was back on track by the end of 2009. During the review process, the GFSC came to the conclusion that it should recruit an additional member of staff to conduct on-site inspections of trust and company service providers so as to increase the number of inspections to that sector. Such reviews have also led to the issuance of Instructions to FSBs regarding particular AML/CFT issues.

130. Recently, bullion dealers, bullion brokers, and postage stamp dealers were added as financial services businesses, just like investment advisers and general insurers. They are subject to registration with the GFSC and required to comply with the FSB Regulations and the FSB Handbook.

131. According to the authorities, outside the clearing banks, general insurers and estate agents, few businesses take advantage of the reduced or simplified customer due diligence provisions in the regulations and the handbooks. It is procedurally simpler to apply “standard risk” approaches even to low-risk customers. Businesses are also mindful of the risk of potentially treating higher-risk customers inappropriately.

## **AGCC**

132. The AGCC reviews and must approve every licensee or certificate holder’s internal control system prior to live operation. Gambling activity must take place in a properly controlled environment. All gambling equipment is required to be independently tested to ensure game fairness. Game fairness represents a significant disadvantage to anyone seeking to use the sector for the purposes of money laundering. Licensees use software to monitor their operations in real time. This alerts staff members who can then assess the issue. This software helps mitigate the operational risks in being used for ML/FT as it allows for early identification of transactions for further consideration.

133. The requirement that each licensee must be an Alderney company gives a presence within the Bailiwick that enables the AGCC to compel attendance. This presence also provides an entity against which the AGCC can take regulatory action and which can be the subject of publicity. Alderney companies can also only be formed with the consent of the GFSC; the GFSC’s scrutiny provides an additional check.

134. The AGCC’s two priority areas are player identification and verification, and the circumstances when CDD and enhanced CDD are required. Player identification and verification is considered to be the cornerstone of the fight against ML and FT. The AGCC also ensures that licensees undertake the CDD and enhanced CDD that is required.

135. By their nature, eGambling transactions are not face-to-face transactions. There is no concept of low risk within the eGambling sector and thus no possibility of reduced or simplified CDD. Risks are either standard or high, and the CDD levels are in accordance. eGambling business can be introduced to a licensee by an affiliate or associate; the licensee must undertake CDD or enhanced CDD as appropriate, they cannot rely on any CDD undertaken by the affiliate or associate.

136. The AGCC’s reviews of AML/CFT in 2008 and 2009 highlighted that the greatest potential risks of money laundering and terrorist financing in the eGambling sector are related to the ownership and control of an eGambling licensee by criminals; collusion amongst customers and, specifically, “chip dumping” in the case of poker; and the use of stored value pre-payment cards. These risks have been minimized by: the license application process protects against the risk of ownership or control by criminals; the use of stored value pre-

payment cards is not permitted; and the systems operated by licensees mitigate the risk of collusion among customers and “chip dumping.”

137. All operative licensees receive an annual on-site inspection. Inspections take place at the main operating location of the licensee wherever that might be in the world. The inspection regime focuses on the financial, technical, and regulatory aspects. The evidence from the on-site inspections is that businesses are aware of their obligations to report suspicions of ML and FT and that the CDD provisions of the eGambling Ordinance and Regulations are observed.

138. The issue of minors accessing eGambling websites features heavily in licensees’ corporate social responsibility strategy. Minors are prohibited from gambling under the Gambling (Alderney) Law and the eGambling Ordinance. Hence, eGambling licensees take the registration and verification process very seriously as well as compliance with the AML/CFT obligations and those relating to corporate social responsibility. The two interlinked objectives have resulted in strong procedures. It is a criminal offense under the eGambling Ordinance to effect a gambling transaction other than as a registered customer of an eGambling licensee. This means that not only can there be no occasional transactions, but also that every player undergoes a registration and verification process.

139. Money can potentially be laundered in an eGambling sector in several ways. Different games pose different risks. Traditional house casino games such as slot machines, roulette, and blackjack pose lower risks as they are games of chance involving only one player playing against the house (through the outcome of a random number generator). Similarly bingo and keno, even though pari-mutual, i.e., pooling and sharing the bets of many players, present a lower risk as their results are still based on the outcome of a random number generator and involve low values and little or no skill.

140. The eGambling sector poses a lower risk of ML/FT than the land-based sector despite the non face-to-face nature of eGambling. The systems that are generally deployed to facilitate game play are developed to provide a complete audit trail for each and every transaction that takes place, both in respect of financial transactions (for example, deposit; transfers; payments; withdrawals) and gambling transactions, irrespective of the type of games. In addition, the use of computers enables the deployment of complex software to identify transactions which might be unusual or suspicious; something that cannot be carried out in the same way in a land-based casino.

141. The biggest driver which limits the usefulness and efficiency of the eGambling sector for money laundering and the funding of terrorism is a basic requirement that repayment of funds to the customer is made by the same method of payment used to fund the deposit, normally on a “first in, first out” basis. By returning funds to the original method of payment the attractiveness of the sector for money laundering/terrorist financing is diminished.

142. Games such as player-to-player (“P2P”) poker involving multiple players (it can also be presented as a “house” game involving only one player), which include an element of skill as well as an element of chance, pose a greater risk of money laundering. The ways money can potentially be laundered include “chip dumping” and “player to player” transfers, through table allocation, player collusion and misuse of the banking system. Chip dumping occurs where one



player will deliberately throw in a good hand, losing to another player in order to pass funds over to that player. In such circumstances, winnings will appear to come from the casino, not another losing player, thus achieving a successful laundering of the proceeds. From STRs submitted to the FIS, chip dumping has been identified as posing the greatest potential risk of ML/FT. Licensees are alert to this and invest significant resources into the elimination of this activity. From its on-site inspections, the AGCC has been able to assess the measures put in place by licenses offering this product and has drafted guidance which includes this topic.

143. Licensees, for business reasons, are also alert to the issue of transactions with no economic value (such as players seeking to withdraw funds without wagering).

144. Further issues can arise with regard to the use of stolen or “cloned” credit or debit cards for the purposes of making deposits. Money can also be laundered through the use of anonymous stored value cards. The AGCC does not permit licensees to accept these as a method of deposit.

145. There is a continuous trend in P2P poker towards high liquidity, meaning that players prefer the bigger rooms. These are by definition run by the bigger, more sophisticated operators and, given the computerized nature of P2P poker rooms; there is a significant probability that unusual playing patterns and repeat pairings of players or internet protocol addresses will be identified in real time.

146. The threat of ML and FT in the eGambling sector has historically been low, not least because while those engaging in such activity are prepared to spend often significant sums in laundering or otherwise dealing with their money, the risks of total loss and “house advantage” in the casino sector is a deterrent to its use for such purposes, as are the real time search tools that are available and widely used to identify unusual patterns of play.

147. A number of issues may alter the limited threat of money laundering in the future. These include the use of pre-payment cards which, despite the prohibition on the use of cash in the eGambling industry, could enable cash to enter into the eGambling sector via other regulated entities.

148. In addition, new methods of payments are being devised such as payments through mobile telephony. The AGCC ensures that when a licensee wishes to introduce new methods of payment, they undertake a risk assessment and explain to the AGCC’s satisfaction how that method meets the requirements of the AML/CFT regime.

### **Progress since the Last IMF/WB Assessment or Mutual Evaluation**

149. The Bailiwick believes all recommendations have been met, save that ratification of the Palermo Convention has not yet been extended to the Bailiwick pending a review of its extradition regime and related developments in the United Kingdom. The following measures have been taken since the last assessment:

- 1) **Meet the UNCAC requirements by widening Guernsey’s law concerning corruption:** The Prevention of Corruption Law has been enacted and the Bailiwick has ratified the UNCAC.

- 2) **Meet the terms of Article 3 of the Protocol on Trafficking Persons:** Sexual offenses legislation is currently under review.
- 3) **Legislation might be required to implement the Convention Article on Extradition and the Protocol on Trafficking in Human Beings:** Extradition is currently under review.
- 4) **Amend the Terrorism Law to provide for a receiver for property owned by a defendant to satisfy a confiscation order:** See Terrorism Law, Schedule 2, paragraph 1 (1) (c).
- 5) **Consider adopting legislation that would provide for an asset forfeiture fund and for asset sharing with other jurisdictions:** Legislation has not been found necessary as the current non-statutory arrangements in this area continue to work effectively.
- 6) **Adopt legislation to make it a crime to fail to report a suspicious transaction, as in the DT Law, rather than as a defense to the crime of money laundering:** See sections 1 to 3 of the Disclosure Law and sections 12, 15 and 15A of the Terrorism Law respectively.
- 7) **Provide for STRs should be submitted to the FIS on a form to be prescribed by law, with appropriate penalties:** STRs have to be submitted as set out in the Disclosure Regulations and the Terrorism and Crime Regulations.
- 8) **Provide the FIS with the authority to require additional information from reporting parties, without the need to meet the burden of proof required for a production order:** The Disclosure Regulations and the Terrorism and Crime Regulations entitle the FIS to request further information within 7 days without the need to satisfy the burden of proof for production orders.
- 9) **Consider amending the relevant laws to provide explicit legal authority for the GFSC to issue guidance notes:** See section 15 of the Disclosure Law and sections 49(7) and 49A (7) of the Proceeds of Crime Law.
- 10) **Increase the staff of the FIS by two intelligence officers as soon as is practicable:** The FIS has trained further investigators and has also appointed an intelligence analyst.
- 11) **Consideration including controlled delivery in the proposed legislation on investigatory powers:** This was considered but was not seen as necessary. Controlled deliveries are not prohibited under the law and are regularly employed in connection with drug trafficking cases.
- 12) **Develop the FIS's IT resources:** Funding has been made available and a new computer system to facilitate processing of STRs is expected to be in use by June 2010.

- 13) **Consideration should be given to enacting a law to regulate MSBs:** This has been done under the Registered FSBs Law.
- 14) **Regarding CDD: Explicitly require customer identification procedures to be followed. Paras. 84 and 85A and para. 75 should be amended to clearly communicate the standard that is expected of FSBs. Originator details should remain with the transfer throughout the payment chain, they should be clarified and strengthened. Decisions on establishing relationships with higher risk customers should be taken by senior management. The section 63 exception, which provides that a senior staff member may give appropriate authority to open an account where identity has not been verified, should be redrafted and clarified. The GFSC should strive for greater consistency to direct FSBs towards the customer identification standards required by the Position Paper:** All of the recommendations have been implemented. See the FSB Regulations and the PB Regulations, together with the GFSC's FSB Handbook.
- 15) **Originator information on funds transfers should remain with the transfer throughout the payment chain, FIs should give enhanced scrutiny to wire transfers with incomplete originator information:** The Wire Transfers Ordinances deal with this.
- 16) **Refer to customer transactions in the definition of customer documents in the Regulations. Amend the Notes to require that records of the currency involved, and the type and identifying number of any account involved in the transaction be maintained:** This has been addressed by the FSB Regulations together with the GFSC's FSB Handbook.
- 17) **Make it a crime to fail to report a suspicious transaction under the POC Law:** The Disclosure Law and amendments to the Terrorism Law have been introduced.
- 18) **Consider providing the FIS with the authority to give instructions to reporting entities or to require FIs to observe instructions of the FIS:** This has been considered and not found necessary to date.
- 19) **Amend the wording of section 102 of the Notes to address suspicion that funds have been used to finance terrorism:** See the Terrorism Law and the FSB Handbook.
- 20) **Regarding the reporting of suspicious, amend the wording to make it clear that all staff have a duty to report suspicions, not just "key staff" (para. 97):** This has been addressed in the Terrorism Law and the GFSC's Handbooks.
- 21) **Internal controls, compliance, and audit: FIs should appoint a person to receive STRs. FIs should notify the GFSC of any change in this respect. All FIs should have proper screening procedures to ensure high standards when hiring. Require all Guernsey FIs to apply Guernsey laws and regulations to branches and subsidiaries outside of Guernsey. These branches and subsidiaries should be**

- required to apply the higher standard:** All requirements have been met (see FSB Regulations and the FSB Handbook).
- 22) **Amend POI Law to allow the GFSC to consider the criminal history of applicants for licenses, directors and senior officers, as part of the definition of ‘fit and proper’:** Amendments to the Protection of Investors Law to cover this are now in place.
  - 23) **Amend the administrative sanctions laws to provide that all FSBs are subject to the same set of sanctions. Amend the law to provide for additional powers for the GFSC not currently in the law:** These requirements have been met by amendments to the Financial Services Commission Law.
  - 24) **Amend the POI to provide the legal authority for the GFSC to enter a licensee’s premises for purposes of assessment and information:** See the Site Visits Ordinance.
  - 25) **Customer identification:** This has been met by FSB Regulations and FSB Handbook.
  - 26) **Banks need documented procedures to ensure proper understanding the nature of a clients’ business and the likely pattern of activity:** See FSB Regulations and the FSB Handbook.
  - 27) **Bank procedures should provide detailed guidance on the type of customer transaction information that should be retained:** See FSB Regulations and FSB Handbook.
  - 28) **Integrity standards:** This is covered by the FSB Regulations and FSB Handbook.
  - 29) **The POI Law should allow the Commission to enter a licensee's premises for purposes of information and assessment:** This has been met by the Site Visits Ordinance.
150. In general, the AML/CFT framework has been revised along the following lines:
- The Disclosure Law and amendments to the Terrorism Law introduced a regime of mandatory reporting. This replaced the previous indirect reporting obligation.
  - Enhanced regulations (the FSB Regulations) have been made in respect of FSBs and an enforceable rules-based regime (the FSB Handbook) was introduced to replace a framework largely based on guidance.
  - A public registration framework, fit and proper requirements and administrative sanctions for registered FSBs have been introduced by the Registered FSBs Law.
  - A requirement for specified information to accompany the transfer of funds has been introduced by the Wire Transfer Ordinances.

- The Alderney eGambling Regulations, 2009 were introduced in respect of Alderney eGambling licensees.
- Changes to the Proceeds of Crime Law were made so that AML/CFT obligations could be required of legal professionals, accountants, and estate agents.
- A regime for the seizure and forfeiture of cash representing the proceeds of crime has been introduced by the Civil Forfeiture Law.
- A declaration system for cross-border movements of cash by travelers has been introduced by the Cash Controls Law.
- A registration system for charities and NPOs has been introduced by the Charities and NPOs Registration Law.
- A power to obtain customer information orders and account monitoring orders has been introduced by amendments to the Proceeds of Crime Law and the Drug Trafficking Law.
- An offense of accepting cash payments in excess of a specified amount by dealers in high value goods has been created by the Proceeds of Crime (Restriction on Cash Transactions) Regulations.
- The GFSC's powers to enter premises and obtain information have been extended by the Site Visits Ordinance.

## **2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES**

### **Laws and Regulations**

#### **2.1. Criminalization of Money Laundering (R.1 and 2)**

##### **2.1.1. Description and Analysis**

###### **Legal Framework**

151. The Bailiwick has criminalized money laundering (ML) through 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). All three laws apply to the whole Bailiwick. The offenses defined in the POCL cover money laundering related to all predicate offenses except drug trafficking offenses as defined in the DTL. FT as defined in the TL is a predicate offense to ML both under the TL and the POCL. In comparison, the scopes of the DTL and TL are limited to drug trafficking and terrorism related predicate offenses, respectively.

###### **Criminalization of Money Laundering (c. 1.1—Physical and Material Elements of the Offense):**

152. As a Crown Dependency, the Bailiwick is not a sovereign state and can, therefore, not sign or ratify international conventions in its own right. Rather, the United Kingdom (U.K.) is responsible for the Bailiwick's international affairs and, following a request by the Bailiwick Government, it may arrange for the ratification of any convention to be extended to the Bailiwick.

153. The U.K.'s ratification of the Vienna Convention has been extended to the Bailiwick on April 9, 2002. The Bailiwick has not yet requested extension of the Palermo Convention because, in consultation with authorities in the U.K., a question has been raised regarding whether the extradition laws that apply currently in the Bailiwick meet fully all Palermo Convention requirements as discussed in Section 6 of this report.

154. As indicated above, the Bailiwick's money laundering offenses are defined through three different acts: the POCL, the DTL, and the TL. Whereas the offenses contained in the POCL and DTL vary only in terms of scope but not with respect to the material elements, the TL's money laundering offenses use different language and will, therefore, be discussed separately.

#### **POCL and DTL**

155. The money laundering offenses of the POCL extend to all criminal offenses triable on indictment. In addition, the money laundering offenses under the DTL cover a number of offenses defined in the DTL, the Misuse of Drugs (Bailiwick of Guernsey) Law 1974 and the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972. The authorities indicated that the 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 offenses would be prosecuted under the POCL.

156. Sections 38 POCL and 57 of the DTL provide that a person is guilty of money laundering if he (1) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct/drug trafficking or converts or transfers that property or removes it from the Bailiwick or the person; (2) knows or suspects that any property is, or in whole or in part directly or indirectly represents another person's proceeds of criminal conduct/drug trafficking and conceals or disguises that property or converts or transfers that property or removes it from the Bailiwick. Until March 24, 2010, the provisions also contained a specific purpose requirement, which was, however, removed after having posed an obstacle to obtaining a conviction for ML in a previous case.

157. Sections 38 (3) POCL and 57 (3) DTL further provides that the reference to concealing or disguising any property includes concealing or disguising its nature, source, location, disposition, movement, or ownership or any rights with respect to it.

158. Sections 40 of the POCL and 59 of the DTL stipulate that "a person is guilty of an offense if, knowing that any property is, or in whole or in part directly or indirectly represents the proceeds of [criminal conduct/drug trafficking], he acquires or uses that property or has

possession of it”, whereby it is expressly stated that “having possession of any property shall be taken to be doing an act in relation to it.”

159. Sections 40 (2) POCL and 59 (2) DTL, respectively, further provide that it is a defense to a charge if a person acquired or used the property or had possession of it for adequate consideration, whereby he/she “acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property” and “uses or has possession of property for inadequate consideration if the value of the property is significantly less than the value of the person’s use or possession of the property.” In connection with that defense, services or goods which are of assistance to the criminal conduct or which the person providing them knows, suspects or has reasonable grounds to suspect may assist the criminal conduct, are not considered adequate consideration.

160. However, the authorities explained that the defense would not pose an obstacle to the application of Sections 40 POCL and 59 DTL, particularly in cases of third party laundering, in that the person acquiring the property (person B) would not have a defense in cases where the rather low threshold, namely, that he/she had “reasonable grounds to suspect that the services or goods may assist the other person (person A) in criminal conduct”, is met. The authorities further stated that the reference to “criminal conduct” would not require that the commission of a certain predicate offense is established. It would suffice to show that person B should have known that his services or goods may assist person A in laundering his/her proceeds of crime.

161. Thus, even though the exception in Sections 40 (2) POCL and 59 (2) DTL are beyond the international standard as set forth in the Vienna and Palermo Conventions, in the context of the Bailiwick there are sufficient safeguards in place to ensure that they cannot be abused for ML or FT purposes.

162. In addition to the above discussed provisions, Sections 39 of the POCL and 58 of the DTL provide that a person is guilty of money laundering if he enters into or is otherwise concerned in an arrangement whereby the retention or control by or on behalf of another (A) of A’s proceeds of criminal conduct/of drug trafficking is facilitated or A’s proceeds of criminal conduct/drug trafficking are used to secure that funds are placed at A’s disposal or used for A’s benefit to acquire property by way of investment and if he knows or suspects that A is or has been engaged in criminal conduct/drug trafficking or has benefited from criminal conduct/drug trafficking. The authorities stated that the removal of the purpose requirement under Sections 38 POCL and 57 DTL resulted in a significant overlap of these provisions with Sections 39 POCL and 58 DTL, the latter would be more geared towards contractual arrangements with the predicate offender; for example, lawyers and TCSPs. Charges against an employee of an insurance company for ML, which are currently pending before the court, were filed based on Section 39 POCL.

## **TL**

163. As indicated above, the provisions of the POCL are applicable with respect to proceeds from offenses defined under the TL, including terrorism financing and terrorism acts. In addition, the TL itself through Section 11 sets out a ML provision which is applicable with respect to “terrorist property,” which is defined to include proceeds of terrorism and terrorism financing offenses.

164. Pursuant to Section 11 of the TL, it is an offense 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 through concealment, removal from the jurisdiction, the transfer to nominees, or through any other way.

165. While Section 11 of the TL covers some of the material elements of the money laundering offenses as defined in the Vienna and Palermo Conventions, the requirement to prove (1) the existence of an arrangement; (2) the involvement of terrorist property; (3) that the arrangement facilitates the retention or control of another's terrorist property; and (4) that the perpetrator knew or should have known at the time the arrangement was made that the property constituted terrorist property would not permit the application of the provision to the full range of situations required by the Conventions. For example, the offense would not cover situations in which a person converts or transfers criminal proceeds for the purpose of disguising or concealing the illicit origin of the property unless the existence of an arrangement can be established beyond a reasonable doubt. Similarly, situations in which a person conceals or disguises the true nature, source, location, disposition of, or rights with respect to proceeds of crime would not be covered unless all three elements of the offense can be established. However, such situations would be covered by and could be prosecuted under the POCL provisions as outlined above.

166. In summary, the ML provisions in the DTL and in the POCL in combination with the TL cover all material elements of the money laundering offenses as defined in the Palermo and Vienna Conventions.

**The Laundered Property (c. 1.2):**

167. The ML offenses under the POCL and the DTL apply to “any property which is, or in whole or in part directly or indirectly represents, ... proceeds of crime”.

168. Sections 50 (1) of the POCL and 68 (1) of the DTL define “property” to include “money and all other property, real or personal, immovable or moveable, including things in action and other intangible or incorporeal property” whether situated in the Bailiwick or elsewhere.

169. Section 4 (1) of the POCL further provides that the term “proceeds” includes “any property obtained by a person at any time [...] as a result of or in connection with criminal conduct” and Section 4 (1) DTL extends the term to “any payments or other rewards received by a person at any time [...] in connection with drug trafficking”.

170. Equally, Section 7 (2) of the TL defines “terrorist property” as any property, which wholly or partly, and directly or indirectly represents the proceeds of or money and property likely to be used for acts of terrorism, including payments or other rewards in connection with its commission. Section 79 of the TL further stipulates that “property” includes “all property, wherever situated and whether real or personal, hereditary or moveable, and things in action and other intangible or incorporeal property.”



171. None of the provisions expressly refer to legal documents or instruments evidencing title to, or interest in such assets. However, the authorities clarified 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 used not only with respect to the money laundering provisions but are fundamental to many different areas of Bailiwick law. For example, Section 10 of the Trusts Law defines “personal property” to include interest in trust property and Section 2 of the Property Law 1979 stipulates that “property” would include both debts and legal remedies. In a number of cases the court has confirmed the authorities’ view on this issue, for example, by confiscating insurance policies as proceeds of drug trafficking based on the argument that the insurance policy would be a legal instrument evidencing title to and the surrender value of the policy an interest in proceeds of crime (*Law Officers of the Crown vs. Naylor 2006*).

**Proving Property is the Proceeds of Crime (c. 1.2.1):**

172. The provisions in the POCL, the DTL, and the TL do not require a conviction for a predicate offense to prove that certain property constitutes proceeds of crime. While this aspect of the ML provisions has not yet been confirmed by the Royal Court, as there have not yet been any convictions for standalone money laundering, the authorities stated that clarification on this matter was expected in the near future as one case involving nine charges for standalone money laundering is currently awaiting trial.

173. With respect to the standard of proof applicable to establish that property stems from an illegal source, the authorities clarified that United Kingdom and Bailiwick case law clearly requires the prosecution to establish beyond a reasonable doubt that the property stems from criminal conduct in general rather than from a specific predicate offense. It was further stated that the “beyond a reasonable doubt” standard would not constitute an obstacle in obtaining convictions for standalone ML. However, in the absence of any successful prosecution for autonomous ML, the authorities’ interpretation is not based on any practical experience and can thus merely be considered an assumption. It is expected that the Royal Court will clarify the issue outlined above in the course of proceedings for the pending autonomous ML case.

**The Scope of the Predicate Offences (c. 1.3):**

174. As indicated above, the money laundering offences of the POCL extend to all offenses triable on indictment. Under Bailiwick law, all offenses which are not exclusively classified as summary offenses constitute offenses triable on indictment, which are more serious offenses.

175. Most laws listed below have been passed by Parliament with application to the whole Bailiwick. A limited number of statutes, however, were initially applied to certain islands only and were subsequently extended to all other islands forming part of the Bailiwick. Through one of these two avenues, at the time of the assessment all laws below were applicable to all parts of the Bailiwick.

Predicate Offense	Law
Participation in an organized criminal group and racketeering	While there are no separate predicate offenses, the category is covered through the offenses of “conspiracy” and “aiding, abetting, counseling and procuring” the commission of an offense as defined in Sections 7, 8 and 12 of Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law 2006 and Section 1 of the Criminal Justice (Aiding and Abetting etc.) (Bailiwick of Guernsey) Law 2007.
Terrorism, including terrorism financing	Sections 4-6, 8-10, 55, 57–60, 63, 66, 71, 72 and 74 of the Terrorism Law.
Trafficking in human beings and migrant smuggling	Section 25 of the Immigration Act 1971, as extended to the Bailiwick of Guernsey by the Immigration (Guernsey) Order, <i>Law Officers of the Crown vs. Wong</i> (2009, as yet unreported).
Sexual exploitation, including sexual exploitation of children	Sections 1–6 , 9 and 12 of the Protection of Women and Girls Law; Sections 1–3 of the Sodomy Law; Sections 1 to 3A of the Protection of Children Law; Customary law offense of rape, <i>Law Officers of the Crown vs. Presland</i> (2007).
Illicit trafficking in narcotic drugs and psychotropic substances	Sections 2 to 4 of the Misuse of Drugs Law; Sections 38 and 41 of the Drug Trafficking Law.
Illicit arms trafficking	Section 3 of the Firearms Law and equivalent provisions in the Firearms (Sark) Law 2001 and the Dangerous Weapons (Alderney) Ordinance 1965.
Illicit trafficking in stolen and other goods	Sections 25 -27 of the Theft Law; Section 23 of the Customs Law.
Corruption and bribery	Sections 1, 3 and 4 of the Prevention of Corruption Law.
Fraud	Sections 1-2, 6-7 and 9-11 of the Fraud Law; Sections 15 to 19 and 22 of the Theft Law.
Counterfeiting Currency	Sections 12 to 17 Forgery and Counterfeiting (Bailiwick of Guernsey) Law 2006.
Counterfeiting and piracy of products	Section 134 of the Copyright Ordinance; Section 31 of the Registered Designs Ordinance; Sections 89 to 92 of the Trade Marks

	Ordinance; Sections 56 to 58 of the Registered Patents and Biotechnological Inventions Ordinance; Section 38 of the Performers Rights Ordinance; Sections 36 to 38 of the Registered Plants Breeders Rights Ordinance.
Environmental crime	Section 9(1) of the Food and Environment Protection Act 1985 extended to the Bailiwick by the Food and Environment Protection (Guernsey ) Order 1987 as amended; Section 11 of the Trans-frontier Shipment of Waste Ordinance 2002.
Murder, grievous bodily injury	Customary law offenses, <i>Law Officers of the Crown vs. Rouget (2008)</i> ; <i>Law Officers of the Crown v Truffit (2007)</i> ; Customary law offence of rape, <i>Law Officers of the Crown vs. Presland (2007)</i> .
Kidnapping, illegal restraining and hostage taking	Customary law offense of kidnapping, <i>Law Officers of the Crown vs. Marsh (2009, as yet unreported)</i> ; Customary law offense of false imprisonment, <i>Law Officers of the Crown vs. Le Prevost (2009, as yet, unreported)</i> ; Section 1 of the Taking of Hostages Act 1982, as extended to the Bailiwick by the Taking of Hostages (Guernsey) Order.
Robbery or theft	Sections 7, 8 and 14 of the Theft Law.
Smuggling	Sections 30, 32, 37, 38 and 40 of the Customs Law.
Extortion	Section 23 of the Theft Law.
Forgery	Sections 1–5 Forgery and Counterfeiting (Bailiwick of Guernsey) Law 2006.
Piracy	Sections 1– 4 of the Aviation Securities Act as extended to the Bailiwick by the Aviation Security (Guernsey) Order.
Insider trading and market manipulation	Section 1 of the Insider Dealing Law; Section 41F of the Protection of Investors Law.

**Threshold Approach for Predicate Offenses (c. 1.4):**

176. The general money laundering offenses of the POCL refer to proceeds of criminal conduct, whereby Section 1 POCL defines “criminal conduct” to include all criminal offenses triable on indictment as well as any conduct that would constitute an offense triable on indictment had it occurred in the Bailiwick. The authorities explained that all offenses which

are not classified as exclusively summary offenses are triable on indictment, whereby the categorization is not based on the extent of the applicable sanction but based on other consideration, such as the gravity of the criminal conduct. The majority of summary offenses constitute public order offenses and violations of road traffic regulations. Predicate offenses constituting customary rather than statutory offenses qualify as offenses triable on indictment based on Sections 10 (1) and 10 (4) of the Magistrates Court Law.

177. In defining the predicate offenses for money laundering, Bailiwick law thus effectively adopts a threshold approach linked to a category of serious offenses.

**Extraterritorially Committed Predicate Offenses (c. 1.5):**

178. All three statutes define the money laundering offenses to cover both conduct which constitutes a predicate offense in the Bailiwick and any conduct committed abroad that would have constituted a predicate offense had it occurred in the Bailiwick (Sections 1 of the POCL and DTL and Section 62 TL). Dual criminality is required only for offenses under the DTL. There are also no jurisdictional provisions that would require any other link between the Bailiwick and the perpetrator, such as citizenship or residence as long as the laundering offense has been committed in the Bailiwick.

**Laundering One's Own Illicit Funds (c. 1.6):**

179. Sections 38 of the POCL and 57 of the DTL make it an offense for a person to conceal, disguise, transfer, or convert criminal proceeds both in cases where the property stems from the commission of a predicate offense committed by another or by the person himself. Equally, the acquisition, possession, or use of proceeds of crime pursuant to Sections 40 POCL and 59 DTL is criminalized regardless of whether the property involved stems from another person's criminal behavior.

180. The TL does not extend the money laundering offense to situations where the terrorist or terrorist financier himself conceals or transfers property to conceal the source of funds or to maintain control over it but covers only persons who do so for or on behalf of somebody else. However, in such cases the self launderer could still be prosecuted pursuant to the provisions of the POCL as outlined above.

**Ancillary Offenses (c. 1.7):**

181. Section 7 of the Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law 2006 criminalizes attempt and conspiracy to commit an offense triable on indictment and Section 1 of the Criminal Justice (Aiding and Abetting etc.) (Bailiwick of Guernsey) Law 2007 provides for the offenses of aiding, abetting, counseling or procuring the commission of any criminal (both triable summarily and on indictment) offense by another person. Both provisions apply to the ML offense set out in the POCL, the DTL and the TL.

182. In addition, Sections 41 (7) of the POCL and 1 (3) of the DTL set out specific ancillary offenses for money laundering, including aiding, abetting, counseling or procuring the commission or attempting, conspiring or inciting to commit such an offense.

183. The Bailiwick law therefore allows for the prosecution of all parties that may be involved in the commission of the money laundering offense. Persons convicted of ancillary offenses under any of the above cited provisions are liable to the same extent as and may be subjected to the same penalties as the primary offender.

**Additional Element—If an act overseas which do not constitute an offense overseas, but would be a predicate offense if occurred domestically, lead to an offense of ML (c. 1.8):**

184. As indicated above, all three statutes define money laundering to cover both conduct which constitutes a predicate offense in the Bailiwick or would have constituted a predicate offense had it occurred in the Bailiwick (Sections 1 of the POCL and DTL and Section 62 TL). Dual criminality is required only for offences under the DTL.

**Liability of Natural Persons (c. 2.1):**

185. All money laundering offenses as outlined above (Sections 38, 39 and 40 POCL, Section 57, 58, and 59 DTL, Section 11 TL) are intentional crimes and therefore apply to persons who knowingly engage in the relevant conduct.

186. With respect to the property in question, the required mental element varies depending on the offense involved:

- With respect to the acts of concealing, disguising, converting, or transferring of criminal proceeds, a person may be held criminally liable if the prosecution can establish beyond a reasonable doubt that the person knew or suspected that the property in question stems from the commission of a crime. When asked why the mental element was changed from “reasonable grounds to suspect” to “actual knowledge or suspicion” on March 24, 2010, the authorities explained that removal of the purpose requirement under Sections 38 POCL and 57 DTL required introduction of an additional safeguard to ensure that the provisions would not effectively result in a strict liability.
- For the offense relating to the acquisition, possession, or use of criminal proceeds, the required mental element is actual knowledge that the property in question constitutes criminal proceeds.
- For the acts of assisting another person to retain the benefit of crime, it suffices that the prosecution can establish beyond a reasonable doubt that the perpetrator knew or suspected that the person with whom he/she entered into an agreement is or has been engaged in or has benefited from criminal conduct. While it is not required that the prosecutor establishes the perpetrator’s actual knowledge about the criminal source of the property involved, the defendant has a defense and therefore a right to acquittal if he/she can establish by preponderance of evidence that he did not actually have knowledge of the criminal nature of the property in question.

- For money laundering based on the predicate offenses of terrorism or terrorism financing, the TL does not expressly stipulate a mental element requirement with respect to the nature of the property, but provides that the defendant has a defense if he/she can prove by a preponderance of evidence that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

187. At a minimum, and with respect to all acts constituting money laundering, a person may thus be held criminally liable for money laundering if he or she acted intentionally and with the knowledge that the property involved stems from a criminal source. The Vienna and Palermo Conventions set forth a minimum standard that the perpetrator acts in the knowledge that the laundered property is the proceeds of crime. Intent as defined under Bailiwick law, therefore, meets the international standard with respect to the mental element requirement.

**The Mental Element of the ML Offense (c. 2.2):**

188. None of the three laws contain a provision clarifying whether or not the mental element may be inferred from objective factual circumstances. A fundamental principle of Bailiwick law, however, which is derived from both customary Bailiwick law and the common law of England and Wales, allows for the mental element of an offense to be inferred from objective factual circumstances. The principle applies to any criminal offense, including money laundering, and has been confirmed by the Royal Court in *Law Officers of the Crown vs. Taylor* (2007-08 GLR 207).

**Liability of Legal Persons (c. 2.3):**

189. The money laundering provisions of the POCL, the DTL, and the TL apply to any “person” without differentiating between legal and natural persons. Section 9 of the Interpretation (Guernsey) Law 1948 provides that the term “person” shall include legal persons unless it is stated otherwise. While the Interpretation Law by its terms applies only to Guernsey, its provisions expressly apply to any Bailiwick-wide criminal statute (Sections 51(2) POCL, 69(2) DTL and 79(3) TL).

190. In addition, Section 49E POCL and Section 67O DTL provide that offenses under the two statutes committed by legal persons or partnerships may result in criminal liability of both, the body corporate or partnership and its individual partners, directors, managers, secretary, or other officers.

**Liability of Legal Persons should not preclude possible parallel criminal, civil, or administrative proceedings and (c. 2.4):**

191. The language of the money laundering offenses does not preclude the possibility of parallel criminal, civil, or administrative sanctions for perpetrators that are legal entities. The authorities confirmed that both criminal and civil/administrative proceedings could be instituted against legal persons at the same time but that in practice this has never been done as no criminal proceedings have ever been instituted against legal persons. If parallel proceedings were to be instituted, there would need to be close cooperation between the regulatory authority and the AG’s office to ensure that the administrative action does not have an adverse impact on criminal proceedings.

**Sanctions for ML (c. 2.5):**

192. Pursuant to Sections 38 (4), 39 (6) and 40 (10) POCL, Section 62 (1) DTL and Section 17 TL, for ML convictions on indictment, the applicable sanctions for both natural and legal persons are imprisonment for a term not exceeding 14 years and/or an unlimited fine. The sanctions for summary convictions range from imprisonment for a term not exceeding 12 months (in cases of ML based on the TL, the applicable sanction is six months) and/or a fine not exceeding £10,000. In addition, confiscation of the benefit may be ordered as outlined under Recommendation 3 of this report.

193. The sanctions for money laundering seem to be in line with other serious crimes under Bailiwick law. For example, blackmailing and handling of stolen goods may be sanctioned with imprisonment of up to 14 years, and corruption, insider dealing, and market manipulation may be sanctioned with imprisonment of up to 12 months and/or a fine (upon summary conviction) or with imprisonment for a term not exceeding 7 years and/or a fine (upon conviction on indictment). The Bailiwick's sanctions for money laundering are almost identical to those applied by the United Kingdom, the Isle of Man and Jersey.

194. In addition to the criminal sanctions stipulated in the POCL, the DTL, and the TL, criminal courts may oblige convicted money launderers to pay compensation to the victims of the crime (Section 1 Compensation Law) and the Guernsey Financial Services Commission (GFSC) may impose a range of administrative sanctions, including a fine of up to £200,000, withdrawal or suspension of an existing or refusal to issue a new license or the imposition of conditions to existing licenses. Upon application of the GFSC or the AG, the court may further disqualify a person from holding office in a financial institution or any other business or having any involvement in a financial services business and may issue an injunction to restrain unlawful business.

195. At the time of the assessment mission, the authorities indicated that there were two convictions for ML, both of which were sanctioned with imprisonment but not fines. The authorities stated the courts would usually punish criminal conduct either with a fine or imprisonment, but not both. The first conviction resulted in imprisonment for two years and three months and the second one was sanctioned with imprisonment for 15 months. No sanctions have ever been applied to legal entities.

<b>Year</b>	<b>ML Offence</b>	<b>Plea</b>	<b>Relevant Previous Convictions</b>	<b>Sentence</b>
<b>2006</b>	0	0	0	0
<b>2007</b>	s.38 POCL	G	No	2 years & 3 months imprisonment
<b>2008</b>	s.38 POCL	G	No	15 months imprisonment
<b>2009</b>	0	0	0	0

**Statistics (applying c. 32.2.):**

196. Statistics in respect of all investigations, prosecutions, and convictions for money laundering offenses are kept by the FIU, based on data collated by them and on information supplied by the police force and the Attorney General's Chambers.

197. Since 2006, the Bailiwick has conducted 31 investigations for ML, of which five led to a prosecution. Of the five prosecutions, two resulted in a conviction based on a guilty plea for both the ML and the predicate offense and one case for autonomous ML is still ongoing. Two cases were terminated based on the failure or inability of the witness to testify in the first case and based on the defendant's preparedness to plead guilty on the more serious predicate offenses in the second case. All prosecutions related to self-laundering. The ML convictions were both obtained based on Section 38 POCL.

198. Of the remaining 26 investigations, 16 were terminated or suspended based on lack of evidence and 10 are still ongoing. The majority of ML investigations related to theft, fraud, embezzlement, human trafficking, and drug trafficking predicate offenses. Since the beginning of 2010, three investigations for ML involving financial sector participants were initiated.

199. The statistics for the last 4 years are as follows:

<b>Year</b>	<b>Investigations</b>	<b>Referrals to prosecutors</b>	<b>Prosecutions</b>	<b>Convictions</b>
	ML	ML	ML	ML
<b>2006</b>	4	2	0	0
<b>2007</b>	7	2	2	1
<b>2008</b>	8	3	2	1
<b>2009</b>	7	1	1	0
<b>2010</b>	5	0	0	0

**Implementation and effectiveness:**

200. The Bailiwick's legal framework for investigating, prosecuting and sanctioning ML offenses is applicable to both legal and natural persons and the ML provisions are fully in line with the international standard. Bailiwick officials are extremely well informed about the various requirements of the ML offenses under the POCL, DTL, and TL and the effective application of the provisions is further facilitated by a mature, stable, and comprehensive institutional framework.

201. The statistics provided by the authorities indicate a good number of investigations for ML when compared to other countries based on GDP and number of population. However, taking into account the size of the Bailiwick's financial sector in comparison to other economic sectors coupled with its status as international financial center, until the end of 2009, only one out of 26 cases involved third party ML by a financial sector participant. The authorities



conceded that more emphasis should be put on identifying financial crime within the domestic financial sector, including in cases where the predicate offense was committed abroad, and that to achieve this goal, an attorney specialized on financial crime was hired by the AG's office at the end of 2009. Among other things, the attorney's task would involve assisting the FIU with the screening of incoming MLA requests to identify possible criminal conduct within the domestic financial sector. As a direct result of this measure, five ML investigations have already been commenced since 2010, including three that involve third party ML by financial sector participants. At the time of the on-site mission, one of these cases was already in the prosecution stage.

202. Furthermore, the Bailiwick has a relatively low number of investigations resulting in a prosecution and eventually a ML conviction. The authorities stated that while they considered the initiation of all ML investigations to have been warranted, a disconnect between the number of investigations vis-à-vis the number of prosecutions and convictions for ML would be the result of law enforcement authorities' practice to initiate an investigation for ML in most cases involving proceeds generating conduct. Law enforcement authorities stated that they had agreed with the AG's decision to not initiate prosecutions in most cases.

203. The authorities are making efforts to develop Bailiwick jurisprudence on autonomous money laundering, which will give the court the opportunity to clarify (1) whether money laundering can be sanctioned even in the absence of a conviction for the predicate offense and (2) in cases involving autonomous ML, how specific evidence needs to be with respect to the predicate offense.

### 2.1.2. Recommendations and Comments

- The authorities should continue to focus their attention on identifying ML crimes within the domestic financial sector. Furthermore, the authorities should further examine the underlying reasons for the disconnect between the number of ML investigations vis-à-vis the number of ML prosecutions and convictions and take measures to overcome any identified obstacles.

### 2.1.3. Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
<b>R.1</b>	<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 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>
<b>R.2</b>	<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 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</li> </ul>

		cases prosecuted and eventually resulting in a conviction calls into question the effective application of the ML provisions.
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## **2.2. Criminalization of Terrorist Financing (SR.II)**

### **2.2.1. Description and Analysis**

#### **Legal Framework**

204. Bailiwick law criminalizes the financing of terrorism through Sections 8–10 of the TL and Sections 4 and 5 of the Terrorism (UN Measures) (Channel Islands) Order 2001. As indicated under Recommendation 1, the Bailiwick is a Crown Dependency and cannot sign or ratify international conventions in its own right. Rather, the United Kingdom is responsible for the Bailiwick’s international affairs and may arrange for the ratification of any convention to be extended to the Bailiwick.

205. The U.K.’s ratification of the International Convention for the Suppression of the Financing of Terrorism (“FT Convention”) has been extended to the Bailiwick on September 25, 2008. Of the remaining 15 international counter-terrorism related legal instruments, only the Unlawful Seizure Convention, the Civil Aviation Convention, the Diplomatic Agents Convention, and the Nuclear Material Convention have been extended to the Bailiwick. Extension of the Airport Protocol has been requested but not yet been granted.

#### **Criminalization of Financing of Terrorism (c. II.1):**

206. Section 8 of the TL constitutes the main terrorism financing offense. The provision makes it an offense for a person to receive or provide or invite another to provide money or property where the person either intends that the property should be used or knows or has reasonable grounds to suspect that the property may be used for the purpose of terrorism.

207. Section 9 of the TL criminalizes the use of money or other property for purposes of terrorism as well as the possession of money or property with the intention to use it for terrorism or having reasonable cause to suspect that it may be used for terrorism.

208. Section 10 of the TL furthermore provides that it is an offense for a person to enter into or become concerned in an arrangement as a result of which property is made available or is to be made available to another and the person knows or has reasonable cause to suspect that it will or may be used for purposes of terrorism.

209. Pursuant to Section 7 of the TL, the term “terrorist property” extends to money or other property likely to be used for the purpose of terrorism, including resources of a proscribed organization, as well as the proceeds of the commission of terrorist acts and acts carried out for the purpose of terrorism. Section 79 further specifies that “property” includes property situated in the Bailiwick or elsewhere, including real or personal, hereditably or moveable, and things in action and other tangible or incorporeal property.

210. In addition to the TL, Section 4 of the Terrorism (UN Measures) (Channel Islands) Order 2001 provides that it is a criminal offense to invite another to provide funds or to receive or provide funds with the intention that they be used, or knowing or having reasonable cause to suspect that they may be used, for the purposes of terrorism and Section 5 criminalizes the provision of funds, financial assets, economic benefits or financial services to or for the benefit of a person who commits, attempts to commit, facilitates or participates in the commission of terrorism or who is controlled, owned, directly or indirectly, or is acting on behalf of or on the direction of such a person.

211. The Terrorism (UN Measures) (Channel Islands) Order defines the term “funds” widely to extend beyond cash and balances in bank accounts to include instruments such as securities dividends and letters of credit. The term “economic resources” is also given a relatively wide definition and includes assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.

212. The international standard requires that the terrorist financing offense extends to any person who provides or collects funds by any means, directly or indirectly, with the intention that they be used for terrorist acts, by a terrorist organization or by an individual terrorist.

### **Terrorist Acts**

213. Section 1 of the TL defines “terrorism” as the use or threat of action where (1) the act involves serious violence against a person or damage to property, endangers a person’s life other than that of the person committing the act, creates a serious risk to the health or safety of the public or a section thereof, is designed to interfere with or seriously disrupt an electronic system, or involves the commission of an offense or is an act of the type described in Schedule 1 of the law and (2) the use or threat is designed to influence a government or international organization or to intimidate the public or a section thereof and is made for the purpose of advancing a political, religious, or ideological cause.

214. If any of the acts listed under (1) involve firearms or explosives and are committed for the purpose of advancing a political, religious, or ideological cause, it is considered terrorism regardless of whether the requirements listed in (2) are met.

215. Under the FATF standard, “terrorist acts” include (1) offenses as defined in the nine Conventions and Protocols listed in the Annex to the FT Convention and (2) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

216. With respect to the generic terrorism offense, the scope of Section 1 of the TL covers most aspects of the FATF definition. However, the generic offense under Bailiwick law provides that only acts undertaken or threats made with the intention of advancing a political, religious, or ideological cause would constitute “terrorism.” This approach, which adds an

element not set forth in the FT Convention, is one that a number of countries have adopted to ensure the generic definition is not used in circumstances where it was not intended. The authorities should assess the advantage of this approach in the domestic context in implementing the Convention, and ensure that the Bailiwick's ability to prosecute in factual settings contemplated by the Convention would not be negatively impacted.

217. With respect to Convention offenses, Section 1 of the TL contains an express reference to the offenses defined in the nine Conventions and Protocols listed in the Annex to the FT Convention. Bailiwick law is thus fully in compliance with the FATF standard on this point.

### **Terrorist Organizations**

218. Section 1 (5) of the TL provides that any reference to "action taken for the purpose of terrorism" would include action taken for the benefit of a proscribed terrorist organization. Sections 8, 9, and 10 of the TL, therefore, apply to the provision or collection of funds for the benefit of proscribed terrorist organizations. In addition, Section 5 of the TL criminalizes the provision of support other than through money or property to proscribed organizations. An organization is proscribed if it is listed in Schedule 1 to the TL, whereby the authorities explained that the list in Schedule 1 would be taken over from the U.K. legislation.

219. Section 8 of the TL may also apply to situations where a person collects or provides funds that he/she has reasonable cause to suspect may be used by terrorist organizations. For example, if a person funds a terrorist organization that has not been "proscribed" by the State, it may be assumed that he/she has reasonable cause to suspect that the money may be used for terrorism and may therefore be held criminally liable for terrorism financing pursuant to Section 9 TL. In addition, Section 5 of the Terrorism (UN Measures) (Channel Islands) Order 2001, which is directly applicable in Guernsey, makes it a criminal offense to make any funds or financial services available to or for the benefit of a legal or natural person who commits, attempts to commit, facilitates or participates in the commission of terrorism, or who is controlled or owned directly or indirectly by such a person, or who acts on behalf of or on the direction of such a person.

220. Under the TL, the standard of "reasonable cause to suspect" that the funds "may" be used for terrorism is a relatively low one. In the absence of jurisprudence on this point, however, the court has not yet confirmed that the provision of living and private expenses to a terrorist organization would be covered by the Sections 5–10 of the TL. Even if the court were to confirm this, evidence can be adduced to rebut the assumption. Nevertheless, based on Section 5 of the Terrorism (UN Measures) (Channel Islands) Order 2001, the provisions albeit not the collection of funds for the benefit of terrorist organizations not "proscribed" by the State would also be criminalized.

### **Individual Terrorists**

221. The TL does not expressly criminalize the financing of individual terrorists, nor does it contain a definition of the term "terrorist." However, Sections 5–10 of the TL extend to situations where a person collects or provides funds that he/she has reasonable cause to suspect may be used for terrorism. The authorities stated that a person who provides funds to an

individual terrorist would be assumed to have reasonable cause to suspect that the money “may” be used for terrorism and could therefore be held criminally liable for terrorism financing under the TL. As indicated in relation to the financing of terrorist organizations the standard of “reasonable cause to suspect” that the funds “may” be used for terrorism is a relatively low one but the court has not yet determine that the provision of living and private expenses to an individual terrorist would be covered by Sections 5–10 of the TL.

222. However, as in the case of non-proscribed terrorist organizations, the provision of funds to such individuals is a criminal offense under the Terrorism (UN Measures) (Channel Islands) Order 2001.

### **Definition of Money and Property**

223. The terrorism financing offenses under Section 8, 9, and 10 refer to the provision of “money or other property” which pursuant to Section 79 TL includes property wherever situated and whether real or personal, hereditary or moveable, and things in action and other intangible or incorporeal property. While the provision does not expressly refer legal documents or instruments evidencing title to, or interest in such assets, based on the definition of “intangible” and “immovable” property as contained in laws and commentaries relating to other areas of the law (as outlined under Recommendation 1), it can be concluded that with respect to proceeds of crime the terms would be interpreted to cover the same scope and, therefore, extend to any type of property, including legal documents or instruments evidencing title to, or interest in the above referenced types of assets.

224. The language of Section 79 TL is not limited to property that stems from illegitimate sources and the authorities confirmed that terrorism property as defined in Section 3 in connection with Section 1 of the TL would extend to property from illegal as well as legitimate sources. The terrorism financing provisions do not require that the funds provided are actually used to carry out or attempt the commission of a terrorist act or that the funds are linked to a specific terrorist act. It is merely required that the funds are intended for use in the commission of a terrorist act or that the financier has reasonable cause to believe that they will be used for terrorism or for the benefit of a proscribed terrorist organization.

225. The Terrorism (UN Measures) (Channel Islands) Order defines the term “funds” widely to extend beyond cash and balances in bank accounts to include instruments such as securities dividends and letters of credit. The term “economic resources” is also given a relatively wide definition and includes assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.

### **Ancillary Offenses**

226. Section 7 of the Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law 2006 criminalizes attempt and conspiracy to commit an offense triable on indictment and Section 1 of the Criminal Justice (Aiding and Abetting etc.) (Bailiwick of Guernsey) Law 2007 provides for the offenses of aiding, abetting, counseling or procuring the commission of any criminal offense (both triable on indictment or summarily) by another

person. Both provisions apply to the FT offense set out in the TL and the Terrorism (UN Measures) (Channel Islands) Order 2001. In addition, Section 79 of the TL provides for the ancillary offenses of aiding, abetting, counseling, or procuring the commission of terrorist financing. Guernsey law, therefore, allows for the prosecution of all parties that may be involved in the commission of a terrorism financing offense.

**Predicate Offense for Money Laundering (c. II.2):**

227. Terrorism financing as contained in Sections 8 – 10 of the TL and Section 5 of the Terrorism (UN Measures) (Channel Islands) Order 2001 are offenses triable on indictment and thus constitutes predicate offense for the ML provisions under the POCL. In addition, the ML offense contained in Section 11 of the TL is applicable with respect to FT predicate offenses.

**Jurisdiction for Terrorist Financing Offense (c. II.3):**

228. Section 62 TL provides that a person may be held criminally liable for any acts committed outside Guernsey that would have constituted a terrorism financing offense pursuant to Sections 8–11 of the TL had they been committed in the Bailiwick. Furthermore, the term “action” includes any action outside the Bailiwick; “person or property” includes any person or property, wherever situated; and “the public” extends to the public of any country or territory other than the Bailiwick.

229. The terrorist financing offenses of the TL, therefore, apply regardless of whether the person alleged to have committed the offense is in the same or a different country from the one in which the terrorist or terrorist organization is located or the terrorist act occurred or will occur. There are also no jurisdictional provisions that would require any other link between the Bailiwick and the perpetrator, such as British citizenship or residency in the Bailiwick.

**The Mental Element of the TF Offense (applying c. 2.2 in R.2):**

230. As outlined above, the terrorism financing offenses under the TL 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.

231. As in the case of the POCL and the DTL, the TL does not expressly provide that the intentional element required for the commission of the terrorism offense may be inferred from objective factual circumstances. However, a fundamental principle of Bailiwick law, derived from both customary Bailiwick law and the common law of England and Wales, allows for the mental element of an offense to be inferred from objective factual circumstances. The principle applies to any criminal offense, including money laundering, and has been confirmed by the Royal Court in *Law Officers of the Crown vs. Taylor (2007- 08 GLR 207)*.

**Liability of Legal Persons (applying c. 2.3 & c. 2.4 in R.2):**

232. The terrorism financing offenses of the TL apply to any “person” without differentiating between legal and natural persons and Section 1 (4) TL provides that the reference extends to any person, wherever situated. Section 9 of the Interpretation (Guernsey) Law 1948 applies the term “person” to both natural and legal persons. While the Interpretation

Law itself is a Guernsey only law, its provisions expressly apply to any Bailiwick-wide criminal statute (Sections 51(2) POCL, 69(2) DTL, and 79(3) TL).

233. The language of the terrorism financing offenses does not preclude the possibility of parallel criminal, civil or administrative sanctions for perpetrators that are legal entities. The authorities confirmed that both criminal and civil/administrative action could be instituted against legal persons at the same time, although in practice criminal proceedings would take priority. At the time of the assessment, no proceedings for FT have been initiated with respect to legal entity.

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

234. Section 17 TL provides that terrorism financing offenses pursuant to Sections 8, 9, and 10 may be sanctioned with imprisonment for a term not exceeding 14 years, to an unlimited fine or to both (upon conviction on indictment) or with imprisonment for a term not exceeding six months, to a fine not exceeding £10,000 or both (upon summary conviction). The Bailiwick's criminal sanctions for terrorist financing are almost identical to those applied by the United Kingdom, the Isle of Man, and Jersey.

235. In addition to the sanctions stipulated in the TL, criminal courts may require convicted terrorist financiers to pay compensation to the victims of the crime (Section 1 Compensation Law), and the GFSC may impose a range of administrative sanctions, including a fine of up to £200,000, withdrawal or suspension of an existing or refusal to issue a new license, against current or former license holders or its officers. Upon application of the GFSC or the AG, the court may further disqualify a person from holding office or having any involvement in a financial services business and may issue an injunction to restrain unlawful business.

236. As there has never been a conviction for terrorist financing in the Bailiwick, no sanctions have ever been imposed. In 2006, one investigation for FT has been instigated in the Bailiwick but was later referred to the United Kingdom, where the case is still pending.

**Statistics (applying c. 32.2.):**

Year	Investigations	Referrals to prosecutors	Prosecutions	Convictions
	FT	FT	FT	FT
2006	1	0	0	0
2007	0	0	0	0
2008	0	0	0	0
2009	0	0	0	0

**Implementation and effectiveness:**

237. The authorities seem to be familiar with the FT provisions. However, at the time of the assessment, there has only been one FT investigation, which was triggered by an MLA request,

and no prosecution relating to terrorism financing cases. As the terrorism financing offenses thus have never been tested before the courts in the Bailiwick, it is difficult to assess their effectiveness.

### 2.2.2. Recommendations and Comments

- Consider the impact of including in the FT offense “intention of advancing a political, religious, or ideological cause” on the Bailiwick’s ability to successfully prosecute in the factual settings contemplated by the FT Convention.

### 2.2.3. Compliance with Special Recommendation II

	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

#### Legal Framework

238. The framework for provisional measures and confiscation of proceeds of crime in the Bailiwick is found on the following laws all of which apply Bailiwick-wide:

- The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, as amended (“POCL”);
- The Drug Trafficking (Bailiwick of Guernsey) Law, 2000, as amended (“DTL”);
- The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (“TL” or “Terrorism Law”);
- The Forfeiture of Money, etc. (Bailiwick of Guernsey) in Civil Proceedings Law, 2007 (“Civil Forfeiture Law”); and
- The International Cooperation Law.

239. Provisions of the POCL may be applied in the case of all criminal offenses under the laws of Guernsey, including the terrorism and terrorist financing offenses, with the exception of drug trafficking. The DTL sets forth similar provisions that apply in the case of drug trafficking offenses. The TL contains a second set of provisions that can be used to forfeit property if there is a conviction for: terrorism financing; use or possession of property for the purposes of terrorism; funding arrangements in support of terrorism; or laundering terrorist property. The Civil Forfeiture Law provides for forfeiture of cash in civil proceedings. Forfeiture in such a circumstance can occur using a lower burden of proof.



**Confiscation of Property related to ML, FT or other predicate offenses including property of corresponding value (c. 3.1):**

**Proceeds**

**Crimes other than Drug Trafficking**

240. Part I of the POCL provides for confiscation, restraint, and charging orders in the case of all crimes other than drug trafficking. The POCL may be used in the case of FT offenses, and as noted below, there are additional provisions available under the TL. Section 2 of the POCL provides that the Royal Court may issue a confiscation order, if requested by the Attorney General, at sentencing where a person has been found guilty of a criminal offense. The Court must be satisfied that the offender has benefited from criminal conduct; that is, that he has obtained property or a pecuniary benefit as a result of or in connection with such conduct.

241. If the offender has benefited, the court must determine the amount to be recovered and order the defendant to pay the amount of the benefit or, if the full amount is not available, the realizable amount at the time the order is made. Alternatively, the court may order the amount it thinks fit if victims have instituted or are contemplating civil proceedings. The POCL also contains provisions to recover additional amounts of benefit above the realizable amount, at a later point, should the authorities find that a defendant has or later acquires additional assets. Section 16, POCL and DTL.

242. The amount to be recovered is the value of the defendant's proceeds of criminal conduct. In determining whether the defendant benefited and the amount, the court must make certain assumptions unless the assumption is shown to be incorrect as to the defendant, or the court is satisfied there would be a serious risk of injustice if the assumption were made. See, e.g., Section 4(3)(4), POCL.

243. The required assumptions are that any property held by the defendant at any time since his conviction, or transferred to him during the six years before the proceedings were instituted, was received by him in connection with his criminal conduct, and that expenditures in the period were from property received in connection with criminal conduct. The effect of the provisions on assumptions is that, once convicted, all unexplained wealth is reachable including proceeds of other criminal conduct (conduct other than that which led to the conviction).

244. "To benefit from criminal conduct" is defined as to obtain property as a result of, or in connection with the offender's or any other person's criminal conduct, and any pecuniary advantage is treated as a sum of money corresponding to the value of the advantage. If the court has determined there is a benefit, it must make a confiscation order.

245. The standard of proof in determining whether a person benefited and the amount to be recovered is a balance of probabilities. If the defendant fails to pay the amount ordered, the court may order a defendant imprisoned with a sliding scale of maximum terms keyed to default amounts set forth in the statute (Section 9, POCL). Such imprisonment does not extinguish the obligation to pay which remains outstanding until fully satisfied. There are also provisions to appoint the Sheriff as receiver to realize property in cases where a confiscation order has not been satisfied. (Section 29, POCL).

### **Drug Trafficking**

246. The confiscation provisions for drug trafficking offenses in the DTL are similar to those described above for all other offenses in the POCL. In the case of drug trafficking offenses, however, the Royal Court may proceed under the provisions for confiscation even if the Attorney General has not asked the court to do so. In addition, special provisions when a victim seeks to be compensated are absent.

247. The law also refers to “payments or other rewards” received in connection with the criminal conduct rather than “property” received (Section 4). The manner in which the court is to assess the benefit, and the procedures to realize confiscated amounts that remain unpaid, parallel similar provisions in the POCL.

### **Terrorism**

248. Section 18 of the TL provides, for criminal forfeiture when a defendant is convicted of any of four offenses under the TL. The offenses are: 1) fundraising for purposes of terrorism (including receiving and providing property for purposes of terrorism); 2) use or possession with intent to use property for purposes of terrorism; 3) involvement in funding arrangements for the purposes of terrorism; and 4) laundering terrorist property.

249. The use of “forfeiture” for these specific terrorism offenses, rather than “confiscation,” stems from the fact that the order, rather than relating to a sum equivalent to an illegal benefit, relates—in the case of fundraising and money laundering offenses—to the money and other property that an offender possesses or controls at the time of the offense with the intention it be used for terrorism purposes (including the financing of terrorism) or where the defendant had reasonable cause to suspect that it might be used for that purpose. The court may also order forfeiture of any payment or other reward received in connection with the commission of the terrorism offense. The forfeiture orders provided for by the TL are issued at the discretion of the court. An application by the prosecutor is not necessary.

250. Schedule 2 to the TL provides additional details regarding the implementation of forfeiture order provision. It provides, among other things: that the Court may require the money or other property be provided to the Sheriff; that it may direct property other than land be sold; that it may appoint a receiver to take possession of land; and that it may direct the Sheriff to pay part of the recovery to persons other than the defendant who claim interests. It also provides for restraint orders to prohibit persons from dealing in any property that is liable to forfeiture.

### **Laundered Property**

251. Laundered property is subject to confiscation in all instances including stand-alone money laundering prosecutions because of the breadth of the property that is recoverable upon conviction, namely, all benefits of the criminal conduct. “Benefits” of criminal conduct includes all property that is obtained as a result of, or in connection with, the offender’s or any other person’s criminal conduct. Section 2, POCL.

252. Under U.K. case law (*R vs. Allpress and Ors*) that would be relied on in the Bailiwick based upon the same statutory language as POCL where a stand-alone money launderer does

not retain ownership of tainted property, that is, where funds have only passed through his bank account, the property is treated as a benefit as long as the defendant had operational control at any stage. Thus, the launderer will be liable for the totality of the funds that have been transferred through his hands or accounts, even when the financial reward he is receiving is much less than the amount transferred.

253. With a limited number of criminal prosecutions in the Bailiwick for money laundering, the issue of recovery of laundered funds in a stand-alone money laundering prosecution has not yet been faced. The authorities are of the view that this issue would be decided in line with U.K. case law which is favorable on this point.

### **Property in Third Party Hands**

254. The standard requires that there be an avenue to recover proceeds, instrumentalities, laundered property, or corresponding value in third party hands where the defendant has alienated such. With the value-based rather than proceeds-based approach in Guernsey, the legal provisions call for the full amount of the proceeds/benefit to be recovered from any property of the defendant.

255. The property of the defendant includes any property that he/she has gifted away in the six years before proceedings have been instituted, and any property the defendant received in connection with his or another's criminal conduct and gave away (Section 8, POCL). In this circumstance, a receiver appointed by the court can seek to recover property in third-party hands that the defendant gifted away, with the caveat that a bona-fide purchaser who establishes his bona-fide status with respect to the property can defeat this. This is consistent with the protection for bona-fide third parties reflected in Criterion 3.5 of the Methodology for Recommendation 3.

256. Stated another way, it does not matter whether the defendant or a third party is in possession of the proceeds or property of equivalent value. If the defendant does not voluntarily pay the amount of the benefit, under Section 29 of the POCL, the court may appoint the Sheriff as receiver to enforce charges imposed upon realizable property in order to satisfy the confiscation order. "Realizable property" is defined in Section 6 of both the POCL and DTL as "any property held by the defendant and any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law."

257. The authorities have successfully restrained property in third-party hands.

### **Instrumentalities**

258. The authorities may recover instrumentalities of crime under a number of different provisions.

### **General Provision (Instrumentalities)**

259. A general criminal law-related provision to recover instrumentalities of crime applies in the case of any offense. It applies to instrumentalities that were seized in the course of a criminal investigation or proceeding or that were in the possession or control of a defendant when he was apprehended. Under Section 3 of the Police Property and Forfeiture Law, the

court may forfeit the instrumentalities upon conviction. The effect of the court's order is to deprive the offender of any rights he had in the property. This provision applies to all offenses.

### **Drug Trafficking and Terrorism (Instrumentalities)**

260. Additionally, Bailiwick law contains specific provisions for the forfeiture of instrumentalities in the case of drug trafficking and terrorism offenses. Instrumentalities used in or intended to be used for drug trafficking offenses, whether they arise under the Misuse of Drugs Law or the DTL, are subject to forfeiture under Section 26 of the Misuse of Drugs Law 1974. That section provides that the court may order anything shown to its satisfaction to relate to the offense to be forfeited and either destroyed or dealt with in such other manner as it orders. The Customs Law (Section 57(1)) also provides for the forfeiture of property used to transmit or conceal (e.g., vehicles, aircraft, etc.) items as drugs that are subject to forfeiture.

261. As noted above, for criminal conduct covered by the TL, Section 18 of that law provides for the forfeiture of property a defendant possessed or controlled which he intended, knew or had, at the time of the offense, reasonable cause to suspect would be used for the purposes of terrorism.

### **Property of Corresponding Value**

262. The structure of Guernsey's confiscation regime, as set forth in the POCL and DTL, incorporates the concept of equivalent value. This is because in both instances, the legislation provides for the convicted defendant to pay a sum that reflects the value of the proceeds ("benefits") of his criminal conduct. A confiscation order is executed on the assets ("realizable property") of the offender, regardless of whether those assets have any relation with the offense. Since the POCL may apply to financing of terrorism offenses, it is also possible to recover equivalent value in the case of such offenses.

263. The provisions to restrain property in anticipation of confiscation in the POCL and DTL permit the restraint of property of equivalent value as the system is value rather than proceeds-based and the restraint of realizable property is envisioned. See "Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2)" below regarding provisional measures. The provisions also make such restraints available at the investigatory stage. Section 25, POCL.

### **Confiscation of Property Derived from Proceeds of Crime (c. 3.1.1 applying c. 3.1):**

264. At the time of the on-site mission, there was nothing specific in the Bailiwick law to cover confiscation of income, profits, or other benefits that derive from proceeds and in a value-based system that can be included in the Court's assessment of the proceeds of criminal conduct and their value. In assessing the proceeds of criminal conduct under Section 4(1), a person's proceeds are "property obtained by a person at any time (whether before or after commencement of this Law) as a result of or in connection with criminal conduct carried on by him or another person." A person benefits if one obtains "property as a result of or in connection with his or any other person's criminal conduct; and if he has derived a pecuniary advantage as a result of or in connection with criminal conduct, 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) POCL.

265. It could be argued that these provisions contemplate, for “proceeds of crime” and “benefit” only the property that was obtained at the point in time (when the offense occurred), and that it does not include a later separate outcome from holding that property (interest, income) although it would cover specific items as real estate or artwork that increases or decreases in value.

266. However, according to Guernsey authorities, the relevant legal provisions have not been applied in this way, and, of course, this is also an argument that under statutory language, interest, income and profits are covered. In the Bailiwick, as a matter of practice, interest, income and profits have been assessed by the court to be part of the benefit. However, there is no specific jurisprudence establishing this. To address this issue and leave it without doubt, on July 28, 2010, amendments to the POCL and DTL were adopted which make explicit the coverage for interest, dividends, or other forms of income or value. Sections 2(3) POCL and DTL

267. In the case of drug trafficking offenses, the court is to determine whether the defendant benefited from drug trafficking. Under the DTL, a person has benefited if he has received any payment or other reward in connection with drug trafficking (either his or another’s). If he derived a pecuniary advantage, he is to be treated as if he received a sum of money equivalent to the value of the pecuniary advantage. Section 2(2)-(3). The provision in the DTL raises the same issue.

268. The question would also necessarily arise in determining how much of property held or owned by a third party could be sought.

269. As noted above, if the offense is FT, confiscation is possible using either the provisions of the POCL or, in many circumstances, forfeiture under the provisions of the TL. Under the TL, proceeds from committing an FT offense are one kind of terrorist property. Terrorist property in turn is subject to forfeiture. Under Section 7(2) of the TL, proceeds include property “which wholly or partly, and directly or indirectly, represents the proceeds” of the terrorism-related act and includes payments or other rewards in connection with its commission. Consequently, it appears when the TL forfeiture provisions are used, all derived benefits are covered. In addition, at the time of the amendments to the POCL and DTL, the TL was also amended to explicitly cover interest, dividends and other forms of income and value. Section 7(1)(a) TL.

### **Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2):**

#### **Proceeds of Crime Law (Provisional Measures)**

270. Measures to preserve assets, both proceeds and property of corresponding value, subject to eventual confiscation are found in POCL, Articles 25–28. Preservation of assets is accomplished through restraint orders (Section 26), realty charging orders (Section 27), and personality charging orders (Section 28). Each such order is available both where criminal

proceedings have been or are about to be instituted, and where a criminal investigation has commenced in Guernsey against the defendant for an offense to which POCL applies. (Section 25). The Court must be satisfied that the defendant, or in the case of an investigation, the alleged offender, has benefited from his criminal conduct.

271. Under the POCL, a restraint order is a court order that prohibits persons from dealing with any realizable property, subject to any conditions and exceptions as are specified in the order. Section 26(1). It may apply to all realizable property a specified person holds and to realizable property that has been transferred to a specified person after such an order has been made. Section 26(2). While the provision permits the Attorney General to seek, and the Court to grant, restraint orders that extend to all property a person holds, the authorities indicated they apply the provisions in a manner appropriate to the extent of the possible benefits.

272. Such orders may always be varied or discharged, and affected persons may seek such variation or discharge at any time. Section 25(6)(7). Once property is restrained, the court may appoint HM Sheriff as receiver to take possession of it and manage it, and also may direct any person holding such property to deliver it to HM Sheriff, and specific authority for the authorities to seize it to prevent removal from the Bailiwick. Section 26(4) and 26(6).

273. Real property located in the Bailiwick may be addressed through realty charging orders which secure payment of the amount of a confiscation order, if there is one, or the full value of the real property if such an order has not yet issued. Section 27. Similarly, personality charging orders may be issued that secure payment against such things as securities of companies that are registered in the Bailiwick, securities of the States of Guernsey, Alderney or Sark, and vessels registered in the Bailiwick. Section 28. The authorities have used realty charging orders in the post-conviction context. They have also a simple and effective method to restrain real property prior to confiscation with copies of the restraint order lodged with the title so as to give notice to any potential purchasers.

274. If necessary and either an order to produce the material is not complied with or other conditions make it necessary to seize rather than restrain property, the police may apply to the Bailiff for a search warrant and the Bailiff may grant such order. Section 46, POCL.

275. The DTL has provisions to restrain assets in anticipation of a confiscation or for the imposition of charging orders that parallel those in the POCL. They apply in the case of drug trafficking offenses. Sections 25–28, DTL. As with the POCL, restraints and charging orders are available if proceedings have been or are about to be instituted, or if an investigation has commenced, and under Section 64, there is a possibility to seize benefits where a restraint is unlikely to be effective.

### **Terrorism financing (Provisional Measures)**

276. In addition to the provisional measures available through the POCL which can also be used in the case of the offense of terrorism financing, the TL has provisions to restrain property in support of any eventual forfeiture provided for under that law. Property liable to forfeiture includes property in respect of which a forfeiture order has been made, or property in the possession or under the control of a person against whom proceedings for an FT offense has been instituted or who is under investigation for an FT offense covered by the TL. Schedule 2,

paragraph 3 and Section 18. The TL at Schedule 5 also provides for the issuance of warrants to search and seize property.

### **General Seizure Provision**

277. Under Section, 14, Police Powers and Criminal Evidence Law 2003, at the investigative stage, in the course of a search, the police have a general power in the course of an authorized search to seize an item if there are reasonable grounds to believe an item has been obtained in consequence of the commission of an offense, or if it has evidentiary value. There must also be reasonable grounds to believe it is necessary to seize the property in order to prevent it being concealed, lost, damaged, altered, or destroyed. Criminal proceeds could fall under these categories. This would apply, however, only to proceeds and not to assets unrelated to the offense that represent equivalent value. The latter would be addressed only through the provisions of the POCL and DTL.

### **Ex Parte Applications for Provisional Measures (c. 3.3):**

278. Regardless of the nature of the crime, whether drug trafficking, terrorist financing or other serious offense, the application to restrain and seize property in support of a confiscation order may be made on an *ex parte* basis. Section 25(5), POCL and DTL. Applications are made by the Attorney General to the Bailiff in chambers. Although issued on an *ex parte* basis, once an order is made and in effect, notice of the order must be provided to persons affected by the order.

### **Identification and Tracing of Property subject to Confiscation (c. 3.4):**

279. The POCL and DTL have similar, parallel provisions for investigations of criminal conduct which provide a number of avenues to secure information and evidence on the extent and location of proceeds and other property subject to confiscation. These provisions assist the police in identifying and tracing property subject to confiscation.

280. The police, with the consent of the Attorney General, may apply to the Bailiff for an order to make specified material available for purposes of investigations 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 Bailiff is to grant the order if: i) there are reasonable grounds for suspecting a specified person has engaged in or benefited from criminal conduct; ii) there are reasonable grounds for suspecting that the material is likely to be of substantial value to the investigation; and iii) there are reasonable grounds for believing it is in the public interest to grant the order. Section 45, POCL, Section 63, DTL. According to the authorities, police have ready access to prosecutors in seeking authority to ask the Court for such orders. In Guernsey practice, these orders are sought and granted regularly with an average of about 8–9 per year. The TL at Schedule 5 para. 4–7 also provides for such orders in the case of criminal investigations for the terrorism offenses specified in that law.

281. If necessary, and either an order to produce the material is not complied with or other conditions make it necessary to seize rather seek the production of documents or other materials, the police may apply to the Bailiff for a search warrant and the Bailiff may grant such order. Section 46, POCL, Section 64, DTL. The TL at Schedule 5 also provides for the

issuance of search warrants and orders for the production of materials relevant to investigations for offenses under that law.

282. The laws also provide for applications by the Attorney General or by a police officer to the Bailiff for customer information orders and account monitoring orders. Customer information orders may require either all or specified financial service businesses as noted in the order to provide customer information on the person specified in the application including the existence, number and balance of accounts of the person specified. Sections 48A–48B, POCL; Section 67A, DTL; Section 37 and Schedule 6, Terrorism Law. The substantial value to the investigation and public interest standards must be met for issuance of a customer information order. See, e.g., Section 48C, POCL.

283. An account monitoring order requires the financial services business to provide for the period specified in the order, which may not exceed 90 days, ongoing account information to a police officer. Section 48H, POCL; Section 67H, DTL; Section 39 and Schedule 7, TL. The standards for issuance of the order are similar to those required for customer information orders. See, for instance, Section 48I, POCL. In Guernsey practice, account monitoring orders have been used successfully.

284. In the case of investigations into serious fraud (which includes money laundering), insider dealing, or market abuse, there are special investigatory powers available without a court order to the Attorney General. The Attorney General may require the person under investigation, or any other person where there is reason to believe the person has relevant information, to answer questions or produce specified documents. The Attorney General may also ask the court for a search and seizure warrant. Section 1, Criminal Justice (Fraud Investigation) Law 1991; Section 10–13, Insider Dealing Law; Section 41L, Protections of Investors Law.

### **Protection of Bona Fide Third Parties (c. 3.5):**

#### **POCL and DTL (Protection of Third Parties)**

285. The POCL and DTL have largely parallel provisions that address bona-fide third parties. In assessing the value of realizable property under the POCL and DTL, the rights of creditors and of bona-fide third parties are protected through several provisions. This is accomplished by defining the “amount that might be realized” as the total value of property less the value of any obligations that have priority. Section 6, POCL. The value of that property is defined as its market value less, if another person holds an interest in the property, the amount required to discharge any encumbrance on the interest. Section 7, POCL. Thus, the value of any third-party interest in any realizable property is not considered realizable property.

286. However, a gift made to a third party, if it falls within the meaning of a “gift caught by this Law” is realizable property, and is not recognized as a valid third-party interest.

287. Both the POCL and DTL at Section 29(8) provide that there be a reasonable opportunity for persons holding an interest in property to make representations to the court before the court takes steps to realize the property. Additionally, the Court and Sheriff, in using



their powers to realize property, must exercise those powers with a view to allowing bona-fide third parties to retain or recover the value of any property they have held. Section 31(4), POCL and DTL.

288. Where property has been restrained, any person affected by the order may apply for a discharge or variation of the order. Section 25(7) POCL and DTL. In addition, all affected persons must be provided notice of restraint and charging orders. Section 25(5) (c), POCL and DTL.

### **Terrorism Law (Protection of Third Parties)**

289. In the case of forfeiture of terrorist property (including proceeds and instrumentalities) in connection with convictions for terrorism offenses specified in the TL including FT, Section 18(7) makes specific provision for third parties. If a third party claims he is the owner or otherwise interested in property to be forfeited, the court must afford the third party an opportunity to be heard before making the order.

290. Where property is restrained pursuant to provisions in the TL, there must be notice to any persons affected, and such persons may apply for the restraint to be discharged. Schedule 2, Sections 4(1) (c) and (4).

### **General Right**

291. In addition, there is a general right for any person who is adversely and wrongly affected by a confiscation or forfeiture measure to apply to the court for judicial review.

### **Instrumentalities (Protection of Third Parties)**

292. Under Section 1(1) of the Police Property and Forfeiture Law 2006, any third party who believes he is entitled to an instrumentality or any other property in the possession of the police may apply to the court for return of the property.

### **Power to Void Actions (c. 3.6):**

293. A common and customary law principle that applies in the Bailiwick is that any contract that is illegal or contrary to public policy can be set aside. *Gaudion v Weardale (1998) 25 GLJ61*.

294. In addition, Guernsey's confiscation provisions are structured to deal with property in situations where a person could be taking action that would thwart the ability of the authorities to recover property otherwise subject to confiscation. As noted above, any gifts made in the six years before proceedings commence are considered realizable property. Interests include beneficial interests. The court may order a person holding an interest in realizable property to pay a sum to the Sheriff equivalent to the gift recipient's interest or the defendant's beneficial interest. The court may grant, transfer, or extinguish interests in property.

295. In addition, since actions aimed at hindering recovery are likely also to constitute money laundering or financing of terrorism or ancillary offenses to these offenses, the recovery of property could take place in the course of such a proceeding.

**Statistics (R. 32):**

296. POCL and DTA provisions to restrain and confiscate proceeds of crime are used in domestic cases, and also in many situations for international requests.

297. The FIU maintains statistics on confiscation and provisional measures undertaken in the Bailiwick. The following statistics, which cover the years 2006 through 2009, are based upon material provided by the FIU.

**Confiscation****Proceeds/benefits confiscated and proceeds/benefits repatriated without confiscation**

<b>Year</b>	<b>Confiscated/Repatriated No. of Cases</b>	<b>Amt of confiscation order</b>	<b>Amt realized/paid</b>
2006	<b>10 total:</b>		
Confiscated	9 local Drug Trafficking (DT)	£79,944	£65,766
	1 Int'l (U.K. human trafficking)	£3,551	£3,551
2006	<b>1 total:</b>		
Repatriated	Ponzi case (to U.S.)		£1,810,455*
			*(2,636,205(usd))
2007	<b>10 total:</b>		
Confiscated	9 local Drug Trafficking	£68,525	£65,421
	1 Int'l (Drug Trafficking)		£267,496
2007	<b>0 total</b>		
Repatriated			
2008	<b>5 total:</b>		
Confiscated	5 local Drug Trafficking	£68,026	£65,106
2008	<b>1 total:</b>		
Repatriated	Ponzi case (to U.K.)**		£416,207*
			*(£606,029(USD))
2009	<b>9 total:</b>		
Confiscated	7 local Drug Trafficking	£96,530	£37,027
	2 Int'l (Drug Trafficking)		£2,351,244
2009	<b>0 total</b>		
Repatriated			

2010	<b>2 total:</b>		
Confiscated	1 local Drug Trafficking	£200	£200
	1 Int'l (Drug Trafficking)	£707,109	£707,109
2010	<b>2 total</b>		
Repatriated	Ponzi case (to U.K.)**		£888,673
	U.K. Revenue Fraud		£229,045
2010 Figures through May 31, 2010			

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Totals of Amounts Recovered Jan. 2006 - May 2010

Local (Drug Trafficking)	£234,520
International (Drug Trafficking)	£3,329,400
International (Other)	£3,551
Int'l Repatriated (Ponzi Fraud—one case)	£3,115,335
Int'l Repatriated (Revenue Fraud—one case)	£229,045
<b>Total:</b>	<b>£6,911,851</b>

298. As the figures above indicate, authorities have successfully recovered £6,911,851 in the last four and a half years. No confiscations or repatriations were based upon ML or FT charges. Rather, they were in connection with a predicate offense, almost uniformly drug trafficking in the case of confiscation, and for repatriations one major fraud case (Ponzi scheme) and one revenue matter.

299. On amounts frozen, authorities indicate that in the years 2006–09, amounts frozen including both domestic cases and those pursuant to MLA requests totaled £109,795,203 as follows:

**Amounts restrained (Domestic Cases and at International Request)**

Year	Frozen	
	No. of Cases	Amount
<b>2006</b>	18	£104,469,834
<b>2007</b>	14	£2,192,950
<b>2008</b>	8	£234,427
<b>2009</b>	8	£2,897,992
<b>Total</b>		<b>£109,795,203</b>

300. As of May 31, 2010, approximately £219,365,274 was under restraint. This amount exceeds the total amounts restrained from 2006–2009 as it also includes property restrained at international request in 2004 and 2005.

**Amounts under Restraint as of May 31, 2010**

	<b>DT</b>	<b>ML</b>	<b>Other</b>	<b>Total</b>
<b>Domestic Cases</b>	£53,289	£701,850	£0	£755,139
<b>Int'l Cases</b>	£0	£0	£218,610,135	£218,610,135
<b>Total Under Restraint</b>				£219,365,274

301. In the entire period, there have been only two restraints in ML cases, and none relating to FT. One ML case is awaiting trial. In the other, the restraint was lifted when the ML prosecution was discontinued because with the age of the principal witness, the prosecution was not viable. In the two cases in which ML convictions were obtained, both involving bank officials who received custodial sentences for self-laundering, neither provisional measures nor confiscation were used. In one case, approximately £8,475 of stolen funds was repaid. In the second, none of the £277,335 taken could be located. In this latter case, at the time of sentencing, with a defendant who had no assets to pay a benefit, the court made an order of a nominal amount as the realizable amount so as to permit a recovery at a later point should there be realizable assets in the future.

**Additional Elements (Rec 3)—Provision for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (c. 3.7):**

**Property of Organizations Principally Criminal in Nature**

302. In Guernsey, the property of organizations criminal in nature is subject to confiscation on the same basis as is available for criminal confiscation generally either through actions against such organizations that are legal persons or through actions against its members. Criminal organizations that are legal persons are subject to criminal liability in Guernsey and if convicted on criminal charges, are liable to confiscation to the full extent of its criminal benefits. To the extent that the value of the criminal organization's property is equivalent to the criminal benefit, all such property would be reachable. Because of the assumptions that come into play in the course of a criminal prosecution, the unexplained criminal wealth of the organization would be recovered, and the recovery would not be limited to the proceeds or benefits of the criminal conduct for the offenses of conviction. 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. Civil forfeiture is also available for such property to the extent that it is funds and represents the proceeds of unlawful conduct.

**Civil Forfeiture**

303. Guernsey enacted a Civil Forfeiture Law in 2007 that applies to cash and bank accounts with a balance in excess of £1,000. The law permits the civil forfeiture of such cash that is the proceeds of unlawful conduct or is intended for use in unlawful conduct. The law also provides for the restraint of property and investigatory powers in support of civil forfeiture actions. Funds in a bank account may be frozen by the court upon showing of reasonable grounds to suspect that the funds are proceeds of unlawful conduct. Section 10.

304. Procedural rules that will apply to cases under the Civil Forfeiture Law are currently under review and authorities expect they will be adopted shortly. Unlike other cases heard in

the Guernsey system, civil forfeiture cases will be by the Bailiff sitting alone: no jurats (jurors) will be involved. As of the time of the assessment, there were no cases of civil forfeiture before the court nor had the court enforced a foreign forfeiture order using the new act. Authorities expect the provisions of the new law will be particularly useful in their efforts to assist authorities of other jurisdictions in mutual assistance requests, but there as with domestic requests, the provisions will apply only in the case of cash and bank account deposits.

305. Police officers may seize cash based upon the same grounds for a 48-hour period which then may be extended by judicial authorities. The provisions of the law apply to all offenses including those under the POCL, DTL, and TL.

### **Offender Demonstrating Lawful Origin**

306. Guernsey has provisions that have the effect of requiring a defendant to demonstrate the lawful origin of property. There is a mandatory assumption that defendant's assets in the six years preceding the institution of charges were proceeds of crime. This assumption must be made unless the assumption is shown to be incorrect in the specific case, or the court is satisfied that there would be a serious risk of injustice if the assumption were made. Section 4, POCL.

### **Analysis**

307. The Bailiwick has a comprehensive legal framework that permits the confiscation of proceeds of crime, including proceeds from money laundering and terrorist financing offenses. It includes provisions for provisional measures. These allow restraint and charging orders both before and after proceedings have commenced.

308. The value-based system the Bailiwick has makes it easier to address benefits of criminal activity since the authorities need not find the actual proceeds or trace such proceeds into their substitutes, but can rely on any assets of the defendant, including those he has alienated, to recover the benefits of criminal activity. The POCL and TL together provide avenues to recover not only the proceeds of terrorist activity but terrorist property of all kinds including funds to be used for terrorist purposes and instrumentalities.

309. Law enforcement and prosecution officials indicate that the provisions in the POCL and other laws that provide for the investigation, restraint and confiscation of proceeds and benefits have worked well in practice. Officials are able to secure production, account monitoring and restraint orders in appropriate cases and ultimately to secure a confiscation order.

310. At the time of the on-site mission, there was nothing specific in the Bailiwick's provisions that indicated definitively that income, profits or other benefits that derive from proceeds are covered as proceeds or benefits of crime. Although in practice, authorities had thus far have recovered such property without challenge, the statutory framework was not clear on this point. Subsequent to the on-site mission, the Bailiwick adopted a provision that clarifies that such income and profits are covered.

### **Implementation and effectiveness**

311. As noted above, Guernsey has an excellent statutory framework in place, including civil forfeiture provisions applicable to cash, to address proceeds, benefits and instrumentalities. When the provisions are used, they appear to work well, although there are a

limited number of cases to draw larger conclusions. The statistics as set forth above, however, indicate that since 2006 the effective use of the provisions, in terms of actual confiscation of assets, has thus far largely been limited to recovering benefits in drug trafficking matters: aside from the voluntary repatriation of a large amount at foreign request in one Ponzi matter. However, the Bailiwick now has substantial funds under restraint, mostly at foreign request, and the authorities have indicated that they will be working towards recoveries both in these matters and in new cases as it further implements its strategy to focus on financial sector criminal activity, on developing ML cases and on recovering proceeds and benefits in a wider range of matters.

### 2.3.2. Recommendations and Comments

- It is clear that the authorities are committed to using the confiscation provisions of the POCL and DTL to recover assets in every proceeds-generating financial—and other—crime prosecuted in the Bailiwick, as well as in connection with international matters. In cases successfully prosecuted in recent years, which as the chart above indicates are primarily drug trafficking cases, the confiscation provisions have been used. The authorities should increase efforts to use their robust framework in a more effective way to address financial sector criminal activity in addition to drug trafficking and use the confiscation provisions in such matters. The authorities have indicated they are committed to reviewing more carefully activities in the financial sector, and to developing investigations and cases that are consistent with the Bailiwick’s profile as a financial center. With this, it can be expected that there will be additional strides in the effective use of their very robust provisions.

### 2.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
<b>R.3</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Although the Bailiwick’s provisions are robust, and they are used routinely in all prosecutions where they can be applied, they have not yet been used in a fully effective manner because of the few cases instituted in proceeds-generating matters other than drug trafficking.</li> </ul>

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

### 2.4.1. Description and Analysis

#### Legal Framework

312. Guernsey implements the obligations to freeze funds of persons and entities subject to sanctions under UNSCR 1267 and successor resolutions and UNSCR 1373 and related resolutions through two orders, the Terrorism (United Nations Measures) (Channel Islands) Order 2001 (“Terrorism Order 2001”) and the Al-Qa’ida and Taliban (United Nations Measures) (Channel Islands) Order 2002 (“Al-Qa’ida Order 2002”). These two Orders-in-Council were made in the United Kingdom under the U.K’s United Nations Act 1946 and extended to the Channel Islands. Their validity was confirmed on a temporary basis (until

December 31, 2010) by the U.K.'s 2010 Terrorist Asset Freezing (Temporary Provisions) Act 2010. They are law in Guernsey (Section 1(4), United Nations Act 1946).

313. Authorities in Guernsey recognize that their reliance on the 2001 and 2002 Orders-in-Council will have to be re-evaluated in light of the decision of the U.K. Supreme Court in *HM Treasury vs. Ahmed and others* [2010] UKSC 2 (United Kingdom Supreme Court 2). That Court found similar Orders-in-Council applicable in the United Kingdom to be *ultra vires*.

314. The U.K. Court expressed a number of concerns. A primary one, that the orders had been issued under the United Nations Act 1946 by the executive without any kind of Parliamentary scrutiny, has been remedied for the time being by the U.K. Parliament's enactment of the 2010 Terrorist Asset Freezing (Temporary Provisions) Act 2010. It provides that certain Orders-in-Council, including the ones that apply in the Channel Islands, are deemed to be validly made under, and within the power conferred by, the United Nations Act 1964, and that the prohibitions and obligations under them have legal force. This act remains in effect until December 31, 2010. The Supreme Court decision expressed concern about the breadth of the reasonable suspicion test under a similar Terrorism Order, and the absence of any effective judicial remedy regarding designation under a similar Al Qa'ida Order. According to the authorities, the United Kingdom and Guernsey will be formulating new legislation before the end of 2010.

315. Additionally, other legal measures, those that apply generally for criminal investigations and prosecutions under Guernsey law, are available to address terrorism-related assets, including those used or intended for use in the financing of terrorism. These measures may be used, in some circumstances, to effect a freeze that is required to comply with the UNSCRs. They permit the restraint, seizure, and confiscation/forfeiture of assets in specified circumstances. The provisions are addressed in the section on Provisional Measures in Section 2.3.1 (Recommendation 3) of this Report.

316. Finally, but only in the case of threats to the economy of Guernsey or to the life or property of nationals of the United Kingdom or residents of Guernsey, there is an administrative procedure for the issuance of a freezing order under Section 20 of the Terrorism Law. Such an order, which does not require the intervention of a court, prohibits persons from making funds available to or for the benefit of the person specified in the order. The Bailiwick's Policy Council is empowered to issue the order. This TL provision could be used, in the narrow circumstances where it can be applied, to assist the authorities in effecting compliance with the UNSCR obligations.

#### **Freezing Assets under UNSCR 1267 (c. III.1):**

317. The Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002 provides Guernsey authorities with a legal basis to freeze, as a sanction, the funds of the persons and entities listed under UNSCR 1267 and successor resolutions. This Order provides for the freezing of funds through a notice issued by the Attorney General where the Attorney General has reasonable grounds to suspect that funds are or may be held by, or are or may be under the control of, a listed person (Section 8).

318. The Order also makes it an offense to make any funds available to or for the benefit of a listed person, or a person acting on behalf of a listed person (Section 7), or to contravene a direction not to make funds available that was made by notice under Section 8 (Section 8(9)). Notices may take immediate effect or effect on a specified date. The authorities indicated that they recognized the obligation to freeze immediately under the UNSCRs, and the provision to permit a notice to take effect on a specified date was in order to leave discretion to avoid injustice, for instance to a third party, and would be used only in extraordinary circumstances.

319. A listed person is defined as Osama Bin Laden or any person designated by the Sanctions Committee in the list maintained by that Committee in accordance with UNSCR 1390 (January 16, 2002) as a member of the Al-Qa'ida organization, or Taliban or an individual, group, undertaking, or entity associated with such persons.

320. The Order provides that the Attorney General as the licensing authority may issue a notice directing that funds are not to be made available to any person except under the authority of a license he grants if he has reasonable grounds to suspect that "the person by, for or on behalf of whom any funds are held is or may be listed." (Section 8). There is no requirement of prior notice to the designated person, but persons holding funds, once they receive such a notice and thus begin to implement their obligation to withhold funds, must provide the owner of the funds with a copy of the notice. Section 8(5). The law does not set forth a prohibition on prior notice. Rather, there is no obligation to provide prior notice. The authorities are of the view that the prohibition is implicit.

321. Section 7 provides the exception to the prohibition against making funds available. Funds may be made available pursuant to a license granted by the Attorney General.

322. The Order also provides that it is a criminal offense for a financial services business to fail to disclose any knowledge or suspicion that a customer, previous customer, or other person with whom it has dealt, is a listed person or acting for such person. (Section 10). The offense provision does not cover non-financial businesses and persons such as lawyers, accountants, or non-profits. Such persons, however, are required under other laws to report suspicions of the financing of terrorism and criminal penalties apply to a failure to do so.

323. To meet the freeze without delay, requirements of UNSCRs 1267/1390 and UNSCR 1373, Guernsey has adopted a framework where the obligation to freeze depends upon funds having been located and the Attorney General issuing a freeze notice. Even in the absence of such notice, however, it is a criminal offense to make funds available to a person or organization on the 1267/1390 list, or to a person who is a terrorist under UNSCR 1373.

324. Representatives of the Law Officers Chambers have indicated that as part of the overall review of legislation applicable in Guernsey to implement the UN resolutions, which is necessary because of the *Ahmed* decision but was underway even before the decision was issued, consideration will be given to adopting an approach that is no longer dependent upon specific funds having been identified and an administrative order specific to those funds being issued. The Bailiwick authorities are currently drafting an Ordinance under the EU implementation law which will adopt the approach that European countries, including the United Kingdom, use of directly applicable regulations as to the persons on the UN 1267 list,



and persons identified on the EC external list and directly applicable requirements regarding an internal list. This more robust approach to compliance with the UN sanctions regime would strengthen Guernsey's framework to freeze without delay in appropriate circumstances.

**Freezing Assets under UNSCR 1373 (c. III.2):**

325. The Terrorism (United Nations Measures) (Channel Islands) Order 2001, an Order-in-Council also made in the United Kingdom under the U.K.'s United Nations Act 1946, gives effect to UNSCR 1373. Under Section 1(4), the Order is law in Guernsey. The Order provides for a freezing regime, similar to the one used in the case of UNSCRs 1267 and 1390. Under Section 6, the Attorney General, who is designated as the licensing authority, may issue a notice to freeze any funds held by, for, or on behalf of a person who commits or attempts to commit or participates or facilitates the commission of terrorism, or a person controlled by such a person.

326. With regard to who falls within the ambit of the definition of terrorist under UNSCR 1373, the decision would be made by the Attorney General in the course of the consideration of whether to issue a freezing notice. There is no pre-existing list of persons designated under UNSCR 1373 as in the United Kingdom for U.K. residents or under the European Community list for persons external to the European Community. Because thus far no funds have been located within the Bailiwick that would be subject to a freeze, there has been no determination that a person falls under UNSCR 1373 and that his funds should be frozen. The standard for issuing such a notice is "reasonable ground for suspecting" that a person "is or may be" a person in the proscribed category.

327. Although the statutory standard under the current Order includes the possibility of issuing a notice if a person "may be" a person in the proscribed category, the Law Offices Chamber indicated that, in light of the 2010 decision of the highest court in the United Kingdom in the *Ahmed* case, such a notice would be issued only under the stricter standard of suspecting a person is a person within the proscribed category.

328. Under Section 5 of the Order, it is an offense to make funds or financial services available to such persons.

329. As in the case of notices under the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002, no requirement exists that the designated person be given prior notice, but persons holding funds, once they receive a notice and thus begin to implement their obligation to withhold funds, must provide the owner of the funds with a copy of the notice. Section 6(5). The Order does not set forth a prohibition on prior notice.

330. Under Section 5, it is an offense for any person to make funds available to or for the benefit of a person who commits or attempts to commit or participates or facilitates the commission of terrorism or a person controlled by such a person. There is, however, no clear indication to financial institutions, non-profits, or others regarding who would fall in this category as the Bailiwick has no list based upon binding law or regulation as there is the United Kingdom or in EU countries. Nor is there any specific guidance—only a general suggestion regarding looking at lists appearing on the U.K.'s official website that contains an updated

version of the UN list under UNSCR 1267, and the internal and external U.K. lists for UNSCR 1373—as to who might be a terrorist under UNSCR 1373. Accordingly, convictions under this provision may be difficult in many circumstances.

331. There is an exception to the prohibition on making funds available if the Attorney General has granted a license that permits the provision of payments, support, etc.

332. The Order also provides that it is criminal offense for an institution to fail to disclose any knowledge or suspicion that a customer, previous customer or other person with whom it has dealt is a person who commits, attempts to commit, participates in, or facilitates terrorism. (Section 9). This criminal provision suffers from the same issue as noted above with Section 5.

**Freezing Actions Taken by Other Countries (c. III.3):**

333. According to the authorities, Guernsey is prepared to consider and give effect to freezing actions of other states at their request. However, it has not received such a request. Such a request is most likely to be received through official U.K. channels, since the United Kingdom acts for Guernsey in international matters, or through a foreign law enforcement request.

334. Authorities indicate they would use the freezing powers provided under the two relevant Orders (the Al-Qa'ida and Terrorism Orders) to effect freezes that have been requested by another country. The Law Offices Chambers, in consultation with other authorities as needed, would evaluate the request immediately, and consult with U.K. authorities who handle similar requests. The Attorney General would make the decision based upon the information provided whether to issue a Notice of a Freeze. The statutory standard would apply reasonable grounds to suspect that funds are or may be held by, or are under the control of, a listed person (Al-Qa'ida Order, Section 8) or a person involved in terrorism (Terrorism Order, Section 6).

335. Thus, according to the authorities, were they to receive credible information from another jurisdiction that assets of a person on the UN list issued pursuant to Resolutions 1267/1390 or of a person that another country believes falls under the ambit of Resolution 1373 were located in Guernsey, it would issue a notice to the holder of the assets in Guernsey, in the latter case assuming the authorities agreed with the requesting country that the individual/organization was covered by UNSCR 1373.

336. Even in the absence of the Attorney General's issuance of a notice, there is an indirect obligation on anyone holding funds or assets of a person listed pursuant to UN Resolutions 1267/1390 to freeze those assets. This is because it is an offense to make funds available to a listed person (Section 7, Al-Qa'ida Order). However, until the Attorney General issues such a notice, there is no affirmative obligation to freeze funds, only the possibility of criminal liability in the absence of a freeze.

337. In the case of a person whose assets should be frozen as a sanction under UNSCR 1373 based upon another state's conclusion that the person is one who commits or attempts to commit terrorist acts, upon receiving a request from such jurisdiction, the Attorney General is

called upon to decide whether he agrees with the requesting state's determination that the person whose assets are to be frozen is a terrorist within the meaning of UNSCR 1373.

338. More generally, Guernsey has not incorporated into its system the external terrorist list that applies in the European Union through EU Regulation or the U.K. internal list. Such lists are consulted, but they have no binding effect.

339. In addition, actions by other states designating persons subject to targeted sanctions under UNSCR 1373, that is names on foreign lists, such as the U.S. Office of Foreign Assets Control (OFAC) list, are generally taken into account on a voluntary basis by many financial sector participants. They are used in evaluating transactions that may be suspicious and should be reported to the FIU, and in conducting risk-based assessments of customers and persons seeking to become customers. It is not clear that this is the case with respect to non-financial businesses and professions or NPOs.

**Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):**

340. Both the Al-Qa'ida and Terrorism Orders at Section 2 provide a broad definition of funds. The term means "financial assets, economic benefits and economic resources of any kind and economic benefits of any kind." Examples are also provided including "interest, dividends or other income on or value accruing from or generated by assets".

341. Although comprehensive as to the kind of asset that is included in the concept of "funds," there is nothing explicit in definition of "funds" that indicates that assets that are jointly owned, indirectly owned, or controlled by the person are covered.

342. Some aspects of this, however, are addressed in the sections of the Orders that identify the funds that are to be frozen. Section 8(1) of the Al-Qa'ida Order and Section 6(1) of the Terrorism Order specify that the funds to be frozen extend to funds held for or on behalf of a person. Thus, funds that are controlled or indirectly owned are covered under the provisions. Although in the legal instruments, there is nothing explicit regarding property that is jointly owned, the authorities are of the view that this is implicit in the sanctions regime, and that the jurisprudence developed under relevant similar sections makes it very clear that it would not matter whether the property was owned in full or jointly owned. See, e.g., *Law Officers of the Crown vs. Baum (2007)*. The assessors accept this position.

**Communication to the Financial Sector (c. III.5):**

343. The system in Guernsey calls for the issuance of notices to persons/institutions holding funds which direct them not to make funds available. Since there are not general notices to all institutions/persons to freeze any funds they might have of persons on the UNSCR 1267/1390 list or that are covered by UNSCR 1373, but rather only specific notices to institutions/persons known or believed to be holding such funds, on one level the communication issue is one of ensuring that the Attorney General provides the holding institution/person the notice immediately upon its issuance.

344. The person to whom the order applies will be notified immediately by service of the order on him, or with service to his last known address if necessary. See, e.g., Section 8(6), Al-

Qa'ida Order. In addition, procedures are in place for the Attorney General to notify specified persons at the Guernsey Financial Services Commission and for the Commission to publicize the notice making financial service sector participants aware of it.

**Guidance to Financial Institutions (c. III.6):**

345. Under the kind of freezing mechanism that Guernsey uses, there is a direct obligation to freeze funds only if the Attorney General has issued a Freezing of Funds Notice to a specific entity or person. The obligation is limited to the person specified in the Notice.

346. In this circumstance, guidance, on one level, is that provided in connection with specific Freezing of Funds Notices, particularly notices to the specific entities/persons regarding what actions to take pursuant to the Notice. This is provided by guidance notes that accompany a Freezing of Funds Notice. These notes cover not only the freezing itself, but also on how to seek a revocation of the Notice and how to apply for a license to disburse funds.

347. On another level is the guidance provided generally to financial institutions and others. The GFSC website sets forth information under a section on sanctions. It references the two Orders and provides a page with additional information from Guernsey's Law Offices of the Crown. The web page also contains a general reference to UN sanctions. This covers all kinds of sanctions, not only those relating to financing of terrorism. After indicating that many of the sanctions prohibit the provision of services or assistance to named individuals, it notes that the full list of individuals may be found in the financial sanctions section of the U.K. HM Treasury website and provides a link to that website. Finally, there is a note that breach of sanctions may result in criminal prosecution, and should readers have any doubt as to their position in relation to sanctions, they should seek professional legal advice.

**De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7):**

348. Authorities have indicated that, as the U.K. government acts for the Bailiwick in international affairs, in the case of a request for a de-listing, the Attorney General would consult with U.K. authorities and would rely on the U.K.'s procedures for de-listing. These procedures were reviewed in the course of the most recent mutual evaluation of the United Kingdom, and considered sufficient. There have been no requests to Bailiwick authorities for de-listings. Were there such a request, the authorities have indicated that person seeking the de-listing would not be required to provide information in any particular form, and would be free to provide anything he or she considers relevant.

349. Once de-listed, the procedure for unfreezing of funds would be through revocation of the Freezing of Funds Notice. Under Section 6(3) of the Terrorism Order 2001 and Section 8(3) of the Al-Qa'ida Order 2002, the Attorney General may by notice revoke a Freezing of Funds Notice. Judicial intervention is not required.

350. The procedures for a revocation based upon a de-listing or a de-listing request are referenced in the Attorney General's Guidance Note that accompany a Freezing of Funds Notice and further specified in "A Guide to Revocation Notices under the Terrorism (United Nations Measures) (Channel Islands) Order 2001 and the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002". The former is provided to each person whose funds are frozen and is available to anyone requesting it, and the second guide is

provided upon request to that person and to anyone else requesting it. All guides note that persons should contact the Attorney General for additional information.

351. The section on sanctions on the GFSC website indicates in general the procedures for unfreezing of funds and directs persons to contact the Attorney General's office.

**Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):**

352. In Guernsey, the Attorney General is always empowered to revoke a notice that freezes funds or assets if it appears to him or her that such a revocation is appropriate. Section 8(3), Al-Qa'ida Order; Section 6(3), Terrorism Order. Accordingly, if there is an error, or a person is inappropriately or inadvertently affected, the Attorney General can revoke the direction that was imposed through a Notice. This can occur immediately and without any specific request.

353. The procedures for unfreezing are, as set forth in the section on III.7 above, publicized in summary form on the GFSC website with additional information and Guides available through contact with the Attorney General's office.

354. Sections 6A and 6B of the Terrorism Order, and Sections 8(7) and (8) of the Al-Qa'ida Order also provide that persons affected by a Freezing of Funds Notice may apply to the Royal Court to have the relevant direction set aside. This is publicized on the GFSC website. Applying to the court is an additional avenue for the affected person, who, as noted, may also ask the Attorney General to revoke the direction.

**Access to frozen funds for expenses and other purposes (c. III.9):**

355. Under Sections 7 (Al Qaeda) and 5 (Terrorism) of the Orders, the Attorney General is authorized to issue licenses that permit access to funds. This power may be exercised to comply with the requirements of S/RES/1452 (2002) that a freeze should not apply to funds determined by the relevant state to be necessary for payment of basic expenses after a notification process with the relevant UN Committee.

356. A guidance document issued by the Attorney General ("A Guide to Licenses under the Terrorism (United Nations Measures) (Channel Islands) Order 2001 and the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order") is available to those who request information. They might want additional information after reviewing an overview on licenses provided in the Guide that accompanies the Freezing of Funds Notice. The guide on licenses informs persons that licenses are issued by the Attorney General, are within his discretion and are normally issued only for basic expenses, but in exceptional circumstances can cover extraordinary expenses. The Guide follows the provisions of UNSCR 1452. Authorities indicated to the extent that referrals or review is necessary by UN committees/offices before funds can be made available, this would be forwarded through the United Kingdom who would act for Guernsey in such a matter.

**Review of Freezing Decisions (c. III.10):**

357. Guernsey has procedures in place permitting a person or entity whose funds have been frozen as a sanction pursuant to the UNSCRs to challenge the measure. First, as the Guidance Notes and GFSC website note, the Al-Qa'ida Order (Sections 8 (7)-(8)) and the Terrorism Order (Sections 6A-6B) each provide that affected persons may apply to the Royal Court to

have any direction made through a Freezing of Funds Notice set aside, and the court may set aside the direction. The person petitioning the court must provide a copy of the application and any witness statements to the Attorney General at least seven days before the date set for a hearing.

358. Secondly, as noted previously, the Attorney General has discretion to revoke a Freezing of Funds Notice without any intervention by a court. Affected persons may also contact the Attorney General and provide grounds for an administrative revocation.

**Freezing, Seizing, and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11):**

359. Provisions to freeze, seize, and confiscate terrorist-related funds in a general criminal law context, rather than as a sanction under UN resolutions, also exist in the Bailiwick. Terrorist-related funds and assets are subject to provisional measures and confiscation to the extent that they are the proceeds or benefits of criminal conduct, or are instrumentalities. This applies where the criminal activity is the terrorist act itself, and where it is the financing of terrorism. Funds and other assets are also subject to forfeiture, if they constitute terrorist property, under the Terrorism Law. In sum, provisions that apply generally to criminal offenses in the Bailiwick, including those for conservatory and confiscation measures, apply equally to terrorism-related criminal offenses.

360. The criminal offenses that have been established in the Bailiwick to comply with the Convention for the Suppression of the Financing of Terrorism (see the Section relating to SR II above) as well as substantive terrorism offenses of various kinds each form a basis for provisional measures to secure funds and assets, and at conviction for confiscation. This applies to the offenses set forth in the Terrorism Law and to the criminal offenses in the two Orders. In addition, terrorist activity and financing of terrorism may constitute unlawful conduct that forms a basis for civil forfeiture, if the asset involved is cash over the statutory minimum, under Guernsey's Civil Forfeiture Law.

**Protection of Rights of Third Parties (c. III.12):**

361. Third parties, as well as any person who is the subject of a Freezing of Funds Notice that the Attorney General issues to comply with UN resolutions, may at any time apply to the Attorney General for a revocation of a notice, and may apply to the Royal Court to have a freezing decision set aside. Thus, third parties have access to review if they believe their rights have been infringed.

362. Where a freeze is not UN-resolution related, but rather the restraint is ordered under the Terrorism Law in the course of an investigation of terrorism or terrorism-related offense, persons that are affected by the order may seek its discharge (see Schedule 2, para. 4(4), Terrorism Law). If there is an acquittal, pardon, or quashing of a conviction, compensation may be available (see Schedule 2, para. 7). The freezing order itself may also include in some circumstances provisions for compensation to those affected. (See Schedule 4, paragraph 9).

**Enforcing the obligations under SR III (c. III.13):**

**Monitoring Compliance**

363. Measures in Guernsey to monitor compliance with the legislation, rules, and regulations relevant to the UN sanctions regime could be improved. Although GFSC materials for financial services participants and prescribed businesses do address financing of terrorism generally, on UNSCR sanctions in particular, they address only the steps necessary once the Attorney General issues a freezing of funds notice. Neither the Handbooks nor the GFSC website provide much clarity regarding steps such participants should be taking to locate and screen for funds of persons on the 1267 list, or the determination of who might be covered by UNSCR 1373 and thus should be part of their screening and CDD processes.

364. In supervisory oversight, the GFSC has monitored whether participants use screening mechanisms to check against UN lists, the EU or U.K. lists as they conduct CDD or engage in other activities. GFSC has ascertained that many FSBs have software through which their data bases are checked daily for matches with the consolidated list of targets provided by HM Treasury. That list contains the UN Sanctions Committee list. In the case of the banking, insurance, and investment industries, the supervisory questionnaires/checklists used by the GFSC addressed use of lists in very generic terms by inquiring as to how the information regarding UN sanctions is disseminated to the Board and staff. Lists under the resolutions are available to the private sector, although through a number of steps, on the GFSC website. Their status vis-à-vis the Guernsey legal framework is not made clear. Since the on-site visit, the FSB and PB Handbooks each have been amended to include a new chapter on “UN, EU and other Sanctions” and reference to copies of the Orders and guidance issued under the two Orders. On June 25, 2010, the GFSC advised all financial services businesses and prescribed businesses of the revision. In addition, the on-site checklists were amended and enhanced to facilitate a more thorough review of compliance with obligations in this area. Company registry officials in Guernsey do check directors and shareholders using the services of [using the database provided by] World Check, and there is an ongoing effort in this regard for the directors and shareholders specific to the Alderney registry. The registrar of NPOs provides the FIS with details of what it considers to be high and medium-risk NPOs, and the FIS checks databases, including World-Check in connection with the individuals and entities linked to these NPOs. Separately, the registrar has advised NPOs to be mindful of UNSCRs 1267 and 1373.

## **Sanctions**

365. The failure to comply with a Freezing of Funds Notice issued by the Attorney General under either the Al-Qa’ida or Terrorism Order is an offense under Sections 8(9) and 6(7), respectively, of the Orders. This is punishable if the conviction is upon indictment with a term not exceeding seven years or a fine or both. If there is a summary conviction, it is punishable with a term not exceeding six months or a fine or both. Section 20(1), Al-Qa’ida Order; Section 12(1), Terrorism Order.

366. These same penalties also apply in the case of the other major criminal offenses, that of making funds available to a listed person (Section 7, Al Qaeda) or to a person who commits, attempts to commit, or participates in the commission of terrorism, or is controlled by such person or acting on behalf of such person (Section 5, Terrorism).

367. Failure to comply with freezing orders under Section 20 of the TL is also a criminal offense, punishable with a maximum of two years imprisonment and an unlimited fine (Schedule 4, par. 7(2)).

368. In addition, the regulatory powers of the GFSC and the AGCC detailed above under Special Recommendation II may be used to impose sanctions. These include the refusal to grant a license, the revocation or suspension of a license, and the imposition of financial penalties.

**Statistics (R.32):**

369. Guernsey authorities note that the New Scotland Yard's Counter-Terrorism Unit is of the view, with which Guernsey authorities agree, that there is a low level of FT risk in Guernsey. Consistent with this threat level, to date, there has been no Freezing of Funds Notices issued or any requests from other jurisdictions to give effect to actions initiated under their freezing mechanisms. However, the Attorney General's Chambers maintains, and periodically reviews, these statistics regarding UNSCR freezing actions and requests.

**Additional Element (SR III)—Implementation of Measures in Best Practices Paper for SR III (c. III.14):**

370. Guernsey's legislative framework and procedures reflect a number of the practices set forth in the Best Practices Paper. For instance, there are competent authorities to designate persons or entities and a reasonable grounds basis for making determinations, safeguards for the designated persons, and procedures that permit a freeze to occur without delay and without prior notice. Measures are not conditional upon the existence of criminal proceedings. There is close cooperation among law enforcement, intelligence, and security authorities who coordinate among themselves and as required with the private sector.

**Additional Element (SR III)—Implementation of Procedures to Access Frozen Funds (c. III.15):**

371. There are procedures in place to deal with access to frozen funds. Guidance notes relating to licenses which would provide access to such funds are available. These are based on the requirements set forth in UNSCRs 1373 and 1452.

**Implementation and effectiveness:**

372. To comply with its obligations under UNSCRs 1267 and 1373 and successor resolutions, Guernsey relies on provisions in Orders-in-Council that permit the Attorney General to issue freezing notices on an administrative basis. The Notices establish an affirmative obligation on named holders of funds not to make those funds or other assets available to designated persons or persons that fall under the sanctions regime of UNSCR 1373. If an institution or person receives a freeze notice, it must comply with the terms of the notice and do so immediately.

373. Such a system, if vigorously implemented, may be adequate to meet standards. However, it is not a particularly strong system. It does not impose a general obligation in the absence of a specific freeze notice. Put another way, an affirmative obligation to freeze comes into play only once actual funds are found and an administrative order is issued.

374. A system as in Guernsey where obligations are triggered by the authorities' issuance of a notice once it locates specific funds contrasts, for instance, with the system that applies generally in the European Union and that the United Kingdom uses, to a great degree, to



comply with its UNSCR 1267 and 1373 obligations. In the EU, regulations require all persons and institution to freeze funds and economic resources of those who appear at regularly-updated UNSCR 1267/1390 list or, for non-EU nationals and residents, appear on a UNSCR 1373 list drawn up by the European Council. There are no intermediate steps of first locating funds and then issuing an order.

375. In the Bailiwick, although it could be argued that all persons, not only those that receive a freeze notice, have an implied general obligation because the Orders-in-Council provide a criminal sanction if a person makes funds available to listed persons or 1373 designees, there is no explicit prohibition in law that applies to all persons. The explicit prohibition applies only to persons receiving a notice regarding funds. While arrangements for communication to a specific institution at the time they must freeze is excellent, and subsequent notification to other financial institutions of that specific freeze, authorities in Guernsey have not undertaken to communicate sufficiently with all institutions, the general public, DNFBPs, etc., the general obligation to freeze as a sanction (not to make funds available) and to whose funds that obligation applies (those whose names appear on the UN's 1267 list and those covered by 1373). In the period since the on-site visit, there have been improvements in communication.

376. This less robust framework has been exacerbated by some limitations in the Bailiwick on the measures that have been in place to communicate with respect to responsibilities and lists. The GFSC website referred the reader to a U.K. website and U.K. lists, but it was not entirely clear what the financial sector participant's obligation was with respect to the persons and entities that appear on U.K.-published lists. Although reliance on the U.K. 1267 list, which is continuously updated on the U.K. website, is understandable to save resources particularly given the relatively low level of threat, what has been missing is clarity regarding the import of the specific list, how to locate it, what it contains, and how it applies in the Bailiwick context. Bailiwick authorities are undertaking steps to deal with this and after the on-site visit updated the website.

377. In addition, there has been limited outreach beyond the financial sector, for instance to DNFBPs or the public at large. As a practical matter, in the case of many FSBs, as they are part of larger groups, there is use of Head Office software programs to screen the entire group database for any matches for these lists, as well as EU, U.K., and OFAC designations.

378. As noted above, the Bailiwick is reviewing the two Orders-in-Council that form the legal basis for its compliance with the UN sanction in light of the Supreme Court decision in *HM Treasury vs. Ahmed and others* [2010] UKSC2. With the expected updating, the Bailiwick will have the opportunity to update and strengthen its legal and practical framework for compliance.

379. In an instance, as is the case for now in Guernsey, where the laws provide for a freezing obligation only once authorities issue a specific notice with respect to specific funds, to be effective a regime must pay particular attention to: 1) clearly articulating and providing ready access to the UN 1267 list and clearly indicating the kinds of persons that may well fall within the ambit of UNSCR 1373; and 2) communicating effectively both to the financial sector and to

a range of persons beyond the financial sector that might encounter such funds. The authorities are now undertaking steps to articulate obligations more clearly and communicate more widely.

380. The GFSC Handbooks and sanctions section of the GFSC website do cover UN sanctions regime and were improved after the on-site mission to provide greater guidance and specificity to the industry.

381. On another issue, the Law Officers Chambers has prepared three thorough and very useful sets of guidance notes, one general in nature that the recipient of the Freezing of Funds Notice receives when notified of his obligation to freeze funds, and two specific guides that are available upon request by anyone. These latter guides address how to seek a revocation of a Freezing of Funds Notice and how to request a license to access funds. Although they contain information very important for the person whose funds are being frozen so that he may assert rights, in the past none of these guides were provided directly to that person. The guides are available but only upon request. The authorities are now providing for service of the guides on the affected person(s) at the time the Freezing of Funds Notice is served.

#### **2.4.2. Recommendations and Comments**

- In the legal framework, it should be made explicit that a designated person does not receive prior notice of a freeze action.
- For convictions under Section 5 of the Terrorism Order to be successful, there should be greater clarity in relevant statutes regarding who might fall under the category of a person who commits or attempts to commit or participates or facilitates the commission of terrorism or a person controlled by such a person.
- At the time of the on-site visit, assessors were of the view that:
  - GFSC public information, as it appeared on the website or elsewhere, should have a greater degree of clarity on the issue of the import of the lists appearing on the HM Treasury website and specifically which lists apply in Guernsey and in what manner. There should be additional clarity on the obligation of financial sector and other participants to locate and screen for funds of persons on the UNSCR 1267 list, and steps they might consider to determine who might be covered by UNSCR 1373, and thus should be part of their screening and CDD processes. There should be greater emphasis on the obligation not to make funds available that is irrespective of the STR process.
  - At the time the Freezing of Funds Notice is served on the designated person, he should also receive information regarding the availability of revocation and the possibility of a license to permit access to some assets and advised that guides are available regarding these issues.
  - Authorities should undertake efforts to enhance the monitoring of compliance with legislation, rules, and regulations relevant to the UN sanctions regime with such steps as including more in supervisory checklists.

382. These matters have each been addressed in the period since the on-site visit, but the effectiveness of these measures cannot yet be assessed.

### 2.4.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	LC	<ul style="list-style-type: none"> <li>It is not explicit in the legal framework that a designated person is not to receive prior notice of a freeze action.</li> <li>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.</li> <li>Although guidance to financial sector and other persons on the import of the lists appearing on the HM Treasury website and specifically which lists apply in Guernsey 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 is too soon to assess the effectiveness of the new measures.</li> </ul>

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

### 2.5.1. Description and Analysis

#### Legal Framework

383. The legal basis for the reporting regime is found in the Disclosure Law (DL) 2007 (Sections 1 to 3A) and the Terrorism Law (TL) 200A2 (Sections 12, 15 and 15A), which established a direct reporting obligation of ML/FT suspicions to either a “nominated officer” (for financial services businesses) or, since quite recently, a “prescribed police officer.” The “nominated officer” is the person nominated by the FSBs for that purpose (normally but not necessarily the MLRO), who in turn is under the obligation to report suspicions to a “prescribed police officer.” Failure to disclose is an offense. According to the Disclosure (Bailiwick of Guernsey) (Amendment) Regulations, 2010, in effect since May 17, 2010, the “prescribed police officer” means a police officer who is a member of the Financial Intelligence Service (FIS).

#### Establishment of FIU as National Center (c. 26.1):

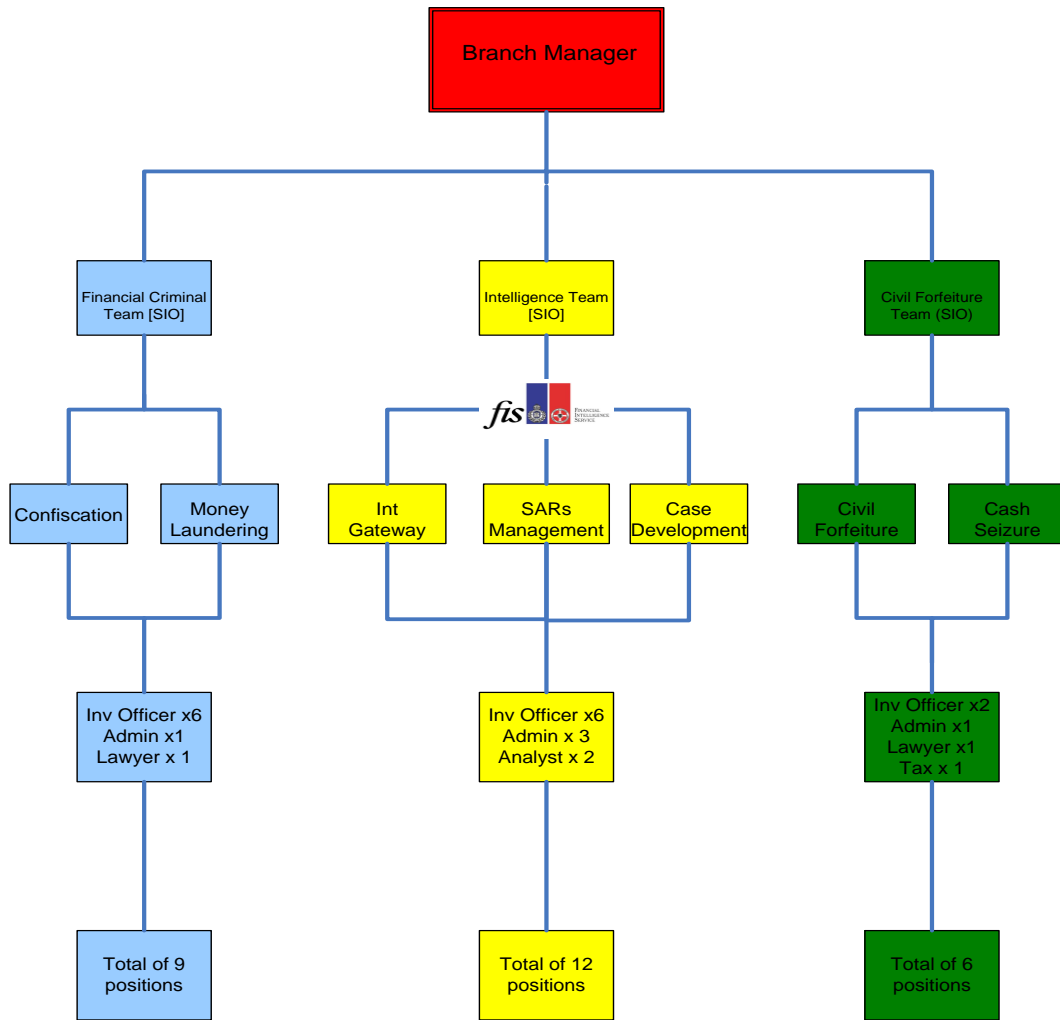
384. *Central national agency:* The Financial Intelligence Unit for the Bailiwick of Guernsey is the Financial Intelligence Service (FIS), specifically designated as such by law with the introduction of the “prescribed police officer” function on May 17, 2010, to whom all AML/CFT disclosures must be addressed. The FIS was established on April 1, 2001 as a joint

police/customs unit and was relocated in the Financial and Economic Crime Branch (FECB) in 2008 following a reorganization of the law enforcement structures. The FECB was renamed as the Financial Investigation Unit (FIU) in November 2009. Before the 2010 legal amendments, the disclosures could legally be made to any police officer, but in practice such information was channeled to the FIS.

385. The following chart shows the present organizational structure of what is now branded as the Financial Investigation Unit (FIU), consisting of three specialist divisions one of which is the FIS that performs the functions of a Financial Intelligence Unit (yellow squares).



**Financial Investigation Unit**



386. *Receiving and analysis:* the specific remit of the FIS as a receiving and processing agency for ML and FT-related disclosures follows from the DL and the TL, as recently amended. The FIS acts as the first reception point of the disclosures and conducts an initial analysis of the information received. Although a law enforcement type Financial Intelligence Unit, the FIS within the internal organization of the Financial Investigation Unit performs a pre-investigative and intermediary role providing for a two-step process where the intelligence team decides if and to whom the information will be passed on for law enforcement purposes.

387. In practice, incoming suspicious transaction reports (STRs) are first evaluated by a senior officer and then registered in the computer system to be further analyzed. When consent is requested by the reporting entity the STR is subject to a risk assessment and a senior officer decides whether or not to grant consent, if possible, within three days. Urgent requests obviously are dealt with immediately. On average approx 22 percent of initial STRs received by the FIS contain consent requests. In practice, the transaction is halted by the reporting entity until consent is given, as this may engage the criminal liability of the reporter. Consent is withheld in approximately 4 percent of these cases, when the suspicion of ML/FT is serious or when more time is needed to make enquiries. Withholding consent amounts to an actual freezing of the assets involved.

388. *Dissemination:* If the information provided in an STR and the analysis performed by the FIS lead to indications of the reported activity being related to proceeds of crime or terrorism funding, the case is passed on to an officer of the Financial Criminal Team to investigate possible offenses of ML or FT as appropriate. Dissemination also occurs to other authorities, particularly to counterpart FIUs (see cr. 26.5). The dissemination rate is rather high, ranging from 70 percent to 86 percent of the total number of STRs received.

**Guidelines to Financial Institutions on Reporting STR (c. 26.2):**

389. All STRs must be submitted in the prescribed form, which is attached as a Schedule to the Regulations 2007 issued by the Home Department under Section 11 of the DL and Section 15C of the TL. The form is *ad rem* and requests enough information (including full identification data, status of business relationship, supporting documents, reasons for suspicion) to enable the FIS to conduct an initial analysis and keep reliable statistics. The form is available on the FIS website and as an Appendix to both the FSB Handbook and the PSB Handbook, issued by the GFSC. Disclosures can be delivered manually, by mail or by fax, or transmitted electronically. The FIU is presently developing an online reporting function in its intelligence database, which is expected to become operational in June 2010.

390. Besides the guidelines issued by the supervisory authority, the FIS provides regular training sessions for the MLROs which include reporting requirements, case studies and other feedback issues. Although a report that is not in the prescribed form is not accepted, in practice it is simply sent back to be corrected and in the meantime the FIS starts its analysis anyway.

**Access to Information on Timely Basis by FIU (c. 26.3):**

391. As a police/customs unit, the FIS has full and direct access to various local and U.K. law enforcement databases, such as Linkworks (Police), ICIS (Customs), and PNC (U.K.).

Police)<sup>2</sup>. Information from the Attorney General can be obtained by virtue of Section 2 of the Fraud Investigation Law allowing him to disclose information that he has received under that Law to any person or body for the purposes of the investigation of an offense or prosecution.

392. Administrative information is available upon request through Sections 6 of the DL allowing “authorized persons” (i.e., persons employed in a government department and authorized by a chief or equivalent officer) to disclose any information held by a government department for law enforcement purposes. Equally, tax information can be obtained by the FIS by virtue of Section 9(2) of the DL permitting the Director of Income Tax to disclose any information in his possession to a police or customs officer for (broadly) law enforcement purposes. The same is the case for information on charities and NPOs, where the Director of Income Tax acts in his capacity as the keeper of the register of charities and NPOs.

393. As for financial/commercial information, the GFSC is allowed to disclose information for the purposes of prevention or detection of crime, in accordance with Section 21(2) (b) of the Financial Services Commission Law. This, however, is limited to information the GFSC already has in its possession, so it cannot go and collect financial information at the request of the FIS. Such additional information requires a court order. Beneficial ownership details can be obtained from Company Service Providers under Section 490 of the Companies Law by police or customs officers (i.e., the FIS) on service of an authorized certificate from the Chief Officer of Police or the Chief Officer of Customs.

394. Finally, the FIU/FIS subscribes to a number of commercial databases which provide U.K. company information, worldwide media reports, and credit history records for U.K. individuals. These include Experian (+ Force view), Equifax, LexisNexis, Companies House, JARD, World Check, Country Check, and C6.

**Additional Information from Reporting Parties (c. 26.4):**

395. Regulation 2 of the Disclosure Regulations 2007, made under Section 11 of the DL and Section 15C of the TL, requires reporting parties to provide to the FIS requested additional material within seven days of receiving a written notice requesting such information. Failure to comply without reasonable excuse is an offense (up to five years imprisonment and unlimited fine). The powers set out in Section 11 have been used twice, but in general the incoming STRs have not yet given rise to frequent additional questioning of the reporting entities as they are aware of the importance of providing full disclosure.

396. It is important to note that this power to request additional information can only be used in respect of the entity that has made the disclosure, not with other entities that, although involved in the transaction, have not taken such initiative. Querying other FSB for relevant financial information, for instance, in order to follow the money trail, would necessitate lifting

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<sup>2</sup> Linkworks: nominal information on subjects, case files, warnings, intelligence reports, owners/vehicles and registration markers – ICIS: *idem* on subjects, warnings, intelligence reports – PNC: *idem* on subjects, warnings, arrest/awaiting prosecution/convictions plus history, wanted/missing intelligence reference, owners/vehicles and registration markers.

the case to investigative level and the issuing of court orders. At intelligence level, the FIS frequently makes financial account enquiries to FSB, often as a result of intelligence received from or a request made by another jurisdiction. Any information given in reply is voluntary, as there is then no legal obligation to respond.

**Dissemination of Information (c. 26.5):**

397. The overall legal basis for dissemination of ML/FT related information is found in Section 8 of the DL, permitting a police or 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), i.e., the prevention, detection, investigation, or prosecution of criminal offenses 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 its 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.

398. Moreover, under Section 10 of the DL, a police officer of the rank of inspector or above and a customs officer of the rank of senior investigation officer or above may disclose to the Director of Income Tax any information which he reasonably believes may assist the Director to carry out his functions.

399. Within the FIU, dissemination occurs in the form of intelligence being passed on by the FIS to the other divisions (financial criminal team or the civil forfeiture team) for further investigation or other appropriate action. The task of the FIS is to selectively develop the case by collecting additional information and adding value to the disclosure information so it can be used to initiate or direct an investigation or support a pending enquiry. Intelligence from STRs is sanitized and evaluated into a written intelligence report, utilizing the grading system detailed within the U.K. National Intelligence Model and either placed directly on local law enforcement databases or disseminated in accordance with the Egmont principles of information exchange to overseas agencies.

**Operational Independence (c. 26.6):**

400. Neither the FIU nor the FIS has an autonomous legal status, although the FIU has its own budget. Both are part of the overall law enforcement structure and as such accountable to its hierarchy. The head of the FIS reports to the head of the Financial Investigation Unit, who in turn reports to the head of the Law Enforcement Division of the customs service. There is a functional interaction between the three sections of the Financial Investigation Unit, which is however operationally quite independent and remains in control of the information it holds. The assessment team did not find any indication of risk of undue outside interference or political pressure.

**Protection of Information Held by FIU (c. 26.7):**

401. Section 8 of the DL, together with the equivalent provisions of the POCL (Sections 43 and 44) and the DTL (Sections 62B and C), provide for the legal protection of the information held by the FIS. The provisions specifically and restrictively spell out the instances where the

information can legitimately be divulged to other persons, subject to the applicable provisions of the Data Protection Law, 2001. Furthermore, the FIS officers are contractually bound to confidentiality and any breach may lead to disciplinary action.

402. The physical protection of confidential information is well organized. The FIU is located within the separate premises of the Cross Border Crime Division of the Guernsey Border Agency. Access is secured and restricted to staff. All confidential documentation is securely stored and all cabinets are locked when the FIS office is unattended. No intelligence material can be removed from the FIS office without reference to a supervisor, and removal by any non-FIS staff is 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.

**Publication of Annual Reports (c. 26.8):**

403. The FIS publishes periodic reports on its website, which have also been circulated in hardcopy to various organizations. These reports contain statistical data and analysis of STRs, sanitized case reports, as well as an overview of additional activities such as the feedback project and training initiatives.

404. Details of FIS activities are also incorporated into both the police and customs service annual reports. In addition, the FIS has periodically compiled articles for inclusion in the Guernsey Association of Compliance Officers newsletter and when necessary written directly to sectors to provide them with information on particular issues e.g., research regarding cash transactions by high-value goods dealers, use of the prescribed reporting form and general awareness-raising information.

405. Within the operational context, the FIS produces quarterly reports for the benefit of law enforcement as a whole, and quarterly reports for the Bailiwick AML/CFT Advisory Committee, in order to inform them of current trends and cases of interest.

**Membership of Egmont Group (c. 26.9):**

406. The Guernsey Financial Intelligence Unit has been an active member of the Egmont Group of FIUs since 1997, initially as the Joint Financial Crime Unit and from 2001 as the FIS. The FIS has hosted the plenary meeting in 2004 and is an active participant to the Egmont activities, such as the Training Working Group.

**Egmont Principles on Exchange of Information Among FIUs (c. 26.10):**

407. The FIS Staff handbook and practice is built on the Egmont Principles for Information Exchange (free exchange for analytical purposes, prior consent before dissemination, and confidentiality) and significant use is made of the Egmont secure web for disseminations and exchanges of information.

**Adequacy of Resources—FIU (R. 30):**

408. The FIS currently has an establishment of 12 staff, comprising a senior investigation officer, a detective sergeant; four customs service investigators, one detective constable, two dedicated financial investigators, one financial crime analyst and two administrative staff,



including a process manager. The analytical software used by the FIS is - i2 Analyst Notebook, Microsoft Excel 2007, KYC360 and iTel. The expenditure for the FIS is part of the FIU budget, which for 2009 was £1,600,000. These human and financial resources were deemed sufficient to effectively perform its functions.

409. All police and customs service personnel are required to undergo comprehensive recruitments processes, including checks for any criminal convictions. FIS personnel are selected from the customs service and police subject to their investigative experience and aptitude for financial investigation. All posts within the FIS are subject to both local and enhanced security clearance and to annual and interim appraisals in accordance with the policies of their parent organizations.

410. All personnel joining the FIS undergo a period of induction and are required to attend a number of locally based courses run by the Guernsey Training Agency which provide an understanding of a number of the core financial vehicles e.g. companies and trusts. All staff members receive data protection training. Central to FIS training for investigators is the NPIA Financial Investigation Training program. All investigative staff is accredited as financial investigators/intelligence officers and in order to maintain this status they are subject to the continuous development requirements of NPIA.

411. The FIS has two dedicated terrorist finance officers who have attended the course run by the U.K. NTFIU, and a Financial Crime Analyst who has had a long experience in the financial industry and attended several specialist training courses. Staff participate in the regular joint training sessions and presentations organized within the Bailiwick for representatives of all bodies with AML/CFT responsibilities.

**Statistics (R.32):**

412. The grounds for making STRs, as indicated by the reporting entities, are reflected in following chart:

Grounds	Year			
	2006	2007	2008	2009
<b>Tax</b>	152	440	192	263
<b>Cash transaction</b>	84	43	68	63
<b>Unexplained lifestyle</b>	73	52	25	16
<b>Due diligence issues</b>	30	52	41	44
<b>Layering</b>	40	26	3	0
<b>Fraud/false accounting/forgery</b>	47	48	86	130
<b>Other inc. defensive/reactive</b>	53	42	69	64
<b>Internet/media etc</b>	37	23	7	13

<b>Early redemption of product</b>	25	7	2	1
<b>Third party referral</b>	0	2	0	4
<b>Corruption</b>	8	19	13	16
<b>Unusual foreign exchange</b>	0	0	0	0
<b>High risk business activity/area</b>	1	5	1	2
<b>Service of order</b>	6	1	12	11
<b>Total</b>	<b>555</b>	<b>760</b>	<b>519</b>	<b>627</b>

413. The disclosures based on tax and fraud grounds clearly predominate, with an average of around 60 percent of the total number of STRs over the last three years. Although the dissemination figures do not give an indication of the predicate criminality except for the local destinations (see below), according to the FIS the overall quality of the STRs is adequate and the grounds for reporting generally founded, as demonstrated by the high ratio of disseminations by the FIS.

414. The statistics for STRs analyzed and disseminated in the last 4 years are as follows:

<b>Year</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
<b>Total no of STRs</b>	555	760	519	627
<b>Average no of Reports</b>	615	615	615	615
<b>Reports under Proceeds of Crime Law</b>	545	731	0	0
<b>Reports under Drug Trafficking Law</b>	5	5	0	0
<b>Reports under Disclosure Law (in force 17/12/07)</b>	0	24	510	622
<b>No of reports above with FT link</b>	1	3	3	1
<b>Reports made under Terrorism Law</b>	5	0	6	4
<b>Number of Reports disseminated (in some cases to multiple recipients)</b>	383	557	418	542

415. The STR dissemination rate is rather high, ranging from 70 percent in 2006 to 86 percent in 2009. These figures relate to both local and international disseminations. STR information sent at the disposal of counterpart FIUs or other foreign law enforcement authorities is also counted as dissemination. The actual number of disseminations is, however, significantly larger than that of the STRs disseminated, as most STRs are forwarded to multiple destinations, depending on the authorities/jurisdictions that may be interested or involved. The balance (STRs in–STRs out) gives the number of disclosures filed within the FIS or still under analysis.

416. Following table captures the overall figures of dissemination (local and cross-border) between 2008 and May 2010:

Year	Local Referral Law Enforcement	Local Referral External	Overseas Referrals FIU	Overseas Referrals Non FIU	Total	*Response to Referrals	**Refused Response
2008	429	17	403	142	991	205	0
2009	464	25	549	200	1238	277	0
2010	94	7	123	30	254	188	0

417. Extrapolation of the above figures to the number of STRs disseminated between 2007 and 2009, gives around 40 percent of the reports with a local destination, with the other 60 percent forwarded to foreign authorities, mostly counterpart FIUs. This estimation needs to be viewed with caution and the local destination corrected downwards, however, when compared with the table below reflecting the country/region of residence of the person(s) subject of the STRs, where the ratio fluctuates between 11.5 percent and 25 percent:

Egmont Area	Year			
	2006	2007	2008	2009
Local	137	87	91	100
UK	194	439	180	207
Europe (excl UK& local)	123	103	132	152
Africa	34	35	40	55
North America	33	38	33	59
Middle East	12	23	14	17
Caribbean	2	4	4	4
South Asia	8	5	6	13
Oceania	8	6	6	9

<b>South America</b>	2	8	6	4
<b>Asia</b>	2	12	7	7
<b>Total STRs</b>	<b>555</b>	<b>760</b>	<b>519</b>	<b>627</b>

**Ratio: 25 percent 11.5 percent - 17.5 percent - 16 percent**

418. The overall picture of diversification between local and foreign dissemination becomes more confusing when the dissemination figure for the years 2007 to 2009 is compared with the breakdown figures below of STRs disseminated and investigated locally over the same period, which gives an average of barely 4.3 percent. Clearly, not all local disseminations are investigated to some extent or another.

419. Following figures reflect the results of the disseminations in terms of investigations:

### **OVERALL**

420. Breakdown of the total amount of STRs submitted to the FIS and the total amount of STRs that resulted in further investigations being conducted / instigated (local and foreign) is as follows:

	<b>Total</b>	<b>Known Results</b>	<b>Percentage (%)</b>
<b>2007</b>	760	65	8.6%
<b>2008</b>	519	83	16%
<b>2009</b>	627	100	16%
<b>2010</b>	173	21	12.1%

### **INTERNATIONAL**

421. The following table identifies the STRs that were of interest to jurisdictions outside of the Channel Islands and includes the United Kingdom.

	<b>STR Total</b>	<b>No of (known) result(s)</b>	<b>Summary of results</b>
<b>2007</b>	42	11	Eight convictions, two pending conviction and one case closed
<b>2008</b>	64	17	Nine convictions, two pending trial, and three case closed, three investigations
<b>2009</b>	76	18	Nine convictions, three ongoing investigations, two cases closed, and four pending trial / sentencing
<b>2010</b>	14	6	One conviction, one pending trial and four ongoing investigations

422. The international investigations involved countries worldwide including: Isle of Man, European Countries including ( Belgium, Czech Republic, France, Germany, Turkey, Gibraltar, Italy, Norway, Portugal, Romania, Serbia, Switzerland, Sweden, and the United Kingdom), Argentina, Australia, Bermuda, Botswana, Brazil, British Virgin Islands, UAE, Ghana, Hong Kong, Iceland, India, Indonesia, Israel, Kenya, Mexico, Nigeria, the Philippines, Russia, Singapore, South Africa, Thailand, the United States, and Zimbabwe.

### LOCAL

423. The Bailiwick of Guernsey investigations have been categorized in relation to the criminality of the investigation:

#### Mutual Legal Assistance 2007 – 2010

	STR Total	Known Result (s)	Summary of Results
2007	8	4	One conviction / Civil Freezing Order
2008	1	0	
2009	2	1	One conviction / Restraint Order
2010	0	0	

#### Guernsey (Drug Trafficking) 2007 – 2010

	STR Total	Known Result (s)	Summary of Results
2007	8	7	Three ongoing investigations, three convictions, one confiscation and one civil case ongoing
2008	7	5	Two cases closed and three ongoing Investigations
2009	10	7	Seven ongoing investigations
2010	3	3	Two ongoing investigations and one pending trial

#### Guernsey (Crime) 2007 - 2010

	STR Total	Known Result (s)	Summary of Results
2007	2	1	One pending trial
2008	4	1	One arrest community service
2009	2	1	One arrest community service
2010	0	0	

#### Guernsey (Crime) Money Laundering 2007 - 2010

	<b>STR Total</b>	<b>Known Result (s)</b>	<b>Summary of Results</b>
<b>2007</b>	0	0	
<b>2008</b>	3	3	Ongoing investigation
<b>2009</b>	2	2	Ongoing investigation pending trial
<b>2010</b>	1	1	One ongoing Investigation

**Guernsey (Fraud) 2007 - 2010**

	<b>STR Total</b>	<b>Known Result (s)</b>	<b>Summary of Results</b>
<b>2007</b>	3	2	Two convictions
<b>2008</b>	2	0	
<b>2009</b>	2	0	
<b>2010</b>	1	1	One case closed

**Guernsey (Immigration Crime) 2007 – 2010**

	<b>STR Total</b>	<b>Known Result (s)</b>	<b>Summary of Results</b>
<b>2007</b>	0	0	
<b>2008</b>	0	0	
<b>2009</b>	5	5	Investigations ongoing, one conviction
<b>2010</b>	0	0	

**Guernsey (Social Security) 2007 - 2010**

	<b>STR Total</b>	<b>Known Result (s)</b>	<b>Summary of Results</b>
<b>2007</b>	0	0	
<b>2008</b>	0	0	
<b>2009</b>	0	0	
<b>2010</b>	1	1	Case under investigation

**Guernsey (Housing Benefit) 2007 - 2010**

	<b>STR Total</b>	<b>Known Result (s)</b>	<b>Summary of Results</b>
<b>2007</b>	0	0	
<b>2008</b>	1	0	
<b>2009</b>	0	0	

<b>2010</b>	1	1	One pending investigation
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**Jersey Investigations  
Jersey Fraud 2007 - 2010**

	<b>STR Total</b>	<b>Known Result (s)</b>	<b>Summary of Results</b>
<b>2007</b>	0	0	
<b>2008</b>	2	0	
<b>2009</b>	1	1	One conviction
<b>2010</b>	0	0	

**SUMMARY**

424. The authorities supplied the following table on the amount of funds recovered through local or international confiscation and the number of convictions and sentences for those individuals involved. These results have been deduced from follow-up checks made on the Guernsey Police system, U.K.-PNC, feedback from other jurisdictions, or open source information.

	<b>Conviction</b>	<b>Sentence (Years)</b>	<b>Criminal Confiscation</b>	<b>Other Funds Recovered</b>	
<b>2007</b>	17	46.3	£341,928	£12,267,505 £272,405,200 £40,000	Fines Bonds Civil Recovery
<b>2008</b>	9	26.4	0	240 hours £3,551,726	Community Service Fines
<b>2009</b>	15	100	£890,000	5 Years £204,427,151 £1,863,060 240 hours	Directorship ban Fines Restrained Community Service
<b>2010</b>	1	15	£500,000	£1,634,431	Confiscation Pending
<b>Totals</b>	<b>42</b>	<b>187.7 (YRS)</b>	<b>£1,731,928</b>	<b>£496,189,074</b>	
<b>Grand Total</b>				<b>£497,921,002</b>	

There are two *caveats* here:

- The total number of convictions (42 international + local) does not correspond with the breakdown statistics above (in total 39, including community service), but that may be attributable to double counting or incomplete feedback. Both figures are, however, close and do give an acceptable picture of the overall result in terms of convictions.
- The relation between STRs and investigations/convictions needs to be put in perspective. Some STRs may have triggered the investigation themselves; others may have been used only as supportive or illustrative material, so their value for the investigation/prosecution is relative. The statistics do not make a differentiation on this point.

#### **Analysis and effectiveness:**

425. There is no legal statute or instrument formally establishing a Financial Intelligence Unit in the Bailiwick. The reporting regime has developed over time from an obligation to report to a “police officer” to (since May 17, 2010) a “prescribed police officer.” Only then was the FIS formally designated as the central reception point of disclosures made under the Disclosure Law. This was, however, only officially recognizing the long-standing (since April 1, 2001) practice of channeling all STRs to the Financial Intelligence Service as a subdivision within the Financial and Economic Crime Branch, now (confusingly) renamed Financial Investigation Unit–FIU. So for all purposes, the FIS assumes the functions and responsibilities of the financial intelligence unit for Guernsey, specifically designated as central authority receiving all STRs, subjecting them to an analytical process, and then deciding if and to whom the information should be disseminated.

426. The STRs follow the usual processing path: the incoming disclosures are matched with the databases the FIS has direct access to, subjected to an evaluation and forwarded to the law enforcement authorities (mostly, but not necessarily the Financial Crime Team within the FIU) if there are indications of money laundering or terrorism financing. The analysis by the FIS is in practice rather passive. Although the FIS has the power to query all administrative services of the Bailiwick, it has only done so on two occasions since 2007 (requests for tax information). The initial assessment is particularly relevant in the context of the consent procedure, when such consent is expressly requested.

427. The organizational structure of the Financial Investigation Unit allows for a clear distinction between the functions of the Unit as an intelligence unit and those of an investigative law enforcement body. This is especially important in the conduct of the external relationships of the FIS with foreign (administrative) FIUs. This clear division of tasks is also operationally effective in that the FIS fulfills a selective and pre-investigative function in filtering out reports that do not warrant further investigation and adding value to the STR information received to prepare the case for further investigation, where the analysis reveals sufficient indications. The separation between the intelligence and investigative functions of the FIU is equally relevant in the development of a relationship of trust between law enforcement and the reporting entities that can rely on the FIS to screen their reports for quality and relevance before deciding on a formal investigation. The relationship between the FIS (or, for that matter, the FIU) and the financial industry appears to be open and constructive.



428. The human and financial resources allocated to the FIU reflect the serious commitment of the Bailiwick authorities to protecting the reputation of the financial center. The assessors noted the professional level of the FIS staff and their specific training and background in AML/CFT matters. The multidisciplinary approach of combining the expert knowledge of the police and customs officers, the analysts, and the legal assistants at operational level is productive. The FIS has access to a whole range of law enforcement, administrative and commercial information but, as said, makes little use of the administrative sources. Direct access to financial information is quite restricted: there is only a legal permission to query the reporting entity for information complementary to the initial disclosure and the possibility to request the supervisory authorities for information in their possession. There is also the practice of the FIS tracing existing financial accounts (FAE), but the financial institutions are not under the obligation to disclose that information. Any other financial information needs the intervention of the courts and the use of the statutory investigative powers of the FIU. This means the process is no longer in the analytical/intelligence stage and has passed to the investigative stage of collecting evidence. The FIS is quite active in the international scene (see statistics above and under R. 40) and does actively share information for intelligence purposes with its counterpart Financial Intelligence Units.

**Effectiveness:**

429. The FIU/FIS keeps detailed statistics, and all requests from the assessment team for additional figures were promptly met. The present average reporting level is approximately 50 STRs per month, and increasing. The dissemination rate is quite high, reaching 86 percent in 2009. As noted above, it is estimated that, in terms of single STRs, the dissemination rate to overseas authorities is 60 percent.

430. It is important to note that the estimation of the rate of STRs resulting in investigations, as shown in the table above (16 percent in the last two years), is made on the basis of feedback received from local and overseas agencies, and needs to be viewed with some caution. While the local information seems quite reliable, the feedback from foreign sources is more difficult to assess. This is particularly the case for the number of convictions reported from overseas, as they may lead to different interpretations and cannot really be verified. All in all though, it must be acknowledged that the figures do give a general idea of the performance of the STR regime in terms of local and overseas investigations, although the real value of the STR information to the investigations remains a question mark.

431. There are no indications of lack of timeliness or unreasonable delays in the processing of STRs due to internal structural factors. Delays are sometimes incurred where the FIU has to depend on external sources, such as its foreign counterparts. The resources allocated to the FIU/FIS are deemed sufficient in view of the number of STRs and the FIS adequately manages the process. The consent procedure puts a time pressure on the FIS, but this has not given rise to real difficulties. The positive effect of this procedure is the *de facto* immobilization or freezing of suspected assets so they do not disappear before law enforcement can take action.

432. As noted, there is a weakness in the information gathering capacity of the FIS. A Financial Intelligence Unit should ideally have direct or indirect access to financial and other additional information to adequately perform its functions. Under the Bailiwick regime, access

to such additional financial information (besides from the reporting entity) is only available through a court order. This is, however, an investigative measure that will normally only be considered by the judge if the case is at a sufficiently high evidentiary stage. Although this circumstance is within the international standards, effectiveness could be enhanced if the FIS would dispose of a formal (additional) financial information gathering power in the context of an STR analysis.

433. Overall, the FIU/FIS is adequately performing its role as a key player in the AML/CFT system. It has developed a relation of trust and openness with the financial sector, which is also an important factor explaining the steadily increasing number of STRs. The system is geared to ensure that the STRs are appropriately dealt with in a focused and professional manner. The clear separation between the intelligence and the investigative side of the handling of the reports particularly enhances the transparency of the process.

434. The majority of the STRs and disseminations relate to foreign predicate activity with the proceeds ending up in the Bailiwick, which is no surprise considering the offshore nature of the Guernsey financial industry. Consequently the FIU/FIS is greatly dependant on the assistance received from its counterparts abroad, which is not always forthcoming or does not always contain much relevant information. Also relevant to a fair analysis of the effectiveness is the positive impact of the systematic (spontaneous) dissemination of information by the FIU/FIS to the competent authorities of other jurisdictions to assist in their analysis or investigation.

435. Focusing on the local situation, the picture is more diffused. While the STR information can be linked to a reasonable number of investigations resulting in prosecutions and convictions for predicate offenses, the law enforcement follow up on money laundering is disappointing. All in all, STRs have been more or less instrumental to the modest number of five ML investigations over a period of three years (2007–2009), with only five ML prosecutions undertaken and two convictions obtained. STR information has been used in only one prosecution. The fact that the FIU/FIS makes relevant information readily available to foreign counterparts is a positive factor, but does not effectively compensate the low level of results domestically. This is a challenge for the law enforcement authorities as a whole and not just for the FIU/FIS.

436. The FIS should endeavor to enhance its performance in terms of cases for investigation for money laundering activity, particularly as a stand-alone offense. The system is still predominantly geared to take on the local predicate criminality and related money laundering, and leave the rest to the foreign originating country. The challenge of investigating and prosecuting money laundering as an autonomous offense by keeping the handling of the case in the Bailiwick, working on the basis of the evidence gathered in its own jurisdiction, and not so much depends on foreign authorities in deciding on and determining the outcome of the investigation/prosecution, still has to be met.

### 2.5.2. Recommendations and Comments

- The FIU/FIS, as part of the Bailiwick law enforcement community, should implement steps to improve the effectiveness of the reporting system to support an increase in the number of investigations and prosecutions.

### 2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors underlying rating
<b>R.26</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Limited effectiveness of the overall reporting system in terms of domestic law enforcement results in respect of money laundering.</li> <li>• Lack of effectiveness due to a limited direct access to financial information.</li> </ul>

## 2.6. Law enforcement, prosecution, and other competent authorities—the framework for the investigation and prosecution of offenses, and for confiscation and freezing (R.27 and 28)

### 2.6.1. Description and Analysis

#### Legal Framework

437. The legal framework for the investigation and prosecution of ML and FT offenses and for related seizure and confiscation measures is provided by Proceeds of Crime Law (POCL), the Drug Trafficking Law (DTL), the Terrorism Law (TL), and the Civil Forfeiture Law (CFL). The investigative powers of the police and the conservatory measures taken during an investigation are governed by the generally applicable provisions concerning investigations in the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 and in the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003. Customs officers can exercise the same powers as if they were police officers (see *i.a.* s.17 DL, s. 51 POCL).

438. Besides having the overall responsibility for the prosecution of offenses, the Attorney General has powers of investigation under the Fraud Investigation Law in cases of suspected serious or complex fraud, under the Insider Dealing Law in cases of suspected insider dealing, and under the Protection of Investors Law in cases of suspected market manipulation.

#### Designation of Authorities ML/FT Investigations (c. 27.1):

439. The Financial Investigation Unit (Cross Border Crime) is a division of the Guernsey Border Agency (Customs and Excise) and has primary responsibility for the investigation of money laundering and terrorism financing and all other financial crime with a cross-border element. It is staffed by police and customs officers and is made up of three teams (see chart above, cr. 26.1). The financial criminal team, which forms a part of the operational arm of the FIU, has specific responsibility for confiscation, money laundering and terrorism financing investigations, and evidence gathering and prosecution file compilation for prosecutors. The

team is led by a senior investigation officer and is staffed by experienced financial investigators. The Civil Forfeiture Team has responsibility for investigations into non-conviction based asset recovery.

440. The Police Commercial Fraud Department (PCFD) is responsible for investigations in respect of domestic financial crime. A Detective Inspector leads the team and all its officers are experienced investigators, most of whom have previous experience within either the Criminal Investigation Department or Special Branch. When the investigation uncovers criminal proceeds, they may deal with the money laundering angle and consider laying additional charges. A partnership agreement is being drafted ensuring proper coordination between the PCFD and the FIU.

441. The Guernsey Police investigates offences that are not assigned to specific law enforcement departments. These would include common offences such as possession of drugs and predicate proceeds generating criminality such as theft and robbery. Drug trafficking matters fall within the remit of the Guernsey Border Agency, who works in partnership and consultation with the Police. The Police can add on a money laundering charge to any local proceed-generating offense, but any substantive money laundering or confiscation investigation will be conducted by the FIU, where the resources and expertise reside.

442. The Attorney General is responsible for issuing warrants authorizing the use of special investigative techniques under the Regulation of Investigatory Powers Law. All prosecutions are brought in his name and are presented in court by a specialist prosecution team within his Chambers. Members of the Attorney General's Chambers provide advice and assistance to police and customs officers in respect of financial investigations and the preparation of cases for prosecution. Lawyers specialized in economic crime, mutual legal assistance, and asset recovery work closely with the law enforcement agencies in the areas of ML/FT.

**Ability to Postpone/Waive Arrest of Suspects or Seizure of Property (c. 27.2):**

443. The Police Powers Law confers a power to police officers to arrest and seize. The power is a permissive one and the exercise of that power can be deferred, postponed, or waived for the purposes of following the money trail, of identifying suspects, or of evidence gathering. Deferring the arrest of suspected persons or seizure of criminal items or assets is a common law enforcement practice aiming at maximum effectiveness, especially in drug trafficking cases. It is the responsibility of the officer in charge of the investigation, often with legal guidance from the Law Officers, to decide on the timing of arrests, which may entail allowing an illegal situation to continue in a controlled way.

**Additional Element—Ability to Use Special Investigative Techniques (c. 27.3):**

444. Under the Regulation of Investigatory Powers Law, the law enforcement agencies can be authorized to employ a range of covert investigative techniques that are available for use in investigations into ML and FT offenses. Sections 3 to 5 deal with interception of communications, Sections 22 and 23 deal with directed surveillance, Section 24 with covert human intelligence sources, Section 26 with intrusive surveillance, Section 39 with entry on to and interference with property, and Section 46 with the investigation of electronic data

protected by encryption. The use of the techniques is dependent on the consent of the Attorney General save for the Section 46 power which requires written permission from a person holding judicial office.

**Additional Element—Use of Special Investigative Techniques for ML/FT Techniques (c. 27.4):**

445. The special investigative techniques identified above have been utilized against serious crime syndicates operating in and around the Bailiwick. An example is Operation Cash Extraction, a case where movements of money were allowed which enabled some overseas jurisdictions to freeze significant amounts.

**Additional Element—Specialized Investigation Groups and Conducting Multinational Cooperative Investigations (c. 27.5):**

446. The Financial Criminal Team within the FIU is staffed by trained financial investigators and is responsible for investigating the proceeds of crime. It is supported by Technical Support Units within the police force and the customs service. In addition, officers possess specific skills that can be utilized during investigations, such as CHIS (Covert Human Intelligence Source) handling, there is a trained search team as well as investigators with forensic computing skills for analyzing seized computer equipment. On behalf of law enforcement, the FIU also manages a contract for forensic accountancy services, which can be called upon by any of law enforcements' financial crime teams.

447. Assistance involving the use of the special investigatory techniques is afforded to other jurisdictions as necessary on a case-by-case basis in support of ML/FT investigations as well as investigations into underlying predicate offenses. The use of these powers is subject to the provisions of the Regulation of Investigatory Powers Law as set out above, and joint protocols are agreed in appropriate cases.

**Additional Elements—Review of ML and TF Trends by Law Enforcement Authorities (c. 27.6):**

448. Internal reviews of methods, techniques, and trends take place regularly within the various organizations involved in law enforcement and there are also regular reviews on an interagency basis. Within the FIU, Egmont group newsletters and sanitized cases of interest are shared with FIU staff and other Service Authority members to raise awareness of current developments. The FIU also receives assessments and circulars on FT matters from the Serious Organized Crime Agency via Special Branch and the Police Force Intelligence Bureau. The FIU subscribes to many ML publications and periodicals and a large emphasis is placed on developing the skills and sector knowledge of the FIU. Where appropriate, such information is also shared with financial investigators within the police force and the customs service, as well as with the Attorney General's Chambers and with the GFSC. Practitioners from all the relevant competent authorities also meet on a quarterly basis through the AML/CFT Advisory Committee and at quarterly meetings of the Financial Crime Group and Terrorist Finance Team meetings, where Bailiwick developments and current cases are discussed.

**Ability to Compel Production of and Searches for Documents and Information (c. 28.1):**

449. There are several legal provisions conferring law enforcement authorities the power to—directly or through court intervention—demand, search for, and seize evidentiary material of a financial nature in the context of a money laundering or terrorism financing investigation.

- Section 45 of the POCL and Section 63 of the DTL permit a police officer with the authorization of the Attorney General to apply ex-parte to the court for a production order, i.e., an order requiring a named person to deliver up specified material. Sections 46 of the POCL and 64 of the DTL permit a police officer with the authorization of the Attorney General to apply for warrant to search specified premises, such as FSB, and seize material found there, under certain conditions.
- Section 48A of the POCL and Section 67A of the DTL provide for the possibility for the courts to issue customer information orders, requiring FSB to provide specified information related to a particular customer if that person is the subject of an investigation into money laundering, or location of criminal proceeds.
- Account monitoring orders can be issued by the court under Section 48H of the POCL and Section 67H of the DTL. These orders require named FSB to provide information about any dealings relating to the account or group of accounts named in the order, for a period not exceeding 90 days.
- The same powers and procedures can be applied in the context of an investigation into terrorism financing offenses. These offenses fall within the definition of criminal or unlawful conduct at Section 1 of the POCL and Section 61 of the CFL and consequently the investigatory powers under these laws are engaged.
- Schedules 5 to 7 of the TL provides for specific investigatory powers in the context of terrorism investigations, including its financing (Section 31). Under these provisions, the court can issue warrants permitting entry, search and seizure, production orders, orders requiring an explanation of seized or produced material, customer information orders, and account monitoring orders.
- There are generally applicable powers of search and seizure in parts I and II of the Police Powers Law. These may be invoked if there are reasonable grounds to believe that a serious arrestable offense as defined in Section 90 has been committed. As that definition covers any arrestable offense whose commission involves actual or intended substantial financial gain or serious financial loss to any person, or whose commission is likely to lead to a threat to the security of the Bailiwick or to public order or to cause death or serious injury to any person, it will apply to most predicate offenses as well as in the vast majority of cases concerned with the proceeds of crime and terrorist funding.
- Section 1 of the Fraud Investigation Law gives the AG special powers to obtain evidence without a court order in respect of serious or complex fraud, including the financial proceeds aspect, wherever committed. In this context, the AG has the power to require

the production of evidence and may seek a search and seizure warrant from the court. These powers have been frequently used, particularly in mutual legal assistance procedures. Sections 10 to 13 of the Insider Dealing Law and Sections 41L and 41M of the Protection of Investors Law provide for similar powers, which can be invoked in cases where the predicate offense involves conduct covered by those laws.

**Power to Take Witnesses' Statement (c. 28.2):**

450. All law enforcement officers are entitled and have the power to take down statements of witnesses. This common authority is inherent to the investigative function of a police or customs officer and is imbedded in the general principles of criminal law and procedure.

451. For the sake of completeness, it is worth noting that specific powers to take non-voluntary witness statements in special circumstances are found in par. 6 of Schedule 5 to the TL (explanation of material produced in response to a production order or as a result of a search warrant) and Section 1(2) and (3) (b) of the Fraud Investigation Law (AG requiring to answer questions or furnish information relevant to the investigation or the whereabouts of documents).

**Statistics (R.32):**

452. *See statistics introduction and under 2.5*

**Adequacy of resources—LEA (R. 30):**

453. The responsibility for investigation of money laundering, terrorist financing, other financial crime, and predicate offenses is shared by the police force and the customs service. Within the customs service, responsibility for dealing with cross-border financial crime lies with the FIU. It is funded under a budget allocated to the Law Enforcement Division and is made up of three teams: the Financial Criminal team, the FIS, and the Civil Forfeiture Team. The FIU is currently staffed by 21 personnel. The police force has an establishment of 176 officers, augmented by 61 civilian support staff, to police the Bailiwick. The Police Fraud Department has four officers who come under the line management of the Detective Inspector CID, who has command of a further twelve detectives in that Department. Both the police force and the customs service have full operational autonomy and independence and are free from undue influence or interference.

454. The day-to-day responsibility for prosecutions rests with the Director of Prosecutions, who has a team of five other lawyers, a paralegal (a former police officer), and a personal assistant. All lawyers within the directorate are criminal specialists who between them have over 80 years prosecuting experience in Guernsey or formerly as senior lawyers within the Crown Prosecution Service (CPS) in England. In addition, a mutual legal assistance lawyer and an asset recovery lawyer work alongside the prosecution directorate and share a resource in the paralegal and personal assistant referred to above.

455. All professional members of the prosecution directorate of the Attorney General's Chambers are required to have qualified as solicitors or barristers in the United Kingdom or in a Commonwealth jurisdiction. The holders of senior positions must also demonstrate significant experience of criminal practice. All lawyers in the prosecution team are required to undertake

training in the areas of money laundering and terrorist financing by attending a minimum of at least one relevant course per year.

456. Prosecutors work closely with the law enforcement agencies throughout the life of many cases, but it is well understood that the prosecutor always has the final decision with regard to whether a prosecution should be started or continued, and therefore has full operational independence. In making prosecution decisions, the Code for Crown Prosecutors is applied.

457. All staff members working for the law enforcement agencies and for the prosecution directorate are provided with regular compulsory training on AML/CFT issues. Financial investigators and analysts working for the FIU are required to attend NPI and similar training courses, presentations, and conferences. Officers of the Police Commercial Fraud Department undergo a basic fraud investigation course in the United Kingdom. Following this, they will undertake the NPIA/ARA course for financial investigation. Through partnership agreements with U.K. forces, the Metropolitan Police, and the City of London Police, staff members also have the opportunity for short-term attachments to Economic Crime Units Representatives from law enforcement also attended several of the AML/CFT training sessions set out below alongside members of the prosecution team.

#### **Implementation and effectiveness:**

458. The statistics on money laundering cases over 2006 to 2009 (see 2.1) show 26 investigations, 8 referrals to prosecutors, 5 prosecutions and 2 convictions (guilty pleas), with 1 prosecution pending on several counts of money laundering (autonomous). An STR was involved (value unknown) in only 1 case that ended in a conviction. Although the number of investigations is steadily rising, the performance of the system in terms of prosecutions is still very modest.

459. The law enforcement authorities are adequately resourced and trained. They have a sufficient legal arsenal at their disposal to conduct investigations and collect the evidence required to bring a money laundering investigation to a good end, but still the results are modest. All money laundering investigations being conducted by the FIU (Financial Crime Team), the effectiveness issues raised under 2.5, are also relevant to the analysis of the overall law enforcement aspects. Great emphasis is placed on making information available to the overseas agencies, which is commendable in itself but carries the risk of overreliance on foreign law enforcement taking the initiative, while the money laundering activity in the Bailiwick continues to take place.

460. As for the judicial side, the limited number of successful prosecutions for money laundering raises an issue of effectiveness of the overall system in this regard. Although progress is being made, as witnessed by the pending money laundering case, the overall law enforcement policy should focus more on keeping the investigation and prosecution of foreign predicated money laundering as an autonomous offense in the Bailiwick jurisdiction. The judicial authorities should further develop their expertise in this domain by putting more effort and emphasis on the development of case law on stand-alone money laundering based on evidence collected in its own jurisdiction.



## 2.6.2. Recommendations and Comments

- The authorities should implement steps to improve effectiveness by seeking to increase the number of investigations and prosecutions, particularly on autonomous money laundering.

## 2.6.3. Compliance with Recommendations 27 & 28

	Rating	Summary of factors underlying rating
R.27	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>
R.28	C	

## 2.7. Cross-Border Declaration or Disclosure (SR.IX)

### 2.7.1. Description and Analysis

#### Legal Framework

461. The Bailiwick of Guernsey introduced a cross-border cash control regime with the Cash Control (Bailiwick of Guernsey) Law, 2007, in order “to disrupt the cash transfer networks which support terrorism, money laundering and all forms of financial crime”<sup>3</sup> and to align itself both with the FATF standards and the EC Regulation 1889/2005 of October 26, 2005 on controls of cash entering or leaving the Community. The Law came into effect on February 18, 2008. Other relevant statutes are the Customs Law 1972 (transportation by freight) and the Post Office Ordinance (parcel post). All extend to Sark and Alderney.

#### Mechanisms to Monitor Cross-border Physical Transportation of Currency (c. IX.1):

462. Guernsey has opted for a declaration system in line with the regime at the external borders of the EU, which imposes an obligation on individuals importing into or exporting from the Bailiwick cash and bearer-negotiable instruments to a value of €10,000 or more to make a report to an “officer”, i.e., of the Customs and Excise. It is an offense for an individual to carry in excess of a “specified” amount (set at €10,000) into or out of the Bailiwick, unless the cash passes through a designated port or customs service airport and the individual completes a truthful cash control declaration (S.1(1)).

463. The Cash Control Law does not apply to the cross-border transportation of cash by means of freight or containerized cargo. This is governed by the general declaration regime of the Customs Law 1972 (S. 14 & 28), whereby all “goods” (and their value) have to be declared to the Chief Revenue Officer of Customs and Excise. By virtue of Section 6(2) of the Cash Control Law cash (as defined in that Law) in excess of €10,000 shall be deemed to be “goods”

<sup>3</sup> Report from the Home Department of the States of Guernsey dated July 23, 2007.

for the purpose of the Customs Law, making the provisions of that Law applicable to all matters pertaining to the Cash Control Law.

464. As for the control of cash import and export through the mail by parcel or by courier, Guernsey applies the provisions of Section 5 and 6 of the Post Office Ordinance 1973. All packets must be accompanied by a customs declaration form stating the nature, quantity, and value of the goods they contain. Here the term “goods” is not specified nor does the Cash Control Law make any reference to the Post Ordinance. Section 5 and 6 refer to “dutiable goods, small packets, or letter packets,” which is quite unspecified and difficult to reconcile with the Cash Control Law definition.

465. The original definition of cash under the Cash Control Law (S.10 (1)) covered all currency and bearer negotiable instruments as defined by the international reference documents. While maintaining the €10,000 threshold, the definition was extended on August 10, 2009 by the Cash Control Law (definition of cash) Ordinance, 2009, to include bullion (including gold, silver, palladium, platinum bullion), and again amended on March 24, 2010 by the Cash Control Law (amendment of definition of cash) Ordinance, 2010 to include postage stamps<sup>4</sup>.

**Request Information on Origin and Use of Currency (c. IX.2):**

466. By virtue of Section 6 of the Cash Control Law, the Customs Law applies to the cross-border control regime. Consequently, all investigation and enquiry powers vested in customs officers can be used in that context. According to Section 33 of the Customs Law, officers have the power to require “evidence” in support of any information required in respect of the import or export of goods. This would include the authority to make further enquiries on the origin or use of the cash. There is, however, no equivalent provision in the Post Office Ordinance.

**Restraint of Currency (c. IX.3):**

467. If a declaration or non-declaration gives rise to a suspicion of the cash being criminal proceeds or intended to be used in unlawful conduct, Sections 6 and 7 of the Civil Forfeiture Law enable cash in excess of £1,000 to be seized for an initial period of 48 hours, extendable by court order to up to two years. The definition of cash in Section 3 of the Civil Forfeiture Law is similar to that of the Cash Control Law.

468. Similarly, suspected terrorist cash, i.e., cash that is intended to be used for the purposes of terrorism, consists of resources of a proscribed organization, or is property earmarked as terrorist property (Paragraph 1 of Schedule 2 TL) can be seized by virtue of Section 19 and part 2 of Schedule 3 of the TL for an initial period of 48 hours, extendable by court order for a period of up to two years. Here also cash is defined in a similar way as the Cash Control Law (Schedule 3, paragraph 1 TL). There is no minimum threshold.

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<sup>4</sup> This was prompted by the circumstance that a stamps dealer of international repute is active in Guernsey and by the potential to use stamps as investment instruments.

469. In case of a false declaration in relation to the import or export of cash, the powers of seizure and detention under Section 56 of the Customs Law can be applied. Ultimately, the cash is liable to forfeiture under Section 22(e) of the Customs Law and Section 7(b) of the Cash Control Law. Although under Section 12 of the Post Office Ordinance, noncompliance with its declaration requirements also renders the goods in question liable to forfeiture, the Ordinance does not contain appropriate and specific provisions on temporary restraint measures.

**Retention of Information of Currency and Identification Data by Authorities when appropriate (including in Supra-National Approach) (c. IX.4):**

470. Section 4 of the Cash Controls Law specifically charges the Chief Officer of Customs and Excise to keep a record of all information from cash control declarations and to conserve the data for a minimum of six years. All declaration data made under the Customs Law is retained for three years. As for the declarations under the Post Office Ordinance, they are also retained for three years but only in case the goods have been forfeited because of a false declaration. All cases of suspected money laundering or terrorist financing would generate an investigation with data from the investigation being kept for 6 years. In practice the information is stored with the FIS. Declaration data are not categorized as STR information (except information disclosed by the Post Office under the Disclosure Law as STRs), and remain accessible and available to the other law enforcement agencies.

**Access to Information by FIU (including in Supra-National Approach) (c. IX.5):**

471. As said, there is an agreed procedure between Customs and the FIU whereby all information collected under the Cash Control Law is sent to the FIS for analysis and further investigation, if necessary. Except for two cases forwarded to the Director of Income Tax in 2008, no declaration has triggered further (law enforcement) action. Information on cash declared in freight or by post is forwarded to the FIS only if there is any suspicion regarding the cash or when periodic risk assessment exercises are conducted. In the past four years, 130 such STRs were made by the Guernsey Post Office, most about parcels containing cash.

**Domestic Cooperation between Customs, Immigration, and Related Authorities (c. IX.6):**

472. According to the authorities, coordination for law enforcement purposes between the relevant authorities is a matter of common practice, particularly enhanced by the comparatively small size of the Bailiwick's law enforcement community. There is an established coordination practice between law enforcement and other interested authorities, such as the Police Special Branch, the FIU, customs, and the Income Tax Authority. Coordination with Immigration is facilitated given that immigration is part of the Customs Service. Coordination between the Customs and Police is structured within the FIU, comprising officers from both agencies and which deals with all AML/CFT issues arising from the declaration system.

**International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (c. IX.7):**

473. Section 5(1) of the Cash Controls Law allows for international cooperation, where it generally and without limitation *as to jurisdiction* states that information can be disclosed for

the purposes of the investigation, prevention, or detection of crime or with a view to the investigation of, or otherwise for the purposes of, any criminal proceedings, which is not limited to proceedings in Guernsey. Under Section 5(1) (f), in cases in which an officer has grounds to suspect that the information relates to any illegal activity, it may be shared with the competent authority of another country or territory on a reciprocal basis.

474. In addition, the Guernsey Customs participate in the global information exchange network based on bilateral and multilateral Customs agreements. Section 4(6) of the European Communities (Bailiwick of Guernsey) Law 1973 also specifically provides for an effective exchange of information and cooperation with the Customs of the EU member States on Community obligations, which would comprise the obligations under the EU Regulation 1889/2005 on cross-border cash control.

**Sanctions for Making False Declarations/Disclosures (applying c. 17.1-17.4 in R.17, c. IX.8)**

475. In addition to the offense of making an untrue declaration in violation of Section 1 of the Cash Controls Law, it is also an offense under Section 1(2) for an individual to enter into an agreement or arrangement by which cash in excess of the specified amount is split and carried by two or more individuals in order to avoid making cash control declaration (“smurfing”). Both offenses are punishable on indictment by an unlimited fine and a term of imprisonment of up to two years (Section 7). The cash concerned is liable to forfeiture by virtue of Section 7(b) of the Cash Controls Law and Section 22(e) of the Customs Law. In the context of freight declaration, failure to comply with Sections 14 and 28 of the Customs Law is punishable with a fine of up to £5,000 and the cash may be forfeited under Section 22. Under Section 12 of the Post Office Ordinance 1973, the parcel related to false declarations is only liable to forfeiture. The regulatory sanctions of the GFSC and the AGCC, such as license revocation, can be invoked as appropriate.

476. These sanctions apply to all natural and legal persons by virtue of Section 9 of the Interpretation Law, which provides that “person” includes any corporate or unincorporated body unless the contrary intention appears. If necessary, prosecutions of natural and legal persons for ancillary offenses under the Attempts Law and the Aiding and Abetting Law can be brought.

477. Prosecution of the above offenses is the responsibility of the prosecution directorate of the Attorney General’s Chambers and the Bailiwick courts apply the penalties. Regulatory sanctions are the responsibility of the GFSC and the AGCC. In cases where a legal person was prosecuted, concurrent prosecution could also be brought against any director or senior manager whose involvement in the offense can be established. Regulatory sanctions can also be applied to directors and senior managers whenever appropriate.

**Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF (applying c. 17.1-17.4 in R.17, c. IX.9):**

478. Depending on the evidentiary value of the available information and elements, the ML and FT-related criminal procedure and code provisions will apply (Sections 38 & 40 PCL; Sections 57 and 59 DTL; 9 and 11 TL—all carrying up to 14 years imprisonment and an

unlimited fine), and criminal charges may be brought against the person also within the context of the cross-border declaration regime. See also the narrative for IX.8 above.

**Confiscation of Currency Related to ML/TF (applying c. 3.1-3.6 in R.3, c. IX.10):**

479. On suspicion of the cash being proceeds of crime or related to terrorism financing, all seizure and forfeiture provisions of the Civil Forfeiture Law and of the Terrorism law fully apply. This was the case in 2005 when a sum of £14,950 sent by post was seized and ultimately confiscated.

**Confiscation of Currency Pursuant to UN SCRs (applying c. III.1-III.10 in SR III, c. IX.11):**

480. All declarations are routinely checked against the lists of designated terrorists. Persons crossing the border with funds subject to the UNSCR 1267 and 1373 sanctions, or attempting to do so, are in breach of the legislation imposing those sanctions. Furthermore, the cash would be liable to seizure under Sections 6 and 7 CFL or Section 19 and Part 2 of Schedule 3 of the TL, and to confiscation depending on the evidentiary value of the available elements.

**Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c. IX.12):**

481. Since August 10, 2009, the definition of cash in the Cash Controls Law was extended to specifically include gold, silver, palladium, and platinum bullion, in response to the emerging international risk of bullion being used for money laundering purposes. Import and export of such precious goods receives special attention from the customs service who, as a matter of practice, would report any unusual or suspicious movements of gold, precious stones, or metals to the customs service or other appropriate authority in the country of origin. Also, unusual importations of precious metals or stones will be reported through the Kimberley process to the relevant U.K. office. No unusual movements have taken place to date, no notifications were sent as yet to foreign agencies.

**Safeguards for Proper Use of Information (including in Supra-National Approach) (c. IX.13):**

482. In addition to the applicable data protection rules, legal protection of cash declaration related data is provided for in Section 5 of the Cash Controls Law, limiting how the information can be lawfully used and the authorities it can be disclosed to. As the data are stored within the FIS, they are physically protected in the same way as STRs (see cr. 26.7 above). Furthermore, the information is categorized as intelligence material and disseminated as such.

**Training, Data Collection, Enforcement and Targeting Programs (including in Supra-National Approach) (c. IX.14):**

483. According to the authorities, all customs investigators and border staff have received training in respect of the requirement to identify and assess the movements of cash into and out of the Bailiwick. Guidance and instruction has been published in the customs service handbook. Data relevant to the cross-border movement of cash is collated by the FIS. Regular risk-

assessment exercises are mounted with the objective of identifying cross-border movement of cash, and these exercises are supported by the deployment of specially trained cash-sniffing dogs. Contravention of any enactment in relation to cash is to be reported and investigated by the FIU.

**Supra-National Approach: Timely Access to Information (c. IX.15):**

484. Non applicable.

**Additional Element—Implementation of SR.IX Best Practices (c. IX.16):**

485. Guernsey has developed technical expertise and the capacity to detect cash at the borders. All customs service officers deployed at the borders have received training in respect of the movement of cash. Regular typologies and recent national cases are provided to “up skill” all customs service staff in this specific task. Customs service staff has various tools at their disposal including X-ray equipment and other detection methods. Security staff are fully trained and briefed on the need and requirement to detect the movement of cash into and out of the Bailiwick. In addition, the Bailiwick law enforcement authorities conduct regular risk-assessment exercises at the borders specifically targeting cash movements. The use of a cash-sniffing dog has been utilized on occasions to support the officers on the controls.

486. Customs service officers and police Special Branch ports officers have good working relationships with all port staff. Port staff routinely receives briefings and updates regarding the need to detect cash being imported or exported and they will be encouraged to contact law enforcement staff with any suspicions or relevant information. Customs service officers deployed profile the movement of passengers and identify travel to or from high-risk jurisdictions, unusual routes, race, religion, or ethnicity. Typologies assist law enforcement staff to identify indicators to assist detection. Law enforcement has access to all data requirements such as passport information, ticket details, routing, shipping documents, cargo manifests, and airway bills.

487. Where cash is detected, staff is trained to evaluate the travelers’ need to carry cash. They are trained to question the person and to identify at a very early stage factors suggesting that these funds may represent the proceeds of crime or be intended for use in the funding of terrorism. Tests are available to check for traces of explosives or, for example, drugs, on currency.

**Additional Element—Computerization of Database and Accessible to Competent Authorities (c. IX.17):**

488. Reports made under the Cash Controls Law are centrally stored in a computerized form within the FIS. These reports are available to competent authorities for AML/CFT purposes and are disseminated in accordance with the relevant provisions contained within the POCL and DL.

**Statistics (R.32):**

489. The Guernsey authorities supplied following statistics on the cross-border declaration system (Cash Controls Law):

**Overall number of declarations**

	<b>Total Declarations</b>	<b>Exiting Jurisdiction</b>	<b>Entering Jurisdiction</b>	<b>Air Travel</b>	<b>Sea Port</b>	<b>Intelligence Disseminated</b>
<b>2008</b>	29	18	11	24	5	2
<b>2009</b>	55	34	21	50	5	0

**Note:**

- Statistics on declarations made under the Customs Law (freight) or the Post Office Ordinance (parcels) were not available.
- The two cases disseminated in 2008 were forwarded to the Director of Income Tax for criminal investigation purposes.

**Overall amounts declared**

490. The statistics for the overall amounts declared are as follows:

	<b>Sterling converted</b>	<b>2008</b>	<b>Sterling converted</b>	<b>2009</b>
	<b>Export</b>	<b>Import</b>	<b>Export</b>	<b>Import</b>
<b>British Pound</b>	420,128.87	355,860.00	134,202.00	185,950.00
<b>US Dollar</b>	52,064.00	24,438.00	3,050.00	47,458.00
<b>Euro</b>	367,511	159,944.00	72,280	100,590.00
<b>Bullion</b>	0.00	0.00	531,631.00	0.00
<b>Repatriated</b>	250,000.00	250,000.00	0.00	£2,500,000
<b>Total</b>	<b><u>669,575.00</u></b>	<b><u>434,382.00</u></b>	<b><u>741,163.32</u></b>	<b><u>2,833,998.00</u></b>

**Note:**

- “Repatriated” means corresponding bank to bank dispatches under cash declaration forms.
- There has been one instance of cash seizure: in 2005, a sum of £14,950, sent by post and spread over several batches, was seized under the DTL and ultimately confiscated.

**Dissemination of information obtained by virtue of Cash Declarations received under the Cash Controls (Bailiwick of Guernsey) Law, 2007**

<b>Year</b>	<b>No. of disseminations</b>	<b>External/international</b>	<b>Comments</b>
<b>2008</b>	1	International–U.K.	U.K. traveler arrived to purchase gold bullion. (Transaction was refused and U.K. HMRC authorities notified)
<b>2008</b>	2	External	Disseminations to Guernsey Income Tax
<b>2009</b>	1	International–South Africa	South Africa FIU regarding 11 independent declarations received concerning cash & travelers checks exported from SA

### **Adequacy of Resources—Customs (R.30)**

491. *Resources/independence:* The customs service is an autonomous body. It is responsible for law enforcement in their domain (particularly, in the areas of serious financial crime, money laundering, and drug trafficking), securing the borders of the Bailiwick in relation to persons and goods, and the collection of revenue in the form of indirect taxes. The Chief Officer reports to the Home Department of the States of Guernsey, but the customs service has complete operational independence and is free from any political interference. It currently has a staff of 92 full-time employees and is made up of four divisions: Law Enforcement, Immigration, Customs and Excise, and Corporate. The heads of the four divisions report to the Chief Officer. The customs service produces an annual report which sets out the key performance objectives of the four divisions and measures performance against those objectives. The law enforcement division has a budget of approximately £5 million, of which 87 percent comprises staff costs. It is divided into four branches. These are the Detection branch, which operates principally at the ports of entry to the Bailiwick; the Operations branch, which targets serious and organized criminals who seek to traffic controlled drugs to the Bailiwick; the Professional Standards branch; and the FIU. The law enforcement division in the discharge of its functions makes extensive use of intelligence and covert operations when appropriate. This necessitates a close working relationship with bodies such as the police force, U.K. organizations such as HM Revenue and Customs and SOCA, and international law enforcement agencies. Its work is supported by TSU, surveillance, investigative, and search teams.

492. *Standards/integrity:* The customs service has a well-developed officer recruitment process. Applicants that are considered to meet the standards set by the key criteria will be required to undertake an assessment day. This will involve the candidates undertaking a series of multiple exercises against which they will be assessed. Candidates that successfully pass the assessment day will then be further formally interviewed. All staff employed are of a high integrity and appropriately skilled. Customs service's financial investigators are generally officers with extensive previous operational and investigative experience and as a consequence have received the commensurate training and development to be able to work in these areas. All Financial Investigators are subject to enhanced security clearance and nationally accredited through the National Police Improvement Agency and also to NVQ level 3 Investigation.

493. Standards are maintained and assessed through regular appraisals and through the requirement of continuous professional development that is integral to the specialized training that financial investigators are required to undertake. The Service assesses staff against key core competencies to maintain high professional standards.

494. The Professional Standards Branch is a pro-active body that measures and assesses staff performance and conduct to ensure the maintenance of high standards. All members of the customs service are bound by confidentiality agreements. They are also covered by tipping off offences under the Bailiwick's AML/CFT legislation and more general statutory provisions in respect of data protection and computer misuse.



495. *Training:* A comprehensive training strategy and associated training program which is linked to the U.K.'s national occupational standards is in place throughout the customs authorities. Officers need to pass nationally-accredited training courses and follow ongoing personal development and continuous professional development programs in a number of different areas depending on their specific area of deployment. Specialist financial investigation and intelligence training is also provided to personnel deployed within the FIU which is augmented within ongoing training events and educational material/typologies to ensure that their continued professional development is maintained. This will lead to national accreditation of Financial Investigators.

#### **Implementation and effectiveness:**

496. The cross-border cash declaration regime installed by the Cash Controls Law 2007 brought the Bailiwick in line with the corresponding EC Regulation 1889/2005<sup>5</sup> and goes beyond the Regulation with the Cash Controls Law Ordinances 2009 and 2010 by expanding the definition of “cash” to bullion and postage stamps.

497. The controls are effectively implemented, as witnessed by the frequency of the declarations under the Cash Controls Law and the STRs filed by the Post Office which resulted in a sizable amount seized and confiscated. Besides the usual ports of access for organized travel like the airport and the ferry terminal, systematic controls are also conducted on private yachts and other boats, and on an ad hoc basis within the Post Office. No instances of non- or false declaration have been reported. None of the declarations have, however, given rise to further action (except the two tax related cases in 2008) or have yet been used in support of investigations. Moreover, as non-canalized movements of cash are not incorporated within the Cash Controls legislation (and, therefore, there is no requirement to complete a cash declaration form), the legal framework governing the declaration of freight and post parcels, i.e., the Customs Law and the Post Office Ordinance, deviates from the specific cross-border declaration regime and international standards on following points:

498. The items subject to a declaration under the Post Office Ordinance are referred to as “dutiable goods, small packets or letter packets.” Cash can hardly be described as “dutiable goods” and the other terms are too unspecified to adequately reflect the definition of cash or bearer negotiable instruments in the sense of the Cash Control Law or the FATF standard.

499. Under the Customs Law and the Post Office Ordinance, there is no obligation to forward any declaration of cash exceeding €10,000 to the FIS, nor is it done so in practice. This is only done when there is a suspicion surrounding the cash or as a result of risk assessment exercises, and as such—although still within the international standard—it diverges from the systematic and comprehensive reporting of the Cash Control declarations to the FIS. Furthermore, the Post Office Ordinance (which is not a “Customs Law”) does not provide for

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<sup>5</sup> The Cash Controls Law declaration threshold of “in excess of” €10,000, however, does not fully correspond with that of the EC Regulation, which sets the amount at €10,000 or more.

the authority to make further enquiries (cr. IX.2), nor are there any provisions on temporary restraint measures (cr. IX.3).

500. There is a significant divergence between the three applicable legal instruments in respect of the level of sanctioning. The penalty under the Cash Control Law is a term of imprisonment of up to two years, an unlimited fine and forfeiture, the Customs Law provides for a fine of maximum £5,000 and forfeiture, while only forfeiture is possible under the Post Office Ordinance. In addition, to unbalancing the system and hampering a uniform approach, there is no objective justification for these differences in approach. Further, the Post Office Ordinance sanction is disproportionately and ineffectively low (cr. IX.8).

501. The authorities suggested that, as customs have a duty to inspect the packages that arrive in the Bailiwick to ensure compliance with the Ordinance, the Ordinance is therefore an “assigned matter”<sup>6</sup> and the penalties of the Customs Laws (forfeiture, imprisonment and fines) will apply in full to anyone in breach of the Ordinance. On the other hand, unlike the Cash Declaration Control Law (section 6), the Post Office Ordinance is not categorized as a “customs law,” making all the provisions of the Customs Law 1972 applicable to the Ordinance. In any case, the application of the Post Office Ordinance to a cross-border declaration regime as imposed by the international standards is controversial and open to legal challenge.

502. After the on-site visit, the Bailiwick authorities have taken corrective action to address the deficiencies in the declaration regime of cash transported by post, through the Post Office (Postal packets) (Amendments) Regulations 2010, came into effect on 28 July 2010 which, in short, brings the mail declaration system in line with the cash importation regime by freight<sup>7</sup>.

503. Corrective action needs to be taken to provide a firm legal basis and bring the system fully in line with the international standards. It is recommended to bring all cross-border transportation of cash above the specified threshold by any means under the uniform declaration regime of the Cash Control Law.

### **2.7.2. Recommendations and Comments**

- Legislative steps need to be taken to align the cross-border cash declaration control related to mail with the comprehensive approach of Cash Controls Law 2007, particularly in relation to the authority to enquire, the temporary restraint measures, and the adequate and uniform level of sanctions.

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<sup>6</sup> Under the Customs Law an “assigned matter” is “... *any matter in relation to which the Chief Revenue Officer is for the time being required in pursuance of any enactment to perform any duties;...*”.

<sup>7</sup> Under these Regulations, cash over £50 is considered to constitute “goods” for the purposes of the Post Office Ordinance and the customs and excise laws. The term “dutiable” is removed. Sanctions for breach of the declaration requirements of the Post Office Ordinance are raised to a maximum of two years imprisonment and an unlimited fine. The Customs enquiry and restraint powers also apply.

- Although the practice of limiting the notification of the FIS to suspicious incidents when related to freight and post parcels formally complies with the standards, from an effectiveness perspective, it is recommended to adapt a uniform approach for all cross-border cash transportations.

### 2.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	LC	<ul style="list-style-type: none"> <li>• (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).</li> <li>• No unified regime for all cross-border cash transportation. (effectiveness)</li> </ul>

## 3. PREVENTIVE MEASURES—FINANCIAL INSTITUTIONS

### Customer Due Diligence and Record Keeping

#### 3.1. Risk of money laundering or terrorist financing

504. The financial services industry in the Bailiwick is by nature subject to a significant risk of money laundering, particularly in the layering and integration stages. Although the entire industry is by no means high risk, significant portions of the sector involve customers, products, or services that are typically considered to be in the higher-risk categories, including the following:

- A substantial portion (indeed in many sectors the large majority) of relationships are conducted on a non face-to-face basis with non-residents of the Bailiwick;
- Many business relationships are conducted through introducers and intermediaries, some of whom are located in the Bailiwick but many others of whom are located in other jurisdictions that may be subject to varying levels of regulation and supervision;
- Private banking represents a significant proportion of the Bailiwick's business; and
- The use of legal persons and trusts, particularly as holding vehicles for personal investment assets, is prevalent, which can create complexities in finding the beneficial owner and other parties with significant ownership or control interests.

505. 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.

### Legal Framework

506. Under the 2004 Assessment Methodology for the FATF Recommendations, an asterisk applied to a criterion indicates that the relevant measures must be set out in law or regulation. To qualify as such, the requirements must have been issued or authorized by a legislative body and impose mandatory requirements with sanctions for noncompliance. This is relevant to many of the requirements under Recommendation 5, as well as all requirements under Recommendations 10 and 13. In respect of the remaining FATF Recommendations, the relevant domestic obligations must, at a minimum, be specified in “other enforceable means,” defined by the FATF Methodology as “measures issued by a competent authority and shown to be enforceable and sanctionable.” In either case, the sanctions must be effective, proportionate, and dissuasive. The following paragraphs set out the Bailiwick laws, regulations, and, as applicable, other enforceable means taken into account for the purposes of this assessment.

507. The primary legislative foundation for AML/CFT preventative measures in the Bailiwick is the Proceeds of Crime Law (POCL), which defines “money laundering,” specifies the businesses which 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.

508. 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.

509. 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.

510. 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.”<sup>8</sup> The following list sets forth the businesses included in Schedule 1 to the POCL:

- Lending (including, without limitation, the provision of consumer credit or mortgage credit, factoring with or without recourse, financing of commercial transactions (including forfeiting) and advancing loans against cheques).
- Financial leasing.
- Operating a money service business (including, without limitation, a business providing money or value transmission services, currency exchange (bureau de change) and check cashing).
- Buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion or buying or selling postage stamps, except where:
  - a) in the case of buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion, the business consists only of buying, selling or arranging for the buying or selling of bullion, or otherwise dealing in bullion, where the value of each purchase, sale or deal does not exceed £10,000, in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked,
  - b) in the case of buying postage stamps, the business consists only of buying postage stamps where the value of each purchase does not exceed £10,000, in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked, and
  - c) in the case of selling postage stamps, the business consists only of selling postage stamps:
    - (i) where the value of each sale does not exceed £10,000, in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked, or
    - (ii) in the course of:
      - (A) a postal services business carried on under the authority of a license granted under the Post Office Law, or
      - (B) a business authorized to sell postage stamps by the holder of a license under that Law.

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<sup>8</sup> Defined as conducting the specified activities in exchange for “any income, fee, emolument, or other consideration in money or money’s worth”.

- Facilitating or transmitting money or value through an informal money or value transfer system or network.
- Issuing, redeeming, managing, or administering means of payment; means of payment includes, without limitation, credit, charge and debit cards, checks, travelers' checks, money orders and bankers' drafts and electronic money.
- Providing financial guarantees or commitments.
- Trading (by way of spot, forward, swaps, futures, options, etc.) in:
  - a) money market instruments (including, without limitation, cheques, bills and certificates of deposit),
  - b) foreign exchange, exchange, interest rate or index instruments, and
  - c) commodity futures, transferable securities or other negotiable instruments or financial assets.
- Participating in securities issues and the provision of financial services related to such issues, including, without limitation, underwriting or placement as agent (whether publicly or privately).
- Providing settlement or clearing services for financial assets including, without limitation, securities, derivative products or other negotiable instruments.
- Providing advice to undertakings on capital structure, industrial strategy or related questions, on mergers or the purchase of undertakings, except where the advice is provided in the course of carrying on the business of a lawyer or accountant.
- Money broking.
- Money changing.
- Providing individual or collective portfolio management services or advice.
- Providing safe custody services.
- Providing services for the safekeeping or administration of cash or liquid securities on behalf of clients.
- Carrying on the business of a credit union.
- Accepting repayable funds other than deposits.
- Accepting deposits in the course of carrying on "deposit-taking business" as defined in the Banking Supervision Law.
- Carrying on "controlled investment business" as defined in the Protection of Investors Law.

- Carrying on “insurance business” as defined in the Insurance Business Law or doing anything which can only lawfully be done under the authority of a license of the GFSC under the Insurance Managers and Insurance Intermediaries Law.
- Carrying on “regulated activities” as defined in the Regulation of Fiduciaries Law, in circumstances where the activity is prohibited except under the authority and in accordance with the conditions of a license granted by the GFSC under Section 6 of that Law (a “fiduciary license”) or carrying on by way of business the activities described in Sections 3(1)(g) or (x) of that Law”,
- Otherwise investing, administering, or managing funds or money on behalf of other persons.

511. Schedule 1 to the POCL provides further that the businesses specified in part I of Schedule 1 to the POCL (which are listed above) are subject to certain exceptions. They are not “financial services businesses” (and, therefore, excluded from regulation) where they are listed in Part 2 to Schedule 1 as the following “incidental or other activities.”

- 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 insurance 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 authorization 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 percent 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.



512. 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 assessors have considered the exceptions set forth in Part II of Schedule 1. The exceptions are based primarily on a determination by the authorities that such businesses present a low risk of money laundering for various reasons, including that the person conducting the business is located in another jurisdiction subject to adequate anti-money laundering regulation, or that the business has a very low turnover or is ancillary to another business or businesses not included in Part I of Schedule 1. The assessors have considered these exceptions from regulated activities, including their rationale, and concluded that the scope of coverage of regulation is in material respects consistent with the FATF definition of “financial institution.”

513. 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 updated as recently as July 2010. The FSB Handbook contains two types of material applicable to FSBs with respect to the Regulations: Level One, called rules (which are in boxes with shaded background), and Level Two, called guidance. After careful consideration, the assessors have determined that the rules contained in the Handbook (Rules) qualify as “other enforceable means” for purposes of the assessment, based upon the following analysis.

514. The Rules set out how the GFSC requires FSBs to meet the Regulations. (Para. 1). When obligations in the FSB Regulations are explained or paraphrased in the FSB Handbook, and where the Rules are set out in the FSB Handbook, the term “must” is used, meaning that these provisions are mandatory and subject to the possibility of prosecution (in the case of a contravention of the FSB Regulations) as well as regulatory sanction and any other applicable sanctions. (Para. 14).

515. Section 49(7) of the POCL authorizes the GFSC to “make rules, instructions and guidance for the purposes of the regulations under subsection (3)” (which comprise the FSB Regulations), and Section 49(8) of the POCL requires that compliance with such rules, instructions, and guidance must be taken into account by the courts when considering compliance with the Regulations. In addition, the GFSC is authorized to issue public statements or impose discretionary financial penalties under Sections 11C and 11D of the Financial Services Commission Law, respectively, when an FSB “has contravened in a material particular a provision of, or made under, the prescribed laws.”<sup>9</sup> Since the Rules are made under Section 49(7) of the POCL for purposes of the FSB Regulations, the GFSC is authorized to impose these sanctions for violations of the Rules.

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<sup>9</sup> The prescribed laws are defined in the Financial Services Commission Law to include the POCL, the regulatory laws, the DTL, the TL, the DL, and the Wire Transfer Ordinances.

516. Furthermore, the minimum criteria for licensing under each of the regulatory laws<sup>10</sup> require compliance not only with each of those laws but also with any rules and instructions “issued under any other enactment as may be applicable to the institution” (which would include the Rules).<sup>11</sup> Failure to fulfill minimum licensing criteria under the regulatory laws authorizes the GFSC to revoke a license as well as impose conditions, directions, notices, or prohibition orders on any of those financial services businesses licensed or authorized under those laws. The GFSC can also take enforcement action under the Registered FSB Law in respect of those FSBs registered with the GFSC under that law.<sup>12</sup>

517. The Rules thus set out enforceable requirements with sanctions that can be imposed by the GFSC for noncompliance. Possible sanctions include the imposition of conditions in respect of FSBs, their controllers and staff; the issue of discretionary penalties up to £200,000 and public statements in respect of FSBs, their controllers and senior management; and the suspension and cancellation of licenses and registrations. These are issued by a competent authority (the GFSC), and therefore qualify as other enforceable means as defined in the FATF Methodology.<sup>13</sup> The authorities’ view that the Rules in the Handbook are enforceable is supported by the fact that the GFSC has included a reference to the failure to comply with the Rules in an enforcement action, and has also been confirmed in meetings with private sector participants, all of which stated that they view the Rules as enforceable requirements.

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

#### **3.2.1. Description and Analysis**

##### **Legal Framework**

518. The Financial Services Businesses (FSB) Regulations lay down the basic framework for compliance with the criteria in Recommendation 5. Regulation 4 requires Customer Due Diligence (CDD) measures to be undertaken when establishing a business relationship; carrying out an occasional transaction; there is suspicion of money laundering or terrorist financing; or there are doubts about the veracity or adequacy of previously obtained identification data. Regulation 7(1) provides for CDD measures to be carried out before or during the course of

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<sup>10</sup> The regulatory laws are defined in the Financial Services Commission Law to include the Banking Supervision Law, the Protection of Investors Law, the Insurance Business Law, the Insurance Managers and Insurance Intermediaries Law, the Regulation of Fiduciaries Law, and the Registered FSBs Law.

<sup>11</sup> See, e.g., Banking Supervision Law, sections 8 and 9 and Schedule 3. Criteria 1.A.

<sup>12</sup> E.g., the GFSC may impose conditions on or revoke a registration under Sections 9 and 10, respectively, of the Registered FSB Law.

<sup>13</sup> Level two of the FSB Handbook presents ways of complying with the Regulations and the GFSC Rules. The FSB Handbook uses the terms “should” or “may” in these provisions to indicate ways in which the requirements of the Regulations and the GFSC Rules may be satisfied. These provisions are, therefore, not mandatory and accordingly are considered guidance rather than other enforceable means.

establishing a business relationship or before carrying out an occasional transaction. Regulation 7(2) provides that verification of identity 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.

519. Regulation 4 requires identification and verification of the customer or any person purporting to act on behalf of the customer and verification of his authority so to act; identification and reasonable measures to verify identity 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; a determination as to whether the customer is acting on behalf of another person and the taking of reasonable measures to identify and verify the identity of that other person; information on the purpose and intended nature of each business relationship and a determination to be made as to whether the customer, beneficial owner and any underlying principal is a politically-exposed person.

520. Regulation 5 requires enhanced CDD to be undertaken in higher-risk circumstances, including relationships in which the customer or any beneficial owner or underlying principal is a politically-exposed person (“PEP”), correspondent banking relationships, and relationships requiring adequate measures to be taken to compensate for the specific risk arising where the customer was not a Bailiwick resident physically present when the business relationship was entered into or the occasional transaction carried out. In addition, Rules in chapters 2 and 11 of the FSB Handbook address measures to prevent the misuse of new technologies.

521. The Rules in the FSB Handbook issued by the GFSC supplement the Regulations and include the identification and assessment of risk, CDD, the treatment of high-risk relationships, the circumstances when reduced or simplified CDD may be applied, the monitoring of transactions and activity, and existing customers.

522. The GFSC also issues notices, instructions and warnings. Business from Sensitive Sources Notices and instructions are mandatory and require FSBs to implement procedures, review current procedures, or take specific action such as exercising a greater degree of caution, requiring enhanced CDD and giving special attention to all business relationships and transactions connected with countries or territories identified in the notices and instructions. The action taken by FSBs is reviewed during on-site inspections and by other means as necessary.

**Prohibition of Anonymous Accounts (c. 5.1):**

523. FSB Regulation 8 states that an FSB must 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. FSB Regulation 4(1) provides that, for any business relationship established prior to the effectiveness of the FSB Regulations in December 2007 that involved an anonymous account or an account in a fictitious name, the CDD requirements must be undertaken as soon as possible after such effectiveness and in any event before such account could be used again in any way.

524. Additionally, the GFSC Rules in chapter 8 of the FSB Handbook require FSBs 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.

525. The current legal provisions for not permitting FSBs to keep anonymous accounts or accounts in fictitious names are consistent with the requirements of the standard.

**Implementation and effectiveness:**

526. During interviews with private sector FSBs, the assessors were informed by these institutions that they do not permit anonymous accounts or accounts in fictitious names, nor do they provide numbered accounts. One bank noted that it has customers whose mail is sent with a number rather than a name appearing in the correspondence, for reasons of security, but assured the assessors that the customers' names are disclosed in its records. The assessors found that the criteria have been effectively implemented.

**When is CDD required? (c. 5.2):**

**5.2(a):**

527. FSB Regulations 4(1) and 4(2) (a) require FSBs to undertake CDD when establishing a business relationship. A "business relationship" is defined in the FSB Regulations as "a continuing relationship between the FSB in question and another party, to facilitate the carrying out of transactions, in the course of such financial services business, (a) on a frequent, habitual, or regular basis, and (b) where the monetary value of any transactions to be carried out in the course of the arrangement is not known on entering into the arrangement."

**5.2(b):**

528. FSB Regulations 4(1) and 4(2) (b) require FSBs to undertake CDD when carrying out an occasional transaction. For purposes of Regulation 4(2) (b), an 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):**

529. Guernsey, Alderney, and Sark has each addressed CDD measures relating to wire transfers by implementing legislation based on the European Regulation 1781/2006 on Wire Transfers. Section 2(5) of each of the Wire Transfer Ordinances requires that, where the transfer 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 €1,000, 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 (ii) which together exceed €1,000. The CDD measures applicable to wire transfers are discussed in greater detail in this section when addressing SR. VII.

**5.2(d):**

530. FSB Regulations 4(1) and 4(2)(c) require an FSB to undertake CDD where it knows or suspects or has reasonable grounds for knowing or suspecting (i) that, notwithstanding any exemptions or thresholds pursuant to the 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):**

531. FSB Regulations 4(1) and 4(2)(d) require an FSB to undertake CDD where it has doubts about the veracity or adequacy of previously obtained customer identification data.

532. The assessors found that the preventive measures obligations for undertaking CDD established by the FSB Regulations and Wire Transfer Ordinances are in line with and specifically address the requirements of this criterion and have generally been implemented by the FSBs.

**Implementation and effectiveness:**

533. FSBs interviewed by the assessors indicated that they have a clear understanding of the need to perform CDD when they establish a business relationship, conduct a transaction, or as otherwise required by the regulation, and that they have systems and controls in place to ensure that it occurs.

**Identification measures and verification sources (c. 5.3):**

534. FSB Regulations 4(1) and 4(3) require each customer to be identified and his identity verified using identification data. FSB Regulation 19 defines a “customer” as a person or legal arrangement who is seeking to form, or has formed, a business relationship with an FSB, or is seeking to carry out or has carried out, an occasional transaction with an FSB,<sup>14</sup> and defines “identification data” as documents which are from a reliable and independent source.

535. The Rules in chapter 4 of the FSB Handbook set out the particular identification and verification requirements for customers who are individuals (including the additional measures required to manage and mitigate the specific risks of non face-to-face business relationships or occasional transactions), the identification and verification of customers who are legal bodies or legal arrangements, the requirements for introduced business relationships, and the timing of identification and verification of identity. The Rules in section 4.4 of the FSB Handbook require an FSB 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

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<sup>14</sup> Section 9 of the Interpretation Law provides that in law and in every other enactment, the expression “person” shall, unless the contrary intention appears, include any body of persons corporate or unincorporate.

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 license) that bears a photograph of the customer; and to verify the individual's legal name, address, date and place of birth, nationality and official personal identification number. The particular sources for verification are set forth in Guidance.

536. Section 4.5 of the FSB Handbook requires that “adequate measures” must be taken to identify and verify the identity of non-face-to-face customers in order to manage and mitigate the increased risks. These include requiring additional documents, development of independent contact with the customer, or third party introduction.

#### **Identification of Legal Persons or Other Arrangements (c. 5.4):**

##### **5.4(a):**

537. 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):**

538. Where the customer is a legal body<sup>15</sup> or legal arrangement, Section 4.3 of the FSB Handbook provides for the general obligation to identify and verify. The Rules in Section 4.3 require an FSB to verify the legal status of the legal person or legal arrangement; and obtain information concerning the customer’s name, the name of trustees (for trusts), legal form, address, directors (for legal persons), and provisions regulating the power to bind the legal person or arrangement.

539. For customers which are legal persons, the Rules in section 4.6 of the FSB Handbook require an FSB to identify and verify the identity of the legal body (including name, any official identification number, date and country or territory of incorporation if applicable); identify and verify any registered office address and principal place of business (where different from registered office) where the risk presented by the legal body is other than low; identify and verify the individuals ultimately holding a 25 percent or more interest in the capital or net assets of the legal body; identify and verify the individuals, including beneficial owners, underlying principals, directors, authorized signatories or equivalent, with ultimate effective control over the capital or assets of the legal body; and verify the legal status of the legal person.

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<sup>15</sup> “Legal body” is defined in Section 4.6.1 of the FSB Handbook as “bodies corporate, foundations, partnerships, associations, or other bodies which are not natural persons or legal arrangements.” This corresponds to the FATF definition of “legal person,” which term is used in this Report

540. Examples of how verification of the above can be obtained is provided in guidance in Section 4.6 of the FSB Handbook and includes obtaining, for customers that are legal bodies: a copy of the Certificate of Incorporation; a company registry search, if applicable, including confirmation that the legal body has not been, and is not in the process of being, dissolved, struck off, wound up or terminated; a copy of the Memorandum and Articles of Association; and a copy of the Directors'/Shareholders' register.

541. Where the documents provided are copies of the originals, the FSB must ensure they are certified by the company secretary, director, manager, or equivalent officer and where the legal person (or any beneficial owner or underlying principal connected with the legal person) presents a high risk, an FSB must consider whether additional verification checks are appropriate, for example, obtaining additional information or documentation.

542. For customers that are legal arrangements, Rules in Section 4.6 of the FSB Handbook require an FSB to: identify and verify the underlying principals and beneficial owners, i.e., the settlor(s), any protector, and any beneficiary with a vested interest or who is likely to benefit from the trust; verify the legal status and the name and date of establishment of the trust; and verify the identity of the trustees of the trust.

#### **Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2):**

543. FSB Regulations 4(1) (a) and 4(3) (c) require FSBs to identify the beneficial owner and to take reasonable measures to verify such identity using identification data. 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. Regulation 19 defines "beneficial owner" to mean (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 trust or other legal arrangement, to 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.

##### **5.5.1:**

544. 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.

##### **5.5.2:**

545. FSB Regulations 4(1) (a) and 4(3)(c) require that, for customers that are legal persons or legal arrangements, the FSB must take reasonable measures to understand the ownership and control structure of the customer. These provisions also require that the beneficial owner and

underlying principal<sup>16</sup> shall be identified. These include the natural persons who own or control the customer and who exercise ultimate effective control over a legal person or arrangement. Section 4.6 of the FSB Handbook contains further Rules and guidance regarding these requirements.

**Information on Purpose and Nature of Business Relationship (c. 5.6):**

546. 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 FSBs, 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. (Para. 52)

**Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2):**

547. FSB Regulation 11 requires an FSB to perform ongoing 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. 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. 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 an FSB must bear in mind that, as the business relationship develops, the risk of money laundering or terrorist financing may change. (Para. 271)

548. 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.

549. The requirements for CDD and verification measures with respect to natural (including for any person purporting to act on behalf of the customer and beneficial owners) and legal persons or legal arrangements are extensive and include the use of independent source

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<sup>16</sup> The "underlying principal" is defined in FSB Regulation 19 to mean, in relation to a business relationship or occasional transaction, any person who is not a beneficial owner but who (a) is a settlor, trustee, or a protector of a trust 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.



documents, data, and other relevant identification data, in a way which is in line with the standard. This applies as well to requirements to identify beneficial owners and to use reasonable measures to verify such identity and to understand the ownership and control of legal persons and arrangements. The requirements to obtain information on the purpose of the relationship and to conduct ongoing monitoring are also consistent with the standard. However, the obligations to include scrutiny of transactions to ensure consistency with the institution's knowledge of the customer and to update documentation when necessary based on risk are in other enforceable means rather than in law or regulation.

**Implementation and effectiveness:**

550. The FSBs interviewed by the assessors did not note any particular difficulty in obtaining the required information and verification documentation. They also expressed familiarity with the process of identifying and verifying legal persons and arrangements as well as beneficial owners and underlying principals, noting that it is sometimes necessary to work through multiple layers of legal persons and trusts in order to understand the control structure and the beneficial owners and underlying principals. They all used a combination of manual (in the case of highest risk) and computerized methods of monitoring customer activity on a risk-sensitive basis. It appeared to the assessors that Bailiwick institutions have implemented the required CDD measures in an effective manner.

**Risk—Enhanced Due Diligence for Higher Risk Customers (c. 5.8):**

551. FSB Regulation 3 and the Rules in chapter 3 of the FSB Handbook require an FSB to undertake a risk assessment of any proposed business relationship or occasional transaction. Based on this assessment, the FSB must decide whether or not to accept each business relationship, or any instructions to carry out any occasional transactions. In addition, the risk assessment allows an FSB 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 any resulting business relationship will be monitored. (Para. 50-51)

552. An FSB must have documented procedures which allow it to demonstrate how the assessment of each business relationship or occasional transaction has been reached, and which take into account the nature and complexity of its operation. The Rules require an FSB to have regard to the attractiveness to money launderers of the availability of complex products and services in reputable and secure wealth management environments, to recognize, manage and mitigate the potential risks arising from relationships with high net-worth customers, and to consider how factors such as wealthy customers, private banking customers (added by amendment effective June 25, 2010), powerful customers, multiple accounts, complex accounts and movement of funds contribute to the increased vulnerability of wealth management. (Para. 59)

553. To assist in the recognition of high-risk indicators, examples are provided in the FSB Handbook guidance. High-risk indicators for customers include complex ownership structures; PEPs; involvement of an introducer from a country or territory which does not have an adequate AML/CFT infrastructure; and requests to adopt undue levels of secrecy with a transaction; while high-risk indicators for products and services include complex structures of

legal persons and/or legal arrangements; hold mail or retained mail arrangements; significant and/or frequent cash transactions; high-value balances or investments, which are disproportionately large to that particular customer, product or service set; and bearer shares and other bearer instruments. (Para. 61)

554. FSB Regulation 5 requires FSBs to carry out enhanced CDD in relation to a business relationship or occasional transaction where the customer or any beneficial owner or underlying principal is a PEP; a correspondent banking relationship, or similar relationship in that it involves the provision of services which themselves amount to financial services business or facilitate the carrying on of such business, by one FSB 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; which the FSB considers to be a high-risk relationship, taking into account any instructions, notices or warnings issued from time to time by the GFSC; or which the FSB has otherwise assessed as a high-risk relationship.

555. 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, or, in the case of an existing business relationship with a PEP, for 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 ongoing monitoring in accordance with Regulation 11; or 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.

556. Chapter 5 of the FSB Handbook addresses the treatment of business relationships and occasional transactions which have been assessed as high risk and contains rules in respect of PEPs, correspondent relationships, countries or territories that do not or insufficiently apply the FATF Recommendations and other high-risk countries or territories and legal persons able to issue bearer instruments. The Rules require enhanced CDD measures to be undertaken as required in FSB Regulation 5 where a business relationship or occasional transaction has been assessed as high risk, whether because of the nature of the customer, the business relationship or its location, or because of the delivery channel or the product/service features available.

**Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9):**

557. The general rule of the FSB Regulations and the FSB Handbook 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. The FSB Regulations and Handbook recognize that there are circumstances where the risk of money laundering or terrorist financing has been assessed as being low (for example, a local resident retail customer purchasing a low-risk product where the purpose and intended nature of the business relationship or occasional transaction is understood by the FSB and where no aspect of the business relationship or occasional

transaction is considered to carry a high risk of money laundering or terrorist financing), or where information on the identity of the customer, beneficial owners and underlying principals is publicly available, or where adequate checks and controls exist elsewhere in national systems.

558. FSB Regulation 6(1) permits an FSB to (a) apply reduced or simplified CDD measures or (b) treat an intermediary as if it were the customer, but only (i) in accordance with the Rules set out in chapter 6 of the FSB Handbook, and (ii) provided that the customer and every beneficial owner and underlying principal is established or situated in the Bailiwick or a country or territory listed in Appendix C to the FSB Handbook.<sup>17</sup> In addition, FSB Regulation 6(3) provides that simplified or reduced CDD shall not be applied where the FSB 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.

559. Chapter 6 of the FSB Handbook sets out the specific occasions when it may be appropriate for a financial services business to apply simplified or reduced CDD measures and includes Rule 6.2, which requires that:

- an FSB 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 an FSB 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 FSB recognizes 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. Where an FSB has reason to believe that any aspect of the relationship or occasional transaction could be other than low (for example, by virtue of the country or territory or value of the relationship), then simplified or reduced CDD measures must not be applied. (Para. 180-182)

560. As specified in Regulation 6(2)(a), 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, and provided that the customer, every beneficial owner, and underlying principal is established or situated in the Bailiwick or a country or territory listed in Appendix C to the Handbook. The application of simplified or reduced CDD is strictly limited to the

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<sup>17</sup> This is to be distinguished from the concession in FSB Regulation 10 authorizing FSBs to rely on introducers, which also refers to Appendix C jurisdictions. The concession for introducers, as well as the Appendix C jurisdictions, is described in relation to Recommendation 9.

circumstances provided for in chapter 6 of the FSB Handbook and includes the following specific instances:

#### **A. Simplified or reduced CDD**

561. Chapter 6 of the FSB Handbook lists the following specific situations where reduced or simplified CDD may be utilized:

1. When the customer is a Guernsey resident who is physically present when establishing a relationship or undertaking a transaction, the required identification data is limited to name, address, date and place of birth, and nationality (the occupation and official personal identification number are not required), and only the name and either the address or the date and place of birth need to be verified.
2. For legal bodies quoted on a regulated market or a collective investment schemes regulated by the GFSC, an FSB must obtain documentation that the legal body is quoted on a regulated market or the collective investment scheme is regulated by the GFSC, and identify and verify individuals who have authority to operate the account or give instructions concerning its use.
3. For customers who have been identified as an Appendix C business<sup>18</sup> that are not acting for underlying principals and the purpose and intended nature of the relationship is understood, verification of the identity of the business is not required.
4. Where the customer, beneficial owner, and any underlying principal have been identified and the product or service is such that the relationship or occasional transaction is considered to be low risk, the receipt of funds may be considered to provide a satisfactory means of verifying identity, so long as the financial services business ensures that certain conditions are met, including that all funds are received from an Appendix C business and from an account in the name of the customer or underlying principal; payments may be made only to an account in the customer's name; no payments may be made from or to third parties; and no cash withdrawals may be made other than by the customer or underlying

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<sup>18</sup> An "Appendix C business" means:

- (a) a financial services business 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 and which would, if it were carried on in Guernsey, be a financial services business; or (ii) the U.K, Jersey, 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; (B) the conduct of which is subject to requirements to prevent money laundering and terrorist financing that are consistent with those in the FATF for such a business; and (C) the conduct of which is supervised for compliance with such requirements by the GFSC or an overseas regulatory authority.

principal on a face-to-face basis where identity can be verified and reasons for significant cash withdrawals can be verified.

5. Insurance intermediaries for commercial and personal lines of general insurance that have previously identified a customer prior to a payment being made, may verify the identity appropriate to the assessed risk of the relationship. An intermediary using this concession must have a sufficient understanding of its business relationships to recognize when a transaction or activity may give rise to a suspicion of money laundering or terrorist financing.

6. An FSB that is involved in the investor liaison of a non-Guernsey collective investment fund may rely on the fund administrator to have performed CDD on the investor, under the following conditions: the fund administrator must be an Appendix C business that is regulated and supervised for investment business; and the fund administrator must provide a written confirmation that it conducts necessary CDD procedures in respect of the investors, has appropriate risk-grading procedures in place to differentiate for high and low-risk relationships, and will notify the financial services business of any investor who is a PEP. In addition, the Guernsey business must have a program for testing and reviewing the administrator's CDD procedures.

562. In addition, chapter 4 of the FSB Handbook contains two additional concessions permitting reduced or simplified CDD.

563. Section 4.7 of the FSB Handbook provides that, in the case of certain employee benefit, share option, or pension schemes where contributions are made by an employer by salary deduction, the employer, trustee, or administrator may be considered the customer who must be identified and verified, and not the individual employees or participants.

564. Section 4.9 of the FSB Handbook provides that, when an FSB acquires a business with established business relationships or a block of customers, it may consider it appropriate to rely on the information and documentation previously obtained by the vendor where certain criteria are met (the vendor must be an Appendix C business, and the purchasing FSB must have the vendor's CDD policies as satisfactory and obtained identification data for each customer from the vendor). Where deficiencies in the identification data are identified, the acquiring FSB must determine and implement a program to remedy such deficiencies. The assessors note that the terms of this concession are contained in guidance rather than in the GFSC Rules, although the terms appear to be otherwise reasonable.

565. The assessors have considered the foregoing concessions permitting reduced or simplified CDD in the general context of what might be considered lower risk based upon the type of customer, product, transaction, or location of customer (including the examples in the Methodology) and have concluded that, except for the concession discussed in the next sentence, they fall within the standards. The assessors noted during the on-site visit that, while the conditions applicable to a concession permitting receipt of funds as verification for identity would seem to minimize the ML and TF risks, it was not clear that this is entirely consistent with the requirements of Recommendation 5. The assessors note that this concession (previously Section 6.3 of the FSB Handbook) was removed in the June 2010 updated Handbook and, therefore, is no longer relevant.

## B. Treating intermediary as customer

566. Sections 6.5.1 and 6.5.2 of the FSB Handbook set out the criteria which must be met for an intermediary<sup>19</sup> relationship to be established whereby it is not necessary to undertake CDD procedures on the customers of the intermediary (i.e., the customers of the intermediary are not identified) unless the FSB considers this course of action to be appropriate. Before establishing an intermediary relationship, the FSB must undertake a risk assessment which will allow it 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 introduced business (discussed below with respect to Recommendation 9).

567. CDD procedures must be undertaken on the intermediary to ensure that the intermediary is either (1) an Appendix C business (other than a trust and corporate service provider); (2) a person licensed under the Regulation of Fiduciaries Law, or (3) 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. The intermediary in any of these cases must provide a written confirmation that: (i) appropriate risk-grading procedures are in place to differentiate between the CDD requirements for high and low-risk relationships; (ii) 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; (iii) contains sufficient information to enable the FSB to understand the purpose and intended nature of the business relationship; and (iv) confirms that the account will only be operated by the intermediary who has ultimate, effective control over the financial product or service.

568. Only a business relationship established to provide for one or more of the products or services in the table below is eligible for treating an intermediary as the customer of the FSB. The GFSC based the list on risks of potential money laundering and terrorist financing in the context of Guernsey's finance sector.

Product/service	Intermediaries who may be considered as the customer
Investment of life 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 that he has rights over a bank account in Guernsey. The assessors view it appropriate to identify the life	The life company

<sup>19</sup> "Intermediary" is defined in the FSB Regulations to mean (a) a financial services business, or (b) a firm of lawyers, or estate agents, operating in Guernsey, which is considered as being the customer of a financial services business when establishing a business relationship, or undertaking an occasional transaction, in accordance with chapter 6 of the Handbook.

company as the customer in this situation.	
Insurance policies where there is no cash-in value and where professional and independent third parties (such as loss adjusters) are satisfied before payments are made. The assessors understand that this and the following two concessions do not apply to life or other investment-related insurance.	The regulated insurance broker
Reinsurance to an insurer who in turn is issuing policies on a commercial basis only, where the reinsurance contract is arranged exclusively between the reinsurer and a recognized and properly regulated insurer and not between the reinsurer and any other party.	The insurer
A Guernsey licensed insurer, as part of its relationship falling within the scope of the Insurance Business Law offering insurance products to another regulated financial services business.	The regulated financial services business
*Investments via discretionary or advisory investment managers of their customers' monies into a collective investment scheme either authorized or registered by the GFSC where the funds (and any income) may only be returned to the bank account from which they originated <sup>20</sup> .	The regulated financial services business, i.e. the discretionary or advisory investment manager.
*A POI licensee, as part of its relationship falling within the scope of the POI Law, with another regulated financial services business: undertaking discretionary management, giving advice, or undertaking advisory management or executing transactions (where the funds (and any income) may only be returned to the bank account from which they originated) <sup>21</sup> .	The regulated financial services business
Client accounts held by banks in the name of a licensed fiduciary or a professional firm where the holding of funds in the client account is on a short-term basis and is necessary to facilitate a transaction. This seems low risk in principle, although the assessors believe that it should be narrowed to avoid possible abuse. This could be done by limiting the duration and permitting its use for only certain transactions (e.g., real estate). The assessors note that Section 4.12 of the FSB Handbook states that if these conditions are not satisfied, the bank must identify each client with an interest in the pooled account.	The professional firm or financial services business.

**Risk—Simplification/Reduction of CDD Measures relating to overseas residents (c. 5.10):**

569. Regulation 6(2) of the FSB Regulations provides that the application of reduced or simplified CDD may only be exercised provided that the customer and every beneficial owner and underlying principal is established or situated in the Bailiwick or a country or territory

<sup>20</sup> Added by amendment effective June 21, 2010.

<sup>21</sup> Added by amendment effective June 21, 2010.

listed in Appendix C to the FSB Handbook. Appendix C was established to reflect those countries or territories which the GFSC considers require regulated financial services businesses to have in place standards to combat money laundering and terrorist financing consistent with the FATF Recommendations and where such financial services businesses are supervised for compliance with those requirements.

**Risk—Simplified/Reduced CDD Measures Not to Apply when Suspicions of ML/TF or other high-risk scenarios exist (c. 5.11):**

570. FSB Regulation 6(3) prohibits the application of simplified or reduced CDD measures where the FSB 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. The FSB may also only apply reduced or simplified CDD where it has assessed the relevant business relationship or occasional transaction as low. By amendment effective June 21, 2010, Regulation 6(3) was amended to clarify that treating an intermediary as customer is subject to the same requirements as applying reduced or simplified CDD.

571. The rules in chapter 6 of the FSB Handbook require FSBs 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):**

572. FSB Regulation 3 describes the general requirements of conducting a risk assessment, which allows an FSB 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 any resulting business relationship will be monitored. Chapter 3 of the FSB Handbook contains guidance on the application of the risk-based approach. 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. The Rules and the guidance in chapters 4 and 6 of the FSB Handbook detailing the types of customers, transactions or products where the risk may be considered as low and where an FSB may wish to apply the reduced or simplified CDD measures are set out fully in the response to criterion 5.9.

573. As regards the application of enhanced due diligence, the assessors note that, 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 the Bailiwick's financial institutions, and the assessors question whether this is fully consistent with the requirements of Recommendation 5.



574. With regard to reduced or simplified CDD and the use of intermediaries, the assessors find that the reduced or simplified risk transactions are acceptable (with one exception discussed above that was eliminated after the on-site visit). These concessions that permit an FSB to treat an intermediary as its customer without identifying the individual customers of the intermediary are limited to seven specific products or services. The assessors also note that the use of this concession is subject to several safeguards in any such case, including a risk assessment of the intermediary and required assurances that the intermediary conducts risk-grading procedures on its customers and appropriate and effective CDD. The assessors also note that, after the on-site visit and effective June 21, 2010, the Bailiwick amended the FSB Handbook provisions regarding two of these specific products to further require that they may be used by an FSB in cases where the funds (and any income) may only be returned to the bank account from which they originated.

575. With respect to criteria 5.11, the assessors noted during the on-site visit that, while Regulation 6(3) states that reduced or simplified CDD may not be applied where the FSB knows or has reasonable grounds for knowing or suspecting that any party to a business relationship or a beneficial owner or underlying principal is engaged in money laundering or terrorist financing, or where the risk is other than low, this restriction could have been construed not to apply to intermediary relationships, although that such relationships are also limited to situations where a relationship has been assessed as low and the assessors understand that the intention of the authorities is to apply the Regulation 6 prohibition to intermediary relationships as well. The assessors suggested that Regulation 6 should be amended to clarify this point. The Regulation was amended by the Bailiwick to clarify this point, effective June 21, 2010.

#### **Implementation and effectiveness:**

576. As regards enhanced CDD, the assessors found that the FSBs they interviewed are quite sensitive to the fact that in many cases a substantial portion of their customers represent higher-risk sectors, including private banking and non-face-to-face customers, and seem to have generally taken the various risk levels in their customer base into account in developing their overall approach to CDD, including ongoing monitoring of customer activity.

577. Regarding reduced or simplified CDD and the use of intermediaries, those institutions the assessors interviewed that make use of the intermediary concessions, which included representatives of the insurance and investment sectors, were knowledgeable regarding the requirements that must be satisfied, including a risk assessment of the intermediary and the required confirmation from the intermediary.

#### **Timing of Verification of Identity—General Rule (c. 5.13):**

578. FSB Regulation 7(1) provides that identification and verification of the identity of any person or legal arrangement (which includes the customer and beneficial owner) must be carried out before or during the course of establishing a business relationship or before carrying out an occasional transaction. This is subject to FSB Regulation 7(2), which is discussed in the following section.

**Timing of Verification of Identity—Treatment of Exceptional Circumstances (c.5.14 & 5.14.1):**

579. 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.

580. Pursuant to FSB Regulation 7(2)(c), an FSB may only carry out verification of identity after the establishment of a business relationship if appropriate and effective policies, procedures and controls are in place to manage risk. The Rule in 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, an FSB must have appropriate and effective policies, procedures, and controls in place so as to manage the risk, which must include the following measures: 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.

581. The provisions described above meet the standard with respect to obligations in place for verification of the identity of the customer and beneficial owner, as well as for failure to satisfactorily complete CDD.

**Implementation and effectiveness:**

582. The assessors found, based on their interviews, that the institutions completed CDD before commencing the business relationship and, therefore, did not utilize these provisions. One of the institutions explained that, because its customers are investors and it is customary (and important) that funds be invested upon receipt, it does permit verification to take place following the commencement of the relationship, although it does so in compliance with the applicable FSB Regulation and Rule.

**Failure to Complete CDD before commencing the Business Relationship (c. 5.15):**

583. FSB Regulation 9 requires that where an 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 filed. In addition, the Rules in Section 4.14 of the FSB Handbook require that when an FSB 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 FSB Regulation 9. An FSB is also required by the Rules in Section 4.14 of the FSB Handbook 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.

**Failure to Complete CDD after commencing the Business Relationship (c. 5.16):**

584. FSB Regulation 9 requires that where a financial services business cannot comply with the CDD requirements of the regulations, it must in the case of an existing business relationship, terminate that business relationship, and consider whether an STR must be filed.

585. The provisions regarding failure to complete CDD before or after commencing the relationship meet the standard for these situations.

**Implementation and effectiveness:**

586. The only FSB interviewed by the assessors that does not complete CDD before commencing the business relationship reported that in the rare situation where it is unable to complete CDD it terminates the relationship and consults the FIS regarding the situation while holding the funds.

**Existing Customers—CDD Requirements (c. 5.17):**

587. In June 2004, following the issue of the revised FATF Recommendations in 2003, the GFSC issued a statement on anti-money laundering standards for existing customers. For the purposes of the statement, existing customers were customers taken on before January 1, 2000. For customers taken on after that date, FSBs are (and have been) required to verify the identity of all of their customers as a matter of law. The statement identified that the GFSC expected all FSBs to adopt the standard embodied in FATF Recommendation 5 and required each FSB to review all existing business relationships and, taking account of all relevant factors, assess the risk of each business relationship; assess the level of identification and verification documentation held for each high-risk customer and underlying principal; as a matter of priority, identify the business relationships where the identification and verification documentation held in respect of high-risk business relationships is not deemed sufficient to allow the risk to be managed and take the measures necessary to obtain due diligence information appropriate to the risk; and for lower-risk customers, ensure that the business relationship is understood and that an appropriate level of information is held on the customer(s).

588. FSB Regulation 4 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.

589. 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 have been established with customers taken on before the coming into force of the FSB Regulations. The GFSC Rules in chapter 8 include a requirement for an FSB 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.

590. In November 2009, the GFSC issued Instruction Number 6 for FSBs. This requires that the Board of each FSB must review the policies, procedures and controls in place in respect of existing customers to ensure that the requirements of FSB Regulations 4 and 8 (relating to CDD and the setting up and maintenance of accounts, respectively) and each of the Rules in chapter 8 of the FSB Handbook are met (as described in the above paragraphs); and by the close of business on March 31, 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. The Instruction advises FSBs that compliance will be reviewed during on-site inspections and by other means as necessary.

#### **Existing Anonymous-account Customers—CDD Requirements (c. 5.18):**

591. FSB Regulation 4(1) (b) requires an FSB to ensure that full identification and verification requirements are carried out in relation to a business relationship established prior to the effectiveness of the Regulations where an anonymous account is maintained or an account which the FSB knows, or has reasonable cause to suspect, is in a fictitious name, as soon as possible after the effectiveness of the Regulations and in any event before such account is used again in any way.

592. The requirement in Regulation 4(1)(b)(2) to complete CDD on existing customers “at appropriate times on a risk-sensitive basis,” together with the requirement in the Rule that CDD policies for existing customers are to be based on “materiality and risk,” are consistent with the standard.

#### **Implementation and effectiveness:**

593. The institutions interviewed were still in the process of bringing their CDD records up to the level of the current requirement. They generally reported taking the risk-based approach stated in the applicable Regulation and Rule referred to above. Most reported that they had completed their higher-risk customers, would generally use any transaction event as time to update, and were well along with updating their entire customer base. The institutions reported no existing anonymous accounts or accounts in fictitious names.

#### **Foreign PEPs—Requirement to Identify (c. 6.1):**

594. FSB Regulation 4(3)(f) requires FSBs to determine whether any customer, beneficial owner or underlying principal is a politically-exposed person (PEP). FSB Regulation 5(2)(b) defines PEP as “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 “an immediate family member... and a close associate of such person.” As such, the definition of PEP is in line with the FATF definition of the glossary.

595. FSB Regulation 5(1) requires, in addition to the CDD requirements described under criteria 5.3 through 5.5, enhanced CDD measures to be carried out where the business relationship or occasional transaction is one where the customer or beneficial owner or underlying principal is a PEP. These measures are discussed under criteria 6.2 through 6.5. In addition, Chapter 5 of the FSB Handbook deals specifically with the treatment of business relationships and occasional transactions which have been assessed as high risk, among them PEPs, and Section 5.3 contains Rules which must be met in addition to the requirements of the FSB Regulations. These Rules require an FSB, when carrying out CDD, to make a determination as to whether the customer, beneficial owner and any underlying principal is a PEP. In making the determination, the Rules require that an FSB must consider (i) assessing countries which pose the highest risk of corruption (one source being Transparency International Corruption Perception Index), (ii) establishing who are the current and former holders of prominent public positions in those countries, and iii) determining, as far as is reasonably practicable, whether or not customers, beneficial owners or underlying principals have any connections with such individuals. The Rules note that the UN, European Parliament, U.K. Foreign and Commonwealth Office, and the Group of States Against Corruption may be useful information sources, as well as using commercially-available databases.

**Foreign PEPs—Risk Management (c. 6.2; 6.2.1):**

596. FSB Regulation 5(2)(a) sets out the additional steps which comprise enhanced CDD. These include (in addition to those discussed under criteria 6.3 and 6.4) obtaining senior management approval for establishing a business relationship or undertaking an occasional transaction in which the customer or any beneficial owner or underlying principal is a PEP, and obtaining senior management approval for, in the case of an existing business relationship involving a PEP, continuing that relationship. FSB Regulation 5(2)(a)(i) and (ii).

**Foreign PEPs—Requirement to Determine Source of Wealth and Funds (c. 6.3):**

597. FSB Regulation 5(2)(a)(iii) further provides that enhanced CDD also includes taking reasonable measures to establish the source of any funds and of the wealth of the customer, beneficial owner, and underlying principal. Rules under Section 5.3.1 of the FSB Handbook provide guidance on the source of funds and source of wealth and advises that the source of funds refers to the activity which generates the funds for a business relationship or occasional transaction. Source of wealth is described as distinct from source of funds, and describes the activities which have generated the total net worth of a person both within and outside a business relationship, i.e., those activities which have generated a customer’s net assets and property. The FSB Handbook also contains guidance that emphasizes that understanding the customer’s source of funds and source of wealth are important aspects of CDD, especially in relationships with PEPs. The Rules also require that FSB must consider the risk implications of the source of funds and wealth and the geographical sphere of the activities that have generated a customer’s source of funds and/or wealth. (Para. 166)

**Foreign PEPs—Ongoing Monitoring (c. 6.4):**

598. FSB Regulation 5(2)(a)(iv) also provides that enhanced CDD means carrying out more frequent and more extensive ongoing monitoring in accordance with the requirements of Regulation 11, which requires that monitoring must be carried out on a risk-sensitive basis, including whether or not the relationship is high risk. This is described in greater detail in relation to criteria 5.7.

**Domestic PEPs—Requirements (Additional Element c. 6.5):**

599. The definition of PEPs in the FSB Regulations currently does not extend to persons holding prominent public functions domestically.

**Domestic PEPs—Ratification of the Merida Convention (Additional Element c. 6.6):**

600. Ratification of the Merida Convention was extended to Guernsey in November 2009.

**Implementation and effectiveness:**

601. In discussions with financial institutions, the assessors found a high degree of sensitivity to the potential risks posed by PEPs and the need for enhanced due diligence in opening and maintaining relationships with them. Each of the institutions the assessors met with that accepted PEPs as customers knew the precise number of its PEP relationships, seemed very familiar with the GFSC's requirements and described its implementation, including utilizing group and other information sources (including commercial databases and in some cases investigative agencies) in order to identify potential PEPs, requiring that senior management approve the establishment of the relationship as well as an review, and determining the client's source of funds and source of wealth.

**Cross-Border Correspondent Accounts and Similar Relationships—Introduction (R.7):**

602. FSB Regulation 5 contains explicit provisions that require enhanced CDD on correspondent banking relationships. Chapter 5 of the FSB Handbook provides for the treatment of business relationships and occasional transactions which have been assessed as high risk (which include correspondent banking relationships) and contains Rules which must be met in addition to the requirements of the FSB Regulations.

**Requirement to Obtain Information on Respondent Institution (c. 7.1); Assessment of AML/CFT Controls in Respondent Institution (c. 7.2); Approval of Establishing Correspondent Relationships (c. 7.3); Documentation of AML/CFT Responsibilities for Each Institution (c. 7.4); Payable-Through Accounts (c. 7.5):**

603. Section 5.4 of the FSB Handbook provides Rules and guidance on the treatment of correspondent relationships for both banking and those established for securities transactions or funds transfers, whether for the financial services business as principal or for its customers. These Rules require FSBs to take additional steps in relation to CDD as follows:

- gather sufficient information about a respondent institution to understand fully the nature of the respondent’s business;
- determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action;
- assess the respondent institution’s AML/CFT policies, procedures and controls, and ascertain that they are adequate, appropriate and effective;
- obtain board or senior management approval, i.e., sign off, before establishing new correspondent relationships;
- document the respective AML/CFT responsibilities of each institution; and
- where a correspondent relationship involves the maintenance of “payable through accounts,” take steps so that they are satisfied that (a) their customer (the “respondent FSB”) has performed all the required CDD obligations as set out in the Regulations and chapter 4 of the FSB Handbook on those of its customers that have direct access to the accounts of the correspondent FSB; and (b) the respondent FSB is able to provide relevant customer identification data upon request to the correspondent FSB.

604. In discussions with Guernsey banks, the assessors did not become aware of any instance in which a Guernsey bank maintains a cross-border correspondent banking or similar relationship for a bank abroad. The GFSC confirmed that no bank in Guernsey maintains such a relationship.

**Misuse of New Technology for ML/TF (c. 8.1):**

605. The Rules contained in Chapter 2 of the FSB Handbook require that FSBs must ensure that there are appropriate and effective policies, procedures, and controls in place that provide for its Board to meet its obligations relating to compliance review. In particular, the Board 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. (Para. 27) The Rules in chapter 11 of the Handbook require that FSBs must, in ensuring that relevant employees receive the ongoing training required under the FSB Regulations, in particular ensure that they are kept informed of new developments, including information on current money laundering and terrorist financing methods, trends, and typologies. (Para. 328) Chapter 4 of the FSB Handbook deals specifically with the CDD procedures and requirements and contains Rules which must be met in addition to the requirements of the Regulations.

**Risk of Non Face to Face Business Relationships (c. 8.2 & 8.2.1):**

606. FSB Regulation 5(4) requires that where the customer is not a Guernsey resident who was physically present when an FSB enters into a business relationship or undertakes an occasional transaction, an FSB must take adequate measures to compensate for the resulting risk when carrying out CDD and, where a business relationship was established, when carrying out monitoring of that relationship. Section 4.5 of the FSB Handbook provides Rules and

guidance on the adequate measures to be taken by FSBs in order to manage and mitigate the specific risks of non face-to-face business relationships or occasional transactions. These adequate measures include undertaking one or more of the following: requiring additional documents to complement those which are required for face-to-face customers; development of independent contact with the customer and other third parties responsible for the source of funds or company registrations, etc; third party introduction; or requiring the first payment to be carried out through an account in the customer's name with a bank situated in a country or territory listed in Appendix C to the FSB Handbook. In addition, where it is not practical to obtain original documentation, an FSB must obtain copies of identification data, which have been certified by a suitable certifier. Guidance is provided in Section 4.5 of the FSB Handbook on the use of suitable certifiers including the provision of a list of examples of acceptable persons to certify evidence of identity. The list includes judges and civil servants, embassy and consulate officers, lawyers and notaries, and actuaries and accountants who are members of recognized professional bodies.

607. The Rules in Section 4.5.2 of the FSB Handbook require FSBs to give consideration to the suitability of a certifier based on the assessed risk of the business relationship or occasional transaction, together with the level of reliance being placed on the certified documents. FSBs must exercise caution when considering certified copy documents, especially where such documents originate from a country or territory perceived by the FSB to represent a high risk, or from unregulated entities in any country or territory.

608. Where certified copy documents are accepted, an FSB must satisfy itself, where possible, that the certifier is appropriate, for example, by satisfying itself that the certifier is not closely related to the person whose identity is being certified. A suitable certifier must certify that he has seen original documentation verifying identity and residential address and must also sign and date the copy identification data and provide adequate information so that contact can be made with the certifier in the event of a query.

#### **Implementation and effectiveness:**

609. The assessors found that the institutions they interviewed considered non face-to-face business to be the norm, and indeed for many institutions it is. Although the Bailiwick has developed efficient and generally effective systems for addressing the increased risks inherent in such relationships, the assessors felt that such relationships may warrant a higher-risk classification.

#### **3.2.2. Recommendations and Comments**

- The authorities should expand the list of higher-risk customers to which enhanced due diligence must be applied and consider including private banking and non-resident customers.



### 3.2.3. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
<b>R.5</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>List of customers to which EDD must be applied omits higher-risk categories relevant to Guernsey.</li> </ul>
<b>R.6</b>	<b>C</b>	
<b>R.7</b>	<b>C</b>	
<b>R.8</b>	<b>C</b>	

### 3.3. Third Parties and Introduced Business (R.9)

#### 3.3.1. Description and Analysis

##### Legal Framework

610. FSB Regulation 10 contains the basic framework for compliance with the criteria in Recommendation 9, permitting elements of CDD to be carried out by introducers<sup>22</sup> in specified circumstances. Chapter 4 of the FSB Handbook provides Rules and guidance for CDD requirements, including those for introduced business relationships. Introducer relationships may be business relationships on behalf of a single person or on behalf of more than one person, including a pool of such persons.<sup>23</sup>

##### Requirement to Immediately Obtain Certain CDD elements from Third Parties (c. 9.1):

611. FSB Regulation 10(1) provides that in the circumstances where the third party meets the requirements for reliance contained in FSB Regulation 10(2), an FSB may accept a “written confirmation of identity and other matters” from an introducer in relation to the CDD requirements of FSB Regulation 4(3)(a) to (e). These CDD requirements include all the information required with respect to Criteria 5.3 to 5.6 (see discussion under Recommendation 5). The Rules in Section 4.10 of the FSB Handbook require that FSBs relying upon an introducer must immediately obtain written confirmation of identity and other matters from the introducer, by way of a certificate or summary sheet(s) including the elements of CDD listed in

<sup>22</sup> An “introducer” is defined in Regulation 19 to mean an FSB, lawyer or accountant who is seeking to establish or has established, on behalf of another person or legal arrangement who is its customer, a business relationship with a financial services business.

<sup>23</sup> This concession is to be distinguished from one contained in FSB Regulation 6, which permits FSBs in more limited circumstances to establish relationships with intermediaries on behalf of undisclosed third parties. This is discussed under criteria 5.9.

the preceding paragraph. (Para. 136) The FSB Handbook contains, as Appendices A and B, forms of “General Introducer Certificate” and “Fiduciary Introducer Certificate,” each of which would, when completed, contain all the information required under Criteria 5.3 to 5.6 (but not the copies of identification data and other relevant data, which are addressed in the next paragraph).

**Availability of Identification Data from Third Parties (c. 9.2):**

612. FSB Regulation 10(1) provides that an FSB may accept a written confirmation of identity and other matters from an introducer, but it also requires that the introducer makes available copies of identification data and any other relevant documentation to the FSB upon request and without delay and that the introducer keeps such identification data and documents, subject to a limited exception provided for in Section 4.10.2 of the FSB Handbook discussed below.

613. Rules in Section 4.10 of the FSB Handbook require that FSBs must take “adequate steps to be satisfied that the introducer will supply, upon request, without delay, certified copies or originals of the identification data and other evidence it has collected under the CDD process.” (Para. 137). The Rules go on to require that FSBs must have a program of testing to ensure that introducers are able to fulfill the requirement that certified copies or originals of the identification data will be provided upon request and without delay, which will involve financial services businesses adopting ongoing procedures to ensure they have the means to obtain that identification data and documentation. (Para. 140) FSBs also have to recognize that introduced business by its very nature, has the capacity to be high risk, and must use a risk-based approach when deciding whether it is appropriate to rely on a certificate or summary sheet from an introducer in accordance with Regulation 10 of the FSB Regulations, or whether it is necessary to do more.

614. The FSB Handbook in Section 4.10.2 contains one exception to the foregoing requirement. A financial services business may accept introduced business from an institution (“the middle institution”) that has received a written confirmation of identity and other required information from the original introducer, but where the original introducer (and not the middle introducer) holds the required copies of the identification data, when the following conditions are satisfied: (a) the original introducer is regulated for the type of business being introduced; (b) both introducers operate from Guernsey, Jersey, or the Isle of Man; (c) confirmation of identity provided to the relying financial services business has been signed by both the original and the middle introducer, committing the original introducer to providing copies of the required identification data, upon request and without delay, to the relying financial services business; and (d) the relying financial services business has a program of testing to ensure that relevant documentation can be made available from the original introducer upon request without delay.

615. The assessors recognize that this concession is convenient and limited in scope, but does not appear to comply with the terms of the recommendation, which read literally requires that the financial institution being relied upon be in possession of the underlying documentation. While the concession is thus clearly outside the scope of Recommendation 9, it seems that in practice none of the FSBs that the assessors met with utilized the “middle

introducer” concession or were even aware of its availability. The concession was eliminated when a revised FSB Handbook was issued in June 2010.

616. In November 2009, the GFSC issued Instruction Number 4 which focused on introduced businesses, pointing out the issues in respect of jurisdictions which may have secrecy provisions and requiring the board of each FSB to review their compliance with the requirements of the FSB Regulations and the Rules in relation to introduced business relationships, including their program of testing. The Instruction required that by the end of February 2010, necessary action must have been taken to remedy any identified deficiencies and, if they could not be remedied, to discontinue the introducer relationship.

**Regulation and Supervision of Third Party (applying R. 23, 24, and 29, c. 9.3):**

617. Paragraph 2 of Regulation 10 defines two categories of third parties on which an FSB is permitted to rely. The first of these is any “Appendix C business,”<sup>24</sup> which must be either (a) a financial services business supervised by the Commission or (b) a business carried on from (i) a country listed in Appendix C to the Handbook which would be an FSB if carried on from Guernsey or (ii) a lawyer or accountant in the United Kingdom, Jersey or the Isle of Man, and in either case (i) or (ii), is a business (A) which may only be carried on in that country by a person regulated for that purpose, (B) whose conduct is subject to requirements to prevent money laundering and terrorist financing consistent with the FATF Recommendations, and (C) is supervised for compliance with such requirements by the Commission or an overseas regulatory authority. Appendix C lists 29 countries (30 in the FSB Handbook updated July 2010) which the Commission considers to have standards to combat money laundering and terrorist financing consistent with the FATF Recommendations and where FSBs are supervised for compliance with those standards. As indicated above, however, inclusion on the list is not sufficient for reliance in that it does not provide assurance that a particular overseas institution is subject to that legislation, or that it has implemented the necessary measures to ensure compliance with the legislation. The FSB seeking to rely on the third party would need to satisfy itself that these two conditions are satisfied.

618. In addition, the Appendix C conditions must be considered in conjunction with the Rules in Section 4.10 of the FSB Handbook, which require that when establishing an introducer relationship, an FSB must satisfy itself that the introducer has appropriate risk-grading procedures in place to differentiate between high and low-risk relationships, and conducts appropriate and effective CDD procedures in respect of its customers, including enhanced CDD measures for PEP and other high-risk relationships.

619. The assessors have concluded that the requirements set forth in the definition of “Appendix C business,” together with the Rules in Section 4.10 of the FSB Handbook, are largely consistent with the conditions for reliance in Criteria 9.3. However, the assessors do not believe that the inclusion in the definition of lawyers and accountants in the United Kingdom, Jersey, or the Isle of Man is warranted, because such professionals have not been subject to

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<sup>24</sup> Supra note \_\_\_\_.

AML/CFT requirements consistent with FATF requirements and “supervised for compliance” with such requirements for a sufficient time to justify reliance on them – nor has the extent of such supervision been assessed.

620. The second category of third party on which an FSB may rely is set forth in Paragraph 2(b) of FSB Regulation 10, which permits reliance on a third party that is an overseas branch of or a member of the same group as the FSB, so long as the ultimate parent body corporate of which both the third party introducer and the relying FSB are members, is an Appendix C business, and both the third party and the relying FSB are “subject to effective policies, procedures and controls on countering money laundering and terrorist financing of that group of bodies corporate.”

621. Although the meaning of “effective policies, procedures and controls” is not further defined, the assessors do not believe that a member of the same group as the FSB that is not directly subject to requirements consistent with the FATF Recommendations is effectively “regulated and supervised” for compliance with CDD requirements within the meaning of Recommendation 9, notwithstanding that it may be subject to group requirements. Accordingly, the assessors find that the reliance permitted by FSB Regulation 10(2)(b) (as in effect at the time of the on-site visit) is not fully consistent with Recommendation 9. Following the on-site visit, the Bailiwick amended Regulation 10(2)(b), effective July 28, 2010, to permit reliance on a third party that is an overseas branch or member of the same group as the FSB, so long as the ultimate parent body corporate is an Appendix C business, and the conduct of the third party is subject to requirements to prevent money laundering and terrorist financing consistent with those of the FATF, which conduct is supervised for compliance with such requirements by either the GFSC or an overseas regulatory authority. The assessors have concluded that with this amendment, reliance permitted by Regulation 10(2)(b), together with the requirements of Section 4.10 of the FSB Handbook, is consistent with Recommendation 9, although the assessors believe that there is an issue of effectiveness discussed below.

#### **Adequacy of Application of FATF Recommendations (c. 9.4):**

622. In the case of FSBs permitted to rely on introducers that are Appendix C businesses, the GFSC has listed a number of jurisdictions (as of July 2010) that it considers to have standards to combat money laundering and terrorist financing consistent with the FATF Recommendations and where FSBs are supervised for compliance with those standards, although the Commission’s basis for determining inclusion on this list is not stated.<sup>25</sup> The assessors understand that the GFSC makes its determination of Appendix C jurisdictions based upon a consideration of several factors, including FATF membership, reports and assessments

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<sup>25</sup> The concession in Paragraph 2(b) of FSB Regulation 10, permitting reliance on introducers that are members of the same group, is not restricted to jurisdictions listed in Appendix C. In the case of a third party who the FSB determines is subject to adequate requirements to prevent money laundering pursuant to the amendment described in the preceding paragraph, the FSB would have to make its own determination as to whether the country meets the necessary conditions.

by the FATF and other bodies of compliance with the FATF standards and, the amount of drug trafficking and financial crime in various jurisdictions, and the extent to which non-FATF jurisdictions have been assessed as having compliant AML/CFT regimes.

**Ultimate Responsibility for CDD (c. 9.5):**

623. FSB Regulation 10(3) provides that where reliance is placed upon the introducer, the responsibility for complying with the relevant provisions of the CDD requirements of the FSB Regulations remains with the relying FSB. This is re-enforced in section 4.10 of the FSB Handbook.

**Implementation and effectiveness:**

624. From its discussions, the assessors understand that to certain financial institutions, the authority to rely on third party introducers is considered useful and efficient and is utilized to a significant degree. Those institutions appear to the assessors to have a thorough understanding of the requirements and to perform the risk assessment and periodic spot testing as required. Other institutions, even when receiving business from third parties, elect to do the full CDD themselves rather than adhering to the formal requirements imposed by Regulation 9.

625. The assessors believe that the following factors may impact the effectiveness of implementation of this concession.

626. Prior to the on-site visit, FSBs were limited under Regulation 10(2) to relying on (in addition to certain attorneys and accountants) either businesses carried on from an Appendix C jurisdiction or another member of a group whose corporate parent is located in an Appendix C jurisdiction. Under Regulation 10(2) as amended, an FSB may rely on another group member that is not an “Appendix C business,” if such group member itself satisfies criteria 9.3. This will require FSBs wishing to rely on such third parties to determine that the jurisdiction of the third party (which is not listed in Appendix C) imposes requirements consistent with FATF standards and supervises for compliance with those requirements. In addition, the GFSC would need to determine that reliance by an FSB in such cases is appropriate. The assessors believe that this raises issues of effectiveness. In addition, there is an effectiveness issue raised by the withdrawal of the ability to utilize the “group introducer” concession. The inclusion within the potential scope of the concession for lawyers and accountants in Guernsey, Jersey and the United Kingdom may not be warranted, as they have been subject to AML/CFT regulation for only two to three years and the effectiveness of its implementation has not been tested nor has the level of supervision been assessed.

**3.3.2. Recommendations and Comments**

- The authorities should not include lawyers and accountants in Guernsey, Jersey, the Isle of Man and the United Kingdom as Appendix C businesses, as they have not been subject to, nor supervised for compliance with, AML/CFT regulation and supervision for a sufficient period.

### 3.3.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	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 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.</li> <li>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.</li> </ul>

## 3.4. Financial Institution Secrecy or Confidentiality (R.4)

### 3.4.1. Description and Analysis

#### Legal Framework

627. There are no statutory financial secrecy provisions under Guernsey law that would inhibit the implementation of the FATF Recommendations. There is, however, a strict application by FSB of the common law duty of confidentiality in respect of their client information, subject to exceptions for specified purposes. These exceptions, known as the Tournier principles and based upon the leading U.K. case Tournier vs. National Provincial and Union Bank of England (1924), arise where the disclosure is required by statute, there is a public duty to disclose, disclosure is in the financial institution's interest, or there is express or implied customer consent.

#### Inhibition of Implementation of FATF Recommendations (c. 4.1):

628. Financial secrecy does not constitute an obstacle for the effective implementation of the FATF Recommendations. Competent authorities, supervisory, law enforcement (including the FIS), prosecutorial and judicial are allowed to obtain any information and documentation kept by FSB or PB and any other entity subject to the AML/CFT requirements. In practice, access to information is channeled through the FIS and/or through the GFSC.

629. Sections 1–3 and 6 of the DL make it an offense for FSB and PB, including nominated officers and authorized agents, not to report knowledge or suspicion that another person is

engaged in money laundering and are the primary provisions under which FSB and PB must report suspicions to the FIS. A similar provision is contained in Sections 12, 15, 15A, and 38 TL with respect to terrorist financing offenses, whereby the obligation in the TL applies to all persons, not only service businesses. The obligation is supported through provisions in the POCL, DTL, and TL, stipulating that it is not a breach of confidentiality, secrecy or any other disclosure restriction to report to the police any suspicion or believe that property is or represents the proceeds of crime.

630. There are restrictions on disclosing personal data in Section 29 of 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, 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, respectively.

631. Access by law enforcement authorities to confidential information is discussed in detail in Section 2 of this report, including the powers of law enforcement agencies, and the FIS in particular, to gain access to confidential client information for purposes of their investigations. In brief, a court order (“customer information order”) pursuant to Sections 48A POCL, 67A DTL or 37 TL is required for such access, thus overriding the duty of confidentiality. In addition, all three laws make provision for law enforcement authorities to obtain account monitoring orders (Sections 48H POCL, 67H DTL and 39 TL). Customer information and account monitoring orders only apply to FSBs on the basis that PBs do not run accounts or hold funds for their clients save as payment for specific transactions or services.

632. Confidential information may be accessed by the GFSC based on Section 21(2) Financial Services Commission (Bailiwick of Guernsey) Law 1987 if the information is necessary to enable the GFSC to carry out its functions (Section 8(2)(a)), for the purpose of criminal proceedings or crime prevention or to assist supervisory authorities outside of Guernsey. Section 49B (6) POCL, further gives the GFSC broad powers to enter the supervised person’s premises, to examine the supervised person and to require the supervised person to supply information and answer questions. Sections 21A and 21B Financial Services Commission (Bailiwick of Guernsey) Law 1987 allows for the GFSC to cooperate with foreign supervisory and law enforcement authorities, including sharing any information, without limitations. Confidential information may only be disclosed under specified gateways in legislation, namely, the gateways in the Financial Services Commission Law and in each of the regulatory laws. Section 21(2) of the Financial Services Commission Law provides for the GFSC to disclose confidential information in certain circumstances which include: where it is necessary for the GFSC to carry out 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 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. In addition to the provisions of the Financial Services Commission Law, each of the regulatory laws contains additional gateways in respect of the discharging of the functions of the GFSC conferred by those laws.

633. In each case, prior to disclosure, the GFSC must consider whether or not to exercise its powers under the appropriate gateway(s). Any disclosure of personal data must be in accordance with the Data Protection Law. No disclosure is made unless a member or officer of the GFSC of the level of Assistant Director or above is satisfied as to which legal gateway is being used to disclose the information and who ensures that there is an audit trail evidencing which legal gateway is being used for the disclosure.

634. There is no provision that explicitly permits the sharing of confidential information between FSB to provide information to each other in order to fulfill R.7, R.9, and SR.VII. However, in practice, customer information is shared among financial institutions in the following manner:

- Intermediaries/Introduced business: Guernsey AML/CFT requirements provide for the introduction of customers by introducers or third parties provided they follow CDD measures in place. (Please refer to Recommendation 9 in this report for a detailed description, analysis, and implementation of the preventive measures in place related to this recommendation.) When dealing within the same financial group, the customer's identification and CDD data may be shared, but each institution is required to conduct its own CDD and risk assessment before establishing the relationship. FSBs visited indicated that usually there is an agreement (between the financial group's entities) for allowing access to copies of the documentation, but that in practice, FSBs conduct their own CDD identification and verification measures.
- Wire transfers: As required by the Wire Transfer Ordinance, all customer/originator information is required to accompany a wire transfer. Because the Bailiwick does not have any financial secrecy laws, FSBs are not prevented from sending the customer/originator's identification details. (Refer to Recommendation SR.VII in this report for a detailed description, analysis, and implementation of the preventive measures in place related to this recommendation.)
- Cross-border correspondent relationships are not taking place in the context of Guernsey, which makes this requirement not applicable in the case of Guernsey. (Please refer to Recommendation 7 in this report.)

#### **Implementation and effectiveness:**

635. The effective implementation of the FATF Recommendation is not restricted or otherwise affected by any duties of confidentiality. This is true in respect of domestic investigations, the sharing of information between competent authorities, whether domestic or international, and the sharing of information between financial institutions.

636. Also as described, there are no impediments prohibiting fiduciaries from sharing information with other businesses or with competent authorities. Customer due diligence information is shared with other fiduciaries and FSBs although the sector seems to have a preference to conduct CDD directly.



637. Similarly, there are no prohibitions limiting the sharing of financial information for lawyers and accountants. The sharing of client information is prevalent in the legal sector where introducer certificates are widely used to verify the identity of introduced business.

### 3.4.2. Recommendations and Comments

None.

### 3.4.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	C	

## 3.5. Record-keeping and wire transfer rules (R.10 & SR.VII)

### 3.5.1. Description and Analysis

#### Legal Framework

638. FSB Regulation 14 contains the requirements imposed on FSBs for maintaining records, including those regarding transactions, CDD information, reports of suspicious transactions, and other matters relating to AML/CFT. Requirements pertaining to wire transfers are addressed under three essentially identical Wire Transfer Ordinances enacted by Guernsey, Alderney, and Sark that were made under the European Communities (Implementation) Law. Additional requirements applicable to recordkeeping and wire transfers are contained in the FSB Handbook.

#### Record Keeping and Reconstruction of Transaction Records (c. 10.1 and 10.1.1):

639. FSB Regulation 14(1) requires an FSB to keep a transaction document and any CDD information, or a copy thereof, for the minimum retention period. FSB Regulation 19 defines a “transaction document” as a document which is a record of a transaction carried out by a financial services business with a customer or introducer, and 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.

640. 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 FSB, 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. These Rules also require that FSBs must ensure that in order to meet the record keeping requirements for transactions, documentation is maintained which must include (1) the name and address of the customer, beneficial owner and underlying principal; (2) if a monetary transaction, the currency and amount of the transaction; (3) account name and number or other information by which it can be identified; (4) details of the counterparty, including account details; and (5) the nature and date of the transaction.

**Record Keeping for Identification Data, Files and Correspondence (c. 10.2):**

641. FSB Regulation 14 requires FSB to keep a transaction document and 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 FSB ceased, or where a customer's occasional transaction with the FSB 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):**

642. 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).

643. Chapter 12 of the FSB Handbook requires in the Rules that an FSB 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. (Para. 342). An FSB also must periodically review the ease of retrieval of, and condition of, paper and electronically retrievable records. FSBs 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. (Para. 354-355).

**Implementation and effectiveness:**

644. The assessors determined, based on FSBs interviewed during the assessment that they retain required records (including CDD information and transaction records) for the minimum retention period and are able to make them available as required. No issue came to the assessors' attention with regard to the ability of FSBs as to timely delivery of records when required by the GFSC, the FIS, or the law enforcement agencies. However, in cases where an FSB relies upon an introducer in another jurisdiction to maintain the underlying documentation verifying the identity of any introduced customer, beneficial owner or underlying principal, there is a risk that such third party may be legally prohibited or otherwise experience delays in supplying these records. To address this risk, the Bailiwick issued an Instruction in November 2009 to require FSBs to ensure that, where introducers were accepted from secrecy jurisdictions or jurisdictions widely thought of as being secrecy jurisdictions, the risks are being mitigated by obtaining copies of identification data on a sample basis.

**Obtain Originator Information for Wire Transfers (applying c. 5.2 and 5.3 in R.5, c.VII.1):**

645. In addition to the FSB Regulations and the Rules and guidance in the FSB Handbook, there are also specific Ordinances which provide for the treatment of wire transfers. FSBs must comply with the relevant Wire Transfer Ordinance (WTO). The WTOs were made under the European Communities (Implementation) Law, and separate WTOs were made for each of Guernsey, Alderney, and Sark under that law.<sup>26</sup>

646. The Bailiwick is in monetary union with the United Kingdom. The majority of transfers of funds between the United Kingdom and the Crown Dependencies are undertaken using the U.K. Bankers' Automated Clearing Services (BACs) payment system, which does not provide for the inclusion of full originator information, as is required by regulation (EC) No. 1781/2006 of the European Parliament for cross-border funds transfers. In light of this inability of BACs to carry full originator information, it was necessary to negotiate a position with the U.K. authorities and the European Commission whereby transfers between the United Kingdom and the Crown Dependencies could be treated as domestic EU transfers.

647. The U.K. Treasury applied to the European Commission for, and was granted on December 8, 2008, a derogation from the relevant requirements of EU Regulation 1781/2006 as allowed by Article 17.1 of that regulation. The derogation provides for EU Member States to establish agreements with territories outside the EU with whom they share a monetary union and payment and clearing systems to allow them to be treated as if they were part of the Member State, so that the reduced information requirement that is set out in the regulation for intra-EU transfers (see Article 6) can also apply to payments passing between that Member State and its associated territory. The Guernsey authorities concluded the necessary agreement with the United Kingdom in August 2008, and therefore transfers within the U.K. Payment Area (the United Kingdom, Guernsey, Jersey and the Isle of Man, referred to as the British Islands in the Ordinances and in this report), are treated as domestic transfers under SRVII, but transfers between Guernsey and other EU Members are treated as cross-border transfers in relation to which full required information on the payer must be provided. The WTOs provide for transfers between Guernsey and the United Kingdom (and Jersey and the Isle of Man) to be accompanied by the originator's account number or, where there is no such account number, a unique identifier.

648. Section 1 of the WTO provides that it applies to transfers of funds in any currency which are sent or received by a payment service provider established in Guernsey, Alderney, or Sark. There is an exemption in Section 2.4 of the WTO for transfers not made from an account of €1,000 or more. A payment service provider (PSP) means a person whose business includes the provision of transfer of funds services. Section 2 of the WTO requires a PSP to ensure that transfers of funds (other than transfers within the British Islands) are accompanied by complete

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<sup>26</sup> Although there are separate WTOs in respect of Guernsey, Alderney, and Sark, and the text of the Guernsey WTO is referred to in this section, the WTOs in respect of Alderney and Sark are virtually identical in terms.

information on the payer. Complete information consists of the name, address, and account number of the payer except that the address of the payer may be substituted with his date and place of birth (where relevant), his customer identification number or national identity number, and where the payer does not have an account number, the PSP of the payer shall substitute it with a unique identifier, which allows the transaction in question to be traced back to that payer. The PSP of the payer must, before transferring any funds, verify the complete information on the payer. Such verification must be on the basis of documents, data or other information obtained from a reliable and independent source.

649. In the case of transfers of funds from an account, the PSP of the payer may deem verification to have taken place if (a) it has complied with any relevant requirements in the FSB Regulations relating to the verification of the identity of the payer in connection with the opening of that account and the keeping of information obtained by that verification, or (b) the payer is an existing customer and it is appropriate to deem verification to have taken place, so taking into account the risk of money laundering or terrorist financing occurring.

650. In addition to the requirements of the WTO, the Rules in Section 7.3 of the FSB Handbook require that in the case of a payer that is a company, the transfer must include the address at which the company's business is conducted. In the case of a payer that is a trustee, a transfer must be accompanied by the address of the trustee. PSPs must ensure that when messaging systems such as SWIFT MT202 (which provide for transfers where both the payer and the payee are PSPs acting on their own behalf), are used on behalf of another financial services business, the transfers are accompanied by the customer identification information necessary to meet the requirements of the WTO. Also, where a PSP is itself the payer (i.e., acting as principal), as will sometimes be the case even for SWIFT MT102 and 103 messages, the requirement in the WTO to provide name, address, and account number may be met by the provision of the Bank Identifier Code (BIC), although an account number must be included where this is available. Where a Business Entity Identifier (BEI) accompanies a transfer, the account number must always be included.

**Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2):**

651. Section 2 of the WTO requires a PSP to ensure that transfers of funds (other than transfers within the British Islands) are accompanied by complete information on the payer. Complete information consists of the name, address and account number of the payer, except that (a) the address of the payer may be substituted with his date and place of birth (where relevant), his customer identification number or national identity number, and (b) where the payer does not have an account number, the PSP of the payer shall substitute it with a unique identifier, which allows the transaction in question to be traced back to that payer.

652. Section 4 of the WTO provides that where there is a batch file transfer from a single payer where any PSP of the payee is situated outside the British Islands, the requirement in Section 2 for a PSP to ensure that transfers of funds are accompanied by complete information on the payer shall not apply to the individual transfer of funds which is bundled together for transmission, provided that the batch file contains the complete information on the payer in question, and the individual transfer carries the account number of the payer or a unique identifier.

**Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3):**

653. Section 3(1) of the WTO provides that subject to subsection (2) (see below), where both the PSP of the payer and the PSP of the payee are situated in the British Islands, a transfer of funds need only be accompanied by (a) the account number of the payer, or (b) where there is no such account number, a unique identifier which allows the transaction in question to be traced back to the payer. Subsection (2) provides that the PSP of the payer shall, upon request from the PSP of the payee, make available to the PSP of the payee complete information on the payer within three working days excluding the day on which the request was received.

**Maintenance of Originator Information (“Travel Rule”) (c.VII.4):**

654. Section 8 of the WTO requires any intermediary PSP to ensure that any information received by it on the payer that accompanies a transfer of funds is kept with that transfer. This means that all PSPs involved in the payment chain have obligations to ensure that the required information accompanies a transfer. Section 9 of the WTO covers situations where the PSP of a payer is situated outside the British Islands and the intermediary PSP is situated within the British Islands. Section 9 provides that an intermediary PSP may use a payment system with technical limitations to send a transfer of funds to a PSP of a payee, except that where it is aware that information on the payer which is required under the WTO is missing or incomplete, it must notify the PSP of the payee that the information is missing or incomplete through (i) a payment or messaging system, or (ii) another procedure, and the system or procedure is agreed between the intermediary PSP and the PSP of the payee. Section 9(4) and (5) of the WTO provide that where an intermediary PSP uses a system with technical limitations, it shall, upon request from the PSP of the payee, make available to the PSP of the payee, all information on the payer which it has received, within three working days (excluding the day on which the request was received), and it must keep records of any information on the payer received by it for five years from the date of the transfer in question.

**Risk- Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5):**

655. Section 5 of the WTO provides that a PSP of a payee must detect whether the fields relating to information on the payer have been completed using the characters or inputs admissible within the conventions of that messaging or payment and settlement system, and have effective procedures in place to detect whether the following information on the payer is missing:

- i. for transfers of funds where the PSP of the payer is situated in the British Islands, the information required for such transfers, and
- ii. for transfers of funds where the PSP of the payer is situated outside the British Islands (other than for batch file transfers),<sup>27</sup> either (A) complete information on the payer, or (B) where relevant, the information required under section 9 (technical limitations).

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<sup>27</sup> For batch file transfers where the PSP of the payer is situated outside the British Islands, the complete information on the payer is required, but only in the batch file and not in the individual transfers bundled therein.

656. The Rules in Section 7.4 of the FSB Handbook relating to Section 5 of the WTO require PSPs to have in place appropriate and effective policies, procedures, and controls which subject incoming payment transfers to an appropriate level of post-event random sampling in order to detect non-compliant payments. The level of the sampling must be appropriate to the risk of the financial services business being used in connection with money laundering and terrorist financing and consideration should be given to areas such as the value of the transaction; the country or territory of the payer; and the history of previous transfers with the PSP of the payer, i.e., whether it has failed previously to comply with the customer identification requirement.

657. Section 6(1) of the WTO requires that, if a PSP of a payee becomes aware, when receiving a funds transfer, that information required on the payer is missing or incomplete, the PSP must (subject to any other relevant requirement relating to money laundering or terrorist financing or any relevant guidance of the Commission), either reject the transfer, request complete payer information from the PSP, or take such other steps as the Commission may direct by Order. The Rules require that where a PSP of a payee becomes aware subsequent to processing the payment that information on the payer is missing or incomplete either as a result of random checking or other monitoring mechanisms under the PSP's risk based approach, it must seek the complete information on the payer; and/or take any other action which the Commission may by order direct. Where the PSP has sought complete information on the payer and it has not been provided within a reasonable time frame, the PSP must consider, on a risk-based approach, the most appropriate course of action to be undertaken. (Para. 239-240) Section 7(1) of the WTO provides that where information on the payer accompanying a transfer is missing or incomplete, the PSP of the payee must take this into account in assessing whether the transfer or any related transaction is suspicious, and whether, accordingly, a disclosure is required under the DL or the TL.

658. In addition, Instruction Number 3 made under Section 49(7) of the Proceeds of Crime Law and issued by the GFSC on November 11, 2009 required the board of each financial services business acting as a recipient of wire transfers to:

- review the policies, procedures, and controls on the detection of missing information on the payer and the action to be taken where information on the payer is missing or incomplete to ensure that they meet the requirements of Sections 5, 6, and 7 of the Ordinance and the Rules in the FSB Handbook appropriately and effectively;
  - ensure that where information on the payer is missing or incomplete, documented evidence of the action taken is retained; and
  - by the close of business on January 29, 2010, have taken any necessary action to remedy any deficiencies.
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659. The action taken by each FSB under instructions is reviewed during on-site inspections and by other means as necessary.

**Monitoring of Implementation (c. VII.6):**

660. Section 49B(1) of the POCL provides that in order to determine whether a FSB has complied with any regulations, 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, and Section 49B(2) provides that if the GFSC's officers, servants, or agents exercise their right of entry under subsection (1) they may require the officers, servants, or agents of the FSB to produce for examination (whether at the premises of the business or at the offices of the GFSC) any documents held by the business, to produce copies of any documents in a legible form for the officers, servants, or agents of the GFSC to take away, and to answer questions for the purpose of verifying compliance with any regulations under Section 49 and any rules, instructions, and guidance of the GFSC under that section.

661. The Site Visits Ordinance provides the power for the GFSC's officers to make site visits to the offices of the licensee under the Banking Supervision Law and to request documents and answer questions for the purpose of verifying compliance with the minimum criteria for licensing in that Law. All of these minimum criteria include compliance with the WTO. In addition, the GFSC can use the Site Visits Ordinance to monitor compliance by FSBs registered under the Registered FSBs Law with the WTO (which includes money transmitters).

662. In addition to powers granted to the GFSC to make site visits and request documents under Section 49B(2) of the POCL and the Site Visits Ordinance, Section 11(1) of the WTO grants the GFSC the authority to monitor and investigate, by providing that the provisions of Sections 25 (power to obtain information and documents), 26(1) (power of Bailiff to grant warrant), and 26A (powers conferred by Bailiff's warrant granted under section 26) of the Banking Supervision Law applies to PSPs in relation to such information as the GFSC may reasonably require for the purpose of effectively monitoring or ensuring compliance with the requirements of the WTO, in the same way as they apply to licensed institutions within the meaning of the Banking Supervision Law. The GFSC utilizes a risk-based approach to monitoring in general, and one of the high risk factors used in scheduling on-site inspections is the provision of money transfer services. Monitoring compliance with the WTO is part of the AML/CFT monitoring, which includes on-site and off-site assessments of compliance. The on-site teams understand the requirements of the WTO and the activities conducted by PSPs, including the risks of AML/CFT.

663. Section 11(2) of the WTO provides that Sections 28 (investigation of suspected offences) and 29 (power of entry in cases of suspected offences) of the Banking Supervision Law shall apply in relation to an offence under the WTO as they apply in relation to an offence under Section 1 or 21 of that Law, which also means that the above information seeking powers in the Banking Supervision Law can be used to monitor compliance with the requirements of the WTO.

**Application of Sanctions (c. VII.7: applying c.17.1–17.4):**

664. Section 12 of the WTO provides that any PSP who, without reasonable excuse, fails to comply with its requirements shall be guilty of an offense and on summary conviction be liable to imprisonment for a term not exceeding six months or to a fine not exceeding level five on the uniform scale (£10,000), or both, and conviction on indictment be liable to imprisonment for a term not exceeding five years, a fine, or both.

665. Section 13 of the WTO provides that where an offense is alleged to have been committed by an unincorporated body, proceedings for the offense shall be brought in the name of that body and not in the name of any of its members. It also provides that where an offense is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of (a) any director or any other officer thereof who is bound to fulfill any duty whereof the offense is a breach, (b) any partner (in the case of a partnership), or (c) any person purporting to act in any capacity described in paragraph (a) or (b) above, that such individual as well as the unincorporated body is guilty of the offense and may be proceeded against and punished accordingly.

666. Section 14(1) of the WTO provides that where an offense is committed by a company 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, chief executive, controller, manager, secretary, or other similar officer of the company or any person purporting to act in any such capacity, he as well as the company is guilty of the offense and may be proceeded against and punished accordingly. Section 14(2) provides that where the affairs of a company are managed by its members, subsection (1) of Section 14 applies to a member in connection with his functions of management as if he were a director. Section 15 provides that the GFSC may make rules, instructions and guidance for the purposes of the WTO and any court shall take the rules, instructions and guidance into account in determining whether or not any person has complied with the WTO.

667. In addition to the sanctions available in the WTO, Sections 11C and 11D of the Financial Services Commission Law and the Registered FSBs Law provide the power for the GFSC to issue public statements and to impose discretionary financial penalties where a FSB has contravened in a material particular a provision of the WTO. The GFSC also has powers to impose conditions and to suspend and revoke licenses and registrations. The GFSC's powers of sanction, which apply to breaches of the WTO, are described more fully under Recommendation 17.

**Additional elements – Elimination of thresholds (c. VII.8 and c. VII.9) (c. VII.8 and c. VII.9):**

668. There is no requirement in place to require all incoming or outgoing cross-border transfers under EUR/USD 1,000 to contain full and accurate originator information.

669. The assessors find that the WTO provisions together with the applicable Rules in the FSB Handbook are fully consistent with the criteria.

**Implementation and effectiveness:**



670. The Guernsey banks and money transmitters interviewed have been operating under the EU derogation for well over a year, and confirmed that they provide full originator information for all transfers outside of the British Islands, while transfers within the British Islands are treated as domestic and put through the U.K. payment system. Such transfers do not require full originator information.

671. In discussions with banks regarding their treatment of incoming transfers, they noted that, in cases where they become aware upon receipt that a transfer has incomplete originator information, they will hold up completing the transfer and request the missing information, although the assessors did not understand this to be a frequent occurrence. The banks all described performing post-event monitoring, which ranged from a review of every transfer (in the case of banks with a smaller volume) to a random sampling (for those with a greater volume). They also stated that they request full originator information in certain cases, consider whether the failure to include full originator information is suspicious and should be reported, and keep records of any foreign banks that repeatedly fail to include full information and consider refusing transfers from such institutions.

### **3.5.2. Recommendations and Comments**

None.

### **3.5.3. Compliance with Recommendations 10 and Special Recommendation VII**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.10</b>	C	
<b>SR.VII</b>	C	

## **3.6. Monitoring of Transactions and Relationships (R.11 and 21)**

### **3.6.1. Description and Analysis**

#### **Legal Framework**

672. FSB Regulation 11 sets forth specific requirements for “ongoing and effective monitoring” of business relationships, including those addressed by Recommendation 11. In addition, Chapter 9 of the FSB Handbook deals specifically with the requirement for a FSB to monitor business relationships and to apply scrutiny of unusual, complex, or high-risk transactions or activity, so that money laundering or terrorist financing may be identified and prevented.

673. FSB Regulation 5(1)(c) requires FSB to conduct enhanced due diligence for any business relationship or occasional transaction where the customer is established or located in a country or territory that does not apply or insufficiently applies the FATF Recommendations. Section 5.5 of the FSB Handbook contains GFSC Rules that also apply to these relationships and transactions.

**Special Attention to Complex, Unusual Large Transactions (c. 11.1):**

674. FSB Regulation 11 requires an FSB to perform ongoing and effective monitoring of any existing business relationship. The Regulation includes specifically (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 a high risk, (b) scrutiny of any transactions or other activity, paying particular attention to all (i) complex transactions, (ii) transactions which are both large and unusual, and (iii) unusual patterns of transactions, which have no apparent economic purpose or no apparent lawful purpose, and (c) ensuring 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(2) provides that the extent of any monitoring carried out, and the frequency at which it is carried out, shall be determined on a risk-sensitive basis including whether or not the business relationship is a high-risk relationship.

675. The Rules in chapter 9 of the FSB Handbook require monitoring of the activity of a business relationship to be carried out on the basis of a risk-based approach, with high-risk relationships being subjected to an appropriate frequency of scrutiny, which must be greater than may be appropriate for low-risk relationships. Additionally, transactions and activity to or from jurisdictions specified in the Business from Sensitive Sources Notices and instructions, issued by the GFSC, must be subject to a greater level of caution and scrutiny. (Para. 259-260).

**Examination of Complex and Unusual Transactions (c. 11.2):**

676. The Rules in Section 9.2 of the FSB Handbook provide that an FSB when monitoring complex, unusual and large transactions or unusual patterns of transactions, must examine the background and purpose of such transactions and record such findings in writing. (Para. 263).

**Record Keeping of Findings of Examination (c. 11.3):**

677. The Rules in Section 12.2 of the FSB Handbook require that records relating to unusual and complex transactions and high-risk transactions must include the FSB's own reviews of such transactions. (Para. 346)

678. FSB Regulation 14 requires an FSB to keep a transaction document and any CDD information for the minimum retention period (which is defined in FSB Regulation 19 to be 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). Regulation 14 of the FSB Regulations also requires that documents and CDD information 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 FIS, the GFSC, or any other person where such documents or CDD information are requested.

679. The obligations imposed by the legal framework in general adequately address the requirements of this recommendation, although there is no requirement that an FSB's findings regarding unusual transactions be available to auditors. The assessors note that, effective June 21, 2010, Regulation 14(4) was amended to specifically require that documents and customer

due diligence information must be made available to auditors, and effective June 2010 the FSB Handbook was amended to require that records be made available to auditors.

**Implementation and effectiveness:**

680. In their discussions with financial institutions, the assessors found that they have developed risk-based monitoring systems, which may be manual, computerized, or a combination of both, to identify large and unusual transactions and patterns of transactions. The assessors also found that the institutions review these transactions and keep records of such reviews for the required period.

**Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 and 21.1.1):**

681. FSB Regulation 5(1)(c) states that where an FSB is required to carry out CDD, it must also carry out enhanced CDD in relation to 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, or which the FSB considers to be a high-risk relationship, taking into account any instructions, notices or warnings issued from time to time by the GFSC. See criteria 5.8 for the definition of enhanced CDD.

682. Section 5.5 of the FSB Handbook sets out Rules which are specific to relationships with countries or territories that do not or insufficiently apply the FATF Recommendations (as well as other high-risk countries and territories) and requires that, in addition to the enhanced CDD measures required by FSB Regulation 5 for high-risk relationships, FSBs must have appropriate and effective policies, procedures, and controls in place to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries or territories that do not or insufficiently apply the FATF Recommendations and from other countries or territories closely associated with illegal drug production/processing or trafficking, corruption, terrorism, terrorist financing, and other organized crime.

683. Section 3.5.1 of the Handbook (Para. 55) contains Rules which require an FSB to visit the GFSC's website and appraise itself of the available information on a regular basis, including Business from Sensitive Sources Notices, advisory notices, instructions, and warnings which highlight potential risks arising from particular sources of business which are issued by the GFSC from time to time. Instructions which identify jurisdictions which have deficiencies in their anti-money laundering and financing of terrorism regimes or are considered by the GFSC to have specific concerns are issued on a regular basis. Additionally, the Rules require FSBs to take care when dealing with customers, beneficial owners, and underlying principals from countries or territories which are associated with the production, processing, and trafficking of illegal drugs and to exercise a higher degree of awareness of the potential problems associated with taking on politically-sensitive and other customers from countries or territories where bribery and corruption are widely considered to be prevalent.

684. Section 5.5 of the FSB Handbook provides Rules which require FSBs to ensure they are aware of concerns about weaknesses in the anti-money laundering or terrorist financing

systems of other countries. FSBs must consider Business from Sensitive Sources Notices and instructions issued from time to time by the GFSC, findings of reports issued by the FATF, FATF-style regional bodies, FATF associate members such as MONEYVAL and the Asia Pacific Group, the Offshore Group of Banking Supervisors, Transparency International, the International Monetary Fund, and the World Bank and its own experience or the experience of other group entities (where part of a multinational group), which may have indicated weaknesses or trends in other countries or territories. (Paras. 173-174).

**Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):**

685. The Rules in Section 5.5 of the FSB Handbook relating to the enhanced CDD requirements require that an FSB must identify transactions which (in the context of business relationships and occasional transactions) have no apparent economic or visible lawful purpose, examine the background and purpose of such transactions, and record in writing the findings of such examinations in order to assist the GFSC, the FIS, and other domestic competent authorities. (Para. 173) However, there is no requirement that findings be available to auditors. The assessors note that, effective June 21, 2010, Regulation 14(4) was amended to specifically require that documents and customer due diligence information must be made available to auditors, and effective June 2010 the FSB Handbook was amended (Para. 170) to require that the findings of such examinations be made available to auditors.

**Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):**

686. As described above, the GFSC issues Business from Sensitive Sources Notices and instructions which require FSBs to undertake enhanced CDD measures and give special attention to all business relationships and transactions connected with specific countries or territories. These notices/instructions have been issued in light of requests from the FATF for jurisdictions to apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism risks emanating from jurisdictions which have deficiencies in their anti-money laundering and financing of terrorism regimes. In this regard, the GFSC issued Instruction Numbers 8 (which required FSBs to immediately consider whether or not they had any exposure to particular persons identified in a U.K. Treasury Order and, if they had any exposure they were requested to advise the GFSC accordingly) and 9 (which required FSBs to exercise greater caution and ensure enhanced CDD measures are undertaken with respect to business relationships connected to countries identified in a FATF statement of February 2010).

687. The obligations imposed by the legal framework in general adequately address the requirements of this recommendation, although there is no requirement that findings be available to auditors. The assessors note that, effective June 21, 2010, Regulation 14(4) was amended to specifically require that documents and customer due diligence information must be made available to auditors and Para. 170 of the FSB Handbook was similarly amended in the FSB Handbook updated in June 2010.

**Implementation and effectiveness:**

688. The assessors found in their interviews that financial institutions are particularly sensitive to the risks posed by customers located in jurisdictions considered high risk, which would include any jurisdictions not compliant with the FATF standards. The institutions interviewed were well aware of the recent Instructions pertaining to the FATF statements of February 2010, although in practice nearly all the Bailiwick institutions rely on their Group Head Offices to inform them of risks of this nature.

689. The assessors note that Instruction Number 9 mentioned above could have more accurately summarized the FATF Statement, which addresses several categories of jurisdictions, ranging from one that is subject to a call for countermeasures, to others that are described as having AML/CFT deficiencies.

### **3.6.2. Recommendations and Comments**

None.

### **3.6.3. Compliance with Recommendations 11 & 21**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.11</b>	<b>C</b>	
<b>R.21</b>	<b>C</b>	

## **3.7. Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 and SR.IV)**

### **3.7.1. Description and Analysis<sup>28</sup>**

#### **Legal Framework**

690. In Guernsey's last evaluation, the reporting of suspicion of money laundering in the POCL and the DTL was criticized by the assessors because reporting was treated as a defense for prosecution for the crime of money laundering (sometimes called "indirect reporting"), rather than treating the failure to report as a crime (as was the case in the TL). In December 2007, the DL came into effect and is consistent with the TL, so that the reporting obligation in both laws now takes the form of a non-disclosure violation.

691. The DL and the TL also create reporting obligations that apply to all non FSBs. These effectively mirror the obligations for FSBs and are discussed under Recommendation 16.

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<sup>28</sup> The description of the system for reporting suspicious transactions in Section 3.7 is integrally linked with the description of the FIU in Section 2.5 and the two texts need not be duplicative. Ideally, the topic should be comprehensively described and analyzed in one of the two sections and referenced or summarized in the other.

692. The GFSC issued Instruction Number 2 in November 2009, which required FSBs to review the timeliness of handling suspicion reports made by staff to the MLRO and the STRs which had been made to the FIS in order to assess whether there were lessons to be learned on the promptness of reporting and, in light of these lessons, ensure promptness in the handling of future reports of suspicion made to the MLRO and disclosure made to the FIS. The GFSC informed the assessors that it review the timeliness of reporting as part of its on-site inspections and has not found any cause for concern. FSBs were also required to draw up a list of each customer where more than one disclosure had been made to the FIS in connection with that customer, together with the number of STRs made, in order to assess whether the relationship with the customer should be continued. Where a decision was made to continue the relationship with the customer, documented comprehensive reasoning must be retained. Any necessary action to remedy any identified deficiencies arising from the instruction must have been taken by the close of business on February 26, 2010.

693. Full details of the implementation of the disclosure regime and supporting statistics are set out under Recommendation 26.

**Requirement to Make STRs on ML and FT to FIU (c. 13.1 and IV.1):**

694. Under Section 1 of the DL, it is an offense for a person not to make a required disclosure. This is defined as a disclosure of knowledge, suspicion, or reasonable grounds for suspicion that another person is engaged in money laundering, which has come to him in the course of the business of a financial services business. The disclosure must be made either to a nominated<sup>29</sup> officer, i.e., a person within the financial services business nominated for the purpose by the employer, or to a prescribed police officer, and it must comply with any regulations made by the Home Department of the States of Guernsey under Section 11 of the DL. Under Section 2 of the DL, it is an offense for a nominated officer not to make a required disclosure to a prescribed police officer. This is a disclosure to a prescribed police officer of any knowledge, suspicion, or reasonable grounds for suspicion that another person is engaged in money laundering which he has gained as a result of a report made to him under Section 1, and which complies with any regulations made by the Home Department under Section 11. The requirement in Sections 1 and 2 of the DL to require reports to a prescribed police officer, defined as the FIS Division of the FIU, were made by amendment effective April 28, 2010. A corresponding amendment was made to the Disclosure Regulations effective May 17, 2010.

695. The DL contains some limited exemptions to the disclosure obligations. A person does not commit an offense if he has a reasonable excuse for not having made an STR, if information has come to a professional legal adviser in privileged circumstances (although the

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<sup>29</sup> The DL and the TL each use the term “nominated officer” to refer to the person nominated by the financial services business to receive disclosures of possible suspicions from employees of the business and to report to the FIS. FSB Regulation 12 and the FSB Handbook use the term “money laundering reporting officer” to refer to the person appointed by a financial services business to have responsibility for compliance with AML/CFT requirements and to receive disclosures of possible suspicions, and use the term “nominated officer” to refer to the person who will receive disclosures in the absence of the money laundering reporting officer.

exemption does not apply to information which is communicated or given with a view to furthering a criminal purpose), or if he does not know or suspect that another person is engaged in money laundering and has not been trained by his employer as required by regulations. In addition, when deciding whether a person has committed an offense under Sections 1 or 2 by failing to report, 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. The GFSC has issued GFSC Rules and guidance in chapter 10 of the FSB Handbook.

696. Sections 15 and 15A of the TL contain offenses in respect of the failure to report knowledge, suspicion, and reasonable grounds for suspicion that a person is engaged in terrorist financing, which mirror the offenses in Sections 1 and 2, respectively, of the DL discussed above. The TL includes the same limited exemptions to reporting as those contained in the DL and discussed above, and also requires that, in determining whether a person has committed an offense for failing to report, the court must take into account whether or not the person followed any rules or guidance issued and appropriately published by the GFSC.

697. A recent amendment to the TL, to specify that reports must be made to a prescribed police officer, defined as the FIS division of the FIU, became effective April 28, 2010. The TL also authorizes the issuance of regulations in Section 15C that corresponds to Section 11 of the DL, and regulation 1(1) of the Terrorism and Crime Regulations was amended effective May 17, 2010 to replicate the provisions in the TL as to the submission of reports to the FIS division of the FIU.

698. Money laundering is defined in Section 17 of the DL as including the money laundering offenses in the POCL and the DTL, as well as the full range of ancillary offenses and terrorist financing is defined in Section 79 the TL to include a range of offenses set forth in the TL. This means that the reporting of suspicion required by the DL and TL applies to the proceeds of all predicate offenses for money laundering under Recommendation 1. Under Section 11, the Home Department may prescribe by regulations the manner in which a report under Sections 1 to 3 has to be made. Regulation 1(1) of the Disclosure Regulations made under Section 11 requires STRs to be made in accordance with the requirements of a form appended to the Regulations, and the form specifies that it must be submitted to the FIS division of the FIU.

699. Under Section 5 of the DL, the offenses in Sections 1 and 2 are punishable with up to five years' imprisonment and an unlimited fine. Under Section 15B of the TL, the offenses in Sections 15 and 15A are punishable with up to five years' imprisonment and an unlimited fine.

700. The GFSC Rules in chapter 10 of the FSB Handbook require an FSB to establish appropriate and effective policies, procedures, and controls in order to facilitate compliance with the reporting requirements of the Regulations and the relevant enactments to ensure that each suspicion is reported to the MLRO (including suspicion during the CDD process); the MLRO promptly considers each internal report and determines if it meets the criteria for reporting; if he determines that it does, he reports it to the FIS. An FSB must also have internal reporting policies, procedures, and controls to ensure that: all employees know to whom within the FSB and in what format their suspicions must be reported; all suspicion reports are

considered by the MLRO and where the MLRO makes a decision not to make an STR to the FIS, the reason for the decision not to disclose are documented and retained; and once an STR has been made to the FIS, the MLRO immediately informs the FIS where subsequent, relevant information or documentation is received. (Paras. 279, 285)

701. The assessors considered whether the reporting provisions of the DL and TL, which create an offense for the failure to report, are fully consistent with Recommendations 13 and SR IV, which literally require a “direct mandatory obligation” to report, and concluded that the nature of the reporting requirement, although not literally direct, does not appear to negatively impact on the understanding by FSBs of the requirement or their implementation thereof.

**STRs Related to Terrorism and its Financing (c. 13.2):**

702. Terrorist financing is defined in Section 79 to include the terrorist financing offenses in Sections 8 to 11 of the TL and all ancillary offenses. These offenses apply to funds that are or may be used for the purposes of terrorism and to terrorist property. Terrorist property is defined in Section 7(1) as money or other property which is likely to be used for the purposes of terrorism (including any resources of a proscribed organization), proceeds of the commission of acts of terrorism, and proceeds of acts carried out for the purposes of terrorism. Section 7(2) 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), and the reference to an organization’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 organization. However, those elements of the terrorism financing covered by Section 5 of the Terrorism (UN Measures) (Channel Islands) Order 2001 offense as outlined under Special Recommendation II are not subject to reporting due to the fact that the Order is not referenced in Section 79 of the TL.

**No Reporting Threshold for STRs (c. 13.3):**

703. There is no threshold specified in the relevant provisions of the DL or the TL. The definitions of money laundering and terrorist financing in Section 17 of the DL and Section 79 of the TL, respectively, are expressly stated to cover attempts and to apply irrespective of the value of the property involved. The GFSC 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.

704. Although the definitions of money laundering and terrorist financing each include attempts, the reporting of attempted transactions is not explicitly stated within the sections of the DL and TL containing the reporting requirements, and therefore must be inferred. The guidance provided in the FSB Handbook does not specifically state the obligation to report suspicious attempted transactions. The FSBs that the assessors met with all stated that suspicious attempted transactions were reported. The FIU also indicated that they have received reports involving attempted transactions. Although there does not appear to have a significant impact on the effectiveness of the provision, authorities should consider amending the legislation and the guidance to explicitly require the reporting of suspicious attempted transactions.



**Making of ML and TF STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):**

705. Neither the DL nor TL contains any exception for tax or other fiscal matters. As fiscal offenses such as tax evasion or fraud come within the definition of criminal conduct in the POCL, they constitute predicate offenses for money laundering, so transactions involving the proceeds of such matters are caught by Section 17 of the DL. The GFSC Rules in Section 10.2 of chapter 10 of the FSB Handbook provide that each suspicion must be reported to the MLRO regardless of whether, among other things, it is thought to involve tax matters.

**Additional Element—Reporting of All Criminal Acts (c. 13.5):**

706. Money laundering for the purposes of the disclosure obligations is defined in Section 17 of the DL by reference to the money laundering offenses in the POCL and the DTL. The money laundering offenses in the POCL apply to the proceeds of criminal conduct as defined in Section 1 of that law, i.e., any conduct which is an indictable offense within the Bailiwick or which would be an indictable offense if committed inside the Bailiwick. The money laundering offenses in the DTL apply to all drug-related crimes within the ambit of the Vienna Convention.

**Implementation and effectiveness:**

707. All of the financial institutions that the assessors interviewed were very familiar with their obligations regarding the detection and reporting of suspicious transactions, including the requirements regarding training, internal reporting procedures, and the designation of an MLRO and a nominated officer, each of management level, and their responsibilities for reviewing internal reports and reporting when appropriate.

708. As regards the efficiency of the reporting process, it appeared to the assessors that the internal reporting and review processes, set forth in detail in Chapter 10 of the FSB Handbook, could have the potential to delay the reporting process. Although there are, of course, valid reasons for care in determining whether a potentially suspicious transaction reaches the appropriate level to merit reporting, the assessors believe that the process merits review to determine whether timeliness could be improved by revising and possibly simplifying the procedure. The assessors note that in November 2009, the GFSC issued Instruction Number 2 requiring FSBs to review the timeliness of handling suspicion reports made by staff to the MLRO and the disclosures which have been made to the FIS since December 15, 2007 in order to assess whether there are lessons to be learned on the promptness of reporting and, in light of these lessons, ensure promptness in the handling of future reports of suspicion made to the MLRO and disclosures made to the FIS.

709. The statistics for STRs received in the last four years, by type of organization, are as follows:

Sector	2006	2007	2008	2009
Community banking	152	121	86	95

<b>Fiduciary</b>	87	109	112	151
<b>Private banking</b>	72	102	133	170
<b>Deposit gatherers</b>	101	339	75	53
<b>Insurance</b>	70	28	9	20
<b>Post office</b>	52	19	27	31
<b>Investments &amp; securities</b>	11	20	37	42
<b>Other</b>	0	0	3	0
<b>Regulator</b>	5	10	9	9
<b>Accountants</b>	3	3	5	14
<b>Bureaux de change</b>	1	0	0	0
<b>Legal professionals</b>	0	3	9	21
<b>HVG dealers</b>	0	3	0	0
<b>Stockbroker</b>	1	0	0	0
<b>Estate agents</b>	0	0	2	2
<b>e-gambling sector</b>	0	3	9	18
<b>Financial advisors</b>	0	0	0	0
<b>Company registry</b>	0	0	3	1
<b>Total STRs</b>	<b>555</b>	<b>760</b>	<b>519</b>	<b>627</b>

### **Protection for Making STRs (c. 14.1):**

#### **Legal Framework**

710. Sections 1(13) and 2(8) of the DL and 15(13) and 15A (8) of the TL contain provisions protecting financial institutions and their directors, officers, and employees who make reports of suspicious transactions in good faith. Sections 4 of the DL and 40(3) and 40(4) A of the TL contain prohibitions on tipping off any other person that a report has been made, subject to certain conditions. There is also protection in both laws for nonfinancial services businesses

and their employees which are described under Recommendation 16. The tipping-off offenses in both laws apply equally to financial services businesses and nonfinancial services businesses.

711. Disclosures by financial institutions and all directors, officers, and employees are protected by Section 1(13) of the DL and Section 15(13) of the TL, which provide that an STR to a prescribed police officer or a nominated officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract, or otherwise. Under Section 2(8) of the DL and 15A(8) of the TL, an STR by a nominated officer to a police officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise. The protection under the various sections applies to legal and natural persons and is sufficiently broad that it is not necessary to know the precise nature of the suspected underlying criminal activity or for any illegal activity to have occurred. The U.K. case of *Shah vs. HSBC* established that the protection under equivalent provisions in the POCL would not apply to STRs that were not made in good faith. This case would almost certainly be followed within the Bailiwick, in line with the courts' longstanding practice of applying U.K. authorities to the interpretation of similarly-worded Bailiwick legislation. However, in order to put this beyond doubt, Sections 2(8) of the DL and 15A (8) of the TL were recently amended by Guernsey's parliament, effective March 24, 2010, to specify that STRs in good faith are protected.<sup>30</sup>

**Prohibition Against Tipping Off (c. 14.2):**

712. A person commits an offense under Section 4 of the DL if, knowing or suspecting that a required disclosure has been or will be made or any related information or other matter has been or will be communicated to a prescribed police officer or nominated officer, he discloses to any other person any information or other matter that is likely to prejudice any subsequent investigation, or which is not already in the public domain and which it is unreasonable to disclose in the circumstances.

713. The TL contains substantively equivalent tipping-off offenses. Sections 40(3) and 40(4) (a), read together, provide that it is an offense for a person who knows or has reasonable grounds to suspect that an STR has been made under various sections of the TL, including Sections 15 and 15A, to disclose to another anything that is likely to prejudice an investigation resulting from such disclosure, or anything not already in the public domain and which it is unreasonable to disclose in the circumstances. The TL includes, as an additional defense for tipping off, that he had a reasonable excuse for the disclosure. The tipping off offenses in both laws carry the same penalties, namely, a maximum of six months' imprisonment and/or a fine of up to £10,000 on summary conviction, and a maximum of five years' imprisonment and/or an unlimited fine if convicted on indictment. These are set out in Section 5 of the DL and Section 40(7) of the TL.

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<sup>30</sup> Each provision defines "good faith" to mean that the person making the disclosure knows or suspects, or has reasonable grounds for knowing or suspecting, that the person in respect of whom the disclosure is made is engaged in money laundering.

714. The alternative grounds in each of the DL and TL for the tipping-off offense (disclosing anything not in the public domain and which it is unreasonable to disclose in the circumstances) was added to each law by amendments effective on March 24, 2010. Thus, an individual charged with tipping off would have to establish as a defense not only that he did not know or suspect or have reasonable grounds to suspect that the disclosure was likely to prejudice an investigation, but also that if the disclosure involved anything not already in the public domain, the disclosure was reasonable in all the circumstances. The DL and TL were each amended, effective July 28, 2010, to remove the defenses that the person accused of tipping off did not know or suspect that the disclosure was likely to be prejudicial or that it was not unreasonable to make the disclosure. The TL was amended to remove the defense that the person had a reasonable excuse for the disclosure.

715. The assessors have carefully considered whether the scope of the tipping-off offense is fully consistent with Recommendation 14. Although it would seem that as a practical matter, the offense under the relevant statutes as recently amended, closely approaches a complete prohibition on tipping off, it is not fully consistent with the standard. The assessors also note that the TL includes in Section 40(5) (b), as a defense, that the individual had a reasonable excuse for the disclosure, which also is not consistent with the standard.

**Additional Element—Confidentiality of Reporting Staff (c. 14.3):**

716. Current practice and procedure in accordance with the U.K. National Intelligence Model, which is reflected in the FIU dissemination guidance and outlined in the internal staff handbook, ensures that intelligence emanating from STRs is sanitized in order to protect the source as far as possible. In addition, all disseminations are subject to a risk assessment that contains a criteria relating to any personal risks that may be incurred. All disseminations must be authorized by a senior officer prior to dissemination.

717. The prescribed form for the submission of an STR under the Disclosure Regulations and the Terrorism and Crime Regulations, which also appears as Appendix D2 in the GFSC Handbooks, has been amended to remove the details of the reporter, in an attempt further to safeguard that person's identity in the event that the STR ultimately has to be disclosed in any legal proceedings. A footnote clearly requests that contact details for the reporter are to be provided in a covering letter.

**Consideration of Reporting of Currency Transactions Above a Threshold (c. 19.1):**

718. Bailiwick authorities have given ongoing consideration to implementing a system of reporting currency transactions above a fixed threshold for several years. It was most recently considered by the Bailiwick AML/CFT Advisory Committee in September 2009; the predecessor to this Committee, the Bailiwick Financial Crime Committee, also considered the feasibility and utility of such a system at its meetings in December 2005, March 2007, and September 2008. The Bailiwick's AML/CFT framework is based on the reporting of suspicion, and the authorities believe that this framework has been working well. The authorities consider that the establishment of an automatic reporting system would be resource intensive, divert resources away from the suspicion-based framework, and present a risk that businesses would

no longer treat the existing framework with the focus that they have now. They also consider that a different approach to that taken in the United Kingdom would not be helpful.

**Additional Element—Computerized Database for Currency Transactions Above a Threshold and Access by Competent Authorities (c. 19.2):**

Not applicable.

**Additional Element—Proper Use of Reports of Currency Transactions Above a Threshold (c. 19.3):**

Not applicable.

**Feedback and Guidelines for Financial Institutions with respect to STR and other reporting (c. 25.2):**

**General Description**

719. Feedback and guidance regarding STRs is provided by the FIS on a case-by-case basis, and also more generally on its website, as well as in presentations and meetings. The GFSC's AML/CFT Handbooks, which are available on the GFSC website, also contain guidance in respect of STRs.

720. In 2006, following a review of practice measured against the Recommendations contained within the FATF Best Practice Paper on Providing Feedback to Reporting Financial Institutions and Other Persons, the FIS introduced the feedback focus group, which comprises representatives from the financial services industry and discusses issues of mutual interest, some of which have been developed to form the basis of presentations to a wider audience within the financial sector. Following the inclusion of registered businesses and prescribed businesses within the AML/CFT legislative framework, membership of this group has been expanded to include representation from these sectors.

721. At the same time, the FIS introduced a feedback project, which required FIS personnel to review all reports received in a stipulated 12-month period and to provide written feedback on a case-by-case basis to financial institutions. Details are set out below.

722. The ability of the Bailiwick authorities to provide feedback on outcomes is inevitably affected by the fact that the majority of STRs received by the FIS relate to entities located in other jurisdictions. This was the case with just under 80 percent of the STRs received between 2003 and 2009. As a result, the ability of the FIS to provide feedback to reporting institutions is restricted, because once the intelligence in an STR has been disseminated to the relevant overseas jurisdiction, the FIS is dependent on that jurisdiction for information as to the final result of the disclosure. Although feedback is explicitly requested within the dissemination caveat that accompanies each intelligence dissemination, it is often not provided.

**Feedback to Financial Institutions with respect to STR and other reporting (c. 25.2):**

723. The law enforcement agencies and the regulatory authorities work closely together to provide feedback on a joint basis by hosting briefing sessions for industry. In addition, each of these authorities provides feedback separately, as set out below.

**FIS:**

724. General feedback at an overview level is provided annually by the publication of annual reports by the FIS, the police force, and the customs service, which outline their respective objectives and achievements. More focused feedback is provided by participation in feedback sessions by the FIS, often alongside representatives from the GFSC, the Attorney General's Chambers, and other members of the law enforcement agencies. These sessions aim to raise awareness of reporting issues and trends. General and sector-specific feedback is also provided directly to MLROs at such events. The FIS has arranged presentations to representatives from industry, the judiciary, and other areas of law enforcement on a variety of issues related to disclosure, sometimes involving external speakers. Most recently, the Head of the FIU gave a presentation in January 2010 to the Guernsey Association of Compliance Officers. In excess of 100 key compliance personnel from FSBs in Guernsey attended the presentation, which included some high level of analysis of STRs in 2009.

725. A number of further feedback initiatives have also been commenced in response to specific issues, for example, consultation with high-value good dealers in respect to the introduction of regulations and reporting thresholds, and enquiries with representatives from the banking sector regarding cash imports/exports. The FIS has also written to sectors of industry on specific issues e.g., an identified modus operandi regarding cash deposits by local drug traffickers.

726. Sanitized local case studies are made available to reporting institutions during presentations and within the FIS's annual report. In addition, the FIS has, since 2005, played a pivotal role within the Egmont TWG sanitized cases project and has also been working with members of the IT and Operational Working Group on a joint trends and indicators database that will incorporate the needs of the various working groups.

727. Case-by-case feedback is routinely provided whenever possible, as reflected in case file notes. It may take the form of letters, phone conversations and personal visits. Data is collated in respect of such feedback provided to industry in order to provide some quantitative assessment.

728. In addition, case-by-case feedback was provided in line with the feedback project introduced in 2006. It took the form of written feedback outlining the disclosure, a brief description of any relevant developments since the report was made, such as whether or not the intelligence was disseminated to another agency or jurisdiction, any follow-up assistance requested, and any specific outcomes resulting from the information the institution provided. Initially, the year 2004 was looked at, and this involved a total of 591 STRs from 120 different financial services businesses. The FIS received responses from 65 institutions. From these, 16 additional lines of enquiry were identified and the FIS was informed of 51 accounts which had been closed and/or where the relationship had been concluded. As part of the project, reporters were asked to provide their views on the initiative and identify any areas for improvement in

order to assist with the evaluation process. Overall, the comments were positive, and it was agreed that the inclusion of the disclosing institutions' reference in future feedback reports would assist in providing updates. A secondary benefit of this project was the identification of further lines of enquiry and additional open source information. The FIS concluded that in light of the positive response from industry, the project would be repeated in respect of 2005 STRs. In the 2005 project, 202 responses were received in respect of the 650 reports reviewed. Of these, approximately 30 percent indicated that the account was subsequently closed; of the accounts remaining open, a further 10 percent revealed that the original suspicion had been negated following receipt of additional information, and a further 20 percent were currently free from any suspicious activity.

729. Following the success of this initiative, and in addition to the routine feedback that is provided wherever possible, another major project is planned later in 2010 following the introduction of a new database which is due to take place in May. The new database will incorporate specific features to assist in providing reporting institutions with quicker and more responsive feedback. Feedback is seen as extremely beneficial, not only in providing institutions with case-by-case feedback on their STRs, but also in providing the FIS with data suggesting that suspicions identified by institutions are in many cases being resolved, with further monitoring or enquiries leading to the negation of suspicion, or suspicious accounts being closed.

#### **GFSC:**

730. Businesses that come within the AML/CFT regulatory framework receive feedback from the FIS as described above. In addition, the GFSC provides joint feedback with the FIS to FSBs via briefings. It also provides individual FSBs with feedback following on-site inspections to those businesses. The instructions issued by the GFSC in November 2009 also constitute feedback on both local and international AML/CFT issues.

#### **AGCC:**

731. eGambling licensees receive feedback from the FIS in the same way as all other reporting businesses. In addition, the AGCC provides eGambling licensees with information about trends and areas/issues of potential concern.

#### **Statistics (R.32):**

732. Statistics on STRs are maintained as detailed under Recommendations 13, 26, 30, and 32 above. As the Bailiwick does not have a reporting system for all currency transactions above a certain threshold, no statistics relating to such transactions are maintained.

### **3.7.2. Recommendations and Comments**

#### **R. 13:**

- Consider amending DL and TL and/or relevant guidance to explicitly require the reporting of attempts, or issuing guidance to clarify the requirement.

- Review STR process to determine whether timeliness could be improved by revising and possibly simplifying the procedure.

**SR IV:**

- The reporting requirement in the TL should be amended to also extend to conduct under Section 5 of the Terrorism (UN Measures) (Channel Islands) Order 2001.

**3.7.3. Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV**

	Rating	Summary of factors underlying rating
<b>R.13</b>	C	
<b>R.14</b>	C	
<b>R.19</b>	C	
<b>R.25</b>	C	
<b>SR.IV</b>	LC	<ul style="list-style-type: none"> <li>• The reporting requirement under the TL does not extend to Section 5 of the Terrorism (UN Measures) (Channel Islands) Order 2001.</li> </ul>

**Internal controls and other measures**

**3.8. Internal Controls, Compliance, Audit, and Foreign Branches (R.15 and 22)**

**3.8.1. Description and Analysis**

**Legal Framework**

733. The FSB Regulations contain the basic framework for compliance with Recommendation 15, including the development of internal policies, procedures, and controls which include compliance management arrangements and screening procedures to ensure high standards when hiring employees. The FSB Handbook contains Rules relating to the requirements in the regulations which address the remaining criteria together with other requirements considered necessary for the purposes of detecting and preventing money laundering and terrorist financing.

734. The DL and the TL provide for the disclosure and tipping off requirements of FSBs and the Disclosure Regulations and the Terrorism and Crime Regulations prescribe the form and manner of reporting.

735. The FSB Regulations together with the Rules and guidance in chapter 2 of the FSB Handbook provide the framework for oversight of the policies, procedures and controls of an FSB to counter money laundering and terrorist financing.



736. FSB Regulation 15(d) contains the provisions for compliance with the criteria of Recommendation 22, including specific provisions regarding branches and subsidiaries of FSBs. The FSB Handbook contains Rules on how the Regulation must be met and guidance on ways of complying with the Regulation.

**Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 and 15.1.2):**

737. The FSB Handbook requires FSBs to establish internal policies, procedures and controls to prevent ML and TF, that cover, among others, CDD, record retention, and the detection and reporting of suspicious transactions. See, e.g., Sections 4.3, 10.2 and 12.2 of the FSB Handbook. The Rules in Section 11.4 of the FSB Handbook require an FSB to prepare and provide relevant employees with a copy, in any format, of the FSB's policies, procedures and controls manual for anti-money laundering and combating the financing of terrorism.

738. FSB Regulation 12 requires an FSB to appoint a person of at least management level as the MLRO and provide the name and title of that person to the GFSC and the FIS as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment. Regulation 12 also requires another person to be nominated to receive STRs, under Section I of the DL and Section 15 of the TL ("nominated officer"), in the absence of the MLRO, and ensure that any relevant employee is aware of the name of that nominated officer.

739. FSB Regulation 15 also requires the Board of an FSB to be responsible for the businesses' policy relating to compliance with the Regulations, which policy must provide for the extent and frequency of reviews of compliance, and to ensure that such reviews are discussed at and recorded in the minutes of board meetings. The rules in Section 2.3 of the FSB Handbook also require the Board to have effective responsibility for compliance with the FSB Regulations and the FSB Handbook. In particular, the Board must ensure that the compliance review policy takes into account the size, nature, and complexity of the business and includes a requirement for sample testing of the effectiveness and adequacy of the policies, procedures, and controls.

740. FSB Regulation 12(d) requires an FSB to ensure that the MLRO, or in his absence the nominated officer, takes into account all relevant information in determining whether or not to file an STR under the DL or TL. FSB Regulation 12(e) requires the FSBs to ensure that the MLRO, or, in his absence, a nominated officer, is given prompt access to any other information which may be of assistance to him in considering any STR. Regulation 12(f) requires the FSBs to establish and maintain such other appropriate and effective procedures and controls as are necessary to ensure compliance with requirements to make STRs under the DL and the TL. The rules in Section 2.4 of the FSB Handbook require that the MLRO has access to the CDD records and receive full cooperation from all staff. (Para. 36)

**Independent Audit of Internal Controls to Prevent ML and FT (c. 15.2):**

741. FSB Regulation 15 requires FSBs to establish and maintain an effective policy, for the review of its compliance with the requirements of the FSB Regulations, and such policy must

include provisions as to the extent and frequency of such reviews. The Rules in section 2.3 of the FSB Handbook also require an FSBs to 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, in particular the Board must consider whether it would be appropriate to maintain a separate audit function to assess the adequacy and effectiveness of the area of compliance.

742. The assessors note that there is no specific requirement to maintain an adequately resourced and independent audit function to test compliance with the procedures, policies and controls of the financial services business.

**Ongoing Employee Training on AML/CFT Matters (c. 15.3):**

743. FSB Regulation 13(2) requires an FSB to ensure that relevant employees receive comprehensive ongoing training in: the Regulations, FSB Handbook, and other relevant enactments; the personal obligations of employees and their potential criminal liability under the Regulations and the relevant enactments; the implications of non-compliance by employees with any rules or guidance made for the purposes of the Regulations; and its policies, procedures, and controls for the purposes of forestalling, preventing, and detecting money laundering and terrorist financing.

744. Additionally, the Rules in section 11.4 of the FSB Handbook require that FSBs must ensure that employees receive the ongoing training required under the FSB Regulations and in particular ensure that they are kept informed of: the CDD requirements and the requirements for the internal and external reporting of suspicion; the criminal and regulatory sanctions in place for failing to report information in accordance with policies, procedures and controls; the identity and responsibilities of the MLRO; the principal vulnerabilities of the products and services offered by the FSB; and new developments, including information on current money laundering and terrorist financing techniques, methods, trends and typologies.

**Employee Screening Procedures (c. 15.4):**

745. FSB Regulation 13(1) requires FSBs to maintain appropriate and effective procedures, when hiring employees, for the purpose of ensuring high standards of employee probity and competence. The Rules in section 11.2 of the FSB Handbook require that, in order for an FSB to ensure that employees are of the required standard of probity and competence, which will depend on the role of the employee, consideration must be given to: obtaining and confirming appropriate references at the time of recruitment; requesting information from the employee with regard to any regulatory action taken against him or action taken by a professional body; and requesting information from the employee with regard to any criminal convictions and checking his criminal record.

**Additional Element—Independence of Compliance Officer (c. 15.5):**

746. FSB Regulation 12 requires each FSB to appoint a person of at least management level as the MLRO. The Rules in section 2.4 of the FSB Handbook require that the MLRO and any deputy MLROs that are appointed must report directly to the Board and have regular contact

with the Board to ensure that the Board is able to satisfy itself that all statutory obligations and provisions in the FSB Handbook are being met and that the FSB is taking sufficiently robust measures to protect itself against the potential risk of being used for money laundering and terrorist financing.

**Implementation and effectiveness:**

747. The institutions interviewed by the assessors all confirmed that they had written AML/CFT policies and procedures in place, that an MLRO and nominated officer have been appointed of management level for receiving potential STRs, that periodic training is conducted, and that the appropriate screening procedures are in place for new employees, including obtaining references and seeking information with regard to past regulatory actions, sanctions, and convictions. The assessors viewed the screening procedures for new employees as adequate. Although there is no specific requirement in place to maintain an independent audit function, in practice the great majority of the institutions in Guernsey are part of a financial group that provides periodic audits through its corporate audit division.

**Application of AML/CFT Measures to Foreign Branches and Subsidiaries (c. 22.1, 22.1.1 and 22.1.2):**

748. FSB Regulation 15(d) requires an FSB to ensure that any of its branch offices which is an FSB in any country or territory outside the Bailiwick, complies with (i) the requirements of the FSB Regulations, and (ii) any requirements under the law applicable in that country or territory which are consistent with the FATF Recommendations, in each case to the extent that the law of that country or territory permits. The same requirement applies to any “body corporate” that is a “financial services business” in a foreign country or territory, of which a Guernsey FSB is the majority shareholder. Section 2.3.2 of the FSB Handbook states that an FSB must be aware that the inability of a foreign branch or subsidiary to observe the requirements of the Regulations and the FATF Recommendations, is “particularly likely” to occur in countries or territories that insufficiently apply the Recommendations. (Para. 30) FSB Regulation 15(d) requires that the foreign branch or subsidiary comply with the Regulations, to the extent that the laws of the foreign jurisdiction allows.

**Requirement to Inform Home Country Supervisor if Foreign Branches and Subsidiaries are Unable to Implement AML/CFT Measures (c. 22.2):**

749. Regulation 15 (2) states that in the event that a foreign branch or subsidiary is not allowed to comply with any requirement in the Regulations, the FSB must notify the Commission.

**Additional Element—Consistency of CDD Measures at Group Level (c. 22.3):**

750. Typically, FSBs which are part of a financial services group are subject to group policy but there is no requirement in law, regulation, or other enforceable means for them to do so.

751. The Regulation in effect at the time of the onsite did not specifically require that, if the AML/CFT requirements of Guernsey and the host countries differ, the branches or subsidiaries should be required to apply the higher standard, to the extent that local (i.e. host country) laws

and regulations permit. By amendment effective June 21, 2010, Regulation 15(d) was amended to specifically require that, if the AML/CFT requirements of Guernsey and the host countries differ, the branches or subsidiaries should be required to apply the higher standard, to the extent the law of the host country allows.

#### **Implementation and effectiveness:**

752. FSB visited during the mission were aware of the requirements imposed on their branches, including the obligation to comply with the higher standard, as permitted by law.

#### **3.8.2. Recommendations and Comments**

##### **R.15:**

- The authorities should establish a direct obligation for FSB maintain an adequately resourced and independent audit function to test compliance with the AML/CFT policies, procedures, and controls.

#### **3.8.3. Compliance with Recommendations 15 and 22**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.15</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• There is no requirement to maintain an adequately resourced independent audit function to test compliance with AML/CFT policies, procedures and controls.</li> </ul>
<b>R.22</b>	<b>C</b>	

### **3.9. Shell Banks (R.18)**

#### **3.9.1. Description and Analysis**

##### **Legal Framework**

753. The Banking Supervision Law provides for the regulation of deposit taking business and together with the FSB Regulations lays down the basic framework for compliance with the criteria in Recommendation 18. FSB Regulation 8 contains provisions with respect to correspondent banking relationships and shell banks.<sup>31</sup>

<sup>31</sup> “Shell bank” is defined in the FSB Regulations to mean a bank that has no physical presence in the country or territory in which it is incorporated and licensed and which is not a member of a group of bodies corporate which is subject to effective consolidated supervision. “Physical presence” is in turn defined to mean a bank that has no physical presence in the country or territory in which it is incorporated and licensed and which is not a member of a group of bodies corporate which is subject to consolidated supervision, and “consolidated supervision” is defined to mean supervision by a regulatory authority of all aspects of the business of a group of bodies corporate carried on worldwide, to ensure compliance with (i) the FATF Recommendations; and (ii) other international requirements, and in accordance with the Core

(continued)

**Prohibition of Establishment of Shell Banks (c. 18.1):**

754. Shell banks cannot be established in the Bailiwick. Section 6(2) of the Banking Supervision Law provides that the GFSC shall not grant an application for a banking license unless satisfied that in relation to the applicant and in relation to any person who is or is to be a director, controller or manager of the applicant, the criteria specified in Schedule 3 are fulfilled. The minimum criteria for licensing, contained in Schedule 3 to the Banking Supervision Law, include a requirement for there to be two Guernsey residents sufficiently independent of each other effectively directing the business and require banks to maintain accounts and other records of business in the Bailiwick. In addition, Section 31 of the Banking Supervision Law requires licensed banks to make audited accounts available in their offices in the Bailiwick.

755. The authorities confirmed that there are no shell banks in the Bailiwick and the assessors found no reason to determine otherwise. Although there are a small number of “administered banks,” i.e., licensed banks that have outsourced their operations in the Bailiwick to another Guernsey bank, both they and the bank providing the administration service are subject to the full range of AML/CFT and prudential requirements. Unlike a “shell bank,” an administered bank has operations and activity in the Bailiwick (albeit not conducted by its own employees), maintains records that are audited, and pays taxes.

**Prohibition of Correspondent Banking with Shell Banks (c. 18.2):**

756. FSB Regulation 8(2) (a) provides that an FSB must not enter into, or continue, a correspondent banking relationship with a shell bank.

**Requirement to Satisfy Respondent Financial Institutions Prohibition of Use of Accounts by Shell Banks (c. 18.3):**

757. FSB Regulation 8(2) (b) provides that an FSB must take appropriate measures to ensure that it does not enter into, or continue, a correspondent banking relationship where the respondent bank is known to permit its accounts to be used by a shell bank. Such measures would have to include sufficient diligence to know (to a reasonable degree) whether the respondent bank permits its accounts to be used by shell banks.

**3.9.2. Recommendations and Comments**

None.

**3.9.3. Compliance with Recommendation 18**

	Rating	Summary of factors underlying rating
<b>R.18</b>	<b>C</b>	

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Principles of Effective Banking Supervision issued the Basle Committee on Banking Supervision as revised or reissued from time to time.

## **Regulation, supervision, guidance, monitoring and sanctions**

### **3.10. The Supervisory and Oversight System—Competent Authorities and SROs. Role, Functions, Duties, and Powers (Including Sanctions) (R. 23, 29, 17 and 25)**

#### **3.10.1. Description and Analysis**

##### **Legal Framework**

758. The sanctions available for failure to comply with Guernsey’s AML/CFT requirements include criminal, civil, and administrative sanctions. The criminal sanctions are set out in the POCL, the DTL, the TL, the DL and the FSB Regulations. In addition, civil and administrative sanctions may be applied by supervisory authorities pursuant to the FSB Regulations and the regulatory laws described below.

759. The Guernsey Financial Services Commission (GFSC) is the overall regulatory authority for AML/CFT in Guernsey. Its powers are set out and exercised through the various financial regulatory laws, including 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. The applicable financial regulatory laws provide the GFSC supervisors with comprehensive powers of supervision and inspection, including sanctioning powers for noncompliance with the AML/CFT requirements.

760. As such, all financial services businesses (FSBs) under the GFSC are subject to AML/CFT regulation and supervision of the relevant provisions of the Disclosure Law (DL), the Terrorism and Crime Law (TL), the Drug Trafficking Law (DTL), the Proceeds of Crime Law (POCL), the Wire Transfer Ordinances (WTO) and the FSB Regulations.

761. The GFSC has issued AML/CFT regulations and a Handbook (FSB Handbook) that includes rules, guidance and instructions to FSB for the effective implementation of the AML/CFT measures. These requirements are supervised for compliance and enforced by the different supervisory divisions of the GFSC. The specific provisions and references in the laws and regulations that provide the enabling powers to the GFSC are discussed below under c.23.2, Rec. 29 and Rec. 17.

762. Section 49 of the Proceeds of Crime (POC) Law empowers the GFSC to make rules, instructions and guidance for the purposes of AML/CFT regulations. 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 FSB, including regulated persons and persons registered under the FSB Regulations and the Registered FSBs Law.

763. The Site Visits Ordinance provides for on-site inspections by the GFSC for the purpose of ascertaining compliance with the Banking Supervision Law and the Protection of Investors Law and any Ordinance, regulation, rule, code, condition or direction made under those enactments. These powers in the Site Visits Ordinance can also be used by the GFSC to monitor compliance by registered financial services businesses with AML/CFT obligations.

**Competent authorities—powers and resources: Designation of Competent Authority (c. 23.2); 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 and 29.3.1); Adequacy of Resources—Supervisory Authorities (R.30):**

**Designation of Competent Authority (c. 23.2):**

764. Section 2(2) of the Financial Services Commission Law establishes the general functions and statutory functions of the GFSC, among these functions is the obligation to counter financial crimes and the financing of terrorism. Also, pursuant to the powers conferred by Section 49(7) of the POC Law, the GFSC is empowered to make rules, instructions, and guidance for the purposes of the FSB regulation to ensure that FSBs adequately comply with the requirements to detect and prevent money laundering and financing of terrorism. The AML/CFT regulations also require the GFSC to review compliance with the applicable provisions with respect to FSB branches outside of Guernsey and for subsidiaries with overseas operations. The GFSC's AML/CFT supervisory program includes offsite monitoring/surveillance and onsite activities. The GFSC is responsible for the supervision of the following number of financial institutions.

**Types of financial institutions in Guernsey as at 31 December 2009:**

<b>Type of institution and activities regulated for AML/CFT</b>	<b>Financial activities</b>	<b>Number regulated/registered</b>	<b>Size of sector</b>
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	44	Deposits – £114.7 billion
Insurers, insurance managers and insurance intermediaries: Life and general insurance	Underwriting and placement of life insurance and other investment related insurance Underwriting and placement of non-life insurance	699 insurers 21 insurance managers 40 insurance intermediaries	Gross assets – £21.0 billion Gross written premiums – £3.3 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	661 licensed institutions 884 Guernsey collective investment schemes 1 stock exchange	Assets under management or administration – £184.2 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 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 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	43	Small
Money service businesses: Money and currency changing and transfer or money	Money and currency changing Transfer of money	35 (29 included in figures for banks and 6 included in registered non-regulated financial services businesses)	Small

765. As the sole AML/CFT supervisor for the financial sector, the GFSC administers the FSB Regulations and the FSB Handbook, in addition to the regulatory laws. The interlinkage between AML/CFT responsibilities and other prudential/regulatory responsibilities has been articulated in the legislation so that, for example, the minimum criteria for licensing in the regulatory laws include compliance with AML/CFT obligations.<sup>32</sup> The GFSC's approach to supervision is risk-based and covers both prudential and AML/CFT supervision. The

<sup>32</sup> See, e.g., Banking Supervision Law Section 8 and Schedule 3 Criterion 3.



supervisory cycle includes activities for both off-site surveillance and on-site inspections. The GFSC has developed detailed examination procedures for conducting off-site surveillance activities and on-site supervision, which are captured in the GFSC's operational manual.

### **Risk-based approach to supervision**

766. The GFSC adopted and implemented a risk-based approach to supervision, in particular for off-site surveillance for both prudential and AML/CFT matters. The risk based approach adopted provides for: i) the identification of risk exposures (inherent risks) within the customers, products and services, transactions, geographical location and delivery channels of the institution; ii) the identification and evaluation of risk mitigants; iii) the evaluation of controls; and the determination of the estimated net risk position (residual risk). The analysis of all these components is conducted through an internally developed supervisory risk matrix. This risk matrix is applied to all FSBs. The results of these evaluations of risks, mitigants, and controls provide the GFSC with the sufficient information and is the basis for planning its supervisory plan for the frequency of both off-site surveillance activities (included the financial and non-financial information required) and on-site inspections.

### **Off-site Surveillance**

767. The GFSC has established a supervisory methodology and practice for conducting off-site surveillance (monitoring) for AML/CFT matters that includes the frequent evaluation of financial and non-financial information received from each FSB. This information received is assessed to ensure compliance with the legal and regulatory obligations and the results of such assessments are validated during the on-site visits (inspections). The frequency and the information requested are based on the risk profile of the institution and the supervisory strategy in place. For example, an institution rated "high risk" is required to submit the frequent financial and non-financial reports (ranging from monthly to quarterly), versus one rated "low risk", which is required to submit such information semi-annually. The GFSC reviews the information received together with its own internal reports (results from prior analysis and on-site inspections) and any other information available. During this off-site analytical review, special consideration is given also to any changes in the control/ownership structure of the institution, which could be relevant to supervision. The off-site analysis also provides the GFSC with the ability to impose enforcement actions for noncompliance if issues are identified during the review, and require corrective action, as needed.

### **On-site Inspections**

768. There are no statutory requirements for conducting on-site inspections within a predetermined timeframe. As such, the internal policy of the GFSC is to conduct on-site inspections on a three-year rolling cycle. In practice, institutions rated high risk (based on the results of the supervisory risk assessment) are scheduled a visit every year. Those rated medium risk are visited within an 18-24 months cycle and low risk FBS are visited every three years. The annual inspection plan provides sufficient flexibility to ensure that, if needed, more frequent or targeted inspections are conducted if the risk profile of the FBS changes in between visits or as a result of the off-site review. The GFSC also conducts thematic on-site inspections if a particular interest arises or if trigger by a special request from other competent authorities

(for example, from the FIU). The inspections cover a full range of risks and areas and are supported by a comprehensive inspection manual.

769. The process for planning AML/CFT on-site inspections follows the process already in place for prudential supervision, that is, the results of the off-site surveillance reviews are considered, contact is established with the FIU to determine any concerns or areas that need special attention, the prudential supervisors are contacted, previous reports of inspections are reviewed, the supervisory strategy is reviewed, and previous findings and corrective actions are followed up. The scope of work, resources needed, and duration of the inspection are driven by the supervisory strategy in place for the institution and the risk profile assigned. On average, on-site AML/CFT inspections are comprised of three to four experienced supervisors who spend an average of three to four days on-site. The authorities indicated that these figures do not take into consideration the additional time and activities allocated for pre and post on-site inspections. The averages and activities will vary depending on whether the visit is limited to AML/CFT or covers other regulatory areas of interest.

770. The table below reflects the number of onsite inspections conducted by the GFSC during the last four years. The inspections focused on evaluating the level of compliance of FSB and PB with respect to AML/CFT policies, procedures, and controls in place, as well as compliance with the obligations imposed by the AML/CFT laws, regulations, and handbooks.

	<b>Total Number*</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
<b>Banking</b>	44	20	17	16 (15 Banks and 1 Bureau de Change)	12
<b>Fiduciary</b>	197	43	40	27	23
<b>Insurance</b>	699 insurers (which includes 21 insurance managers) 40 insurance intermediaries	30 (inspections of captive managers also covered 127 captives/ PCCs)	28 (inspections of captive managers also covered 210 captives/ PCCs)	31 (inspections of captive managers also covered 131 captives/ PCCs)	33 (inspections of captive managers also covered 202 captives/ PCCs)
<b>Investment Business (including stock exchange)</b>	661 licensed institutions 884 Guernsey collective investment schemes 1 stock exchange	14 (inspections of fund administrators also covered 170 funds and 57 administered licensees)	12 (inspections of fund administrators also covered 84 funds and 34 administered licensees)	32 (inspections of fund administrators also covered 713 funds and 250 administered licensees)	48 (inspections of fund administrators also covered 317 funds and 71 administered licensees)

	<b>Total Number*</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
<b>Registered financial services businesses</b>	43	n/a	n/a	8 (1 inspection covered 2 registrations)	7 (1 inspection covered 2 registrations & 1 covered 3 entities)
<b>Prescribed Businesses</b>	35 (29 included in figures for banks and 6 included in registered financial services businesses)	n/a	n/a	<b>From Oct – Dec 4</b> (1 inspection covered 2 entities and 1 covered 2 registrations)	14 (1 inspection covered 2 entities and 1 covered 2 registrations)
<b>Total entities covered by inspections</b>	2,563	461	425	1,210	729

771. As the sole supervisor in AML/CFT matters, the GFSC is empowered to impose sanctions on FSB and PB for noncompliance with the requirements of the AML/CFT laws, regulations, and handbooks. The table below reflects the enforcement powers (sanctions and refusals) used by the GFSC.

<b>Year</b>	<b>Division</b>				
	<b>Banking</b>	<b>Fiduciary</b>	<b>Insurance</b>	<b>Investment</b>	<b>Policy and International Affairs</b>
<b>2006</b>	0	1	0	0	n/a
<b>2007</b>	0	3	1	0	n/a
<b>2008</b>	2	2	1	3	0
<b>2009</b>	0	7	2	3	6
<b>Total</b>	<b>2</b>	<b>11</b>	<b>4</b>	<b>6</b>	<b>6</b>

#### **Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1):**

772. As described under Recommendation 23, the GFSC has powers to monitor and ensure compliance by all financial services businesses (FSB) with AML/CFT obligations, including but not limited to the FSB Regulations and the FSB Handbook. Overall, the GFSC has adequate

powers under the various laws and regulations to monitor and ensure compliance by FSB with the requirements to combat money laundering and terrorist financing.

773. The GFSC's powers to obtain information and documents are described under criterion 29.3 below. The GFSC's powers of on-site inspection are described under criterion 29.2 below. The GFSC's powers of sanction are described under Recommendation 17.

**Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2):**

774. Section 49B of the POC Law empowers the GFSC to enter any premises in the Bailiwick in order to determine whether a FSB has complied with the FSB Regulations, the FSB Handbook and instructions. In exercising this power the GFSC may require the business to produce for examination any documents held by the business and to answer questions.

775. In addition, the Site Visits Ordinance provides for on-site inspections by the GFSC for the purpose of ascertaining compliance by FSBs with the Banking Supervision Law, the Protection of Investors Law and any Ordinance, regulation, rule, code, condition or direction made under those enactments. The Ordinance provides a tiered approach to inspections. Section 1 provides that the GFSC may make site inspections to licensees with their agreement. Section 2 provides the GFSC with authority to undertake site inspections with notice but without the agreement of the licensee. Section 3 provides that, if the GFSC suspects that notice of a visit would result in documents being removed, tampered with, falsified or destroyed, then representatives of the GFSC may enter premise on request but without notice. The Ordinance also requires licensees to produce documents for examination requested by the GFSC and to answer questions.

776. Section 67 of the Insurance Business Law and section 44 of the Insurance Managers and Insurance Intermediaries Law state that the GFSC may make an on-site inspection to a licensee under those laws after making arrangements with that licensee. Inspections can be made with a view to the performance of the GFSC's regulatory functions or, if the GFSC considers it desirable to do so for the protection of the public or the reputation of the Bailiwick as a financial centre. In addition, Section 49(B) of the POCL grants the GFSC broad powers to enter any premises and to require officers and agents of a FSB to produce for examination documents and copies and to answer questions to verify compliance with any of the AML/CFT requirements. Also, for consistency purposes, the Site Visits Ordinance was amended to apply to the insurance industry, effective July 28, 2010.

777. Compliance with the wire transfer provisions of the FSB Regulations and the FSB Rules is subject to on-site inspections under the on-site provisions of the Proceeds of Crime Law and the Site Visits Ordinance. Compliance with the Wire Transfer Ordinances by registered FSBs is subject to inspection under the Site Visits Ordinance and the Registered FSBs Law. All FSB subject to the Wire Transfer Ordinances are subject to on-site inspections under the Site Visits Ordinance or the regulatory laws.

**Power for Supervisors to Compel Production of Records (c. 29.3 and 29.3.1):**

778. Section 49B of the Proceeds of Crime Law allows the GFSC to require, while carrying out an inspection, FSB 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 FSB 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 offense 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 two years or to a fine or both.

779. The GFSC has power to obtain information and documents from FSB 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 Registered FSBs Law.<sup>33</sup> It is an offense under these laws for an FSB not to provide information and documents reasonably requested by the GFSC.

780. In addition, 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.<sup>34</sup>

781. The GFSC's powers to compel the production of information and documents, to require persons to answer questions and to gain access to premises are not predicated on the need to require a court order. These powers are not predicated on the GFSC requiring a court order to gain access to information or enter FSB premises.

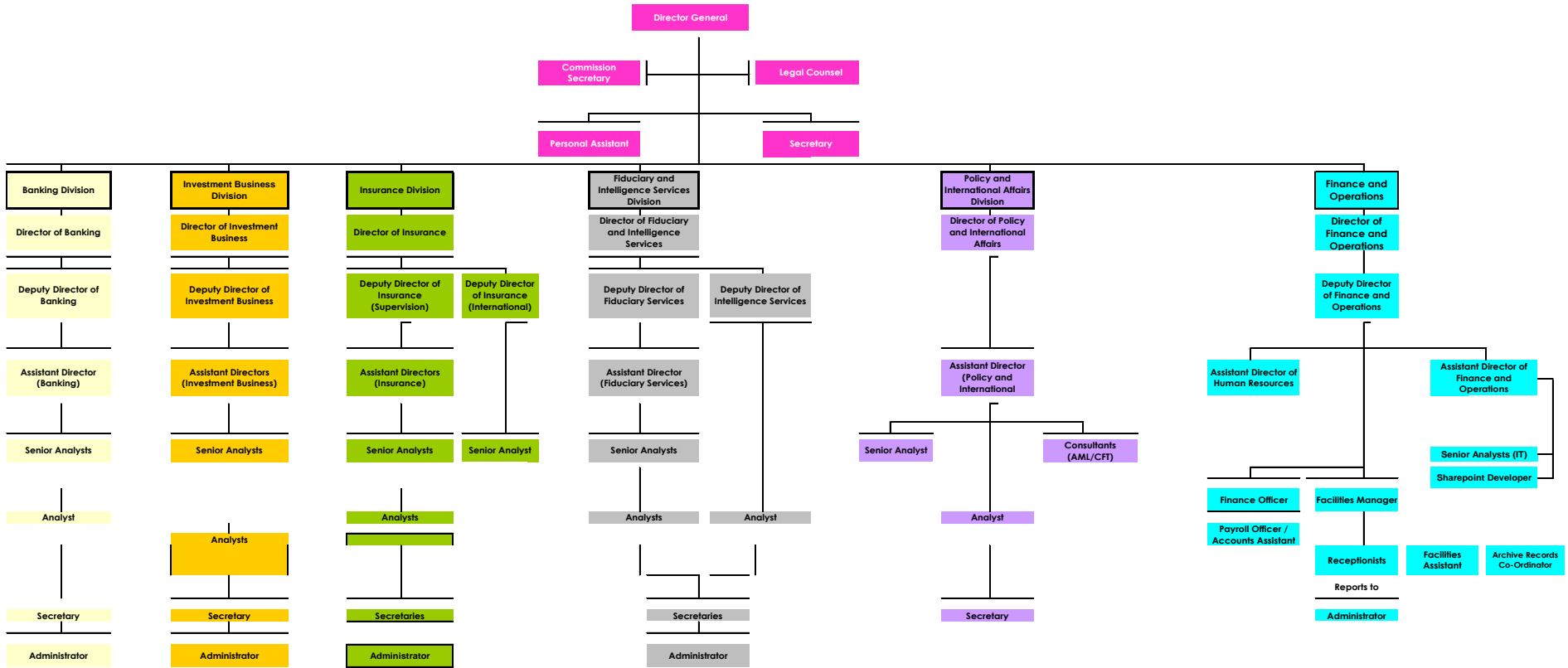
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<sup>33</sup> For example, Section 6A of Schedule 3 of the Banking Supervision Law requires an institution to supply such information as the GFSC may require to assess compliance with the minimum criteria for licensing, and Sections 1A and 3 of Schedule 3 include compliance with all AML/CFT requirements

<sup>34</sup> For example, Banking Supervision Law Sections 26-29.

Commission Organisation Chart

21 May 2010



### **Adequacy of Resources—Supervisory Authorities (R.30):**

782. The GFSC has 97 staff and 4 consultants and as of the onsite visit was in the process of recruiting a number of staff including a Legal Counsel and an Assistant Director. The only recruitment relevant to AML/CFT is the Assistant Director role in the Fiduciary Division which, the authorities indicated, will provide for an enhancement of their on-site inspection program. The GFSC is divided into seven Divisions, namely: 1) the Director General's Division; 2) the Banking Division; 3) the Investment Business Division; 4) the Insurance Division; 5) the Fiduciary Division; 6) the Policy and International Affairs Division; and the Finance and 7) Operations Division.

783. At the day to day level, the Banking Division is responsible for the AML/CFT supervision of the banking sector, the Investment Business Division is responsible for the investment sector, the Insurance Division is responsible for the insurance sector, the Policy and International Affairs Division is responsible for registered financial services businesses and registered prescribed businesses, and the Fiduciary and Intelligence Services Division is responsible for the trust and company service provider sector. Each of these Divisions conducts on-site inspections to the supervised entities for which it is responsible.

784. The vast majority of the GFSC's income derives from fees it levies on the FSB and PB sectors. Its remaining income is derived from bank interest. In 2009, the GFSC's total income was £10.1 million compared with expenditure of £10.95 million. The reserves at December 31, 2009 were £1.3 million. The authorities forecast income and expenditure for 2010 at £11.3 million. A significant fee increases over 2009. The authorities indicated that both technical resources and premises are satisfactory. The GFSC currently operates from two premises. These premises will be vacated in or around September 2010 and the GFSC will move to another location where it will operate from one site.

785. The authorities indicated that GFSC officers are subject to a comprehensive recruitment process. The process includes interviews, the provision of three satisfactory references and checks for any criminal convictions. Section 21(1) of the Financial Services Commission Law requires information from which an individual or body can be identified to be kept confidential by the GFSC subject to gateways which enable the GFSC to carry out its functions (this includes those relating to AML/CFT ) and for the purposes of the prevention, detection, investigation and prosecution of crime. The wrongful disclosure of information is an offence subject to penalties. The penalty on conviction on indictment is imprisonment for up to three years or a fine or both. The penalty on summary conviction is a fine of up to £10,000 or an imprisonment of up to three months or both. There are similar provisions across the regulatory laws administered by the GFSC. On joining the GFSC and annually thereafter staff are required to acknowledge they have understood the provisions on confidentiality in the legislation and the attendant penalties for wrongful disclosure. The GFSC's staff handbook also contains text on how to meet confidentiality requirements.

786. The staff handbook also addresses conflicts of interest and integrity issues in order to ensure the GFSC's officers maintain high professional standards. The handbook describes potential conflicts, includes a policy on personal account dealing, provides procedures on general

disclosure, prohibits particular investments and provides for completion of conflicts of interest registers. The GFSC Commissioners are subject to separate guidance on how to manage conflicts of interest; this guidance is published. The authorities indicated that a standing agenda item at meetings of Commissioners covers disclosure of any conflicts.

787. The authorities indicated that staff resources are frequently reviewed and that at the time of the onsite, these were adequate to fulfill its AML/CFT functions with the recruitment of an additional assistant director in the Fiduciary Division to allow for an enhancement of their on-site inspection program.

788. GFSC staff is provided with compulsory ongoing training for combating ML and FT. The training includes an on-line program purchased from a specialist off-island firm of AML/CFT trainers. A specialist U.K. trainer is also employed to provide training—these sessions are divided into training for new staff and follow-up training. In addition, training has been provided to GFSC staff by representatives of the Attorney General’s Chambers, the FIS and GFSC staff.

789. Since 2007, training has been provided routinely. Training topics included the scope of legislation, requirements for FSBs and PBs, typologies, suspicion, terrorist financing and prosecutions.

790. The authorities indicated that they also encourage attendance at external conferences. Officers at the GFSC have organized or attended the regular joint training sessions and presentations within the Bailiwick for representatives of all bodies with AML/CFT responsibilities.

791. The Policy and International Affairs Division of the GFSC also provides a significant resource to the GFSC. The senior officers of that Division are highly active in AML/CFT internationally. They participate in and contribute to AML/CFT work undertaken by the FATF, the IAIS, the IMF, MONEYVAL, the OGBS and the FSI. This provides training as well as knowledge of international developments; briefings are provided by the Division to the GFSC’s senior management.

**Sanctions: Powers of Enforcement & Sanction (c. 29.4); Availability of Effective, Proportionate & Deterrent Sanctions (c. 17.1); Designation of Authority to Impose Sanctions (c. 17.2); Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3); Range of Sanctions—Scope and Proportionality (c. 17.4):**

792. The financial regulatory laws, as well as the POC Law, Disclosure Law provide for sanctioning powers to the GFSC for violations with the AML/CFT legal and regulatory requirements. Such powers to sanction extend to directors and officers of FIs.

793. The GFSC have also a broad of powers to sanction financial institutions for noncompliance issues and has used these powers in numerous occasions mostly by imposing regulatory conditions on licensees, including winding down business activities. However, prior to May 24, 2010, no financial sanctions had ever been imposed by the GFSC for violations of the AML/CFT law, regulations, and rules. The recent financial sanctions of May 24, 2010, imposed on three individuals in the amount of £14,000 (on one individual) and £7,000 (on the other two),



were related to noncompliance with the FSC Law, the Fiduciary Law, the FSB (AML/CFT) Regulations, and the Handbook for FSBs. The authorities are also of the opinion that indirect financial penalties have been imposed on a number of financial institutions by way of: i) imposing conditions which prohibit undertaking any new business for a specified period of time; ii) imposing conditions requiring specific training to be undertaken; and iii) appointing inspectors with the cost being borne by the institution. Following is the number and type of measures taken for non-compliance with the AML/CFT requirements.

Year	Type of Sanction Imposed	Comments
2007	Orderly wind-down of business GFSC had not licensed because of approach to AML and fiduciary responsibilities.	The directions were complied with – business relocated outside of Guernsey September 2007.
	Orderly wind-down of business surrendering license after discovery of circumvention of internal controls on cash distribution.	The directions were complied with – business relocated outside of Guernsey September 2007.
	No new business to be taken on pending full file review by directors of compliance with AML/CFT and other obligation on existing files. Also appointment of inspectors by GFSC to review AML and other procedures. Led to refusal of license application and closure of business.	No new business condition complied with. File reviews not done by directors, and breach formed part of deferral to Commissioners who refused the license application. Inspector's report obtained and also supports refusal for break of regulatory standards.
	<p>Managing Director of a company discussed with the Law Officers and Law Enforcement due to his involvement in companies which handled proceeds of an investment fraud.</p> <p>Further to 2007 action, and while police investigation ongoing, in 2008 the Commission appointed inspectors to investigate loans</p>	Managing Director has been charged with money laundering and is awaiting trial.

	transactions between two parties which may involve proceeds of crime.	
<b>2008</b>	Insufficient client detail in an element of existing introduced business at a licensee. Condition placed on the institution's license requiring it to identify all its customers, to assess the risk of those customers, and obtain the level of customer due diligence appropriate to the assessed risk of the business relationship, or to close the account.	The licensee met this condition within the required timeframe.
	License conditions requiring submission of improved AML/CFT procedures. Directions covering closure of business.	Business relocated outside Guernsey in 2008, due to proprietor's view that in the long term it would be difficult to comply with Guernsey requirements.
	A license condition was imposed preventing appointment of further directors outside Guernsey to prevent control moving outside the Commission's jurisdiction while AML/CFT and other issued are addressed.	The condition is being complied with.
	Conditions imposed restricting no new business, following issues identified during onsite visit (issued in report to be auctioned). Company in process of surrendering its insurance intermediary license.	Issues in respect of corporate governance, compliance and AML/CFT (inadequate steps taken in fully complying during onsite visit. Conditions imposed and requirement to address all issues in report issued. Company surrendered its insurance intermediary license.
	The licensee's documented process and systems were found to be deficient although licensee had commenced	The licensee undertook remedial action to the Commission's satisfaction.

	remedial action. Conditions were imposed on license to ensure that adequate steps are taken to address all outstanding issues.	
	The licensee was deficient in due diligence held on investors. The condition has been imposed that no new business will be taken on by the licensee.	The licensee has implemented a remedial program to obtain required information. The licensee has reported to the Commission with the findings of an external review conducted by independent accountants. A follow up onsite visit has been conducted. Following referral to HOD's enforcement action is ongoing. The Commission awaits a final response from the licensee's advocate.
	The licensee was deficient in due diligence held on investors. Conditions have been imposed insisting on rectification by December 31, 2008 or closure of accounts and weekly reporting.	The licensee has complied with conditions and a follow up onsite visit was undertaken. Further issues were identified. Conditions were imposed and the Commission is monitoring compliance.
	A condition was placed on a licensee who provided a weak business risk assessment with regard to insufficient assessment of the bank's risk of money laundering and terrorist financing. Also found to have poor standards on monitoring transactions.	The licensee met this condition within the required timeframe.
<b>2009</b>	Statutory directions re wind-down imposed; to close by February 28, 2009 and no new business meanwhile.	The directions were complied with. Licensee dissolved on September 2009.
	License conditions imposed requiring new AML/CFT procedures to be submitted for approval; review of existing files; no new business to be	The conditions were complied with. Licensee closing business.

	taken out on; followed by independent file review in August.	
	A license condition was imposed requiring submission of revised AML/CFT procedures by March 27, 2009.	The condition was complied with.
	License conditions imposed requiring new AML/CFT procedures, review of files and not new business to be taken on.	The conditions were complied with.
	License conditions imposed requiring new AML/CFT procedures, review of files, business and client risk assessments and no new business to be taken on.	The conditions were complied with.
	License conditions were imposed requiring an external review of high risk relationships against regulatory requirements and implementation of subsequent recommended changes.	The conditions were complied with.
	License conditions were imposed requiring improved risk assessment and client review program.	The conditions were complied with.
	A license condition was imposed that the licensee shall cease to pay out the proceeds of any life insurance policy unless full identification and verification has been obtained.	The condition was complied with.
	License conditions were imposed requiring a review of all long-term business, and implementation of a compliance monitoring program.	Licensee continues to report to the Commission and is progressing with rectifying the issues.
	The licensee took on the administration of a fund from another entity. The transfer included the transfer of CDD which following a review by	The conditions were complied with.

	the licensee was found to be deficient. Conditions were imposed on license to ensure that adequate steps are taken to address all outstanding issues.	
	The licensee took on the administration of a fund from another entity. The transfer included the transfer of CDD which following a review by the licensee was found to be deficient. Conditions were imposed on license to ensure that adequate steps were taken to address all outstanding issues. A full client review by the licensee identified deficiencies outside the scope of the original review. Conditions were imposed to concur with the instruction notices.	The Commission is considering the final report from the licensee as required under the conditions in order to assess its compliance. If satisfied the conditions will be removed.
	The licensee was deficient on the testing of reliable introducers and on the due diligence of intermediary relationships. Conditions were imposed which included a moratorium on new business, the introduction of a reliable introducer testing policy and the submission of reports on the progress of collection of CDD on intermediaries.	A follow up visit is planned to review compliance.
	Issues in respect of corporate governance and AML/CFT training for staff identified during onsite visit. Registered entity was found deficient. Conditions imposed requiring submission of revised business risk assessment, procedures manual and confirmation of staff and board member's AML/CFT training.	The registered entity met the conditions within the required timeframe.

	<p>Issues in respect of corporate governance and AML/CFT training for staff identified during onsite visit. Registered entity was found deficient. Conditions imposed requiring submission of revised business risk assessment, procedures manual and confirmation of staff and board member's AML/CFT training.</p>	<p>The registered entity met the conditions within the required timeframe.</p>
	<p>Issues in respect of corporate governance and AML/CFT training for staff identified during onsite visit. Registered entity was found deficient. Conditions imposed requiring submission of revised business risk assessment, procedures manual and confirmation of staff and board member's AML/CFT training as well as a review of corporate governance by the Board.</p>	<p>The registered entity met the conditions within the required timeframe.</p>
	<p>Issues in respect of corporate governance, compliance and AML/CFT identified during onsite visit. Conditions imposed requiring review of policies, procedures and controls and effectiveness of these by the Board.</p>	<p>The registered entity ceased carrying out prescribed business and subsequently surrendered its registration.</p>
	<p>Issues in respect of appointment of appropriate MLRO. Conditions imposed requiring review of policies, procedures and controls and effectiveness of these by the Board.</p>	<p>The registered entity met the conditions within the required timeframe.</p>
	<p>Issues in respect of appointment of appropriate MLRO. Conditions imposed requiring review of policies, procedures and controls and effectiveness of these by the Board.</p>	<p>The registered entity met the conditions within the required timeframe.</p>

<b>Up to April 30, 2010</b>	A condition was imposed for the licensee to obtain an independent review of compliance with the Regulations and Handbook and other matters.	The condition is being complied with.
	A condition was imposed preventing the licensee from accepting any new business while AML/CFT issues are being resolved, in order to focus resources on the latter.	The condition is being complied with and the issues are being resolved.
	License conditions imposed requiring licensee to bring client review programme up to date to comply with the Regulations.	The conditions are being complied with.
	License conditions imposed requiring licensee to obtain independent assistance in bringing procedures into compliance with the Handbook.	The conditions are being complied with.
	Issues re suspicion reporting procedures and AML/CFT training for staff identified during onsite visit. Conditions were imposed requiring submission of revised procedures and confirmation of staff and board members AML/CFT training.	The registered entity met the conditions within the required timeframe.

794. Violations of the AML/CFT framework may trigger the application of criminal, civil, and administrative sanctions.

### **Criminal Sanctions**

795. Pursuant to Sections 38(4), 39(6) and 40(10) of the POCL, Section 62(1) of the DTL and Section 17 of the TL, Money laundering convictions on indictment are punishable by imprisonment for a term not exceeding 14 years and/or an unlimited fine. The sanctions for summary convictions for money laundering range from imprisonment for a term not exceeding 12 months (in cases of ML based on the TL the applicable sanction is six months) and or a fine not exceeding £10,000.

796. Pursuant to Section 17 of the TL, terrorism financing offenses may be sanctioned with imprisonment for a term not exceeding 14 years, or to an unlimited fine or to both upon conviction on indictment or with imprisonment for a term not exceeding six months, to a fine not exceeding £10,000 or both upon summary conviction. In addition to the sanctions set forth in the TL, criminal courts may oblige convicted terrorist financiers to pay compensation to the victims of the crime (Section 1 Compensation Law) and order the forfeiture of any property and instrumentalities.

797. Pursuant to Sections 1, 2 and 3 of the DL and Sections 12, 15 and 15A of the TL, it is an offense for any person (which includes legal 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 TF. Section 4 of the DL and Section 40 of the TL have offenses for tipping off. The offenses may be sanctioned with imprisonment for a term not exceeding six months or a fine not exceeding £10,000 upon summary conviction, or imprisonment for a term not exceeding five years or to an unlimited fine or both upon conviction on indictment (Section 5 of the DL, Section 41 of the POCL, Section 15B of the TL, and Section 61 of the DTL).

798. In addition, FSB Regulation 17 provides that any natural or legal person who violates any requirement of the FSB Regulations may be held criminally liable and be sanctioned on conviction to imprisonment for up to five years or an unlimited fine or both. The penalties on summary indictment are imprisonment for up to six months or a fine of up to £10,000.

### **Civil Sanctions**

799. Pursuant to the following provisions of the regulatory laws: Section 35 of the Banking Supervision Law, Section 33 Protection of Investors Law, Section 76 Insurance Business Law, and Section 53 Insurance Managers and Insurance Intermediaries Law, on the application of the GFSC, the Royal Court may issue an injunction restraining a natural or legal person from contravening various provisions of the indicated laws, including the unlawful or fraudulent conduct of business. Although these provisions are not directly applicable to money laundering offences, they could be used in a case where, for example, money laundering was suspected of being involved with other activity, such as the fraudulent conduct of business.

800. As outlined under Section 2 of this report, criminal sanctions under the POCL, DTL and TL apply to all “persons”, which is defined in the Interpretation law to include both natural and legal persons. While the Interpretation Law itself is a Guernsey only law, its provisions expressly apply to any Bailiwick-wide criminal statute (Sections 51(2) POCL, 69(2) DTL and 79(3) TL). Section 49E POCL further stipulates that both legal persons and their officers, managers, directors, secretaries or other persons may be held responsible for any offenses under the POCL or any ordinances or regulations issued on the basis thereof if it can be established that the person acted negligently or based on consent or connivance.

801. Criminal sanctions are applied by the Royal Court Guernsey upon application by the AG whereas civil sanctions are applied by the Royal Court of Guernsey upon application by the GFSC. Administrative sanctions under regulatory laws are issued by the GFSC.

### **Administrative Sanctions**



802. In addition to criminal and civil sanctions, the GFSC may impose a range of administrative sanctions on licensed financial services businesses, both under the Financial Services Commission Law and under the regulatory laws, for violation of AML/CFT requirements.

803. Under Sections 11C and 11D of the Financial Services Commission Law, the GFSC is authorized to issue public statements regarding the type of violation and the names of individuals and businesses involved. Section 11D also provides the GFSC with discretionary financial penalties when: the GFSC is satisfied that a licensee, former licensee or relevant officer (a) has contravened a provision of the prescribed Laws, or (b) does not fulfill any of the minimum criteria for licensing specified in the regulatory Laws. Under this section, the GFSC has the power to impose discretionary financial penalties of up to £200,000, for violations of any provision of, or made under, the prescribed laws.<sup>35</sup> This would include violations of the FSB Regulations or the Rules.

804. The GFSC may also impose such conditions as it thinks fit on FSBs for breaches of the FSB Regulations or Rules, pursuant to the regulatory laws.<sup>36</sup> Such conditions include a restriction of the scope of business; a prohibition to solicit business in a specified place or from persons of a specified description or to enter into certain transactions or class of transactions; removal of any director, controller, partner, manager, general representative or employee; the provision of information and documents to the GFSC (for example a report by a third party on compliance with AML/CFT obligations; or a prohibition, restriction or limitation on the carrying out of business). Conditions can be applied against individuals as well as businesses and a breach thereof may be criminally sanctioned.

805. Under other provisions of the regulatory laws<sup>37</sup> the GFSC may revoke the license of an FSB on a variety of grounds, including where the minimum licensing criteria have not been fulfilled. A minimum condition of licensing under these laws is compliance with the FSB Regulations and the FSB Rules.

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<sup>35</sup> The prescribed laws are defined in the Financial Services Commission Law to include the POCL, the regulatory laws, the DTL, the TL, the DL, and the Wire Transfer Ordinances.

<sup>36</sup> Section 9(8) 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 Registered FSBs Law. E.g., Section 9(8) of the Banking Supervision Law authorizes the GFSC to have regard to any matter that it may consider under Sections 6 or 8, which include the rules, etc. issued under the POCL in criteria 1A. of Schedule 3.

<sup>37</sup> Section 8 of the Banking Supervision Law, Section 6 of the Protection of Investors Law, Section 14 of the Insurance Business Law, and Section 9 of the Insurance Managers and Insurance Intermediaries Law. For example, Section 8 of the Banking Supervision Law authorizes revocation of a license if, e.g., any of the criteria of Schedule 3 are not fulfilled. Criteria 1A of Schedule 3 requires that a bank at all times act in accordance with “any rules, codes, guidance, principles, and instructions issued ... under any enactment as may be applicable...”.

806. The assessors reviewed statistical information related to sanctions imposed by the GFSC from 2007 up to April 2010, and noted that the GFSC had actively used its powers to sanction financial institutions, directors and officers for non compliance issues in numerous occasions; however, the same statistical information also reflected that prior to May 24, 2010, no financial sanctions had ever been imposed by the GFSC for violations of the AML/CFT law, regulations, and rules. The financial sanctions of May 24, 2010, imposed on three individuals in the amount of £14,000 (on one individual) and £7,000 (on the other two), were related to noncompliance with the FSC Law, the Fiduciary Law, the FSB (AML/CFT) Regulations, and the Handbook for FSBs. The authorities are also of the opinion that indirect financial penalties have been imposed on a number of financial institutions by way of: i) imposing conditions which prohibit undertaking any new business for a specified period of time; ii) imposing conditions requiring specific training to be undertaken; and iii) appointing inspectors with the cost being borne by the institution.

807. Administrative sanctions pursuant to regulatory laws may be applied to both legal persons licensed as financial service businesses and to the extent applicable also to persons acting as controllers, directors, partners and senior managers of such businesses. The penalties under section 17 of the FSB Regulations apply to individuals as well as FSBs.<sup>38</sup> In addition, the powers of the GFSC under the Financial Services Commission Law can be applied directly to controllers, directors, partners and senior management of such businesses.

808. Although the range of administrative sanctions and powers available to the GFSC is considered broad, the current discretionary financial penalties available to the GFSC under Section 11D of the FSC Law are not considered dissuasive and proportionate, given that the GFSC can only impose fines for up to £200,000 for violations of any provision of the prescribed laws. Considering the size of the financial system in Guernsey, the assessors are of the view that the maximum discretionary financial penalty of £200,000 is considered too low. As such, the authorities should consider enhancing the discretionary financial penalties regime and establishing a sanctions regime that is proportionate to the severity of the violation or level of non compliance.

**Market entry: Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1); Licensing or Registration of Value Transfer/Exchange Services (c. 23.5); Licensing of other Financial Institutions (c. 23.7):**

**Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1):**

**Market entry - General**

809. The GFSC manages the regulatory framework for all FSBs, particularly the granting and revoking of licenses, and control over ownership and investments in these institutions. All

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<sup>38</sup> Under section 49E of the POCL, where an offense is committed by a company under regulations made under that law (including the FSB Regulations) can be imposed on a director or other manager, partner or shareholder, if such offense was committed with the consent, connivance, or as a result of the negligence, of such person.

regulated FSBs require authorization from the GFSC to operate in Guernsey. The FSBs are subject to strict licensing requirements including the vetting of owners, directors and officers for technical competence, solvency, and integrity (which also includes criminal background checks with the local police and if outside Guernsey, with the U.K. law enforcement agencies).

810. Under Section 6 of and Schedule 3 to the Banking Supervision Law, Section 4 of and Schedule 4 to the Protection of Investors Law, Section 7 of and Schedule 7 to the Insurance Business Law, and Section 4 of and Schedule 4 to the Insurance Managers and Insurance Intermediaries Law only FSBs that meet minimum criteria for licensing may be licensed by the GFSC. FSBs that fail to continue to meet the minimum criteria for licensing can have their licenses revoked.<sup>39</sup> In addition, FSBs registered under the Registered FSBs Law are subject to fit and proper criteria (similar to those in place for FSB) and the GFSC has powers to prevent a business from being registered and to revoke a registration if the relevant criteria are not satisfied.

### **23.3.1:**

811. Each regulatory law requires every licensee and every person who is, or is to be, a director, controller, partner or manager to be fit and proper as part of the minimum criteria. In determining whether a person is fit and proper consideration is given to:

- (a) his probity, competence, experience and soundness of judgement for fulfilling the responsibilities of the position;
- (b) the diligence with which he is fulfilling or likely to fulfill those responsibilities;
- (c) whether the interests of depositors or potential depositors of the institution are, or are likely to be, in any way threatened by his holding that position (extracted from the Banking Supervision Law; similar criterion is noted in each sector, including in the Insurance Managers and Insurance Intermediaries Law where the criterion refers to clients and policy holders);
- (d) his educational and professional qualifications, his membership of professional or other relevant bodies and any evidence of his continuing professional education or development;
- (e) his knowledge and understanding of the legal and professional obligations to be assumed or undertaken;
- (f) his policies, procedures and controls for the vetting of clients and customers and his record of compliance with any provision contained in or made under the Fraud Investigation Law, the POCL, the DTL, the TL, the DL, the WTO, any legislation implementing European Community or United Nations sanctions and applicable in the Bailiwick, or any other enactment prescribed by regulation of the GFSC; and
- (g) his policies, procedures and controls to comply with any rules, codes, guidance, principles and instructions issued by the GFSC.

812. Consideration is also given to the previous conduct and activities of the person in question and, in particular, to any evidence that he has:

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<sup>39</sup> See, e.g., Section 8 of the Banking Supervision Law..

- (a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence;
- (b) contravened any provision contained in or made under the regulatory laws, any enactment relating to money laundering or terrorist financing (including, for the avoidance of doubt, rules, instructions and guidance issued by the GFSC), or any other enactment appearing to the GFSC to be designed for protecting members of the public against financial loss;
- (c) engaged in any business practices (whether unlawful or not) - (i) appearing to the GFSC to be deceitful or oppressive or otherwise improper, or (ii) which otherwise reflect discredit on his method of conducting business or his suitability to carry on deposit-taking business;
- (d) engaged in or has 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 judgment.

813. Under Section 22A of the Banking Supervision Law, Section 28A of the Protection of Investor Law notice, 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 Registered FSB Law, it is a requirement for FSB to give prior notice before effecting any appointment of a director.

814. 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 do so 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 object to any controller, inter alia, if he is not fit and proper or, having regard to that person's likely influence, if the FSB 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. It is an offence for a person to become a controller without first notifying the GFSC under Section 14 of the law or if he remains as a controller after the GFSC has served a notice of objection. Section 17 of the law provides the GFSC with power to restrict the transfer of shares, restrict voting rights and apply to the court to require the sale of shares. 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.

### **23.3.1:**

815. For FSBs (banking, investment, and insurance firms) subject to the Basel Core Principles, the Objective and Principles of Securities Regulation and the Insurance Core Principles the GFSC obtains personal questionnaires from directors, chief executives and controllers. 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. The GFSC can require individuals not meeting the fit and proper criteria to be removed from their posts.

816. In determining whether a person is fit and proper to hold a particular position the minimum criteria require consideration to be given to the person's probity, competence, experience and soundness of judgement for fulfilling the responsibilities of the position; the

diligence with which the person is fulfilling or likely to fulfill those responsibilities; the educational and professional qualifications, the membership of professional or other relevant bodies and any evidence of continuing professional education or development, the knowledge and understanding of the legal and professional obligations to be assumed or undertaken, the policies, procedures and controls for the vetting of clients and customers and the record of compliance with any provision of the laws.

817. In addition, at the level of the business itself, the minimum criteria for licensing require that the business must be carried on:

- (a) with prudence and integrity,
- (b) with professional skill appropriate to the nature and scale of its activities, and
- (c) in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

**Licensing or Registration of Value Transfer/Exchange Services (c. 23.5):**

818. Before the FSB regulations came into force, natural and legal persons providing money or value transfer service or a money or currency changing service were subject to the AML/CFT requirements through regulations for financial services businesses made under the POCL (these regulations were superseded by the FSB Regulations). The FSB Regulations require MVTs to include the notification of basic information to the GFSC prior information on directors and beneficial ownership. The GFSC maintains a non-public registry of such businesses. These provisions were strengthened in 2007 by the FSB Regulations and the Registered FSBs Law.

819. Sections 15A and 15B of the FSB Regulations apply to persons covered by the Banking Supervision Law, the Protection of Investors Law, the Insurance Business law, the Insurance Managers and Intermediaries Law and the Regulation of Fiduciaries Law and require a natural or legal person regulated under those laws who operates a money service business (including, without limitation, a business providing MVTs and/or currency exchange (bureau de change)), facilitating or transmitting money or value through an informal or value transfer system or network, money broking, money changing to be registered with the GFSC.

820. Persons conducting MVTs or a money or currency changing service and who are licensed under the regulatory laws are subject to the minimum criteria for licensing under those laws.

821. The GFSC maintains a register of persons subject to sections 15A and 15B of the FSB Regulations on its website. At the time of the onsite visit, there were only two such entities operating in Guernsey.

822. Under Section 2 of the Registered FSBs Law, an FSB carrying on or holding itself out as carrying on business in or from within the Bailiwick must be registered with the GFSC. An FSB is not required to be registered with the GFSC if:

- the total turnover of that business, plus that of any other financial services business carried on by the same person, does not exceed £50,000 per annum,

- 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,
- the turnover of such business does not exceed 5% of the total turnover of the person carrying on such business,
- the business is ancillary, and directly related, to the main activity of the person carrying on the business,
- in the course of such business, money or value is not transmitted or such transmission is not facilitated by any means,
- the main activity of the person carrying on the business is not that of a financial services business, and
- 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.

823. Registration can be refused under Section 5 of the Registered FSBs Law if, for example, the informational requirements of registration have not been complied with, including such information as the GFSC may have required to evaluate the application; it appears to the GFSC that false, misleading, deceptive or inaccurate information has been provided; or it appears to the GFSC that the applicant has contravened a material particular or committed an offence under a provision of the AML/CFT legislation or the FSB Handbook.

824. It is an offence under Section 17 of the FSB Regulations for a person to not be registered under Sections 15 and 15A of the regulations. The penalties in Section 17 apply to a failure to be registered. Section 2(2) of the Registered FSBs Law provides that it is an offence not to be registered under the law. Under Section 33(2) of the law, a person who fails to register is liable on conviction on indictment to imprisonment for a term of up to two years or to a fine or both. The penalty on summary conviction is imprisonment for a term of up to 3 months or to a fine of up to £10,000 or to both.

**Ongoing supervision: Regulation and Supervision of Financial Institutions (c. 23.1); Application of Prudential Regulations to AML/CFT (c. 23.4); Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6); AML/CFT Supervision of other Financial Institutions (c. 23.7); Guidelines for Financial Institutions (c. 25.1):**

**Regulation and Supervision of Financial Institutions (c. 23.1):**

825. All financial sector activities, as defined in the FATF Recommendations are supervised for AML/CFT in Guernsey. Under Section 49(3) of the POCL, the Policy Council is empowered to make regulations in respect of the duties and requirements that FSBs must comply with for the purposes of detecting and preventing money laundering and terrorist financing. The implementing regulations, the FSB Regulations, are made under this section of the POCL. Section 49(7) of the POCL empowers the GFSC to make rules, instructions and guidance for the purposes of implementing the FSB Regulations for both prevention of money laundering and terrorist financing.

826. Pursuant to Section 15 of the DL the GFSC can make rules and issue guidance and instructions, for the purposes of the DL or any other enactment or any rule of law (including

customary or common law) which relates to or concerns, whether directly or indirectly, the disclosure of information or ML/FT. The power of the GFSC to issue instructions was added to the power to make rules and issue guidance recently, with effect from 24 March 2010. As such, the GFSC may use the powers granted under Section 15 in respect of the disclosure requirements contained in both the DL and the TL. In this respect, the DL requires the court to take into account any rules, guidance or instructions issued under section 15 of the DL when considering whether a person has committed a non-disclosure offense.

827. In 1991, the GFSC issued AML guidance to the banking sector. This was followed in 1997 by the issuance of AML guidance to banks and to the investment, insurance (commonly referred to as “FSB”) and trust and company service provider (TCSP) sectors. In 2000, the GFSC issued revised guidance based on the coming into force of the POCL and the introduction of AML regulations under this law. In 2002, the regulations and guidance were updated to include terrorist financing and to require FSBs outside the banking, investment, insurance and fiduciary sectors to notify the GFSC of their existence, activities, and individuals involved in their business. (The current FSB Regulations (which repealed the 2002 regulations) came into force in December 2007, and together with the FSB Handbook issued by the GFSC, which also came into force in December 2007 and contains rules and guidance issued by the GFSC, further strengthened the AML/CFT standards applicable to FSB.

828. The GFSC first began to undertake AML/CFT on-site inspections in 1999, starting with a program of inspections of banks. Then in 2002, this program was then extended to include all FSB 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. While the businesses covered by the Registered FSBs Law had been required to make notifications to the GFSC since 2002 and the GFSC had maintained an in-house register of these businesses, it was not until 2007 that registered FSBs became part of the GFSC’s formal on-site inspection program, for both prudential and AML/CFT matters.

829. The GFSC has monitored the implementation and effectiveness of AML/CFT compliance since the 2007 framework came into effect. As part of the GFSC’s monitoring and supervisory for compliance, in November 2009 the GFSC issued a series of instructions to FSB. These instructions were issued under Section 49(7) of the POCL and required FSB to take action in respect of their: i) corporate governance and internal controls; ii) suspicion reporting; iii) wire transfers; iv) introduced business; v) screening of employees; vi) existing customers; and vii) business from sensitive sources (jurisdictions which do not apply or insufficiently apply the FATF Recommendations, including those identified by the FATF as primary concern with respect to money laundering).

**Application of Prudential Regulations to AML/CFT (c. 23.4):**

830. All FSBs under the responsibility of the GFSC are subject to prudential supervision, are required to have internal control and recordkeeping requirements that are appropriate to their operations and risks, and have to have audit programs to test and review the adequacy of the internal control regime. This audit function is generally internal, although in some cases the internal audit function has been outsourced to independent parties due to the size of some FSB. Institutions are also required to have annual audits (financial statement certifications) conducted

by external audit firms, which also include elements of AML/CFT as part of the internal control environment evaluation.

831. For FSBs that are subject to the Basel Core Principles, the regulatory and supervisory measures that apply for prudential purposes are also relevant to AML/CFT. For example, the licensing criteria/requirements under each of the regulatory laws require that consideration be given to any contravention of any enactment relating to money laundering or terrorist financing for the purpose of ascertaining whether a person is fit and proper.<sup>40</sup>

**Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6):**

832. Section 49B of the POCL, which provides the GFSC with powers to conduct on-site inspections and obtain information and documents when carrying out inspections for the purpose of monitoring compliance with the FSB Regulations and FSB Handbook, apply to all FSBs, including persons registered under the FSB Regulations and the Registered FSB Law.

833. The powers of the GFSC as described under Recommendation 29 include the obtaining of information and documents by the GFSC in the exercise of its supervisory and monitoring functions. These powers therefore apply to money and value service providers registered under Sections 15 and 15B of the FSB Regulations. Compliance with AML/CFT obligations is embedded before the license is granted in the minimum criteria for licensing in the regulatory laws. Money and value service providers are also subject to the GFSC's onsite inspection powers under the Site Inspections Ordinance, the Insurance Business Law and the Insurance Managers and Insurance Intermediaries Law.

834. Under Section 18 of the Registered FSBs Law the GFSC may require persons registered under that law to provide the GFSC with information and documents. Section 18 also permits the GFSC to require registered persons to provide it with a report, in such form as the GFSC may specify, by a person who has relevant professional skill and who is nominated or approved by the GFSC. In addition, the GFSC is able to use Section 18 to require any director, controller, senior officer or beneficial owner of a registered person to furnish the GFSC with such information and documents as it may reasonably require for determining whether he is a fit and proper person to be concerned in the management of a financial services business. Section 17 of the Registered FSBs Law provides the GFSC with power to undertake on-site inspections to registered FSBs and persons associated with them. A person who without reasonable excuse fails to comply with the GFSC's requirements under sections 17 and 18 of the law is guilty of an offense and subject to the penalties in section 9 of the Site Visits Ordinance.

835. Persons registered under the FSB Regulations and the Registered FSBs Law are subject to onsite inspections by the GFSC to ascertain compliance with their AML/CFT obligations. The GFSC uses a detailed questionnaire and verification procedures to guide the AML/CFT inspections. The GFSC requires poor standards to be improved – this is achieved by writing to the business to require it to remedy deficiencies and by imposing sanctions whenever it is

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<sup>40</sup> See, e.g., the Banking Supervision Law, Section 6, Schedule 3, Criteria 3.



appropriate to do so. Since December 2007 sanctions have been applied against two businesses providing money value transfer and/or currency exchange services.

**Licensing of other Financial Institutions (c. 23.7):**

836. The basic registration framework is described in criterion 23.5. Persons registered under the FSB Regulations are regulated through the POCL, the FSB Regulations and the Banking Supervision Law. Persons registered under the Registered FSBs Law are regulated through the POCL and the Registered FSB Law.

837. Hotel and shops offering limited money or currency changing services have been exempted, on the basis that ML/FT risk related to these sectors is low, and therefore, the GFSC considers it inappropriate and disproportionate to subject hotels and shops offering money or currency changing services to the full weight of the AML/CFT framework. The GFSC indicated that money and currency changing transactions within hotels and shops are occasional and limited, and there is very little risk of persons falling within the exemptions being used for money laundering or terrorist financing. Hence, the exemption in the Registered FSBs Law includes these small businesses in respect of money and currency changing services. The GFSC wrote to hotels in January 2010 to remind them of their obligations should they no longer fall within the exemptions. Hotels and shops and any other businesses which might provide money or value transmission services are not exempted from the requirement to register with the GFSC and comply with the rest of the AML/CFT framework. At the time of the visit, neither hotels nor other shops were providing MVTs.

**Guidelines for Financial Institutions (c. 25.1):**

838. The FSB Handbook contains guidance as well as rules for financial services businesses and the PB Handbook contains guidance as well as rules for prescribed businesses (i.e. firms of lawyers, accountants and estate agents registered with the GFSC). Guidance is one of the key features of the Handbooks which applies across the spectrum of obligations of financial services businesses and prescribed businesses.

839. Both Handbooks also provide industry specific guidance such as suspicious features and activities and case studies.

840. The FSB Handbook contains guidance as well as rules for financial services businesses across the spectrum of their obligations; guidance is one of the key features of the Handbooks and covers cover corporate governance, the risk based approach, customer due diligence, high risk relationships, low risk relationships, wire transfers, existing customers, monitoring transactions and activity, reporting suspicion, employee screening and training, and record keeping. The guidance throughout the FSB Handbook assists financial services businesses to comply with the FSB Regulations and the rules in the FSB Handbook. Chapter 7 of the FSB Handbook provides guidance in respect of meeting the Wire Transfer Ordinances as well as the FSB Regulations while chapter 10 of the FSB Handbook on suspicion reporting requirements covers not only the regulations but the suspicion reporting requirements in the DL and TL and the disclosure regulations made under those laws; the chapters also provides guidance on the Terrorism Order and the Al-Qa'ida Order.

841. Chapter 13 of the FSB Handbook provides industry specific guidance and includes several pages of information on suspicious features and activities. Appendix G to the FSB Handbook provides several pages describing money laundering and terrorist financing and a series of case studies demonstrating how financial products and services can be used to launder the proceeds of crime or to finance terrorism.

842. The authorities indicated that the goal of the GFSC in issuing this guidance is to make FSBs measures as effective as possible in combating ML and FT. The GFSC has also placed case study material on its website for FSBs to consult. A large proportion of this material is linked to typologies issued by the FATF and Egmont.

**Implementation and effectiveness:**

843. The existing supervisory framework appears adequate and enables the GFSC to effectively monitor compliance by financial services businesses with respect to obligations established by the AML/CFT laws, regulations, rules, and guidance.

844. The GFSC commenced its program of on-site inspections in 1999. The program has been continually upgraded and since December 2007 the GFSC has inspected compliance by FSB with the FSB Regulations and the FSB Handbook. A detailed questionnaire is used to guide the inspections. Inspections include reviews of procedures, books and records and include sample testing to ascertain effectiveness of compliance. Deficiencies are followed up by the GFSC by requiring FSB to amend their policies, procedures and controls or to take other actions to improve effectiveness such as undertaking training of staff by a particular date or reviews of customer records by a particular date. Although the range of administrative sanctions and powers available to the GFSC is considered broad, the current discretionary financial penalties available to the GFSC under Section 11D of the FSC Law are not considered dissuasive and proportionate, when considering that the maximum discretionary financial penalty available to the GFSC is only up to £200,000 for violations of any provision of the prescribed laws.

845. While the GFSC has identified shortcoming/weaknesses within individual FSB during onsite visits, the framework appears to be effectively implemented within the FSB and Registered FSB under the supervision and monitoring of the GFSC. In those instances, where shortcomings/weakness have been noted, the GFSC has issued enforcement actions to remediate problems and in some cases sanctions for non-compliance.

846. Corrective actions taken by FSB under a monitoring program are reviewed periodically by GFSC supervisors during both, offsite surveillance and verified during follow up on-site inspections.

847. Likewise, the existing supervisory framework in place for MVTS appears to be effective and allows the GFSC to effectively monitor compliance by this sector.

### 3.10.2. Recommendations and Comments

- The authorities should consider enhancing the discretionary financial penalties regime and establishing a sanctions regime that is dissuasive and proportionate to the severity of the violation or level of non compliance.

### 3.10.3. Compliance with Recommendations 17, 23, 25 and 29

	Rating	Summary of factors underlying rating
<b>R.17</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
<b>R.23</b>	<b>C</b>	
<b>R.25</b>	<b>C</b>	
<b>R.29</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>

### 3.11. Money or Value-Transfer Services (SR.VI)

#### 3.11.1. Description and Analysis

##### Legal Framework

848. Section 2 (1) of the Registration of Non-Regulated Financial Services Businesses Law requires all FSBs including those providing money or value transfer services to register with the GFSC. Money and value transfer services are subject to the same AML/CFT requirements as other financial services businesses as outlined in Section 49 of the Criminal Justice (Proceeds of Crime) Law.

##### Designation of Registration or Licensing Authority (c. VI.1):

849. Section 12 of the Registration of Non-Regulated Financial Services Businesses Law requires the GFSC to establish and maintain a list of all registered financial services and to publish a copy of the list on the Commission's official website. The registry provides the name and addresses of registered businesses and clearly identifies those who are conducting money and value transmission services. Furthermore, Section 17 of the Registered FSBs Law empowers the GFSC to conduct inspections with respect to ensuring compliance with the obligations established by law, regulations and the handbook.

**Application of FATF Recommendations (applying R.4-11, 13-15 and 21-23, and SRI IX) (c. VI.2):**

850. Money and value transfer service operators are subject to the all requirements that apply to financial services businesses as per Section 49 of the Criminal Justice (Proceeds of Crime) Law and related regulations. These include procedures in respect of identification, monitoring, record-keeping, internal reporting and training. These requirements can be described in section 3 of this report. Section 15 of the TL requires financial services businesses to report reasonable knowledge or suspicions that another person is engaged in terrorist financing. Section 1 of the DL requires financial services businesses to report reasonable grounds to know or suspect that another person is engaged in money laundering.

**Monitoring of Value-Transfer Service Operators (c. VI.3):**

851. Pursuant to Section 49B of the POCL, the GFSC can conduct on-site inspections and obtain information to monitor compliance with the FSB regulations.

852. There are currently only two MVTs operating in Guernsey. One entity was the subject of three on-site inspections since September 2008. The initial on-site raised concerns about corporate governance, procedures and AML compliance. The subsequent visits confirmed that these concerns have been addressed. The other MVT was inspected in October 2008 with no significant issues being raised.

**List of Agents (c. VI.4):**

853. Section 16 (5) of the FSB Regulations requires any financial services business conducting money and value transfer services to maintain a list of agents which must be made available to the GFSC on demand. There were two agents operating in Guernsey at the time of the assessment.

**Sanctions (applying c. 17.1-17.4 in R.17) (c. VI.5):**

854. Failure to comply with Guernsey's AML/CFT requirements includes criminal and administrative sanctions. The details of sanctions are outlined in the POCL (Section 49), the TL (Section 15 B) and the DL (Section 5) and the FSB Regulations (Section 17). All criminal violations are subject to fines, imprisonment or both. The Registration of Non-Regulated Financial Services Businesses Law, Sections 8 and 9, give the GFSC the authority to suspend or revoke registration. Sanctions apply to both natural and legal persons.

**Adequacy of Resources—MVT Registration, Licensing and Supervisory Authority (R.30):**

855. MVTs are subject to supervision by the GFSC's Policies and International Affairs Division. There are 3 officers and 2 contractors that conduct on-site inspections of MVTs, prescribed businesses and other non-regulated financial businesses. There was one MVT (with two agents) operating in the Bailiwick at the time of the assessment and both have been subject to an on-site inspection.

**Additional Element—Applying Best Practices Paper for SR VI (c. VI.6):**

856. Guernsey has concentrated its efforts on meeting the essential criteria and ensuring that money and value service providers are registered with the GFSC, and that such service providers meet the FSB Regulations and the FSB Handbook, are subject to on-site inspections and are subject to the GFSC’s enforcement powers.

857. Guernsey has implemented many of the practices outlined in the best practices paper as many of them correspond to the AML/CFT requirements that MVTs must comply with. MVTs are required to be registered and are subject to a “fit and proper” test during registration. They are required to provide the address from which they operate. Efforts to identify MVTs have been undertaken and all MVTs are believed to have been identified. As noted earlier the GFSC is responsible for ensuring compliance in the MVT sector and sanctions can be applied if an MVT does not register or fails to comply with AML/CFT requirements.

**Effectiveness and implementation:**

858. The legislative framework is in line with the standard. The GFSC is the designated specifically to register money and value transmitter. MVTs are required to register with the GFSC and the GFSC does maintain a public registry where MVTs are listed.

859. Given the apparent small size of the sector it would appear reasonable that MVTs are part of the non-regulation financial services business registry that is administered by the GFSC. The scope of requirements extended to MVTs is extensive and resources allocated to the supervision of the sector are adequate.

**3.11.2. Recommendations and Comments**

None.

**3.11.3. Compliance with Special Recommendation VI**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>SR.VI</b>	<b>C</b>	

**4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS**

**4.1. Customer Due Diligence and Record keeping (R.12)**

**4.1.1. Description and Analysis**

**Legal Framework**

860. This section explores the effectiveness of preventative measures for Designated Non-Financial Businesses and Professions (DNFBPs). 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. 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. Dealers in Precious Metals and Stones other than bullion dealers do not have AML/CFT obligations other than the requirement to report suspicious transactions. 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 analyzed separately in each section.

861. 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.

862. 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 issued a public statement on May 25, 2010 imposing fines for breach of the FSB regulations and the rules contained in the FBS handbook on three individuals who were directors of a former licensed fiduciary.

863. 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.

864. 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 the banking, insurance and investment sectors. Although the description of the requirements applicable to FSB, 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 with the exception of persons acting as a director of six companies or less.

865. Dealers in precious metals and stones other than bullion dealers are prohibited from conducting cash transactions above £10,000 and are therefore not considered a DNFPB for the purposes of the standard.

866. The PB Regulations do not require a PB carrying on business in the Bailiwick to register with the GFSC if its total turnover (revenue) does not exceed £50,000 per annum, if it does not carry out occasional transactions involving more than £10,000; the services are provided only to customers resident in the Bailiwick, and the funds received by the PB are drawn on a bank operating from or within the Bailiwick. If a business is not required to register based on the above exception criteria, it is also exempt from the AML/CFT requirements other than STR reporting.

867. Lawyers, notaries and accountants are subject to the PB Regulations only when they undertake certain prescribed activities relating to: (1) the acquisition or disposal of an interest in real property; (2) the management of client money, securities or other assets; (3) the management of bank, savings or securities account; (4) the organization of contributions for the creation, operation, management or administration of companies; (5) the creation, operation, management or administration of legal persons or arrangements, and the acquisition or disposal of business entities. Requirements do not apply when a lawyer is employed by public authorities or undertakings which do not by way of business provide legal services to third parties. The span of covered activities is in line with the standard.

868. Estate agencies are subject to the PB Regulations when they act, in the course of a business, on behalf of others in the acquisition or disposal of real property for the purposes of effecting the introduction to the client of a third person who wishes to acquire or dispose of such an interest and after such an introduction has been affected for the purposes of securing the disposal or acquisition of that interest. 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.

869. Several laws govern the establishment of casinos in the Bailiwick of Guernsey. The 1971 Guernsey Gambling Law and the 2002 Sark Gambling Law make all forms of gambling unlawful except if permission is granted by ordinance. The Guernsey Hotel Casino Concession of 2001 states that no person shall establish or operate a casino except in accordance with the terms of this Law. Finally, the Alderney Gambling Law, eGambling Regulations and eGambling Ordinance outline the conditions by which an eCasino can operate. In practical terms there were no land casinos in the entire Bailiwick of Guernsey at the time of the assessment. There were 44 eGambling license holders in Alderney as of December 31, 2009.

870. The Alderney eGambling Regulations outline the AML/CFT requirements for eCasinos including obligations to conduct customer due diligence (CDD), monitor transactions, keep records, develop policies and procedures, screen employees, establish an audit function and train employees.

871. There are two categories of eGambling licenses. The Category 1 eGambling license enables the holder to conduct operations associated with eGambling. This includes player registration, the management of player funds and offering gambling. The Category 2 eGambling license allows the holder to provide approved games to the customers of Category 1 eGambling license.

872. The Category 1 license holder conducts all CDD activities. The Category 2 license holder does not have any CDD nor does it have a direct contractual relationship with the customer (player). Until July 2, 2010 Category 2 license holders did not have requirements to effectively monitor gambling transactions. Both categories are required to report suspicious transactions, conduct business risk assessments and establish appropriate policies and procedures. Category 2 license holders do not have any identification information on the customer and share gambling information with the Category 1 licensee. Category 1 licensee is responsible for monitoring both the financial transactions that it facilitates as well as the gaming activity that is facilitated by the Category 2 licensee. Category 2 licensees are also now obligated to monitor gambling transactions and communicate to the Category 1 licensee to which they provide services any transactions that do not have any economic or lawful purpose.

873. Based on the information provided by the authorities, Category 1 would appear to have all the necessary information to adequately monitor both financial transactions and gaming activity that might lead to a money laundering or terrorist financing suspicion. However it is unclear whether these monitoring activities are comprehensive as discussed later in this section.

874. It should be noted that the risks of money laundering and terrorist financing in the eCasino industry are primarily linked to conducting minimal gaming activities, requesting reimbursement through a different payment mechanism than the payment method used to initiate the financial transactions and through payment mechanisms that allow transactions between players. There is no specific provision in the legislation or regulation that requires payments to be made through the initial payment mechanism. Player to player transaction or the use of wire transfers are not prohibited by legislation or regulations. Although the AGCC requires controls to be in place when these types of payment mechanisms are used the imposition of these controls are at the discretion of the AGCC. The assessment team did not find wide use of these mechanisms during the on-site visit but the vulnerabilities with respect to the payment mechanism is still present in absence of legislative or regulatory prohibitions. The other industry risk is related to player collusion where one player deliberately loses to another in an effort to transfer funds to the other player. This is particularly present in “open table” scenarios where players play against each other rather than against the house. At the time of the assessment there were no “open table” games being offered by Alderney eCasinos although the legislative framework does not prohibit it.

875. At the time of the assessment most licensees held both Category 1 and 2 licenses. However, the AGCC expects that a greater segregation of licenses will occur over the next few years based on current industry trend of eCasinos specializing in either client recruitment or game provision.

876. For the purposes of this assessment only Category 1 licensees will be considered eCasinos. Criteria 12.1 a) states that a casino should comply with requirements: “when their customers engage in financial transactions equal to or above USD/€3,000”. The criterion further specifies that: “Financial transactions do not refer to gambling transactions that involve only casino chips or tokens”. Category 2 licensees do not have customers who engage in financial transactions, nor do they have a direct relationship with the customer (player). Category 2 acts as the gaming software platform provider, effecting gambling transactions on behalf of Category 1 licensees.



877. Although eCasino customers can purchase virtual chips and tokens through Category 1 licensees they cannot redeem these chips or tokens or otherwise transfer value to another player. It should be noted that the current Alderney model as Category 1 licensees overseeing the gambling activity that they facilitate. This includes real-time monitoring to ensure that games are played fairly. Authorities have extended some AML/CFT obligations to Category 2 licensees such as on-going monitoring as a precautionary measure to ensure that any suspicious activity detected by a Category 2 licensee is communicated to their Category 1 counterpart.

878. In analyzing all of these facts it is the view of the assessment team that Category 2 licensees are not casinos for the purposes of the FATF methodology because they do not facilitate financial transactions or the transfer of value and do not have a direct relationship with customer. Furthermore, the recent revisions to the regulatory framework requires any transactions that do not have any economic or lawful purpose detected by Category 2 licensees to be reported to their Category 1 counterpart ensuring that, when fully implemented, on-going monitoring activities are able to detect suspicious activities from both the Category 1 and 2 perspective.

### **Adequacy of Legal Framework**

879. The criteria determining the obligation imposed on real estate agents, lawyers and accountants are in line with the standard. The exception with respect to legal privilege is in line with the standard. Other exemptions have been provided to certain sectors with most of the exemptions provided being in line with the standard (see discussion below) with the exception of those extended to the eCasino sector as well as the exception allowing an individual to be the director of six companies without being licensed as a TCSP.

880. The exception not to require a PB carrying on business in the Bailiwick to register with the GFSC seems to be reasonable given that entities who only deal with Guernsey residents, have a turnover of less than £50,000 and do not conduct transaction over £10,000 would be at low risk of being used for money laundering and terrorist financing.

881. An exemption has been extended to DPMS through a cash restriction provision that prohibits transactions of £10,000 or more in the sector. This is below the threshold of EUR/USD 15,000 designated by the standard. This reduces the risk of DPMS of being used to launder money or finance terrorism while also reducing the compliance burden on DPMS by limiting AML/CFT requirements to the reporting of suspicions of ML and TF.

882. A legislative and regulatory framework is in place for the establishment of land based casinos although there are currently no land based casinos in the Bailiwick. Letters from both the Chief Minister and the Minister of the Home Department to the assessment team have confirmed that AML/CFT requirements would be extended to land based casinos if they were ever to be established in Guernsey.

883. The licensing exemption provided to persons acting as a director of six companies or less is not in line with the standard. This activity would fall within the FATF definition of a TCSP. It is unclear the number of individuals that are subject to this exemption or the size of assets they manage. An adequate risk assessment of the exemption is difficult to conduct in absence of this data. The absence of supervisory oversight may impact the quality of beneficial ownership

information maintained by the individual; however, other safeguards as outlined under Recommendation 33 are in place and ensure that beneficial ownership information is available.

**CDD Measures for DNFBPs in Set Circumstances (Applying c. 5.1-5.18 in R. 5 to DNFBP) (c. 12.1):**

**Legal Professionals, Accountants and Real Estate Agents**

**Customer Due Diligence**

884. Section 8 of the PB regulations prohibits the use of anonymous accounts.

885. CDD requirements for prescribed businesses (legal profession, accountants and real estate agents) are outlined in Section 4 of the Proceeds of Crime (Legal Profession, Accountants and Real Estate Agents) Regulation.

886. Clients shall be identified and their identity verified when (1) establishing a business relationship; (2) carrying out occasional transactions; (3) when there is a suspicion of money laundering or terrorist financing or (4) when there is doubt about the veracity or adequacy of previously obtained information.

887. Section 3 of the PB Regulations requires that: (a) the client shall be identified and his identity verified using identification data, (b) any person purporting to act on behalf of the client shall be identified and his identity and authority to act shall be verified, (c) the beneficial owner and underlying principal shall be identified and reasonable measures shall be taken to verify such identity using identification data and such measures shall include measures to understand the ownership and control structure of the client; (d) a determination as to whether the client is acting on behalf of another person and if so, take reasonable measure to obtain sufficient identification data to identify and verify the identity of that other person, (e) information shall be obtained on the purpose and intended nature of each business relationship, and (f) determine whether the client, beneficial owner and underlying principal is a PEP.

888. For the purposes of these sections underlying principal means, in relation to a business relationship or occasional transaction, any person who is not a beneficial owner but who (a) is a settlor, trustee or a protector of a trust which is the customer, or client, or the beneficiaries of which are the beneficial owners, or (b) exercises ultimate effective control over the customer.

889. Section 4.6 of the PB Handbook sets out the identification and verification requirements of clients who are not individuals, including legal bodies, legal arrangements and trusts. It includes requirements for PB to identify and verify beneficial owners and underlying principals. Where a legal body which is not either a collective investment scheme regulated by the GFSC or a legal body quoted on a regulated market is the client, beneficial owner or underlying principal the rules require a PB to:

- identify and verify the identity of the legal body. The identity includes name, any official identification number, date, and country or territory of incorporation, if applicable (ie. if the data has been created, in the instance of an identification number for example);
- identify and verify any registered office address and principal place of business (where different from registered office) where the risk presented by the legal body is other than low;
- identify and verify the individuals ultimately holding more than a 25 percent interest in the capital or net assets of the legal body;
- identify and verify the individuals with ultimate effective control over the capital or assets of the legal body, including beneficial owners, underlying principals, directors or equivalent; and
- verify the legal status of the legal body.

890. It is the view of the assessment team that the exemptions provided to legal bodies quoted on the stock market or collective investment schemes regulated by the GFSC are applied to lower risk products and are in line with the standard.

891. Guidance provided in Section 4.4.2 of the PB Handbook lists a current passport, current national identity card or armed forces identify card as the best possible methods to verify identity.

892. Prescribed businesses are required to conduct ongoing and effective monitoring of any existing business transaction pursuant to Section 11 of the PB regulations. Ongoing monitoring shall include: (1) reviewing identification data to ensure it is kept up to date particularly for high-risk customers; (2) scrutinize any transaction or activity paying attention to complex transactions, transactions which are both large and unusual patterns of transactions which have no apparent economic or lawful purpose. There is also a requirement to ensure that identification data is recorded and stored such to facilitate the on-going monitoring of each business relationship.

893. Section 7.2 of the rules require PBs to scrutinize transactions undertaken in the course of a relationship to ensure that the transaction being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary the source of funds.

#### **Implementation and effectiveness:**

894. The CDD requirements set out in regulations and rules are extensive and meet the criteria set out by the standard. Reporting entities have a good understanding of the requirements and have implemented robust CDD programs often having immediate controls in place to ensure that CDD measures are completed.

895. Although TCSPs do establish accounts for their clients the use of anonymous accounts is prohibited by the FSB regulations and the assessment team confirmed during meetings with the industry that anonymous accounts were not used.

896. The concession allowing lower risk legal bodies to be exempt from identifying and verifying any registered office address and principal place is in line with the standard. Entities are required to document why the entity is lower risk. It should be noted that this concession is rarely applied.

897. The requirement to identify and verify the individuals with ultimate effective control over the capital assets of the legal body, including beneficial owner, underlying principals, directors or equivalent, is in line with the standard although the requirement is defined more broadly than is required by the standard.

898. The requirement to obtain beneficial ownership information is understood very well particularly in the fiduciary sector. Many fiduciaries met by the assessment team have dedicated personnel to conduct the necessary due diligence checks. The requirement to understand the corporate structure and the purpose and intended nature of the relationship is also well understood by all sectors particularly fiduciary, lawyers and accountants who usually require this information to conduct their functions. Processes are in place to ensure that information pertaining to ongoing relationships is kept up to date and that transactions are monitored. It is evident that reputational risk of both the business and of the Bailiwick is a primary concern for all members of industry.

## **Risk**

899. PB can adopt a risk-based approach to CDD. The adoption of a risk-based approach serves to balance the cost burden placed on individual businesses and on their clients with a realistic assessment of the threat of the business being used in connection with money laundering (ML) or terrorist financing (TF). Its goal is to focus the effort where it is needed and has most impact. Section 3 of the PB Handbook provides guidance on identifying and assessing risk, examples of mitigation measures for business and relationship risks as well profile indicators to help develop a comprehensive risk assessment.

900. Section 3 of the PB Regulations and the rules in chapter 3 of the PB Handbook require a PB to undertake a risk assessment of any proposed business relationship or occasional transaction. Based on this assessment, the prescribed business must decide whether or not to accept each business relationship and whether or not to accept any instructions to carry out any occasional transactions. In addition, the assessment allows a prescribed business to determine, on a risk basis, the extent of identification information (and other CDD information) that must be obtained, how that information will be verified, and the extent to which the resulting business relationship will be monitored.

901. Section 5 of the PB Regulations provides that a prescribed business must carry out enhanced client due diligence in relation to a business relationship or occasional transaction in which the client or any beneficial owner or underlying principal is a politically exposed person (PEP). It must also conduct enhanced due diligence when encountering a business relationship or an occasional transaction (i) where the client is established or situated in a country or territory that does not apply, or insufficiently applies, the FATF Recommendations, (ii) where the PB considers to be a high risk relationship, taking into account any notices, instructions or warnings issued from time to time by the GFSC, or (iii) where the business relationship or occasional transaction has been assessed as a high-risk relationship.

902. PB can apply reduced or simplified CDD requirements pursuant to Section 6 of the PB regulations and rules outlined in Section 6 of the PB Handbook. The application of simplified or reduced CDD is strictly limited to the circumstances provided for in chapter 6 of the PB Handbook and include the identification and verification of face-to-face individuals i.e. where the client is a Guernsey resident who is physically present when establishing a relationship or undertaking a transaction; legal bodies quoted on a regulated market; collective investment schemes regulated by the GFSC; and clients who have been identified as an Appendix C business and are not acting for underlying principals.

903. Reduced or simplified CDD limits an entity's obligations to obtaining the legal name, any former names (maiden names) and any other names used; the principal residential address; and date, place of birth and nationality.

904. Appendix C to the PB Handbook includes countries or territories whose regulated businesses may be treated as if they were local FSB or local PB. Appendix C business means a FSB which is supervised by the GFSC, a PB registered under the regulations or a business which is carried on from a country or territory listed in Appendix C to the PB Handbook and which would, if it were carried on in the Bailiwick, be a FSB or a PB. The business must also be subject to AML/CFT requirements and supervision.

905. The application of simplified or reduced CDD measures is prohibited where the PB 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 ML or TF or in relation to business relationships or occasional transactions where the risk is other than low.

#### **Implementation and effectiveness:**

906. The requirements to evaluate and assess risk are detailed and comprehensive. The guidance issued by the GFSC provides a good overview of the risk-based approach. Entities seem to have a good understanding of the requirement to conduct a business risk assessment and client risk assessments have been integrated within business processes. The concession to apply reduced CDD measures for low risk clients is appropriate.

907. Assessors have concerns with the concession that is extended to TCSPs, lawyers, accountants and estate agents located in Appendix C countries as they have relatively recently been subject to AML/CFT regulation, and the effectiveness of its implementation has not been tested. It may be difficult in practice for DNFBSs to determine whether particular foreign introducers are in fact regulated and supervised for AML/CFT purposes, as is required by the terms of Appendix C. Furthermore, most countries listed in Appendix have received either partially compliant or non-compliant ratings for customer due diligence measures applied to DNFBSs further putting into question the reliance that would be placed on these sectors.

908. Assessors also question the concession allowing an individual to be the director of six companies without being licensed as a TCSP. This concession has not been adequately justified from a risk perspective.

909. Guidance provided by the GFSC on Businesses from Sensitive Sources and acceptable jurisdictions for simplified CDD was contradictory. Greece had been identified as an acceptable country to adopt simplified due diligence measures in Appendix C of the handbook, but was also listed in the Business from Sensitive Sources notice of March 9, 2010. As entities are required to take into account any notice issued by the GFSC, entities expressed confusion as to what was acceptable practice given the apparent contradiction between the notice and the guidance provided with respect to Appendix C. Greece was removed from Appendix C in July 2010.

910. The low risk exemptions identified by the GFSC have the necessary safeguards in place although in practice they are not widely used by most sectors. However, the GFSC has not identified legal arrangements or fiduciaries as high risk. This is a concern given their prevalence within the Bailiwick and vulnerability to ML.

### **Timing of verification**

911. Identification and verification of identity of a 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 pursuant to Section 7 (1) of the PB Regulations.

912. Section 7 (2) of the PB regulations allows for the verification of identity to be conducted following the establishment of a business relationship provided that it is completed as soon as reasonably practicable, 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.

913. When the circumstances are such that verification of identity of clients, beneficial owners and underlying principals may be completed following the establishment of the business relationship or after carrying out the occasional transaction, a prescribed business must have appropriate and effective policies, procedures and controls in place so as to manage the risk. The procedures include: establishing that it is not a high risk relationship, monitoring by senior management of these business relationships to ensure verification of identities 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.

### **Implementation and effectiveness:**

914. Requirements pertaining to timing of verification are in line with the criteria. The exception allowing transactions to proceed without identification in cases where it is essential not to interrupt the normal conduct of business seems reasonable with appropriate controls in place to mitigate the risk of delayed identification.

915. The concept of as soon as practicable is not defined which could lead to unacceptable delays in conducting identification. However, PBs had the view that the verification of identity should take place immediately and if verification was not possible immediately the formal establishment of the business relationship should not occur until verification had been undertaken. Policies and procedures as well as controls pertaining to CDD have been implemented. These include senior management verification that client verification had occurred

prior to establishing the business relationship, conducting quarterly review of client identification files or having a computer system that prohibits the establishment of a business relationship prior to identity being verified.

### **Failure to satisfactorily complete CDD**

916. Pursuant to Section 9 of the PB regulations where a PB cannot comply with any of the regulations relating to CDD it must in the case of an existing business relationship, terminate that business relationship, 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 client, and consider whether an STR must be made pursuant to part I of the DL or Section 12 of the TL.

### **Implementation and effectiveness:**

917. Requirements prohibiting the establishment or maintaining of a relationship when client identification has not taken place combined with the obligation to consider filing an STR are in line with the criteria for this recommendation. DNFBPs had concrete examples of when a business relationship was refused or terminated due to the absence of or inability to conduct CDD and STRs were filed in instances where the entity had suspicions that the potential client was involved in money laundering.

### **Existing customers**

918. Based on a risk assessment conducted by the GFSC, PB are not required to undertake a retrospective KYC program provided that the businesses were subject to ongoing obligations to monitor business relationships. The authorities justify the exemption by stating that the risk of lawyers and accountants is mitigated as a large number of entities they advise are regulated FSB subject to AML/CFT legislation. This, together with the more recent hiving off by firms of lawyers of the business of creating Guernsey companies into regulated Guernsey TCSPs; the assessment of ML and FT vulnerabilities of the accountancy sector; the significant number of property transactions for local persons, mostly using local bank accounts, rather than for foreign persons; the large number of transactions undertaken by PB which are one off transactions and the low number of established business relationships led to the decision not to require PB to undertake a retrospective KYC program provided that the businesses were subject to ongoing obligations to monitor business relationships.

919. Regulation 8 requires a PB in relation to all clients not to set up anonymous accounts or accounts in names which it knows, or has reasonable cause to suspect, to be fictitious and to maintain accounts in a manner which facilitates the meeting of the requirements of the PB Regulations.

### **Implementation and effectiveness:**

920. The assessor's view is that the exemption for PB from a requirement to conduct retrospective KYC is too broad. The exemption should not have excluded categories considered as high risk by the FATF, such as legal persons or arrangements such as trusts that are personal assets holding vehicles or companies that have nominee shareholders or shares in bearer form. At

a minimum, PB should be required to consider updating client information when : (a) a significant transaction takes place; (b) customer documentation standards change substantially; (c) there is a material change in the way that the account is operated, (d) the institution becomes aware that it lacks sufficient information about an existing customer.

## **ECasinos**

### **Customer Due Diligence**

921. Alderney's eGambling Regulations set out the CDD requirements for eCasinos. As explained earlier, there are two categories of eGambling licenses. The Category 1 eGambling license oversees the organization and preparation of gambling transactions. This includes the acquisition of players including marketing, registration and verification of players, the contractual relationship with players and the fund management of players. The Category 2 eGambling licensee is responsible for effecting the gambling transaction including the operational management of a gambling platform located within an approved hosting center.

922. The Category 1 license holder conducts all CDD activities. As noted earlier, Category 2 license holders are not considered casinos for the purposes of the FATF standard as they do not facilitate financial transactions nor have direct relationships with the customer.

923. Under regulation 228(1) of the eGambling Regulations, a Category 1 eGambling licensee is not permitted to hold anonymous accounts or accounts in fictitious names. Section 7(1)(e) of Schedule 16 of the eGambling Regulations requires that the MLRO or in his absence a nominated officer is given prompt access to any other information which may be of assistance to him in considering any report.

924. Customers wanting to conduct gambling transactions with an eCasino must first register with a Category 1 eGambling license holder. Pursuant to Section 227(4) of the eGambling Regulations, the registration of a customer shall not be completed by the person carrying it out until the individual is identified, his place of residence is verified, confirmation has been received that he is acting as a principal and if the client is not a natural person the legal status of the entity is verified. Section 226 of the eGambling Regulations states that a Category 1 eGambling licensee shall not permit a person to effect a gambling transaction unless that person has been registered in accordance with regulation 227 of the eGambling Regulations. Furthermore, Section 2(a) of Schedule 16 to the eGambling Regulations requires that a Category 1 eGambling licensee shall undertake CDD before registering a customer.

925. Verification is conducted by identification verification software. These products use data from public sources such as electoral rolls and the phone book. Some software also use information related to credit history. The ID verification software generates a score that rates the accuracy of the identity the eGambling licensee is trying to verify. The licensees establish the percentage threshold that they deem acceptable.

926. Authorities have indicated that at times, on-line verification software is combined with other identification methods such as: (i) direct telephone contact with the new customer, (ii) passport number, driving license number and national ID card number, (iii) payment method



checks; (iv) profile and duplicate accounts detection processes; (v) customer IP addresses, geographical address and machine ID checks; (vi) credit checks; and (vii) international item checks and local publication database checks. However it is unclear whether these additional methods are applied in every situation or only in instances where enhanced due diligence is warranted. It should be noted that there is no legislative or regulatory requirement that obligates entities to combine on-line verification tools with another verification method.

927. Section 2 of Schedule 16 to the eGambling Regulations requires that a Category 1 eGambling licensee undertakes CDD prior to the customer being registered; and (1) after a registered customer makes a deposit of €3,000 or more, or makes a deposit that results in the total value of his deposits in the course of any period of 24 hours reaching or exceeding €3,000; (2) when the eCasino has a suspicion of ML or FT; and (3) when the eCasino doubts the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification of a registered customer. There are no provisions which enable Category 1 eGambling licensees and their customers to use wire transfers. This method of funds transfer is not allowed in the eGambling sector. Once a client's identity has been verified, a deposit of €3,000 or more or an STR will likely trigger a re-verification using the ID verification software.

928. It would be unusual for an eGambling licensee to register a customer who is not a natural person. At this time there are no such accounts opened. However, in such a case, Section 227(4)(d) of the eGambling Regulations sets out the registration requirements in the event that a customer is not a natural person. This specifies that the registration of a customer shall not be completed by the person carrying it out until the legal status and legal form of the customer has been verified and the names of the natural persons who have ultimate ownership and/or control of the customer have been determined, in accordance with the terms of the Category 1 eGambling licensee's approved internal control system (ICS) and the ML and TF provisions set out in Schedule 16.

929. Additional CDD requirements are defined in Section 10 of Schedule 16 to the eGambling Regulations as:

- (a) identifying the customer and verifying the customer's identity on the basis of identification data,
- (b) identifying, where there is a beneficial owner or underlying principal who is not the customer, the beneficial owner or underlying principal and taking adequate measures, on a risk-sensitive basis, to verify his identity so that the eGambling licensee is satisfied that it knows who the beneficial owner or underlying principal is, including, in the case of a legal person, trust or other legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement,
- (c) identifying any person purporting to act on behalf of a customer and verifying that identity on the basis of identification data and the authority of the person so acting, and
- (d) obtaining information on the purpose and intended nature of the customer relationship.

930. Section 6(1) of Schedule 16 to the eGambling Regulations requires that a Category 1 eGambling licensee shall perform and document ongoing and effective monitoring of any existing customer relationship which shall include: (a) reviewing identification data to ensure they are kept up to date and relevant in particular for high risk customers; (b) ensuring that data

recording and storage facilitates on-going monitoring; (c) ensuring that the transactions are consistent with the licensee's knowledge of the registered customer and his risk profile, paying particular attention to complex transactions, large and unusual transactions and unusual patterns of transactions which have no apparent economic or lawful purpose.

**Implementation and effectiveness:**

931. The sources used by identification verification software are not sufficiently reliable to be used as the only form of identification in non face-to-face transactions. As all eGambling transactions are non-face-to-face it is important that robust client identification methods are used. Inherently the on-line identification verification tool provides an imprecise confirmation of identity by the very fact that the accepted scoring can be less than 100 percent. The reliability of the software will vary according to reliability of the data sources. Although additional identification methods are sometimes used, it is unclear whether these additional methods are applied systematically. A specific legislative or regulatory requirement should be enacted requiring eCasinos to apply additional specific and effective CDD procedures when online verification tools are used to mitigate against the non-face-to-face nature of eCasino transactions and the imprecise findings of the online verification tool.

**Risk**

932. Section 3 of Schedule 16 to the eGambling Regulations requires a Category 1 eGambling licensee to carry out enhanced customer due diligence for PEPs, jurisdictions that insufficiently apply FATF standards and high risk relationships. Enhanced CDD measures involve steps in relation to identification and verification that are defined in the same way for eCasinos as they are for PB. The Category 1 eGambling licensee is required to describe the enhanced CDD measures it has in place in its ICS (see Section 3.2.2 of the ICS Guidance).

933. The concepts of low risk and simplified or reduced CDD measures have not been adopted within the Alderney eGambling regime. The AGCC determined that there were only two levels of risk for eGambling transactions: standard risk or high risk. For issues implicating standard risk, the Category 1 eGambling licensee needs to demonstrate normal CDD measures whereas, high risk transactions require the application of enhanced CDD.

934. The AGCC has issued guidance that provides eCasinos with examples of potentially higher risk activities and relationships. The guidance also refers entities to the GFSC website with respect to higher risk jurisdictions.

**Implementation and effectiveness:**

935. The measures in place to evaluate and mitigate risk in the eCasinos sector are in line with the criteria for this recommendation. The guidance issued by the AGCC provides useful information as to what circumstances might be considered higher risk in the eCasinos sector.

**Timing of verification**

936. Section 226 of the eGambling Regulations states that a Category 1 eGambling licensee shall not permit a person to effect a gambling transaction as part of its operations unless that person is a customer who has been registered in accordance with Section 227.

937. Section 4 of Schedule 16 to the eGambling Regulations sets out the provisions relevant to the timing for CDD where it cannot be completed prior to the registration of the person as a customer if 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. Furthermore, Category 1 licensees are required to explain in their ICS why verification cannot be carried out at registration and what the timescale for carrying it out would be.

938. Customer verification will at times be conducted following the start of gaming activity. The AGCC has indicated that allowing a client to play for more than 72 hours without verification being completed would be unacceptable; however this standard has not been included in the guidance that was issued in July 2010.

939. During the approval of the eCasino's Internal Control System (ICS) the AGCC confirms that the following conditions are met: (1) No gambling may commence before player identification data has been received and examined; (2) No gambling may commence before the risk has been assessed; (3) No gambling may commence if negative inferences are present; (4) The ICS must stipulate a maximum deposit limit prior to completed verification; (5) The risk of fraud and money laundering must be fully mitigated by preventing the customer from withdrawing or transferring funds prior to completed verification.

**Implementation and effectiveness:**

940. Timing of verification requirements for eCasinos are in line with the standard. Some client identification verification does take place following the establishment of the relationship in order to allow the flow of business not to be interrupted as permitted by the standard. When approving the eCasino's internal control system the AGCC ensures that proper controls are established if gambling is conducted prior to client identification verification being completed. These measures are also subject to oversight during the annual compliance examination conducted by the AGCC.

**Failure to conduct CDD**

941. Section 5 of Schedule 16 to the eGambling Regulations states that if a Category 1 eGambling licensee cannot complete either CDD or enhanced CDD in respect of a person wishing to become a customer or an existing customer it should not register the customer, terminate the relationship of an existing customer and consider making an STR.

942. Section 7 of the AML/CFT Guidance states that the Category 1 eGambling licensee's ICS will need to detail the processes that will be taken not to register a prospective customer and to terminate the customer relationship where failure relates to an existing customer. In addition the ICS should highlight the steps that will be taken to ensure that the obligations of the licensee with regard to the DL and the TL are met as to whether the circumstances warrant the making of a disclosure.

943. In practice some clients are able to gamble prior to their identities having been fully verified. Discussions with eCasinos confirmed that if a customer cannot be identified after

having gambled for a limited amount of time with a fund limit, access to gambling is refused or revoked.

**Implementation and effectiveness:**

944. The requirements pertaining to failure to satisfactorily complete CDD are in line with the standard. If an eGambling customer is allowed to gamble without their identity being verified the standard practice is to revoke their access after 72 hours.

**Existing customers**

945. The CDD measures that are to be applied to existing customers are the same as those that are to be applied to those seeking to be registered as a customer of the Category 1 eGambling licensee. In practice, there would be no existing customer that would not be identified.

946. Furthermore, under paragraph 4 of Schedule 16, a Category 1 eGambling licensee must perform ongoing and effective monitoring of any existing customer relationship including the scrutiny of any transactions. Close attention must also be placed on high risk customers. Section 3.2.8 of the ICS Guidance requires that the procedures in place to ensure that its CDD remains valid, timely and current are set out in its ICS. However, no definition or guidance is provided as to what could be considered a high risk customer in the context of eGambling.

**Implementation and effectiveness:**

947. Both the AGCC and eCasinos confirmed that all existing customers have been subject to identification verification. It should be noted that the issues concerning the reliability of identification methods and the effective mitigation of non-face-to-face transactions is also an issue in the identification verification of existing customers.

**CDD Measures for DNFBPs in Set Circumstances (Applying Criteria under R. 6 and 8-11 to DNFBP) (c.12.2):**

**Politically-Exposed Persons**

**Legal Professionals, Accountants and Real Estate Agencies**

948. The definition of PEP in Section 5 (2) (b) corresponds to the FATF definition including the inclusion of family members and close associates.

949. Section 4(3) (f) of the PB Regulations requires a determination to be made as to whether the client, beneficial owner and any underlying principal is a politically exposed person. Section 5 (1) (a) requires PBs to conduct enhanced due diligence when establishing a business relationship or conducting an occasional transaction with a client, beneficial owner or underlying principal that is a PEP. Enhanced due diligence is defined as: (1) obtaining senior management approval to establish or maintain the relationship, (2) take reasonable measures to establish the source of funds and of wealth, (3) carry out more frequent and extensive ongoing monitoring; take additional steps such as obtaining additional information, verifying additional aspects of the client's identity, and obtaining additional information to understand the purpose

and intended nature of each business relationship. It should be noted that there is no explicit provision requiring PBs to determine whether potential customers are a politically exposed person.

950. Additionally, when making a determination in respect of a PEP, PB must consider assessing countries which pose the highest risk of corruption and establishing who are the current and former holders of prominent public functions within those high risk countries and determining, as far as is reasonably practicable, whether or not clients, beneficial owners or underlying principals have any connections with such individuals and using commercially available databases.

951. Additionally, the rule in section 5.3.1 of the PB Handbook requires that PB must, in establishing the source of any funds or wealth, consider the risk implications of the source of funds and wealth and the geographical sphere of the activities that have generated a client's source of funds and/or wealth. Larger TCSPs and PB use commercial software to determine if a customer is a PEP. Smaller firms conduct internet searches to meet their requirements.

### **ECasinos**

952. Section 10 of Schedule 16 to the eGambling Regulations provides the same definition of PEP, family member and close associate as the PB regulations. Additionally, Section 6 of the AML/CFT Guidance contains examples of PEPs and guidance in relation to the steps that need to be taken in order to determine whether a customer is a PEP and the additional measures required in relation to PEP.

953. Section 227(2) of the eGambling Regulations requires that prior to registering a customer, or as soon as reasonably practicable thereafter, a Category 1 eGambling licensee shall undertake a risk assessment in respect of that person, in accordance with the terms of the Category 1 eGambling licensee's approved ICS, to determine if the customer or any beneficial owner or underlying principal is a politically exposed person.

954. The mechanisms that the Category 1 eGambling licensee must adopt to comply with this regulation must be contained within its ICS which must be approved by the AGCC prior to the licensee commencing operations. Section 3(2) of Schedule 16 to the eGambling Regulations requires that a Category 1 eGambling licensee obtains the approval of senior management before registering a PEP as a customer or continuing a relationship with an existing customer who is subsequently found to be a PEP. The eGambling licensee must also take reasonable measures to establish the source of funds and of wealth of the customers, beneficial owners and underlying principals identified as PEPs.

955. Section 3(1) (a) of Schedule 16 to the eGambling Regulations requires that enhanced CDD be applied to a relationship in which the customer or any beneficial owner or underlying principal is a PEP. The definition of enhanced due diligence is identical to the definition in the PB regulations set forth in a previous paragraph in this section. As noted above enhanced due diligence includes the requirement to conduct on-going monitoring .

### **Implementation and effectiveness**

956. Requirements for PEPs determination are in place. The requirement to identify PEPs and conduct enhanced due diligence is well understood and implemented by DNFBCPs supervised by the GFSC. Discussions with the fiduciaries and the legal profession highlighted

the higher prevalence of PEPs in those sectors. Enhanced CDD measures were well established in firms where relationships with PEPs have been established. Smaller firms indicated that they were less likely to deal with foreign clients however when they did they would conduct PEPs determination at the time of client identification.

957. A meeting with an industry representative revealed that limited attention had been paid to PEP requirements in the past but that the business would be using commercial software to conduct their PEP determination in the future. AGCC had identified this shortcoming in examinations. It is unclear whether this is an isolated incident or indicative of a trend in the industry.

### **Non face-to-face transactions**

#### **Legal Professionals, Accountants and Real Estate Agencies**

958. The PB Regulations lay down the basic framework for compliance with the non face-to-face requirements and contain provisions on new and developing technologies and include particular requirements with respect of business relationships or transactions where the client is not a Guernsey resident.

959. Section 3.2 of the PB Handbook requires management of the PB to take appropriate measures to keep abreast of and guard against the use of technological developments and new methodologies in ML and TF schemes.

960. In addition, the rules in Chapter 11 of the PB Handbook require that PB must, in ensuring that relevant employees receive the ongoing training required under the PB Regulations, in particular ensure that they are kept informed of new developments, including information on current ML and TF techniques, methods, trends and typologies.

961. Section 5(4) of the PB Regulations requires that where the client is not a Guernsey resident who is physically present when a PB enters into a business relationship or undertakes an occasional transaction, a PB must take adequate measures to compensate for the specific risk arising as a result when carrying out CDD, and where the activity was establishing a business relationship it must carry out monitoring of that relationship. Adequate measures are defined in section 4.5.1. of the PB Handbook.

#### **ECasinos**

962. Section 175(3)(f) of the eGambling Regulations requires that eGambling licensees identify within their approved ICS measures taken to keep abreast of and guard against the use of technological developments and new methodologies in ML and TF schemes.

963. The nature of the eGambling sector is that all transactions are conducted through non face-to-face channels. There is no concept of low risk within the Alderney eGambling framework. Therefore, there is no possibility of reduced or simplified CDD. Risks are either standard or high with the levels of CDD being either standard to enhanced depending on the risk level assigned to the customer as a result of the risk assessment that licensees are required to carry out in respect of that customer when entering into the customer relationship.

**Implementation and effectiveness:**

964. The requirements outlined in PB regulations adequately address the requirements with respect to new technologies and non face-to-face transactions. DNFBPs have a good understanding of the risks involved in non face-to-face transactions and are applying enhanced CDD to mitigate the risk associated with identifying non face-to-face customers.

965. At the time of the on-site visit, requirements detailed in Alderney's eGambling regulations did not require specific policies and procedures to be in place with respect to non face-to-face transactions. Section 175 (5) of the eGambling Regulations was amended on July 19, 2010 to require eCasinos to incorporate robust client identification methods and measures to mitigate the specific risks related to non-compliance. Despite this recent regulatory amendment which is taken into account in this assessment, the procedures implemented by eCasinos at the time of the assessment did not sufficiently mitigate the risk associated with non face-to-face transactions and the imprecise findings resulting from on-line verification methods. Although the AGCC does evaluate the client identification and verification practices of each eCasinos when it reviews its Internal Control System (ICS) in practice it is unclear whether eCasinos systematically apply additional CDD measures to mitigate the non face-to-face nature of transactions. The guidance provided by the AGCC indicates that eCasinos should consider whether additional checks are required due to the non-face-to-face nature of the transactions but does not require it. In order to have an effective regime that mitigates against the non-face-to-face nature of eGambling transactions, ECasinos should be required, through legislation or regulation, to have additional CDD procedures in place for all non-face-to-face transactions.

**Intermediaries / Introduced Businesses****Legal professionals, accountants and real estate agencies**

966. The PB Regulations and the PB Handbook provide for PB to establish introduced business relationships in specific circumstances. In November 2009 the GFSC issued Instruction Number 3 which focused on introduced businesses pointing out the issues in respect of jurisdictions which may have secrecy provisions and required PB to review their compliance with the requirements of the PB Regulations and the rules in the PB Handbook in relation to introduced business relationships. The Statement required that by the end of February 2010 necessary action must have been taken to remedy any identified deficiencies and, if they could not be remedied, to discontinue the introducer relationship.

967. Section 10(1) of the PB Regulations provides that if a business is an Appendix C business or an overseas branch or member of the same group of bodies as the PB it may accept a written confirmation of identity and other matters from an introducer in relation to the CDD requirements. Appendix C businesses are FSB or PB that operates in a country listed in Appendix C who has AML/CFT obligations and is supervised for compliance with those requirements.

968. The rules in Section 4.9 of the PB Handbook require that PB relying upon a third party immediately obtain written confirmation of identity and other matters from the introducer, by way of a certificate or summary sheet(s) and must satisfy itself that the introducer has

appropriate risk-grading procedures in place to differentiate between the CDD requirements for high and low risk relationships and conducts appropriate and effective CDD procedures in respect of its customers, including enhanced CDD measures for PEP and other high risk relationships. Copies of identification data and any other relevant documentation must be made available by the introducer to the PB upon request and without delay and the introducer keeps such identification data and document.

969. Section 4.9 of the PB Handbook requires PBs to have a program of testing to ensure that introducers are able to fulfill the requirement that certified copies or originals of the identification data will be provided upon request and without delay. This will involve PB adopting ongoing procedures to ensure they have the means to obtain that identification data and documentation.

970. Instruction number 4 required PB to review their program of testing as required by the rules in Section 4.10 of the PB Handbook to ensure that, where introducers have been accepted from jurisdictions with secrecy provisions and from those jurisdictions which are widely thought of as having secrecy provisions, the risks have been identified and are being managed and mitigated by obtaining copies of the identification data on a sample basis from each of the introducers.

971. The GFSC has issued guidance with respect to the use of introducers and has verified during on-site examinations that the regulatory requirements are being complied with including confirming that introducers from jurisdictions which have secrecy provisions provide client information without delay.

972. Section 10(3) of the PB Regulations provides that where reliance is placed upon the introducer the responsibility for complying with the relevant provisions of the CDD requirements of the PB Regulations remains with the receiving PB. This is reinforced in Section 4.10 of the PB Handbook.

### **ECasinos**

973. Category 1 eGambling licensees may outsource their registration, verification and CDD functions to an associate. Associate is defined as a business associate or executive associate. These outsourcing arrangements are governed by a contractual relationship and are not considered introduced business.

974. Category 1 eGambling licensees are allowed to receive introductions from associates and affiliates. However the Category 1 eGambling licensee is required when registering that person as a customer to undertake either CDD or enhanced CDD as appropriate depending upon their risk assessment of that customer. They cannot rely on any CDD undertaken by the affiliate or associate. As such, requirements with respect to intermediaries and introducers do not apply.

### **Implementation and effectiveness:**

975. Requirements outlined for TCSPs and PB are mostly in line with the standard and implementation is largely effective. TCSPs, accountants and real estate agents do not seem to



rely heavily on introducers to conduct CDD measures. All the firms who met with the assessment team preferred to conduct their own due diligence. The legal profession appears to be more reliant on these methods. Discussions with the GFSC and the members of the legal profession confirmed that CDD is conducted on the introducer and that testing procedures are developed and implemented to ensure that information is readily available.

976. Assessors have concerns with the concession that is extended to TCSPs, lawyers, accountants and real estate agents located in Appendix C countries as they have relatively recently been subject to AML/CFT regulation and the effectiveness of its implementation has not been tested. It may be difficult in practice for Guernsey institutions to determine whether particular foreign introducers are in fact regulated and supervised for AML/CFT purposes, as is required by the terms of Appendix C.

## **Record Keeping**

### **Legal Professionals, Accountants and Real Estate Agents**

977. Section 14(1) of the PB Regulations requires a PB to keep a transaction document and any client due diligence information, or a copy thereof, for 5 years following the cessation of a relationship, after the transaction was completed or a longer period that the GFSC may direct. The definition of transaction document in Section 30 of the PB Regulations means a document which is a record of a transaction carried out by a prescribed business with a client or an introducer. The definition of client due diligence information also outlined in Section 30 means identification data, and any account files and correspondence relating to the business relationship or occasional transaction. The rules in Section 10.2 of the PB Handbook require that all transactions carried out on behalf of or with a client in the course of business, both domestic and international, must be recorded by the prescribed business. Rules 10.2.1 of the PB Handbook further specifies that CDD information must be kept in the following records: copies of the identification data obtained to verify the identity of all clients, beneficial owners and underlying principals; copies of any client files, account files, business correspondence and information relating to the business relationship or occasional transaction; or information as to where copies of the identification data may be obtained. These last requirements are not included in regulations as required by the standard.

978. Section 14(4) of the PB Regulations requires that documents and client due diligence information, including any copies thereof, may be kept in any manner or form, provided that they are readily retrievable, and must be made available promptly to any police officer, the GFSC or any other person where such documents or client due diligence information are requested pursuant to the PB regulations or any relevant enactment.

979. Chapter 10 of the PB Handbook provides the rules and guidance in respect of record-keeping and requires a PB to 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. Additionally, a PB must periodically review the ease of retrieval of and the condition of, paper and electronically retrievable records and consider the implications of outsourcing arrangements, or where reliance is placed on introducers. PB must not enter into outsourcing 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 PB Regulations which require records to be readily retrievable.

### **ECasinos**

980. Section 9(1)(a) of Schedule 16 to the eGambling Regulations requires licensees to maintain records of transactions and any customer due diligence information for five years following completion of the transaction or the cessation of the relationship (or such longer period as the AGCC may direct). This requirement applies regardless of whether the customer relationship is ongoing or has been terminated. Section 1.8.6 of the ICS Guidance outlines how eGambling licensees should describe their AML record-keeping practices, including an outline on how and in what form the licensee will retain records.

981. Section 9(4) of Schedule 16 to the eGambling Regulations requires that transaction documents and customer due diligence information are kept in a form that is readily retrievable and are made available on a timely basis to competent authorities including the FIS, the police and the AGCC. Customer due diligence information is defined as identification data and any other files and correspondence relating to the customer relationship. Section 1.8.6 of the ICS Guidance specifies that a licensee's internal control system should describe the procedures that it will follow when it has to produce records for inspection and demonstrate that it is in a position to deal with such demands.

### **Implementation and effectiveness:**

982. The recordkeeping measures in place are mostly in line with the standard. Law enforcement and the FIU are satisfied with the timeliness and completeness of information provided by the DNFBP sectors. The use of on-line verification methods may have an impact on eCasinos' capacity to provide evidence for prosecution of criminal activity but no concerns were expressed by law enforcement taking into account that there have been limited investigations involving the eCasinos sector.

983. Competent authorities other than the AGCC should be able to extend the document retention period for eCasinos.

### **Attention to complex, unusual transactions**

#### **Legal Professionals, Accountants and Real Estate Agencies**

984. Section 11 (1) (b) of the PB Regulations requires a PB to perform ongoing and effective monitoring of any existing business relationship that includes the scrutiny of any transactions or other activity, paying particular attention to all complex transaction, transactions which are both large and unusual and unusual patterns of transactions which have no apparent economic purpose or not apparent lawful purpose. The extent of any monitoring 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. It should be noted that the requirement to pay attention to complex and unusual transactions should not be subject to an additional risk consideration. However, the assessment team believes that PBs pay systematic

attention to transactions that are complex and unusual and that this additional requirement does not have a practical impact on the implementation of the measure.

985. Section 7.2 of the PB Handbook provides rules on the monitoring of business relationships and recognizing suspicious transactions and activity. For unusual and large transactions or unusual patterns of transactions, the background and purpose of such transactions must be examined and the findings recorded in writing.

986. Section 14 of the PB Regulations requires that documents and client due diligence information 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 FIS, the GFSC or any other person where such documents or client due diligence information are requested pursuant to these Regulations or any relevant enactment. It also specifies that document must be kept for a period of five year. The authorities indicated that under this requirement the documents are also available to auditors given the broad drafting of the provision. Reporting entities confirmed that auditors were also provided access to the information.

### **ECasinos**

987. Paragraph 6(1)(c) of Schedule 16 to the eGambling Regulations requires that a Category 1 eGambling licensee must scrutinize any transactions or other activity (including, where necessary, the source of funds) to ensure that the transactions are consistent with the licensee's knowledge of the registered customer and his risk profile. The Category 1 eGambling licensee is required to pay special attention to all complex transactions, transactions which are both large and unusual, and unusual patterns of transactions, which have no apparent economic or lawful purpose.

988. Section 6(2) of Schedule 16 to the eGambling Regulations states that a Category 1 eGambling licensee when monitoring complex, unusual and large transactions or unusual patterns of transactions, must examine as far as reasonably possible, the background and purpose of such transactions and set forth its findings in writing.

989. Section 9(3)(a) of Schedule 16 to the eGambling Regulations states that a Category 1 eGambling licensee shall keep records of any findings of complex, unusual and large transactions for five years from the date the record was created. Under paragraph 9(4) of Schedule 16 to the eGambling Regulations such records must be made available on a timely basis to competent authorities including the FIS, the police and the AGCC. The authorities indicated that under this requirement the documents are also available to auditors given the broad drafting of the provision. Article 9 (4) (b) of Schedule 16 of the eGambling Regulations was amended in July 2010 in order to expressly include auditors. Reporting entities confirmed that auditors were also provided access to the information.

### **Implementation and effectiveness:**

990. The implementation of requirements related to complex, unusual transactions have been effectively implemented in the TCSP, legal professionals, accountants and real estate agency sectors with entities having the requirement to pay special attention to all complex, unusual, large transactions, or unusual patterns of transactions, that have no apparent or visible

economic or lawful purpose. Reporting entities in these sectors have on-going monitoring systems in place to detect instances where transactions would fall outside of normal business practices. Entities also had a good understanding of the vulnerabilities that exist within their sectors. However, not all Category 1 eCasino licensee effectively monitor all eGambling transactions. Gambling transactions facilitated by the Category 2 licensees have not been systematically subject to on-going monitoring activities by Category 1 licensees resulting in portions of Guernsey's gambling activity not being subject to AML/CFT monitoring. At the time of the on-site examination the AGCC did not believe that the Category 2 gambling information was provided to Category 1 licensees or that Category 1 licensees were monitoring these transactions. Subsequent information provided by the authorities highlight an Internal Control System developed by a Category 1 licensee that outlines on-going monitoring practices that include the monitoring of Category 2 gaming information. Presented with this conflicting information the assessment team is unable to determine the effectiveness of eCasinos capacity to detect unusual and complex transaction in this particular situation.

#### **4.1.2. Recommendations and Comments**

##### **Legal profession, accountants and real estate agents**

- Amend the exemption for individuals who act as a director for six companies or less in line with the standard.
- The GFSC should identify legal arrangements or fiduciaries as high risk given their vulnerability to money laundering and their prevalence in the Bailiwick.
- Determine when PBs could rely on foreign introducers or intermediaries who are DNFBPs. DNFBPs in most countries have recently been subject to AML/CFT regulation and the effectiveness of its implementation has not been tested. It may be difficult in practice for institutions to determine whether particular foreign introducers is in fact regulated and supervised for AML/CFT purposes, as is required by the terms of Appendix C.

##### **ECasinos**

- On-line verification software used by eCasinos for client identification purposes are not sufficiently reliable to be used as the only form of identification in non face-to-face transactions. Ecasinos should be required to apply additional specific and effective CDD measures to mitigate against the impreciseness of on-line verification methods.
- Implement methods and measures to manage and mitigate the specific risks associated with non face-to-face transactions in the eCasinos, including having additional CDD procedures in place when using on-line verification software for non face-to-face transactions, to bring the sector in line with the standard. During the on-site assessment Alderney's eGambling regulations did not require specific policies and procedures to be in place with respect to non face-to-face transactions. Amendments to Section 175 95) (a) of the eGambling Regulations were introduced on July 2010 to require eCasinos to implement methods and measures to manage and mitigate the specific risks on non

face-to-face transaction. Despite this recent regulatory amendment, the procedures implemented by eCasinos at the time of the assessment did not sufficiently mitigate the risk associated with non face-to-face transactions and the imprecise findings resulting from on-line verification methods. Furthermore, the effectiveness of the new regulatory provisions could not be assessed due to their recent implementation. As noted above, ECasinos should be required to have additional CDD procedures in place when using on-line verification software for non face-to-face transactions.

- Not all eCasinos have effectively implemented the requirement to pay special attention to complex and unusual transactions. Gambling transactions facilitated by Category 2 licensees have not been subject to AML/CFT monitoring activities by Category 1 licensees. As the eCasino responsible for establishing the relationship with the customer, facilitating the financial transaction and providing the gateway for gambling activity Category 1 licensees should be required to monitor gambling transactions to identify complex, unusual or large transactions.

#### 4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	PC	<p>ECasinos</p> <ul style="list-style-type: none"> <li>• On-line verification methods used by eCasinos should be complemented by additional evidence of identity of the client.</li> <li>• Requirements to mitigate against the risk associated with non face-to-face transactions in the eCasinos sector are not in line with the standard.</li> <li>• Not all eCasinos have effectively implemented the requirement to pay special attention to complex and unusual transactions.</li> </ul> <p>TCSPs, legal profession, accountants and estate agents</p> <ul style="list-style-type: none"> <li>• The exemption for individuals who act as a director for six companies or less is not in line with the standard.</li> <li>• The GFSC should identify legal arrangements or fiduciaries as high risk.</li> <li>• Reliance should not be placed on introducers or intermediaries who are DNFBPs.</li> </ul>

## 4.2. Suspicious Transaction Reporting (R.16)

### 4.2.1. Description and Analysis

#### Legal Framework

991. The Disclosure Law (DL) and Terrorism Law (TL) provide the legal framework for the reporting of suspicious transactions for all designated non-financial businesses and professionals. Sections 12 and 15 of the TL outline the requirements to report suspicions of terrorism financing for non-financial services businesses and financial services businesses, respectively. Pursuant to Sections 1 and 3 of the DL financial services businesses (in this case trust and company service providers (TCSPs) and non-financial services businesses are required to report suspicions on money laundering. Both the DL and TL Laws required that the suspicions of money laundering and the financing of terrorism be reported to a police officer. A legislative amendment specifically requiring that suspicious transaction reports (STRs) are reported directly to the FIU came into force on April 28, 2010.

992. A non financial services business is defined at Section 17 of the DL as a business which is not a financial services business. Suspicious reporting requirements extend to all types of business activity and individuals not just those which would fall under the GFSC's registration framework. Practically this means that anyone who has a suspicion that someone is involved in money laundering or terrorist financing must report to the FIU. As such the reporting requirements apply to all DNFBPs, including TCSPs, lawyers, notaries, accountants, real estate agents, casinos, and dealers in precious metals and stones (including bullion dealers). In this context lawyers and accountants are also required to report suspicious activities irrespective of whether or not the suspicion is related to an activity which requires the firm to be registered with the GFSC. Section 3 of the DL and Section 12 of the TL creates an offense if a non-financial services business fails to report a suspicion of money laundering and terrorist financing respectively.

993. In accordance with section 3(6)(d) of the DL a person does not commit an offence for failing to report a suspicion of money laundering or terrorist financing where he is a professional legal adviser and the information or other matter came to him in privileged circumstances. It should be noted, however, that items held with the intention of furthering a criminal purpose are not items subject to legal professional privilege. Section 12.1. of the PB handbook clearly sets out the circumstances where legal privilege can be applied. The exemptions applied to legal privilege are in line with the standard.

994. A description of the legal framework describing how preventative measures apply to all DNFBP sectors can be found at Section 4.1.1.

**Requirement to Make STRs on ML and TF to FIU (applying c. 13.1 and IV.1 to DNFBPs):**

995. Section 3 of the DL contains a mandatory reporting obligation in the form of a non disclosure offence that is applicable to all non financial services businesses. Under Section 3(3) of the DL the obligation applies to knowledge or suspicion which is based on information that has come to a person in the course of the business of a non financial services business. Pursuant to Sections 2 and 3 of the DL financial services businesses and non-financial services businesses were required to report suspicions of money laundering to a police officer. The obligation did not specifically require entities to report to the FIU. This requirement was recently addressed through legislative and regulatory amendments that now require individuals and businesses to specifically report directly to the FIU. This amendment came into force on April 28, 2010.

**STRs Related to Terrorism and its Financing (applying c. 13.2 to DNFBPs):**

996. Section 12 and 15 of the TL contains provisions for non financial services businesses and financial services businesses to report knowledge, suspicion or reasonable grounds of knowing or suspecting that another person is engaged in terrorist financing. Terrorism Financing is defined at Section 79 of the TL and refers to any attempt, conspiracy or incitement to carry out terrorism as well as the fund raising, the use and possession of money or property or the funding of arrangements for the purposes of terrorism.

997. The TL and relevant regulations were also amended to specifically require that individuals and businesses report directly to the FIU. This amendment came into force on April 28, 2010.

**No Reporting Threshold for STRs (applying c. 13.3 and IV.2 to DNFBPs):**

998. There is no threshold specified in the relevant provisions of the DL or the TL. The definitions of money laundering and terrorist financing at Section 17 of the DL and Section 79 of the TL respectively expressly cover attempts, and are stated to apply irrespective of the value of the property involved.

999. The reporting requirement is tied to the knowledge or reasonable suspicion of money laundering and terrorist financing. Although there is a legal basis for the reporting of suspicious attempted transaction it is not explicit in the reporting requirement set out in Sections 1 and 3 of DL and Sections 12 and 15 of the TL.

**Making of ML and TF STRs regardless of Possible Involvement of Fiscal Matters (applying c. 13.4 and c. IV.2 to DNFBPs):**

1000. Neither the DL nor the TL makes any exception for transactions that may involve tax or other fiscal matters. Additionally, the rules in Section 8.2 of chapter 8 of the PB Handbook provide that each suspicion must be reported to the MLRO regardless of whether, amongst other things, it is thought to involve tax matters. The FIU has indicated that in 2009, 263 STRs out of the 627 reported pertained to tax matters.

**Implementation and effectiveness:**

1001. Section 2 and 3 of the DL set out an offense if the MLRO of a financial service business or a prescribed business fails to report knowledge, suspicions or reasonable grounds for knowing or suspecting that another person is engaged in money laundering. Money laundering is defined at Section 17 of the DL which refers to Sections 38, 39, and 40 of the POCL and Sections 57, 58, and 59 of the DTL. These sections outline offences when a person conceals or disguises the proceeds of criminal conduct or drug trafficking. As such the requirement to report knowledge, suspicions or reasonable knowledge or suspicions of money laundering applies to all criminal conduct.

1002. The legal framework requiring the reporting of suspicions of money laundering and terrorist financing is extensive. An offense is created for failing to report suspicions of money

laundering and the financing of terrorism and apply to all DNFBPs. The requirement encompasses all criminal conduct which includes all predicate offenses identified by the standard.

1003. The requirement to report suspicious transactions is not entirely direct. The obligation is established by creating an offence for failure to report rather than an explicit, direct requirement to report suspicions of money laundering and terrorist financing. The standard states that: “The requirement should be a direct mandatory obligation and any indirect or implicit obligation to report suspicious transactions, whether by reason of possible prosecution for a ML offense or otherwise (so called “indirect reporting”) is not acceptable.” The framing of the obligation through the creation of an offence could potentially result in less effective implementation of the standard. Meetings with industry confirmed that this was not the case in this instance. The requirement to reporting suspicious transaction is well understood by all obligated sectors. The assessors considered whether the reporting provisions of the DL and TL, which create an offense for the failure to report, are fully consistent with Recommendations 13 and SR IV, which literally require a “direct mandatory obligation” to report, and concluded that the nature of the reporting requirement, although not literally direct, does not appear to negatively impact on the understanding by FSBs of the requirement or their implementation thereof.

1004. Although the definition of money laundering and terrorist financing includes attempts, the reporting of attempted transactions is not explicitly stated within the sections requiring the reporting requirements (Sections 1 and 3 of the DL and 12 and 15 of the TL) and must be inferred. The guidance provided in the FSB and PB handbooks does not specifically outline the obligation to report suspicious attempted transactions although some correspondence sent by the GFSC to prescribed businesses does outline the requirement to report attempted transactions. The assessors met with a cross section of DNFBPs and all indicated that suspicious attempted transactions were reportable. The FIU also indicated that they have received reports involving attempted transactions. Although there does not appear to have a significant impact on the effectiveness of the provision authorities should consider amending the legislation and the guidance to explicitly require the reporting of suspicious attempted transactions.

1005. The table below outlines the level of reporting by DNFBPs from 2006 to 2009.

<b>STRs filed by DNFBPs</b>								
Number, percentage of total reports								
	<b>2006</b>		<b>2007</b>		<b>2008</b>		<b>2009</b>	
<b>TCSP</b>	87	16%	109	14%	112	22%	151	24%
<b>Accountants</b>	3	0.5%	3	0.3%	5	0.9%	14	2%
<b>Legal professionals</b>	0	0%	3	0.3%	9	2%	23	3%
<b>Estate agents</b>	0	0%	0	0%	2	0.3%	2	0.3%



<b>eCasinos</b>	0	0%	3	0.3%	9	2%	18	3%
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1006. TCSPs provide the second largest number of STRs of all reporting sectors (24 percent in 2009). The number of reports has been steadily increasing since 2006. Authorities attribute the increased level of reporting to increased awareness and the expansion of AML/CFT requirements in 2008.

1007. The legal profession, accountants and real estate agent sectors have relatively low reporting volumes although the level of reporting has been increasing since 2008 when requirements for these sectors were expanded. The increase in the legal profession is notable with no reports being reported in 2006 and 23 reports being reported in 2009. Accountants have also seen an increase from 3 reports in 2006 to 14 in 2009. The increase corresponds with the coming into force of expanded AML/CFT requirements in 2008 and the outreach that was conducted by the GFSC.

1008. The GFSC has conducted yearly analyses of reporting levels in the accounting and legal sectors in an effort to respond to concerns by the FIS that reporting levels were too low. The GFSC issued a letter on February 17, 2010 reminding all lawyers and accountants of the requirement to report. The FIS indicated in discussions with assessors that they believe that the level of reporting for all sectors is commensurate with the risk of money laundering that they have observed.

1009. Reporting in the real estate agent sector has remained low with a high of two reports being reported in 2008 and 2009. This may partially be due to the fact that Guernsey has a dual market system where the local market is only available to Guernsey residents. Non-residents can only transact on the open market and only 1,700 residences are available on the entire island of Guernsey. Although the presence of the local market does minimize the risk it is unclear whether this entirely justifies the low reporting volumes in the sector.

1010. Reporting levels in the eCasinos sector do not correspond to the size of the sector and the risks associated with non face-to-face transactions. The structure of the industry undermines the capacity for eCasinos to identify suspicious transactions. Ecasinos are divided into two groups, Category 1, who are responsible for registering the client and managing client accounts, and Category 2, who provide the games and manage the gambling. AML/CFT obligations require Category 1 to conduct the on-going due diligence and monitor transactions but at the time of the assessment it was unclear whether they monitored the gaming activity facilitated by Category 2 licensees. Category 2 licensees do not have any CDD obligations and only have a requirement to monitor complex or unusual transactions since July 2, 2010 due to amendments to Section 6 of Schedule 16 of the Alderney eGambling Regulations. If they detect suspicious gaming activity they cannot attribute it to an individual. While most of the current license holders have both Category 1 and 2 licenses the AGCC expects that over the next few years a greater segregation of the industry will occur with businesses falling into either one of the license categories. It should be noted that the recent amendment requiring Category 2 eCasinos to monitor complex or unusual transactions has been implemented too recently to assess its effectiveness.

1011. Client identification conducted by Category 1 license holders is insufficient as discussed in Recommendation 12. The non face-to-face nature of transactions and the limited CDD conducted by Category 1 eCasinos, result in eCasinos having limited knowledge of their clients. Furthermore, training of employees on money laundering trends and techniques as well as CDD and reporting requirements were not required prior to July 2, 2010 rendering it impossible for the assessment team to assess its effectiveness. All these factors may contribute to the low number of STRs being filed. EGambling license holders in Alderney had over 3 million customers and conducted £2.1 billion worth of transactions in 2009. Reporting levels have gone from zero reports in 2006 to 18 reports in 2009. Despite the increase in reporting assessors believe that the sector's suspicious transaction detection framework is ineffective and that reporting levels are not commensurate with the transaction activity occurring in the sector.

**Additional Element—Reporting of All Criminal Acts (applying c. 13.5 to DNFBPs):**

1012. PB are required to report to the FIU suspicions of money laundering regardless of whether the criminal acts would constitute a predicate offence for money laundering either domestically or internationally.

**Legal Framework**

1013. The DL and TL provide the legal basis for protection for STR reporting and tipping off. Disclosure to the FIU does not contravene any obligation as to confidentiality pursuant to Sections 3 of the DL and 12 of the TL. These sections have been amended to clarify that reporting in good faith is protected. The provisions are broadly worded and apply to all individuals including directors and officers.

1014. Section 4 of the DL and Section 40 of the TL create offences for tipping off. The DL and TL were each amended, effective July 28, 2010, to remove the defense that the person accused of tipping off did not know or suspect that the disclosure was likely to be prejudicial or that it was not unreasonable to make the disclosure. The TL was amended to remove the defense that the person had a reasonable excuse for the disclosure.

**Protection for Making STRs (applying c. 14.1 to DNFBPs):**

1015. Disclosures to police officers by employees of non financial services businesses are protected by Section 3(10) of the DL and Section 12(10) of the TL, which are worded in the same way as the equivalent provisions for financial services businesses. Recent amendments to the DL and TL Laws clarify that suspicious reports made in good faith are also protected. For a discussion of those measures please refer to Section 3.

**Prohibition Against Tipping-Off (applying c. 14.2 to DNFBPs):**

Section 4 of the DL and Section 40 of the TL contain tipping off provisions that make it an offence to disclose the fact that an STR or related information has been or will be provided to the FIU. The recent amendments to the tipping off offenses, as described under Section 3, apply to nonfinancial services businesses in the same way.

**Additional Element—Confidentiality of Reporting Staff (applying c. 14.3 to DNFBPs):**

1016. The FIU dissemination guidance and the internal staff handbook ensure that intelligence emanating from STRs is sanitized in order to protect the source. In addition, all disseminations

are subject to a risk assessment that contains a criteria relating to any personal risks that may be incurred. All disseminations must be authorized by a senior officer prior to dissemination who reviews the disclosure to ensure that the confidentiality of reporting staff is respected.

### **Implementation and effectiveness:**

1017. With the recent amendments related to the protection for STR reporting and the scope of the tipping-off offenses, Guernsey is in line with the standard. It should be noted that previously, the scope of the tipping off offence was too narrow. The TL and DL provided for exemptions allowing a person to disclose the reporting of an STR if the person did not know, suspect, or have reason to suspect that the disclosure was likely to be prejudicial. The DL further provides a defense if the person had a reasonable excuse. It should be noted that no instances of tipping off have been recorded despite the narrowness of the provision. Amendments were introduced to address the narrowness of the tipping off definition. With these changes Guernsey is in line with the recommendation.

### **Internal Policies and Controls**

#### **Legal Framework**

1018. Requirements with respect to internal policies and controls for legal professionals, accountants and estate agents are outlined in Sections 12 to 15 of the Proceeds of Crime (Legal Professionals, Accountants and Real Estate Agents) and Chapter 2 of the Handbook for Legal Professionals, Accountants and Real Estate Agents. ECasinos are required to establish internal policies and controls pursuant to Section 175 and Sections 7 and 8 of Schedule 16 of the Alderney eGambling Regulations.

#### **Establish and Maintain Internal Controls to Prevent ML and TF (applying c. 15.1, 15.1.1 and 15.1.2 to DNFBPs):**

##### **Legal profession, accountants and real estate agents**

1019. Section 15 (a) of the Prescribed Businesses (PB) Regulations require prescribed businesses to establish policies, procedures and controls as may be appropriate and effective for the purposes of forestalling, preventing and detecting money laundering and terrorism financing. The policies and procedures are to be the subject of staff training pursuant to Section 13 (2)(d) of the PB regulations. The GFSC provides guidance on the scope and appropriateness of policies and procedures in its PB handbook.

1020. Section 12 of the PB Regulations requires a prescribed business to appoint a person of at least management level as the Money Laundering Reporting Officer (MLRO) and provide the name and title of that person to the GFSC and the FIS as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment. Manager is defined in the PB Law as a person other than a chief executive who under immediate authority of a director or chief executive of the company exercises managerial functions or is responsible for maintaining accounts or other records of the company. Additionally, PB are required to appoint another person to be nominated to receive STRs, under part I of the DL and Section 15 of the TL ("nominated officer"), in the absence of the MLRO, and ensure that any relevant employee is

aware of the name of that nominated officer. The guidance provided by the GFSC is that this person should also be at the management level.

1021. Section 12(e) of the PB Regulations requires prescribed businesses to ensure that the MLRO, or, in his absence, a nominated officer, is given prompt access to any other information which may be of assistance to him in considering any report. Additionally, the rules in Section 2.4 of the PB Handbook require that the MLRO has access to the CDD records and receive full cooperation from all staff. Customer due diligence is defined to include identification data and any account files and correspondence relating to the business relationship or occasional transaction.

### **ECasinos**

1022. Section 175 of the eGambling Regulations requires that eGambling licensees have an internal control system (ICS) which they must operate in accordance with. The ICS is a detailed description of a licensee's entire control environment, including but not limited to how the licensee complies with AML/CFT requirements. The ICS must have policies, procedures and controls for the purposes of forestalling, preventing and detecting money laundering and terrorist financing. Section 1 and 3 of the ICS guideline specify that policies and procedures should address the topics of CDD, record keeping, the detection of unusual and suspicious transactions and reporting obligations. The ICS must be approved by the Alderney Gambling Control Commission (AGCC) in advance of the licensee commencing operations. Section 8 (iv) of the ICS guideline requires that eCasinos must ensure that employees are trained with respect to the policies and procedures.

1023. Section 4(d), 6(d) and 60(c) of the eGambling Regulations require eGambling licensees to appoint an executive officer in order to fulfill the duties of compliance officer to report to the AGCC on all compliance matters related to the eGambling Law. In addition, Sections 4(e), 6(e) and 60(d) require that eGambling licensees appoint an executive officer to act as money laundering reporting officer (who may be the compliance officer). An executive officer is defined under Section 30 of the eGambling Ordinance as a person who is concerned with, or takes part in, the company's management.

1024. Section 9(4) (b) of Schedule 16 to the eGambling Regulations requires that transaction documents and customer due diligence information are made available on a timely basis to the MLRO and the nominated officer (who carries out the functions of the MLRO in his absence). Although timeliness is not defined meetings with eCasinos confirmed that the access to required documents and information was timely.

1025. In addition, Section 7(1)(e) of Schedule 16 to the eGambling Regulations states that eGambling licensees are to ensure that the MLRO, or, in his absence, a nominated officer, is given prompt access to any other information which may be of assistance to him in considering any STR .

### **Independent Audit of Internal Controls to Prevent ML and TF (applying c. 15.2 to DNFBPs):**

#### **Legal profession, accountants and real estate agents**

1026. Section 15 of the PB Regulations requires prescribed businesses to 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 PB Regulations, and such policy must include provisions as to the extent and frequency of such reviews. The rules in Section 2.3 of the PB Handbook require prescribed businesses to 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, in particular the Board must consider whether it would be appropriate to maintain a separate audit function to assess the adequacy and effectiveness of the area of compliance.

1027. The requirement to consider the maintaining of an independent audit function seems appropriate in the context of prescribed businesses, given the diversity of their activities and the varying size of operations.

### **ECasinos**

1028. Section 175(3) (e) of the eGambling Regulations requires eGambling licensees to have an audit function in place which tests its systems as part of its internal control system. Section 1.11 of the ICS Guidance highlights the importance of the internal audit function and requires eGambling licensees to describe, in its ICS, the reporting structure and processes by which the licensee's executive management monitors the correct operation of its internal control program. Furthermore, Section 188 of the eGambling Regulations requires eCasinos to discuss the results of the review at a Board Meeting.

1029. In addition, as part of its ICS the eGambling licensee must have an effective policy in place for reviewing its compliance with the requirements of the AML/CFT procedures set out in Schedule 16 and of the customer focused regulations in Part V of the eGambling Regulations. The ICS guidance does not specify whether the review must be conducted by an independent third party.

### **Ongoing Employee Training on AML/CFT Matters (applying c. 15.3 to DNFBPs):**

#### **Legal profession, accountants and real estate agents**

1030. Section 13(2) of the PB Regulations requires prescribed business to ensure that relevant employees receive comprehensive ongoing training with respect to the relevant enactments, the Regulations and the Handbook; their personal obligations; the implications of noncompliance; and its AML policies, procedures and controls. Relevant employee is defined at Section 30 of the PB Regulations as any member of the board, member of the management of the prescribed business and employees whose duties relate to the prescribed business.

1031. Additionally, the Rules in Section 9.4 of the PB Handbook require that prescribed businesses ensure that employees receive the ongoing training required under the PB Regulations and in particular ensure that they are kept informed of CDD and STR reporting requirements, sanctions for failing to report, the identity and responsibilities of the MLRO, vulnerabilities of products and services offered by the PB; and new ML and FT developments including trends and typologies.

**ECasinos**

1032. Section 175(3)(d) the eGambling Regulations requires eGambling licensees, as part of their internal control system, to have an ongoing employee training program for the purposes of forestalling, preventing and detecting ML and FT. In addition Section 8(1) (b) of Schedule 16 to the eGambling Regulations requires that relevant employees receive comprehensive ongoing training in the AML/CFT legislation framework, the personal obligations of employees, the implications of noncompliance by employees and the eCasino's AML/CFT policies, procedures and controls.

1033. In addition paragraph 8(1)(c) of Schedule 16 to the eGambling Regulations requires that eGambling licensees identify relevant employees who, in view of their particular responsibilities, should receive additional and ongoing training, appropriate to their roles, in the matters set out above and shall provide such training.

1034. The June 2, 2010 amendments to Section 8 of the eGambling Regulation now require that employees be trained on money laundering techniques, methods and trends, the identity and responsibilities of the MLRO and the detection of unusual or suspicious transactions. However, due to their recent implementation the effectiveness of these requirements could not be assessed.

**Employee Screening Procedures (applying c. 15.4 to DNFBCs):****Legal profession, accountants and real estate agents**

1035. Section 13(1) of the PB Regulations requires prescribed businesses to maintain appropriate and effective procedures, when hiring employees, for the purpose of ensuring high standards of employee probity and competence. Additionally, the Rules in Section 9.2 of the PB Handbook require that in order for a prescribed business to ensure that employees are of the required standard of probity and competence they should obtain and confirm references, request disclosure of any regulatory action taken and obtain a check of the candidate's criminal record.

**ECasinos**

1036. Section 175(3)(c) the eGambling Regulations requires that, as part of their ICS, eGambling licensees must have screening practices in place when recruiting relevant employees for the purposes of forestalling, preventing and detecting ML and TF. Section 1.5 of the ICS Guidance explains that eGambling licensees are under an obligation to "know your employee." The AGCC requires the licensees to describe the controls and procedures employed to ensure that employees are suitable to maintain the integrity of licensed eGambling operations. The AGCC notes that as part of the screening process different levels of classification of employee may undergo different degrees of vetting.

1037. In addition paragraph 8(1)(a) of Schedule 16 to the eGambling Regulations requires that an eGambling licensee shall maintain appropriate and effective procedures, when hiring employees, for the purpose of ensuring high standards of employee probity and competence.

**Additional Element—Independence of Compliance Officer (applying c. 15.5 to DNFBPs):**

1038. The rules in Section 2.4 of the PB Handbook require that the MLRO reports directly to the Board. Sections 4(e), 6(e) and 60(d) require that eGambling licensees appoint an executive officer to act as money laundering reporting officer ensuring that the MLRO has direct access to the Board.

**Implementation and effectiveness:**

1039. The legal framework for prescribed business, TCSPs and eCasinos, is comprehensive and largely in line with the standard. The one omission pertains to eCasinos who did not have an explicit requirement to train employees on money laundering techniques, methods and trends, customer due diligence requirements and the detection of unusual or suspicious transactions. A regulatory amendment was introduced on July 2, 2010 to address this concern; however, its recent implementation did not allow the assessment team to ascertain its effectiveness.

1040. The requirement to test policies, procedures and controls could be further clarified. It is unclear what is expected of businesses that determine that an internal audit function is not appropriate. Supervisors should clearly state whether the individual conducting the review must be independent or have certified auditing skills.

1041. Discussions with the GFSC and reviews of policies and procedures from reporting entities confirm that policies and procedures include sections on CDD, record retention, the detection of unusual and suspicious transactions and reporting obligations. As a regular practice, reporting entities develop their policies and procedures based on the structure of the PB handbook.

1042. Policies and procedures in the eCasinos sector are incorporated in the eCasino's ICS. Although all key AML topics are included they are interspersed throughout the very technical elements of the document potentially diluting their effectiveness. The size of the ICS (often several hundred pages) makes it extremely difficult for employees to fully understand all the requirements. This could be addressed by ensuring that appropriate training on all aspects of AML requirements is delivered periodically.

1043. During meetings with industry the assessment team was able to ascertain that MLROs were all at the management level. They also confirmed that larger firms had established an independent audit function. Smaller firms used the requirement to conduct periodic reviews as the mechanism to ensure that policies and procedures were respected and appropriate controls were in place. Reviews were conducted by external consultants as well as by employees of the businesses. All reviews were documented and presented to the Board for consideration and appropriate action.

1044. Training organized by the GFSC and the FIS was widely attended. All fiduciaries and prescribed businesses met during the assessment had comprehensive training programs including the widespread use of AML consultants and in one instance a web-based training program.

1045. Although some AML training does occur in the eCasinos sector the extent of training should be expanded. The training obligation does not require all employees to be trained. Some

eCasinos interviewed confirmed that they did not deliver training to all employees. Training requirements for eCasinos were recently amended on July 2, 2010 to include information on money laundering techniques, methods and trends, and customer due diligence requirements and the detection of unusual or suspicious transactions requirements that were not in place during the on-site visit.

1046. All DNFBPs met during the assessment had extensive employee screening programs. All businesses conducted criminal background checks prior to hiring employees.

**Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 and 21.1.1):**

**Legal Framework**

1047. Section 5 of the PB Handbook outlines the requirements with respect to giving special attention to countries not sufficiently applying FATF Recommendations. This is supplemented by a requirement in Section 3 of the Handbook that requires PBs to visit the GFSC's website and apprise themselves of new information including notices, instructions and warning. There is a similar provision in Section 4 of the eGambling Regulation requiring Category 1 eGambling license holders to visit the AGCC website. There is no requirement for eCasinos to pay special attention to countries not sufficiently applying FATF Recommendations. However, Section 3 (1) (b) of Schedule 16 to the eGambling Regulations does require eCasinos to carry out enhanced due diligence including the conducting of more frequent and extensive monitoring.

**Legal Professionals, Accountants and Real Estate Agents**

1048. Section 5(1) (b) of the PB Regulations requires that where a prescribed business is required to carry out CDD, it must also carry out enhanced CDD in relation to a business relationship or an occasional transaction including countries that do not apply or insufficiently apply the Financial Action Task Force (FATF) Recommendations.

1049. Pursuant to Section 5.4 of the PB Handbook, prescribed businesses must give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries or territories that do not or insufficiently apply the FATF Recommendations and from other countries or territories closely associated with illegal drug production/processing or trafficking, corruption, terrorism, terrorist financing and other organized crime.

1050. Section 3.5.1 of the PB Handbook contains rules which require a prescribed business to visit the GFSC's website and appraise itself of the available information on a regular basis including Business from Sensitive Sources Notices, advisory notices, instructions and warnings which highlight potential risks arising from particular sources of business which are issued by the GFSC from time to time. Notices, advisories, instructions and warnings are issued to advise obligated entities of jurisdictions where enhanced due diligence should be applied or when the GFSC wants to instruct businesses on a certain matter. The GFSC had issued Business from Sensitive Source Notices and informs entities directly when they are issued. Instructions provide specific directives that DNFBPs must comply with. This may include paying special attention to transactions involving a country that does not adequately apply FATF recommendations. The notices provide a list of countries that have been the subject of FATF advisories or contain



information with respect to suspicious activities that should be noted by entities. The notices also include a section which details actions to be undertaken by entities.

### **ECasinos**

1051. Section 4(1) of the eGambling Regulations requires that the Category 1 eGambling licensee must take note and meet the requirements of all notices, instructions and counter-measures (whether described as “Business from Sensitive Sources Notices” or otherwise) issued by the AGCC and designed to alert and advise it of weaknesses in the anti-money laundering systems in other countries or territories where the Category 1 eGambling licensee may operate. There was no similar requirement for Category 2 license holder to take note and meet the requirements of the notices instructions and counter-measures. Section 6(1) was inserted into the Alderney eGambling Regulations on the 1 July 2010 which requires Category 2 eGambling licensees to take note and meet the requirements of the notices, instructions and counter-measures issued by the Commission.

1052. Section 3(1) (b) of Schedule 16 to the eGambling Regulations requires that Category 1 eGambling licensees apply enhanced CDD in respect of relationships where the customer is established or situated in a country or territory that does not apply or insufficiently applies the FATF Recommendations.

1053. There was no explicit obligation requiring eCasinos to specifically give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF recommendations. However, Section 3 (1)(b) of Schedule 16 of the eGambling regulations does require eCasinos to carry out enhanced due diligence including the conducting of more frequent and extensive ongoing monitoring. Paragraph 6 (1) requires that when an eCasinos identifies transactions as having no apparent economic or lawful purpose it should document its findings in writing . Paragraph 6 (1) (c) of Schedule 16 of the eGambling regulations was amended on July 2, 2010 to specifically require transactions arising from a country or territory that does not apply or insufficiently applies the FATF Recommendations to be subject to on-going and effective monitoring.

### **Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):**

#### **Legal Professionals, Accountants and Real Estate Agents**

1054. The rules in Section 5.4. of the PB Handbook require prescribed businesses to identify transactions which (in the context of business relationships and occasional transactions) have no apparent economic or visible lawful purpose and examine the background and purpose of such transactions and record in writing the findings of such examinations in order to assist the GFSC, the FIS and other domestic competent authorities. A June 21, 2010 amendment to Section 14 (4) (b) (ii) of the PB regulations outlines a requirement to also make documents available to auditors.

### **ECasinos**

1055. There is no specific provision to provide access to the background and purpose of transactions that have no apparent economic or visible lawful purpose to competent authorities or auditors.

### **Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):**

### **Legal Professionals, Accountants and Real Estate Agents**

1056. 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. The GFSC issues Business from Sensitive Sources Notices/instructions which require prescribed businesses to undertake enhanced CDD measures and give special attention to all business relationships and transactions connected with specific countries or territories. These notices/instructions have been issued in light of requests from the FATF for jurisdictions to apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism risks emanating from jurisdictions which have deficiencies in their anti money laundering and financing of terrorism regimes.

1057. In addition to issuing notices the GFSC has the power to impose any conditions to PBs that it sees fit pursuant to Section 8 of the Registration of Non-Regulated Financial Services Businesses Law. Under this condition making power the GFSC could prohibit transactions emanating from a jurisdiction of concern.

1058. Additionally, the GFSC issued instruction number 8 which required financial services businesses to immediately consider whether or not they had any exposure to particular persons and, if they had any exposure they were requested to advise the GFSC accordingly.

### **ECasinos**

1059. In the event that a country continues to fail to apply or insufficiently applies the FATF Recommendations the AGCC could, under Section 22(3)(b) of the eGambling Ordinance issue a notice requiring the application of other appropriate counter measures which Category 1 eGambling licensees would be required to adopt (under Section 4(l) of the eGambling Regulations). Business from sensitive sources notices have been issued in coordination with the notices issued by the GFSC. Under this guidance making power the AGCC could also prohibit transactions with a high risk jurisdiction.

### **Implementation and effectiveness:**

1060. Both the AGCC and the GFSC have issued Business from Sensitive Sources Notices and requested enhanced customer due diligence in certain instances mostly to coincide with the publication of FATF advisories. They have the necessary authority to apply varying countermeasures to jurisdictions of concern if required. In practice, Business from Sensitive Sources Notices are issued when the FATF or other competent authorities raise concerns.

1061. It should be noted that the requirements for PBs to pay special attention is focused on countries not sufficiently applying FATF recommendations rather than on business relationships and transactions with persons from countries which do not apply FATF standards as required by the standard. Despite this difference in the drafting of the requirement the assessment team does not believe that it impacts on the effectiveness of the implementation. PBs and TSCPs are aware of notices and instructions issued by the GFSC and have incorporated this information in the monitoring programs.

1062. All industry representatives from the TCSP and prescribed businesses sectors were very familiar with the notices.

1063. There were 296 businesses that fell in the DNFBP category as of December 31, 2009 with the vast majority being TCSPs (197). A table providing a breakdown of the sector can be found at Recommendation 12.

1064. DNFBPs are supervised by the GFSC and the AGCC. The Fiduciary and Intelligence Services Division of the GFSC is responsible for supervising TCSPs. The Policy and International Affairs Division monitors lawyers, accountants and real estate agents. The AGCC is responsible for supervising eCasinos. A breakdown of examinations conducted between 2007 and 2009 can be found in R.24.

**Statistic (R.32):**

1065. A table outlining the number of STRs reported by TCSPs is included at the beginning of the recommendation. Statistics also include an analysis of reporting levels.

**4.2.2. Recommendations and Comments**

- Although the definition of money laundering and terrorist financing includes attempts, the reporting of attempted transactions is not explicitly stated within the sections requiring the reporting requirements (Section 1 and 3 of the DL and 12 and 15 of the TL) and must be inferred. Authorities should consider amending the DL and TL and providing guidance to businesses to explicitly require the reporting of suspicious attempted transactions.

**ECasinos**

- STR reporting in the eCasinos sector is insufficient. The number of STRs in the eCasinos sector does not correspond to the AML risk level and the transactions volume conducted by the industry.
- AML/CFT training requirements do not apply to all eCasinos employees and do not specifically require training on money laundering techniques or employee obligations regarding CDD and reporting. The authorities are recommended to require eCasinos to provide AML/CFT training to all eCasinos employees. The training should specifically include, *inter alia*, money laundering techniques and employee obligations regarding CDD and reporting.

**4.2.3. Compliance with Recommendation 16**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.16</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• The number of suspicious transaction reports submitted by the eCasinos sector is insufficient.</li> <li>• Ecasinos were not specifically required to provide training to their</li> </ul>

		<p>employees on money laundering techniques or employee obligations regarding CDD and reporting.</p> <ul style="list-style-type: none"> <li>• The requirement to provide training does not apply to all eCasinos employees.</li> </ul>
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### 4.3. Regulation, Supervision, and Monitoring (R.24-25)

#### 4.3.1. Description and Analysis

##### Legal Framework

1066. The GFSC and the AGCC are responsible for ensuring supervision and monitoring of DNFBPs. The Fiduciary and Intelligence Services Division of the GFSC is responsible for the licensing and supervision of TCSPs. The Policy and International Affairs Division of the GFSC is responsible for registering and ensuring compliance for lawyers, accountant and real estate agents. The AGCC is responsible for the supervising and licensing of eCasinos.

1067. The GFSC is responsible for overseeing compliance for all FSB and Non-Financial Services Businesses and can enter any premises in the Bailiwick owned by a PB or FSB pursuant to Section 49B of the Proceeds of Crime Law (POCL). Non-Financial Services Businesses supervised by the GFSC include TCSPs, legal professionals, accountants and real estate agents as well as bullion dealers, lending services, financial leasing, money services businesses, safe custody services, money broking, portfolio management and factoring. GFSC's supervisory mandate extends to licensing requirements as well as to AML/CFT. The AGCC is responsible for the supervision of eCasinos including ensuring compliance with licensing requirements, technical standards and AML/CFT requirements pursuant to Section 2 (b) of the Alderney Gambling Law.

1068. Section 49B (4) of the POCL provides that nothing in that section compels the production or divulgence of an item subject to legal professional privilege or excluded material, but an advocate or other legal adviser may be required to give the name and address of a client. Sections 49B(4) of the POCL was extended to legal professionals, accountants and estate agents by Section 24 of the PB regulations.

1069. A description of the legal framework describing how preventive measures apply to all DNFBP sectors can be found at Section 4.1.1.

##### **Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3):**

1070. Section 2B of the Alderney Gambling Law established the AGCC to license and regulate eGambling in Alderney. The AGCC requires that its active licensees be inspected at least annually, after they have commenced activation of their license. Historically all operative licensees have received an annual on-site inspection which takes place at their main place of business wherever in the world this might be. In addition inspections are frequently timed to coincide with the conclusion of the financial year of the licensee to ensure that the information

available is as up to date as it can be. The inspection regime focuses on three distinct areas, all of which include AML/CFT components. Each inspection normally has a financial aspect, a technical aspect and a regulatory aspect. The AGCC conducted 11 on-site inspections in 2007, 16 in 2008, and 22 occurred in 2009.

1071. The Internal Control System (ICS) document serves as the basis for all inspections. AML/CFT is an element of all examinations. Findings focus on AML/CFT deficiencies, as well as ICS breaches.

1072. Sections 249 and 251 of the eGambling Regulations provide the powers for routine inspections. Section 249(2) of the eGambling Regulations affords the AGCC access to such records and information as is needed to carry out monitoring of any aspect of the operations of an eGambling licensee. The AGCC can call for such information from the licensee and its associates (including hosting facilities).

1073. Under Section 12(1) of the eGambling Ordinance, the AGCC may use its sanctioning powers in several circumstances. The sanctions that can be imposed by the AGCC are set out in Section 12(3). In addition to being able to issue a direction to rectify or a written caution, the AGCC can impose a financial penalty not exceeding £25,000. It can also suspend the validity of the eGambling license or certificate or revoke the eGambling license or withdraw the certificate. Also, the AGCC can combine any of these sanctions if it considers such a course of action to be appropriate. Between January 2008 and July 2010 the AGCC undertook five special investigations, issued 11 rectification directions, four formal cautions and applied two fines and two suspensions. Of these, one suspension related to unidentified players being registered and one certificate suspension arose due to an associate being convicted of money laundering. The Gambling (Alderney) Law provides that a person guilty of a first offence shall be liable for a fine not exceeding £25,000, a term of imprisonment not exceeding 6 months or both and for a second or subsequent offence a fine not exceeding £50,000, a term of imprisonment not exceeding 2 years or both. Money laundering offences are subject to these sanctions pursuant to Section 233 of the eGambling Regulations. In respect of the proceedings that can be brought by the AGCC, not only can the legal entity be held to account but also those employees, directors and members of senior management pursuant to Section 25 (1) of the eGambling Ordinance who would be responsible for the criminal behavior.

1074. All applicants for eGambling licenses, their ultimate beneficial owner(s) and senior management are closely scrutinized to confirm that they are indeed “fit and proper”. The suitability of the applicant is tested by examining the applicant’s character, business reputation and financial position; examining ownership and corporate structures; and looking into the character and reputation of business associates as well as the sources of funding. Those in a position to control the direction and operations of the applicant company are required to be approved by the AGCC as key individuals. Where an individual or entity is identified as not being “fit and proper” their application shall be refused pursuant to Section 5 (2) (a) of the Alderney eGambling Ordinance. Processes to determine whether a key individual is fit and proper do not include the conducting of police checks although criminal background checks are conducted through WorldCheck and Equifax. In instances where concerns are present the AGCC has also made use of external agencies and additional intelligence sources in order to enhance its criminal background checks. There have been two instances where associates of the eGambling

licensees have had their certificates revoked due to their criminal involvement subsequent to their relationship being approved by the AGCC. The ongoing due diligence of the certificate holders by the AGCC identified their criminal involvement and the association with such individuals was terminated.

### **Monitoring Systems for Other DNFBPs (c. 24.2 & 24.2.1):**

#### **Trust and Company Service Providers**

1075. The GFSC first began to undertake on-site inspections in the TCSP sector in 2001. A specific supervisory team is dedicated to supervising TCSPs for both licensing and AML/CFT requirements and takes a risk based approach to supervision updating risk assessments on every TCSP on an annual basis. Quarterly examination plans are established according to risk, with high risk entities being examined every three years, medium risk entities every 4 years. It is estimated that all TCSPs will be subject to an on-site examination approximately every 6 years.

1076. Section 49B (1) of the Proceeds of Crime Law allows the GFSC to enter any premises in the Bailiwick controlled or occupied by a business in order to determine whether a financial services business has complied with related regulations.

1077. When conducting on-site inspections of TCSPs, the GFSC undertakes three types of examinations: full inspections, management inspections and themed inspections. Full inspections cover all areas relevant to the risk assessment at both the management and operational levels. A selection of client files is selected by the GFSC to be reviewed during the inspection for compliance with regulatory requirements. An extensive questionnaire is administered covering the themes of corporate governance, risk-based approach, customer due diligence, high and low risk relationships, existing customers and monitoring transactions, record keeping, reporting suspicion and the responsibilities of the MLRO.

1078. Management inspections are directed at the directors and/or senior management of a licensee. These inspections involve offsite review of key documents prior to conducting onsite interviews with senior management and file reviews. Management inspections also involve a summary of CDD undertaken for at least five client relationships. Themed inspections cover one or more aspects of a licensee at the management or operational level and are conducted on an exception basis. The Fiduciary and Intelligence Services Division of the GFSC conducts an equal number of full and management inspections.

1079. Off-site supervision activities include the revision of prescribed annual returns and management letters issued by independent auditors. The material is reviewed by an inspector who specializes in the specific entity. In addition to these reviews the inspectors update the risk assessment for each entity under their responsibility on an annual basis. Occasional meetings with higher risk entities can also be scheduled.

1080. The Fiduciary and Intelligence Services Division conducted 23 onsite examinations in 2009 representing 12% of all entities in the sector. Examinations in the TCSP sectors have been steadily decreasing from a high of 43 inspections in 2006. The decrease can be largely attributed to the expansion of requirements for fiduciaries in 2008 and an emphasis on ensuring that higher

risk entities fully complied with new requirements. The Division is comprised of 11 staff members.

1081. The GFSC has issued two public statements with respect to individuals that did not meet their AML/CFT requirements. Financial penalties have been issued to three individuals ranging in amounts from £7,000 to £14,000.

### **Bullion Dealers**

1082. Bullion dealers are supervised by the Policy and International Affairs Division of the GFSC. There were currently two bullion dealers in the Bailiwick at the time of the assessment. Both bullion dealers were subject to on-site examination. One follow-up on-site inspection was conducted in April 2010 on AML/CFT obligations and no significant deficiencies were identified.

### **Legal Professionals, Accountants, and Real Estate Agents**

1083. Section 24 of the PB Regulations extends Sections 49B and 49C of the Proceeds of Crime Law to PB and therefore provides that, the GFSC may on request enter any premises in the Bailiwick. In exercising this right the GFSC may require the business to produce for examination any documents held by the business and to answer questions.

1084. Section 5 of the Financial Services Commission (Site Visit) Ordinance also provides powers for the GFSC to obtain information, documents and explanations from PB. A person who without reasonable excuse fails to comply with the use of these powers by the GFSC is guilty of an offence. For a discussion on what sanctions are applicable to PB please refer to Recommendation 32 in this section.

1085. The GFSC commenced its program of on-site inspections of PB in 2008. A detailed questionnaire is used to guide the inspections. Inspections include reviews of corporate governance, risk-based approach, customer due diligence, record keeping, low and high-risk relationships, monitoring transactions, reporting suspicions, employee screening and training and includes sample testing to ascertain effectiveness of compliance.

1086. Inspections have been conducted in the lawyers' offices and no issues regarding privilege have been raised. Some law firms have implemented the practice of separating their client's due diligence information reducing the potential for claiming privilege on a particular file. The GFSC has been promoting this as a best practice within the industry.

1087. The GFSC conducted a total of 22 on-site examinations since December 2008. These included 6 in the legal profession, 4 accountants and 12 in the real estate sector representing 39 percent of all PB. All high risk entities have been examined. The Policy and International Affairs Division plans to examine high risk entities every 12 to 18 months and medium risk entities every two to three years. It is planned that all prescribed businesses will be examined within four years.

1088. Off-site supervisory activities include the administration and analysis of a compliance questionnaire to all prescribed businesses which informs the entities' risk assessment. Information

from the GFSC's intelligence section is also received and analyzed further informing the affected entity's risk assessment.

1089. The GFSC has taken a number of measures to ensure that the cash prohibition that applies to Dealers in Precious Metals and Stones (DPMS) is implemented. The GFSC sent a letter to all DPMS on May 25, 2010 (during the assessment visit) reminding them of the prohibition to conduct transactions of £10,000 or more. The package also included information on money laundering, vulnerabilities of the DPMS sector and a feedback report prepared by the FIS. They have also written to all banks reminding them of the cash prohibition that applies to the DPMS sector and asking them to remain vigilant.

1090. Deficiencies are followed up by the GFSC by requiring a PB to amend its policies, procedures and controls or to take other actions to improve effectiveness such as undertaking training of staff by a particular date or reviewing their business risk assessment. The GFSC has also used its powers to impose conditions to four entities.

1091. The Royal Court pursuant to Section 15 of the PB Law may issue a disqualification order if it is satisfied that it is desirable in the public interest to do so. Such an order would prohibit a person, without the leave of the court, from being a director, controller, partner or senior officer of any prescribed business; or from participating in, the management, formation or promotion of any PB. A disqualification order may be issued for a period of up to 15 years. Section 12 to 14 of the law allows the GFSC to issue a formal, private reprimand, impose a financial penalty of up to £200,000 on issue or a public statement with respect to a PB. Furthermore, pursuant to Section 27 of the PB Regulations, a person who is guilty of breaching the regulations is liable on summary conviction to imprisonment of up to 6 months or a fine or both. The penalty on conviction on indictment is imprisonment for up to 5 years or a fine or both.

1092. Separately from the above powers the GFSC and the court, under the Guernsey Bar Law the importance of AML/CFT is explicitly recognized for lawyers. Under Section 17(1) of the Guernsey Bar Law the Bar's disciplinary body, La Chambre de Discipline, must hear any complaints about professional misconduct and under Section 17(2) this expressly includes a complaint in respect of breach of the Proceeds of Crime Regulations. Pursuant to 27 (1) (b) of the Guernsey Bar Regulations, the powers of sanction available to La Chambre de Discipline are reprimand, public rebuke, a fine, suspension and disbarring.

#### **Guidelines for DNFBPs ( applying c. 25.1):**

##### **Guernsey Financial Services Commission**

1093. The PB Handbook contains guidance as well as rules for lawyers, notaries, accountants and real estate agents across the spectrum of their obligations; guidance is one of the key features of the PB Handbook. The chapters of the PB Handbook cover corporate governance, the risk-based approach, customer due diligence, high-risk relationships, low risk relationships, monitoring transactions and activity, reporting suspicion, employee screening and training, and record keeping. Chapter 10 of the PB Handbook on suspicion reporting requirements covers not only the regulations but the DL and TL and the regulations made under those laws; the chapter also provides guidance on the Terrorism Order and the Al-Qa'ida Order.



1094. Chapter 13 of the PB Handbook provides industry specific guidance and includes several pages of information on suspicious features and activities. Appendix G to the FSB Handbook provides several pages describing ML and TF and a series of sector specific case studies demonstrating how financial products and services can be used to launder the proceeds of crime or to finance terrorism.

### **Alderney Gambling Control Commission**

1095. The AGCC publishes a number of guidelines to assist eGambling licensees in implementing effective AML/CFT regimes.

1096. In addition to a the Internal Control Systems (ICS) handbook which provides guidance on how to develop an entity specific control system, the AGCC has published the Prevention of Money Laundering & Combating the Funding of Terrorism Guidelines designed to assist licensees in understanding the rationale behind the legislation and offering practical assistance on areas they might like to consider when looking at their AML/CFT systems.

1097. The AGCC also issues Business from Sensitive Sources Notices, which under regulation 4(1) of the eGambling Regulations category 1 eGambling licensees are required to take note of and meet any requirements of all notices, instructions and counter-measures. These requirements did not apply to Category 2 holders. Further to the amendment of section 6(1) of Schedule 16 of the Alderney eGambling Regulations in July 2010, this requirement does not apply to Category 2 eGambling licensees.

### **Feedback**

1098. Annual feedback sessions are also organized by the FIS and GFSC for all reporting sectors. These sessions highlight reporting deficiencies as well as emerging trends and typologies that might impact a particular sector.

1099. The FIS has issued a Feedback and Typologies document that provides an analysis of STRs received, a summary of law enforcement actions, examples of grounds for suspicions by reporting sectors and typologies involving FIS sanitized cases.

1100. Meetings with industry representatives from the fiduciary, legal, accounting, estate agency and casino sectors all highlighted the availability of GFSC and the AGCC to provide guidance when entity specific questions or issues arose.

1101. The FIS provided feedback on the quality of STRs to most DNFBP sectors. The table below provides a breakdown of the feedback provided from 2004 to 2009.

<b>Year</b>	<b>Accountants</b>	<b>Law Firms</b>	<b>Estate Agents</b>
<b>2006</b>	2	0	0
<b>2007</b>	0	1	0
<b>2008</b>	0	5	2
<b>2009</b>	1	8	2
<b>Totals</b>	<b>3</b>	<b>14</b>	<b>4</b>

**Statistics (R.32)**

1102. A breakdown of examinations conducted between 2007 and 2009 and sanctions imposed during that period can be found below.

**On-site Inspections Conducted in DNFPB Sectors**

	<b>2007</b>	<b>2008</b>	<b>2009</b>
<b>TCSPs</b>	40	27	23
<b>Lawyers</b>	Not applicable	2	4
<b>Accountants</b>	Not applicable	1	2
<b>Real Estate Agents</b>	Not applicable	2	8
<b>ECasinos</b>	11	16	26

**Sanctions imposed on TCSPs**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010 (Jan/April)</b>
<b>Directions/ License conditions</b>	3	2	7	4
<b>Public Statement</b>	-	-	0	3
<b>Monetary Penalty</b>	-	-	-	3

**Sanctions imposed on Prescribed Businesses**

	<b>2009</b>	<b>2010 (Jan/April)</b>
Directions/ License conditions	6	1

**Sanctions Imposed on Casinos**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010 (Jan/April)</b>
Rectification proposal/Direction to rectify	4	3	4	-
Caution	-	-	-	7

License/certificate suspension	-	-	-	2
License Denial	-	1	-	-
Fine	-	1 (suspended)	-	-

**Adequacy of Resources—Supervisory Authorities for DNFBBs (R.30):**

1103. As described throughout Section 4, the GFSC and the AGCC have the required powers to effectively monitor and ensure AML/CFT compliance by all DNFBB sectors. The GFSC and AGCC's powers to obtain information, conduct examination and apply sanctions are detailed earlier in this section.

1104. Based on the fact that eCasinos are inspected annually, it would appear that the supervisory function of the AGCC is sufficiently resourced. The AGCC has 17 staff including 9 inspectors that are responsible on average for 5 licensees each. Three inspectors specialize more specifically on AML compliance.

1105. Examinations in the TCSP sector have been declining going from a high of 43 inspections in 2006 to 23 inspections in 2009. Authorities explained that the reduction in examination in 2008 was due to the expansion of AML requirements which resulted in the GFSC placing enhanced focus during inspections on new requirements including the establishment of a business risk assessment. Given the high risk status conferred to TCSP the recent number of on-site inspections should be increased. The GFSC has indicated that increasing the number of examinations in the fiduciary sector was a priority and hired an additional Assistant Director as of June 21, 2010 to increase their inspection coverage.

1106. Three officers and two contractors conduct inspections of bullion dealers, legal professionals, accountants and estate agent. Since December 2010, 22 inspections were conducted in these sectors. Given the small number of entities (58) in these sectors, it would appear that resources dedicated to PB supervision are adequate.

1107. AML/CFT training is provided to GFSC employees through the completion of an on-line training module, periodic face-to-face training by specialists and attendance at workshops and conferences. GFSC employees are subject to confidentiality provisions of the GFSC which are renewed on an annual basis. The two contractors who undertake on-site inspections are subject to confidentiality provisions which form part of the terms of their contracts. They have also completed the on-line training module and attended conference, seminars and briefings on AML/CFT.

**Implementation and effectiveness:**

1108. The AGCC's supervision of eCasinos is extensive. Annual onsite inspections are conducted, eCasinos are required to provide monthly and quarterly reports that are analyzed by the AGCC and any changes to the eCasinos' ICS must be reported to the AGCC for approval.

1109. The ICS is the basis for all onsite inspection and AML/CFT is part of all onsite examinations. The principal emphasis of onsite inspections is to ensure the proper administration of gaming activities with the AML component representing between 10 to 50 percent of the 10 person-day on-site inspection. The AGCC conducts a "fit and proper" test on key individuals involved in seeking an eGambling license. The processes undertaken are extensive and include criminal background checks, identity verification, examination of financial position ownership and corporate structures. However, police record checks are not conducted for all these key individuals. Although criminal background checks are conducted through Equifax and WorldCheck these private software do not have the same level of accuracy and certainty as police record checks. This increases the risk that criminals or their associates obtain an eGambling license. There have been two instances where associates of the eGambling licensees have had their certificates revoked due to their criminal involvement subsequent to their relationship being approved by the AGCC. The ongoing due diligence of the certificate holders by the AGCC identified their criminal involvement and the association with such individuals was terminated. This highlights the vulnerability of the sector to criminal influence requiring the highest standard of verification when approving individuals in key positions.

1110. The GFSC's efforts with respect to TCSP supervision provide a good basis for supervisory activity. Full inspections appear to be comprehensive and the inspection questionnaire used covers all aspects of the entities' obligation. When deficiencies are identified, follow-up action is requested on a timely basis and inspectors ensure that the mandated timeframes are respected. When follow-up actions are not complied with the GFSC has used its powers to impose conditions and has issued two public statements and three fines to individuals. The GFSC has referred four cases of noncompliance to the Law Officers for criminal prosecutions.

1111. The frequency of supervision of TCSP needs to be enhanced. The reduction of examination by nearly 50 percent since 2006 is inadvisable in a sector that has been identified as high risk by the authorities. The three year cycle to conduct onsite examinations for high risk entities is not appropriate given the prominence of the sector in the Bailiwick and its vulnerability to ML.

1112. The monitoring framework for the legal profession, accountants and real estate agents is appropriate given the number of businesses and their vulnerability to ML and TF. The scope of onsite inspections is comprehensive and the frequency of examination is acceptable with 41 percent of entities having been examined since December 2008.

1113. Inspections in lawyer's offices seem to have avoided some of the challenges linked with solicitor-client privilege. Promoting the best practice of separating client due diligence files seems to be a practical solution to addressing the co-mingling of privileged information with CDD and record keeping requirements. This separation of documentation does not impede the

ability of the GFSC to ensure compliance. All information apart from that pertaining to the provision of advice is accessible and accessed.

1114. The GFSC has conducted on-site inspections of both bullion dealers. Although no on-site inspections have been undertaken with retail jewelers the GFSC has undertaken some measures to ensure that the cash restriction requirement that applies to all DPMS (both jewelers and bullion dealers) is being respected. Prior to the onsite visit of the assessment team, compliance with the cash prohibition provisions had been discussed between the Law Officers, the GBA and the GFSC; with the GFSC contacting banks to assess use of cash by retail DPMS. During the visit, the GFSC wrote to DPMS reminding them of the prohibition on accepting cash above £10,000. The GFSC also wrote to banks to remind them of the cash prohibition imposed on dealers and requested their vigilance in monitoring cash transactions conducted by DPMS.

1115. Both the AGCC and the GFSC have a wide range of sanctions at their disposal. Recommendation 32 reflects the sanctions that have been applied over the last three years. As the statistics demonstrate both supervisors used a wide range of sanctions to address non-compliance. These methods ranged from imposing conditions, imposing fines, issuing public statements and revoking licenses. In almost all circumstances where sanctions were imposed the deficiencies identified were addressed. In a few instances the business withdrew its license or relocated. The GFSC has referred four cases of criminal non-compliance to the Law Officers' Chambers. Investigations are currently on-going.

#### 4.3.2. Recommendations and Comments

- Police record checks are not conducted systematically on key individuals seeking an eGambling license. The absence of police record checks increases the risk that a license may be granted to criminals or their associates.
- The GFSC should, as it has recognized, increase the frequency of its on-site inspections for TCSPs. Examinations have been reduced by nearly half in the TCSP sector since 2006. All TCSPs should be inspected on a more frequent basis.
- The AGCC should provide more guidance with respect to AML requirements particularly in the area of customer due diligence.

#### 4.3.3. Compliance with Recommendations 24 and 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors underlying rating
<b>R.24</b>	<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 on-site inspections for TCSPs.</li> </ul>
<b>R.25</b>	<b>LC</b>	The AGCC should provide additional guidance with respect to AML requirements particularly CDD measures.

#### **4.4. Other Non-Financial Businesses and Professions—Modern, Secure Transaction Techniques (R.20):**

1116. The Methodology provides the following examples of businesses or professions to which countries “should consider” applying the FATF Recommendations: dealers in high value and luxury goods, pawnshops, gambling, auction houses, and investment advisers.

##### **4.4.1. Description and Analysis**

###### **Legal Framework**

1117. Suspicious reporting requirements outlined in the DL and TL apply to all individuals and businesses in the Bailiwick, not only those businesses who have AML/CFT obligations with respect to CDD and internal controls. As a result reporting obligations for professionals extend beyond activities that trigger broader AML/CFT obligations.

###### **Other Vulnerable DNFBPs (applying R. 5, 6, 8-11, 13-15, 17 & 21 c. 20.1):**

1118. Guernsey has extended its AML/CFT framework beyond the institutions covered by the FATF definition of financial institution and the businesses and professions covered by the FATF definition of DNFBPs.

1119. The definition of FSB has historically covered investment advisers licensed under the Protection of Investors Law and money brokers that are not covered under the FATF definition of financial institutions. The definition also covers general insurers as the GFSC considers the ML risks of non-life and other investment related insurance to be underestimated internationally. More recently, in March 2010 the framework was extended to cover bullion dealers, bullion brokers and stamp dealers following vulnerabilities identified by law enforcement. In addition, electronic money has been explicitly brought into the definition of the issue, redemption, management or administration of means of payment. These extensions were introduced on the grounds of ML/FT risk.

1120. The Alderney AML/CFT framework encompasses all e-gambling/gambling licensees. In February 2010, Schedule 2 to the Proceeds of Crime Law was amended to extend the AML/CFT framework to include any activity carried out by external accountants, tax advisers, auditors and insolvency practitioners. These businesses are required to register with the GFSC by October 4, 2010 and meet all the requirements of the PB Regulations and the rules in the PB Handbook by October 31, 2010. This extension is not based on risk—it reflects a desire by the Guernsey authorities to seek closer equivalence with EU standards.

1121. All the sectors listed above are subject to GFSC supervision. No STRs have been received by these sectors.

**Modernization of Conduct of Financial Transactions (c. 20.2):**

1122. Guernsey issues its own sterling notes and coins as the legal tender of the Island, which are readily accepted throughout the Channel Islands, although their acceptability is limited elsewhere. The notes are issued in £50, £20, £10, £5 and £1 denominations. There is limited demand for the £50 note. The maximum £50 denomination is smaller than the largest denomination in the U.K. (£100) and the euro zone (€500). U.K. bank notes are also legal tender in the island and circulate alongside the Guernsey issue.

**GFSC**

1123. GFSC encourages FSB to develop modern and secure techniques of money management as a means of encouraging the replacement of cash transfers. In addition, the GFSC discourages the inappropriate use of cash collections and requires the maintenance of registers by FSB which record the value and reasons for cash collections pursuant to their condition making authority. The GFSC reviews the use of cash during onsite inspections. It is made clear during inspections that cash is vulnerable to being used for ML and TF. Meetings with industry confirmed that the use of cash outside the banking sector is very rare.

1124. The GFSC has worked with private banks over a number of years to manage down customer expectations about the availability of cash. All cross border payments are made to customer accounts at a specified bank, and cross border counter payments have been eliminated. Very few private banks permit cash payments and those that do, they keep a register or log of cash transactions available for inspection by the GFSC.

**AGCC**

1125. The eGambling regulations preclude the licensed operator from ever handling player funds in the form of cash. Player funds are always credited and debited to the licensed entity through financial intermediaries—either banks, credit card operators or other payment intermediaries authorized by the AGCC.

**Implementation and effectiveness:**

1126. Guernsey has extended the AML/CFT obligations to investment advisers, external accountants, tax advisers, auditor and insolvency practitioners as well as bullion dealers, bullion brokers and stamp dealers. It has also discouraged the use of cash and is not issuing large denomination notes.

**4.4.2. Recommendations and Comments**

None.

**4.4.3. Compliance with Recommendation 20**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.20</b>	<b>C</b>	

## 5. LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANIZATIONS

### 5.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33)

#### 5.1.1. Description and Analysis

##### Legal Framework

1127. Bailiwick legal entities are regulated by the Companies (Guernsey) Law 2008 (“Guernsey CL”), the Companies (Alderney) Law 1994 (“Alderney CL”) and the Limited Partnerships (Guernsey) Law 1995. In addition, the Control of Borrowing Ordinance (“COBO”) and the Criminal Justice (Proceeds of Crime) (Financial Service Businesses) Regulation are relevant for this section of the report.

##### Measures to Prevent Unlawful Use of Legal Persons (c. 33.1);

1128. The Bailiwick has the following measures in place to obtain and maintain beneficial ownership information on legal persons incorporated under Guernsey or Alderney law:

- For the majority of Guernsey companies, the requirement to have a registered agent, who in turn is under an obligation to “take reasonable steps” to ascertain the identity of persons who are beneficial owners of the company;
- For the majority of Bailiwick companies (Guernsey and Alderney) and limited partnerships, the requirement to utilize a licensed Trust and Company Service Provider (TCSP), who in turn is subject to and in most cases supervised for compliance with the CDD obligations under the AML/CFT regime;
- For all Bailiwick companies (Guernsey and Alderney) and limited partnerships, the obligation to provide certain beneficial ownership information to the relevant registry (Alderney companies registry, Guernsey company registry or Guernsey partnership registry) and to update such information;
- For all Bailiwick companies (Guernsey and Alderney) and limited partnerships, the duty to maintain shareholder, director and partner registers and to file annual returns with the Alderney and Guernsey Company Registrars;
- For Alderney companies only, the COBO conditions the incorporation on consent by the GFSC, which is granted only upon provision of beneficial ownership information. For Guernsey, the COBO was repealed upon introduction of the registered agent requirement.
- For all Bailiwick companies and limited partnerships, the above mentioned measures are supported by investigative and other powers of LEAs and the GFSC to obtain access to information held by FSBs, TCSPs and other entities and persons as outlined under Recommendations 4, 27, and 28 of this report.



## **Registered Agent for Guernsey Companies**

1129. With few exceptions, Guernsey companies are required under Section 483 Guernsey CL to have a registered agent, who must be either a Guernsey resident serving as individual director of the company or a licensed company service provider. Companies that fail to comply with this requirement are guilty of an offense under the Guernsey CL.

1130. The name and address of the registered agent must be provided to the Guernsey registrar upon incorporation and any changes to it are to be provided within 14 days. In addition, the company itself is required pursuant to Section 485 to record such information.

1131. Under Section 486 Guernsey CL, the registered agent is required to “take reasonable steps to ascertain the identity of the person who are the beneficial owners of members’ interest in that company” whereby the law does not elaborate or define the meaning of the terms “reasonable steps” and “beneficial owner”.

1132. Pursuant to Section 487 Guernsey CL, the name, usual residential address, nationality and date of birth of each natural beneficial owner must be obtained. For beneficial owners that are legal entities, the company name, its registered or principal office, the legal form and law by which it is governed and if applicable its registration number has to be obtained. About 90 percent of all Guernsey companies are covered by the registered agent requirement. Once obtained, records on beneficial owners have to be kept at the registered office in Guernsey, whereby police, customs, supervisory and prosecuting authorities may gain access to such information on the basis of a “certificate” as outlined under criterion 33.2 below. The authorities further clarified that Section 487 spells out an ongoing obligation and thus requires the registered agent to keep beneficial ownership information updated at all times. Failure to comply with Section 487 may result in criminal prosecution of the registered agent.

1133. The authorities indicated that in the absence of a definition in the Guernsey CL, the term “beneficial owner” would be defined in line with the definition as contained in the Criminal Justice (Proceeds of Crime) (Financial Service Businesses) Regulation which, as outlined under Recommendation 5 above, is in line with the definition in the FATF standard and refers to a natural person in all cases. However, the authorities’ explanation would be in conflict with Sections 487 of the Guernsey CL as the latter differentiates between beneficial owners that are natural and those that are legal entities in specifying the type of information that has to be obtained by the registered agent. Based on this differentiation, it would appear that the term “beneficial owner” as contained in the Guernsey CL is wider than the definition of the term as contained in the Criminal Justice (Proceeds of Crime) (Financial Service Businesses) Regulation and thus does not in all cases require identification of the natural person standing behind a shareholder, director, beneficiary or controller/enforcer.

1134. In addition, the requirements under Section 486 Guernsey CL and the Criminal Justice (Proceeds of Crime) (Financial Service Businesses) Regulation seem to be inconsistent in that the former merely requires a registered agent to take “reasonable measures to ascertain” whereas Section 4 of the Proceeds of Crime Regulation requires TCSPs to “identify and take reasonable steps to verify” beneficial ownership information. The assessors pointed out that licensed TCSPs who are subject to both the Guernsey CL and the Regulation may get confused as to which

provisions to apply, which may have a negative impact on the quality and completeness of the information obtained. The authorities stated that the term “reasonable steps” would be interpreted in a strict sense and that registered agents would be required to obtain beneficial ownership in all but very exceptional circumstances.

1135. The authorities further emphasized that TCSPs would be subject to criminal liability for breach of the Regulation provisions and would thus in any case apply the stricter provision of the Regulation. This interpretation was also confirmed by private sector participants, which stated that they would always identify the natural persons owning or controlling a legal entity and interpret Guernsey law to require them to do so.

### **Utilization of Licensed TCSP by majority of Bailiwick companies and limited partnerships**

1136. As a general principle, the Guernsey CL requires that all application for incorporation of a Guernsey company must be submitted by a TCSP (Section 17 Guernsey CL). Applications under Alderney law must be submitted by an advocate, whereby since 2008 advocates require a TCSP license to carry out such an activity. At the initial formation stage, all Bailiwick companies are thus linked to a licensed TCSP, which in turn is required to obtain and maintain beneficial ownership information as part of the initial CDD process as outlined under Recommendation 12 of this report. Limited partnerships may be registered without involvement of a licensed TCSP.

1137. The majority of Bailiwick companies and limited partnerships utilize the services of a licensed TCSP in the course of their existence based on the rather extensive licensing requirements as set out below in the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law 2000. According to the law, anybody who “by way of business” in or from the Bailiwick, any company or corporate administration activities, including the formation, management or administration of companies or partnerships or other unincorporated bodies, the provision of corporate or individual directors, of registered office, company secretary or nominee services or to act as a director of a company or partner of a partnership is required to obtain a Guernsey TCSP license. The term “by way of business” is defined in the Law as the specified activities in exchange for “any income, fee, emolument or other consideration in money or money's worth.” Consistent with Recommendations 12 and 16, licensed TCSPs are subject to the full range of CDD obligations under the Criminal Justice (Proceeds of Crime) (Financial Service Businesses) Regulation, including the obligation to identify and verify the identity of beneficial owners and to keep such information complete, accurate and updated, and are monitored for compliance with these requirements by the GFSC.

1138. The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law provides for a number of “exemptions” which allow persons to conduct the above-mentioned activities “by way of business” but in the absence of a license. Most significantly, Section 3 (1) (g) of the Fiduciary Law, allows for a person to act as a director for up to six companies. While in such a scenario the person would not be supervised due to the absence of a license, the CDD obligations under the Criminal Justice (Proceeds of Crime) (Financial Service Businesses) Regulation would still apply to persons covered by this exemption pursuant to Schedule 1 Part I (23) of the Regulation. In the absence of a supervisory framework, however, it is questionable how accurate and complete beneficial ownership information maintained by exempted company service providers would be. It should be noted, however, that in such

scenarios the other measures (registration requirement, registered agent requirement, law enforcement powers) are still applicable.

1139. The authorities stated that about 70% of all Guernsey companies and about 50 percent of all Alderney companies are managed by licensed TCSPs.

### **Provision of Certain Beneficial Ownership Information to Registries**

1140. Bailiwick companies obtain legal personality upon registration with the relevant registry. To incorporate a company and thus obtain legal personality, registration of (1) a memorandum of incorporation signed by at least founding member and stating amongst other things the company name, the registered office in Guernsey, the type of company to be incorporated, the liability of the company members and whether or not the company is to be established as cell company; (2) the articles of incorporation setting out the company's management and the decision making processes; and (3) the address of the company's first registered office, the name, address or registered office, nationality or legal form, occupation and date of birth or registration number of the first directors, and the name and address of the first registered agent (if applicable) and all founding members is required. Changes to the directors or particulars of directors, to the registered office or the registered agent have to be provided to the relevant companies' registry within 14 days.

1141. Limited partnerships are required under Section 8 of the Limited Partnership Law to provide details on the name of the limited partnership, the nature and principal place of its business, its registered office in Guernsey and the full name of every general partner and his address upon registration. Any change to the registered information must be provided to the registry within 21 days. Changes to the registered office take effect only upon notification of the partnership registry.

### **Shareholder, Director, and Partner Registries**

1142. Under both the Guernsey CL and Alderney CL, companies are required to maintain shareholder and director registers at their Guernsey or Alderney registered office.

1143. Under Sections 123 Guernsey CL and Section 71 Alderney CL, the member registry has to contain the name and address of all members as well as the date on which a person was registered or ceased to serve as such. In the case of companies with share capital, the number and class of share held by each member has to be provided as well. For companies limited by guarantee, the register also has to contain the name of each guarantor and the amount guaranteed. Less stringent requirements apply to incorporated cell companies with an incorporated cell of more than 50 members.

1144. Under Sections 143 Guernsey CL and Section 70 Alderney CL, director registries must provide the name and residential or service address, nationality, business occupation and date of birth of each natural person director; and the name, registered or principal office, legal form, and the jurisdiction of incorporation and the register number for each company director. Any changes to the director registry have to be provided to the relevant Company registry within 14 days. In addition, the verification of registered director information in the annual tax return is required.

Under Alderney but not Guernsey law, changes to the members or particulars of members of the company also have to be verified in the annual tax return.

1145. Limited partnerships are required to maintain a register indicating, amongst other things, the full name and address of each limited partner.

### **Control of Borrowing Ordinance for Alderney Companies**

1146. Under the Alderney system, companies require “consent” from the GFSC on behalf of the Policy Council pursuant to the Control and Borrowing (Bailiwick of Guernsey) Ordinance (COBO) before they can apply for incorporation. The GFSC provides such consent only after having conducted due diligence on the proposed beneficial owners and the proposed activity of the company. While the beneficial ownership information so obtained is not provided to the Alderney Company registry, the information can be obtained by LEAs from the GFSC through the gateways outlined below. Until 2008 the COBO was also applicable in Guernsey. The introduction of the registered agent requirement, however, eliminated the need for this measure and the COBO was subsequently repealed for Guernsey.

1147. The authorities provided a copy of the consent request form, which instruct the applicant to indicate details of the party interested in the company registration, the person from whom instructions to register the company have been received, of the registered and beneficial owners, of all nominee shareholders and the beneficial owners of each share, and those persons for whose ultimate benefit the company will be operated. Thus, the application form requires most but not all elements of the term “beneficial owner” as defined in the FATF standard.

### **Access to Information on Beneficial Owners of Legal Persons (c. 33.2):**

1148. Information obtained by TCSPs in the course of conducting CDD can be accessed by LEAs pursuant to Section 14 (4) (b) of the PB regulation, which provides that CDD information must be made available promptly to any police officer, the FIS or the GFSC. The analysis sections for Recommendations 4, 27 and 28 describe in great detail how information held by the GFSC may be obtained by LEAs and these gateways are also available for information obtained for Alderney companies pursuant to the COBO.

1149. For Guernsey companies, Section 490 of the Guernsey CL provides that the registered agent has to grant LEAs, the GFSC and the Attorney General access to beneficial ownership information upon presentation of a certificate 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. A request may also relate to information which existed prior to enactment of the Guernsey CL.

1150. Both the Alderney and Guernsey Registry of Companies are publicly accessible. While the Alderney registry is only available in paper form, the Guernsey registry is also available

online. All information maintained as part of the two registries, including underlying documentation, can be accessed by LEAs, the public and thus also FSB, whereby a small fee may apply. Equally, the partnership registry is publicly available.

1151. Information held by the companies themselves, including director and shareholder registries are publicly accessible upon request and against a small fee. Access to the register may only be denied only based on a court decision. Information held by limited partnerships is accessible by LEAs pursuant to Section 15 (11) Limited Partnership Law.

**Prevention of Misuse of Bearer Shares (c. 33.3):**

1152. While not expressly prohibited, both Guernsey and Alderney law effectively treat bearer shares as registered shares due to the requirement under both laws to maintain a complete shareholder register. The authorities clarified that benefit rights attach to the shareholder register rather than possible share certificates. Express reference to bearer shares is made in Section 77 (3) Guernsey CL, which prohibits the migration of foreign companies into Guernsey if they have issued bearer shares.

**Additional Element—Access to Information on Beneficial Owners of Legal Persons by Financial Institutions) (c. 33.4):**

1153. As outlined under c. 33.2, information held by companies and partnerships (including director and shareholder registers) as well as information maintained by the company and partnership registries is publicly available and can thus accessed by FSB.

**Implementation and effectiveness:**

1154. Bailiwick companies are subject to a wide variety of measures which in summary ensure that accurate and comprehensive beneficial ownership information is obtained for all legal entities. Most notably, the registration requirements under the Guernsey and Alderney CL and the Partnership Law coupled with the link between the majority of Bailiwick companies and licensed TCSPs, ensure transparency with respect to the beneficial ownership and control of legal persons.

1155. The Bailiwick authorities appear to have a good understanding of the risks involved with the use of corporate vehicles as asset management tools and thus seem to allocate a large amount of resources and efforts on the effective implementation of the measures outlined above. Effectiveness is further facilitated by the high level of professionalism amongst Bailiwick TCSPs. All TCSPs the assessors met with were well informed of their obligations with respect to beneficial ownership information and stated that in all cases the natural person ultimately owning or controlling a legal entity would be identified.

1156. To ensure a consistent application of the measures described above including by companies that are not linked to a licensed CSP, however, the authorities should clarify the meaning of the terms “beneficial owner” and “reasonable measures to ascertain” as contained in the Guernsey CL.

### 5.1.2. Recommendations and Comments

- The authorities should clarify the meaning of the terms “beneficial owner” and “reasonable measures to ascertain” as contained in the Guernsey CL to ensure a consistent application of the measures described above.

### 5.1.3. Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
<b>R.33</b>	C	

## 5.2. Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)

### 5.2.1. Description and Analysis

#### Legal Framework

1157. Guernsey allows for the creation of trusts under the Trust (Guernsey) Law 2007 (“the Trust Law”) and of general partnerships pursuant to the Partnership (Guernsey) Law 1995 (“the Partnership Law”). In addition, the Criminal Justice (Proceeds of Crime) (Financial Service Businesses) Regulation is relevant for this section of the report.

#### Measures to Prevent Unlawful Use of Legal Arrangements (c. 34.1); Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2):

1158. As outlined in the general section of this report, trusts and general partnerships may be set up under Guernsey but not under Alderney or Sark law.

1159. Neither trusts nor general partnerships are subject to any registration requirements. However, any person who provides “by way of business” services relating to or advice on the formation, management or administration of trusts or partnerships, e.g. acting as a partner for any partnership, or as an individual or corporate trustee or as a protector to a trust, is a regulated activity under the Regulation of Fiduciaries, Administration Businesses and Company Directors (Bailiwick of Guernsey) Law 2000 as outlined above and thus subject to the full range of CDD obligations under the Criminal Justice (Proceeds of Crime) (Financial Service Businesses) Regulation, including the obligation to identify and verify the identity of beneficial owners and to keep such information complete, accurate and updated.

1160. As outlined in Recommendation 33 above, the term “by way of business” applies to any regulated activity conducted for remuneration and thus allows for only very narrow exemptions. As described in Recommendations 12 and 16, licensed TCSPs are also supervised for compliance with the CDD requirements.

1161. For access to information held by TCSPs see the analysis under Recommendations 27 and 28 of this report.

1162. The authorities stated that in the absence of a registration requirement, it would not be possible to ascertain the total number of trusts and general partnerships established under Guernsey law. However, based on statistics held by the GFSC, there are about 27,000 Guernsey trusts administered by Guernsey TCSPs. The authorities estimated that an additional 3,000 Guernsey trusts not linked to a licensed TCSP may exist. It was unclear how many general partnerships existed and what percentage thereof was linked to a licensed TCSP. However, the authorities stated that the number of partnerships seemed to be very limited. Upon request by the GFSC, the three largest law firms in the Bailiwick reviewed their historical records and concluded that none of them had ever been involved in the establishment of a general partnership.

1163. Those partners and trustees that are not subject to the AML/CFT framework are not under any legal obligation to obtain and maintain accurate, complete and updated beneficial ownership information. Of course, the investigative powers available to LEAs as outlined in Recommendations 27 and 28 could be used to inquire and if necessary compel the production of such information. While in practice trustees would be expected to obtain some beneficiary information in carrying out their professional function, in the absence of a specific legal obligation to that effect, it is questionable how complete and accurate such information would be.

**Additional Element—Access to Information on Beneficial Owners of Legal Arrangements by Financial Institutions) (c. 34.3):**

1164. Information held by TCSPs is not publicly available and therefore not accessible to FIs.

**Implementation and effectiveness:**

1165. The Bailiwick authorities appear to have a good understanding of the risks involved with the use of legal arrangements as asset management tools and thus seem to allocate a large amount of resources and efforts on the effective implementation of the measures outlined above. Effectiveness is further facilitated by the high level of professionalism amongst Bailiwick TCSPs. All TCSPs the assessors met with were well informed of their obligations with respect to beneficial ownership information and stated that in all cases the natural person ultimately owning or controlling a legal entity would be identified.

1166. While the majority of Guernsey trusts are linked to licensed TCSPs and thus transparency with respect to the beneficial ownership seems to be warranted, the situation is less clear with respect to general partnerships. The authorities provided statistics which indicate that 496 general partnerships are linked to licensed TCSPs. In the absence of an estimate of the total number of partnerships, it is however difficult to put the figure indicated above into context. The fact that there is a number of trusts (up to 10%) and an unknown number of partnerships that are not covered by any specific obligations to obtain and maintain accurate and complete beneficial ownership information gives rise to concern. The assessors agree that LEA powers may be useful in such cases and result in the obtaining of beneficial ownership in some cases. However, in the absence of a specific legal obligation to that effect, it is questionable how complete and accurate information held by such trustees or partners would be in most situations.

### 5.2.2. Recommendations and Comments

- The authorities should put in place specific measures to ensure the availability of accurate and complete beneficial ownership information for trusts and general partnerships that are not administered by licensed TCSPs.

### 5.2.3. Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
<b>R.34</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>

## 5.3. Non-Profit Organizations (SR.VIII)

### 5.3.1. Description and Analysis

#### Legal Framework

1167. The Charities and Non Profit Organizations (Registration) (Guernsey) Law, 2008 (introduced in November 2008) sets forth the registration requirements for non-profit organizations (NPOs) which have gross assets and funds of £10,000 or more, or a gross annual income of £5,000 or more. The law assigns responsibility to the Director of Income Tax for establishing and maintaining a registry of NPOs. The registration obligations only apply to NPOs located in Guernsey, Herm and Jethou. Legislation is currently being considered that would extend registration obligations to NPOs located in Sark and Alderney.

1168. Both non-profit organizations and charities are required to register for the NPO registry with the Director of Tax; however, exemptions exist for NPOs that have less than £10,000 in gross assets or funds or have gross annual income of less than £5,000. Manumitted organizations, that is, those organizations under the control of professional trustees licensed by the GFSC under its regulatory legislation and whose dealings with the NPO are carried out in the course of their regulated activities are not subject to the registration requirements.

1169. The Charities and Non Profit Organizations Law also requires NPOs and manumitted organizations to keep records of all financial transactions for 6 years. Registered organizations are also required to file annual financial statements and renew their registration. The annual filing requirement is not extended to manumitted organizations.

1170. The Director of Income Tax can refuse to register an organization if he is not satisfied that the organization is a NPO. Failure by an NPO to register is a criminal offence and liable on summary conviction to a fine. Providing false or misleading information can result in imprisonment for a term not exceeding two year or to a fine or both.



1171. Legal persons and/or legal arrangements are not prohibited from owning or controlling non-profit organizations. The requirements in the Bailiwick to obtain information as to beneficial ownership of legal persons or arrangements described under Recommendations 33 and 34 applies to the owners or controllers of NPOs in all such cases. An application for registration under the Charities and Non Profit Organizations Law must state the full names of the persons who own, direct or control the activities of the organization including (without limitation) its directors, officers and trustees, and give relevant addresses pursuant to Section 2 of Schedule 1 of the Charities and NPO Law.

**Review of Adequacy of Laws & Regulations of NPOs (c. VIII.1):**

1172. The introduction of the Charities and Non Profit Organizations (Investigatory Powers) Law resulted from a review conducted by a working group established in 2005 comprised of the Attorney General, the Chief Executive of the States of Guernsey, the Administration (the post title was later changed to Director) of Income Tax, the Chief Executive Officer of the Commerce and Employment Department, the Director of Financial Services Development of the Department, the Director General of the GFSC and the Director of Policy and International Affairs at the GFSC.

1173. According to the authorities, the Director of Income Tax conducts periodic risk assessments of NPOs. According to the internal framework developed by the Director of Income Tax, higher risk organizations include all NPOs who operate outside the Bailiwick whilst those in the medium category include NPOs that while operating internationally are branches or sub-organizations of NPOs established in the U.K. or other major jurisdiction. Accounts are received for all higher and medium category NPOs and these are sampled by the Director for areas of concern. Details of all medium and high risk NPOs are forwarded to the FIS, and this information is updated on a quarterly basis. According to authorities, the vulnerability of NPOs in the Bailiwick is considered to be low. Reports on the effectiveness of the regimes are provided to the AML Advisory Committee. One such report was presented in May 2010.

1174. Authorities have only recently undertaken a risk analysis of manumitted organizations. It was determined that a total of 207 NPOs and charities are administered by fiduciaries with an asset value of £2 billion. In relation to asset location, the top three jurisdictions are: Switzerland, Guernsey and Luxemburg. The purposes of the NPOs are generally for specified cultural, educational and social purposes. The risk assessment conducted by the GFSC determined that the activities undertaken by manumitted organizations are low risk.

**Outreach to the NPO Sector to protect it from Terrorist Financing Abuse (c. VIII.2):**

1175. The Director of Income Tax and the GFSC met with the Association of Guernsey Charities prior to the coming into force of the registration requirements. This relationship with the Association has been maintained by the Director of Income Tax. The details of the registration requirements were included in a press release that was sent and published in the local media. A presentation by an officer of the U.K. Charities Commission was delivered to the NPOs in 2007. Although the main purpose of the information sessions was to raise awareness with respect to the new registration requirements, part of the session was dedicated to the terrorist financing vulnerabilities faced by NPOs.

1176. Information on the risks associated with terrorism financing had been placed on the States of Guernsey website, the States of Alderney website and the GFSC's website. All registered NPOs were also directed to this information. The GFSC also held an information session in June 2010 targeted to TCSPs who manage manumitted organizations to ensure that they are aware of the obligations that apply to manumitted organizations.

**Supervision or Monitoring of NPOs that Account for Significant Share of the Sector's Resources or International Activities (c. VIII.3):**

1177. The Director of Income Tax has established a relationship with the Chairman of the Association of Guernsey Charities. In addition to the outreach activities noted above, a comparison was conducted between the entities on the registry and charities found on the association's membership list. Those entities that were not registered were contacted by the Association and asked to register. According to the authorities, all entities contacted registered and now appear on the registry.

1178. According to the authorities, the Director of Tax undertakes a periodic review of registration application and annual renewals. However no supervision of NPOs has been undertaken with respect to record keeping requirements. Manumitted organizations had not been subject to specific supervisory oversight by the GFSC with respect to all of their obligations under the NPO Law prior to May 2010. The GFSC did however examine some record keeping requirements of manumitted organizations during that time.

**Information maintained by NPOs and availability to the public thereof (c. VIII.3.1):**

1179. Section 2 (2) of the Schedule to the Charities and NPOs Registration Law requires that registered NPOs provide the full names of persons who own, direct or control the activities of the organization as well as the details of the purposes, objectives and objects of the organization. The name of the NPO is publicly available on the Income Tax Office website. 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 are not available to the public. Manumitted organization are required to keep copies of all financial transactions pursuant to Section 8 (1) (a) of the NPO Law. This information is not accessible to the public.

**Measures in place to sanction violations of oversight rules by NPOs (c. VIII.3.2):**

1180. Failure by NPOs to comply with the requirement to register is punishable on summary conviction with a fine of up to £10,000 under Section 1 (5) of the Charities and NPO Law. Under section 2 of the Law it is an offence to provide false and misleading information. Section 3 states that providing false or misleading information 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 under paragraph 8(4). There were no civil or administrative sanctions with respect to non-registration at the time of the on-site visit.

**Licensing or registration of NPOs and availability of this information (c. VIII.3.3):**

1181. NPOs and charities are required to register with the Director of Income Tax as per paragraph 2 of the Schedule to the Charities and NPO Law. NPOs in Alderney and Sark are not required to be registered under the NPO Law. However, charities in Alderney which have gross assets and funds of £10,000 or more, or a gross annual income of £5,000 or more must register if they want to retain their tax exempt status. Manumitted organizations are not required to be registered.

1182. The Charities and Non-Profit Organisations (Registration) Sark Law introduces a distinct registration framework for Sark. This framework is simpler than that for Guernsey. The provisions of the Sark NPO Law came into force on May 11, 2010. The registry has not yet been established at the time of the assessment.

1183. Section 13 of the Schedule to the Charities and NPO Law allow the information held by the Director of Income Tax to be disclosed to competent authorities. Information held by manumitted organizations can be disclosed by the GFSC under Section 21 (2) (b) of the Financial Services Commission Law.

**Maintenance of records by NPOs and availability to appropriate authorities (c. VIII. 3.4):**

1184. Registered NPOs and charities as well as those managed by TCSPs are required to maintain records of all financial transactions for a period of six years under section 8 of the Schedule to the Charities and NPO Law. Section 8 (2) of the Schedule to the NPO and Charities Law requires that these records be sufficiently detailed to enable verification that the organization's assets, funds and income have been applied or used in a manner consistent with the purposes, objectives and objects of the organization stated in the register.

**Measures to ensure effective investigation and gathering of information (c. VIII.4):**

1185. As stated previously NPO and charities with obligations are required to keep records of all financial transactions for 6 years. Section 9 of the Schedule to the Charities and NPO Law allows the Director of Income Tax to require a registered or manumitted organization to deliver to him documents that may contain information relevant to the organization's assets, funds and income. Section 13 of the Schedule allows information to be disclosed to competent authorities.

1186. Investigatory powers in Schedules 5 to 7 of the TL may be used by LEA (AG) to gather information on NPOs suspected of being involved in the financing of terrorism through powers related to search and seizure, production orders, customer information orders and account monitoring.

1187. Recent amendments to the NPO Law provide the Attorney General with powers to investigate charities and non-profit organizations, including bodies located outside the Bailiwick. These powers are specifically tailored to ensure that NPOs can be investigated in detail regardless of whether or not an organization in question is registered under the NPO Law. This amendment came into effect April 15, 2010.

**Domestic cooperation, coordination, and information sharing on NPOs (c. VIII.4.1):**

1188. The Director of Income Tax has the authority to share information with competent authorities as noted earlier. Section 8 of the Disclosure Law allows LEAs to provide the information to any other person if the disclosure contributes to the prevention, detection or prosecution of criminal offences in the Bailiwick or elsewhere.

1189. In addition to collaboration between authorities on a case-by-case basis, the Anti-Money Laundering/Countering the Financing of Terrorism Advisory Committee can be used as a forum to share information and coordinate activities.

**Access to information on administration and management of NPOs during investigations (c. VIII.4.2):**

1190. As indicated in previous sections information on the administration and management of a particular NPO is available through the Director of Income Tax and the GFSC.

**Sharing of information, preventative actions, and investigative expertise and capability, with respect to NPOs suspected of being exploited for terrorist financing purposes (c. VIII.4.3):**

1191. Mechanisms to share information amongst competent authorities are in place as stated previously. Investigatory powers can be invoked to support actions against NPOs, as can the powers of seizure, freezing and forfeiture as outlined in Section 19 of the TL and Section 6 of the Civil Forfeiture Law.

1192. The Director of Income Tax regularly provides a copy of the full registry (including non-public parts) to the FIU. Information on medium and high risk NPOs and charities is shared with the FIU with the information being updated on a quarterly basis. The FIU can undertake an investigation if there is concern with respect to an NPO suspected of being exploited by a terrorist organization.

**Responding to international requests regarding NPOs—points of contact and procedures (c. VIII.5):**

1193. The Director of Income Tax is empowered through Section 13 (2) to disclose information for the purposes of an investigation, prevention or detection of crime outside the Bailiwick. The manager of the Compliance Investigation Unit of the Income Tax Office would receive international requests for assistance made to the Director of Tax.

**Implementation and effectiveness:**

1194. The registration framework for NPO is not comprehensive. The decision to exempt manumitted organization is not justified from a risk perspective. A total of 207 manumitted organizations hold £2.018 billion in asset with over 76% of those assets held internationally. The large asset values and the international nature of the holdings do not justify a low risk evaluation from a terrorist financing perspective. Manumitted organizations present the highest vulnerability to TF in the NPO and charities sector in Guernsey and therefore should be subject to registration.

1195. Information on the purpose and objectives of NPOs stated activity and the identity of the person who owns controls or directs their activities is not available to the public for registered NPOs. Furthermore, no information relating to manumitted organizations is available publicly.

1196. No supervision or monitoring activities have been undertaken with respect to the non-registration requirements of the Charities and NPO Law. Other than reviewing registration and renewal applications for completeness the Director of Tax has not yet undertaken inspections with respect to registered NPOs. The GFSC had not specifically conducted inspections with respect to all of manumitted organizations' obligations under the NPO Law until May 2010.

1197. Sanctions for non-compliance with registration requirements are not effective. Authorities expressed a reluctance to criminally sanction a charity that was unwilling to register given the sensitive nature of applying criminal sanctions to an organization that had charitable goals. The Charities and NPO (Registration) Legislation was amended on July 28, 2010 to establish administrative penalties. These administrative penalties will be important to address instances where criminal sanctions are inappropriate. The sanctions range from £10 to £500 which does not appear to be dissuasive. The effectiveness of the administrative penalties could not be assessed given their recent implementation.

### 5.3.2. Recommendations and Comments

- Manumitted organizations could be vulnerable to terrorism financing activities and should be subject to registration.
- Outreach focused on the raising awareness on the risks of terrorist abuse and the available measures to protect against such abuses should be provided to the entire NPO sector.
- Information on the purpose and objectives of the NPO and the identity of the persons who own, control or direct their activities is not publicly available.
- Supervision of manumitted organizations should be undertaken with respect to their obligations under the NPO Law.
- Sanctions for non-compliance with registration requirements should be strengthened to ensure that they are effective and dissuasive.

### 5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	PC	<ul style="list-style-type: none"> <li>• The NPO registration system is not comprehensive.</li> <li>• Outreach is not provided to the entire NPO sector.</li> <li>• Information on the purpose and objectives of the NPO and the identity of the persons who own, control or direct their activities is</li> </ul>

		<p>not publicly available.</p> <ul style="list-style-type: none"> <li>• NPOs are not subject to limited supervisory activities.</li> <li>• Sanctions for non-compliance with registration requirements are not effective and dissuasive.</li> </ul>
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## 6. NATIONAL AND INTERNATIONAL COOPERATION

### 6.1. National Cooperation and Coordination (R.31 & R. 32)

#### 6.1.1. Description and Analysis

##### Legal Framework

1198. Relevant agencies, including the FIU, the police, the GFSC and the Attorney General among others operate in legal frameworks that permit cooperation on issues at both operational and policy levels.

1199. The Disclosure Law (DL) authorizes for purposes of a criminal investigation or proceeding disclosures of information that a government department holds. It permits police and customs officers to disclose information they receive in order to prevent, detect, and investigate civil and criminal offenses; prosecute criminal offences; or assist the GFSC or the intelligence service in carrying out their functions. In addition, the Director of Income Tax may disclose information to police officers to facilitate criminal investigations or proceedings, or to assist in intelligence service functions, and also disclose to the GFSC information to enable it to discharge its functions. The Attorney General and specified police and customs officers may also disclose information to the Director of Income Tax if they reasonably believe it will assist the Director to carry out his functions. DL, Sections 6 and 8 -10.

1200. Other Bailiwick laws also have provisions that permit specific agencies to make disclosures to enhance the ability of other agencies to fulfill their functions. For instance:

- **Financial Services Commission Law:** The GFSC may disclose information for a wide range of purposes. Among these are to assist the GFSC to carry out any of its functions; to prevent or detect crime; for the purposes of a criminal proceeding; and to enable Bailiwick gambling supervisory authorities to carry out their functions or pursue investigations. Section 21(2).
- **Proceeds of Crime Law:** The criminal offences of assisting another to retain proceeds and acquisition, possession and use each have provisions for persons to disclose suspicions to police officers. Although there is a general prohibition against the officer receiving the information from disclosing it, there are exceptions in the case of a disclosure for purposes of the investigation of crime or in support of a criminal proceeding in the Bailiwick, or to the Attorney General, the GFSC or another police officer.

- **Fraud Investigation Law:** The Attorney General may disclose information that he receives under the Law for the purposes of the investigation or prosecution of an offence, or to the Director of Income Tax or bodies with supervisory, regulatory or disciplinary functions in relation to financial services, among others. Section 2.
- **Gambling (Alderney) Law -** The AGCC may transmit to other persons or bodies such information relating to its functions as it sees fit. Schedule 1, paragraph 12(2)(c).
- **Charities and NPOs Registration Law:** The Director of Income Tax may disclose information held as the keeper of the register of charities and NPOs for a wide range of purposes, including the prevention or detection of crime; for purposes of criminal proceeding; and to assist the Attorney General to discharge his functions. Schedule, para. 13(2).
- **The Guernsey Company Law:** Resident agents of Guernsey companies must disclose information to the Attorney General, the GFSC and the law enforcement agencies if necessary for the exercise of their functions. Section 490.
- **The Alderney and Guernsey Company Registries and Guernsey Partnership Registry:** Information held on the ownership and control of legal entities and limited partnerships is publicly available.

#### **Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):**

##### **Policy**

1201. The Bailiwick has had an AML/CFT policy coordination committee in place since 1999. Its members have always included the Attorney General, Director General of the GFSC, head of the FIU, and Chief Officers of the police and customs services. In 2009 its membership was expanded to include the Director of Income Tax, Registrar of Companies and CEO of the AGCC, and the Committee was renamed the Bailiwick AML/CFT Advisory Committee. It serves as both an advisory body to the States of Guernsey Policy Council and as a consultative body. It meets several times a year.

1202. The Committee works to ensure that the Bailiwick's AML/CFT policies and strategies have political support at the highest levels. Beginning in October 2008, it formulated and now regularly updates a written policy, its "Financial Crime Strategy" that is aimed at ensuring a coordinated approach by all key stakeholders in AML/CFT. Currently, there are seven strategic imperatives. These include increasing the amount of criminal proceeds recovered and the cases in which they are pursued, and focusing increasingly on using the criminal and civil forfeiture legislation. Agencies that are represented on the Committee self-assess against this strategy on a bi-annual basis.

1203. In addition to the Advisory Committee, three other groups, two of which report formally to the Committee, work in specialized policy areas. A Financial Crime Group, chaired by the head of the FIU, is responsible for coordination and implementation of the strategy that the Committee has adopted and with policy matters in tackling financial crime. It consists of

representatives of the Attorney General's Chambers, GFSC and Income Tax, and the managers of all three financial teams within the FIS. The Group discusses trends, identifies emerging money laundering risks, and will consider issues that arise, as well as current cases and mutual cooperation matters.

1204. A specialized Terrorist Financing Team operates under the Financial Crime Group. It also meets quarterly. Its membership is similar to that of the Financial Crime Group. However, the Police Special Branch also participates in this team. The focus of this team is terrorist financing issues both local and international.

1205. Additionally, in 2009 the Attorney General's Chambers established an AML/CFT forum within the Chambers to facilitate coordination of policy, legislative and operational matters across the different office directorates. The Attorney General, the head of prosecutions, the office's mutual legal assistance, legislative drafting and asset recovery lawyers, and legislative counsel responsible for AML/CFT policy issues are part of the forum. It meets on a quarterly basis to review ongoing cases and trends, as well as developments in the law relating to AML/CFT.

### **Operational**

1206. The relevant agencies also have close working relationships on the operational level. The Customs Service and police force work cooperatively and coordinate activities particularly in drug and financial crime related matters. They also work together in the FIU setting. The head of the FIS also manages caseload, resources and priorities of law enforcement officers working on financial investigation matters.

1207. Prosecutors work closely with law enforcement agencies in preparing individual cases, and assist the FIS/FIU in reviewing and preparing cases. The Director of Income Tax provides information to the FIS.

1208. There are also meetings of regulatory authorities, representatives of the Attorney General's office and law enforcement officials on particular issues, as needed. Agencies also share training opportunities.

### **Additional Element—Mechanisms for Consultation between Competent Authorities and Regulated Institutions (c. 31.2):**

1209. There is regular consultation between the authorities and regulated industry. The GFSC meets with associations that represent the financial sector. There was a consultation process between the GFSC, FIS and industry in the development of the Handbook for Financial Services Businesses and of regulations that apply to financial services.

1210. The FIU has developed an Industry Focus Group to permit money laundering reporting officers and other representatives of financial firms to engage in informal discussion with the FIU.

1211. Joint seminars are held that include representatives of GFSC, FIS/FIU and members of the finance sector. These provide an opportunity to address current issues and hear feedback. The Director of Income Tax is in regular contact with the Association of Guernsey Charities, and, as



needed, with individual charities and other NPOs. The AGCC has regular contact with the eGambling sector including AML/CFT training sessions to ensure that the sector is kept abreast of developments.

**Review of Effectiveness (c. 32.1):**

1212. Bailiwick authorities regularly review the effectiveness of their systems for combating ML and FT. The Advisory Committee, together with the subcommittees noted above, consider strategic direction, and analyze effectiveness in meeting the elements of the strategy. Each stakeholder self-assesses against the strategy at least bi-annually and compiled results are discussed and used in re-evaluations of overall effectiveness. In addition, the authorities regularly consider and revise risk assessments, and use statistics gathered to evaluate the adequacy of preventive measures and other systems.

**Implementation and effectiveness:**

1213. The Bailiwick has developed very effective mechanisms for coordination and cooperation among all domestic AML/CFT stakeholders. There is regular consultation and coordination on both policy and operational levels through regularly-scheduled formal meetings and through informal contact. There is also a unified development of a common vision and strategy and regular assessments against the strategy. Emerging issues are examined and discussed both through strategy papers and in meeting settings. There is regular attention given to overall effectiveness through the work of the Committee and sub-committees.

**Statistics (applying R.32):**

1214. Statistics have generally been found to be comprehensive and accurate for all aspects of R 32. Detailed statistics can be found in the relevant sections of this report as follows: Section 2 on FIU and law enforcement, Section 3 on FSBs, Section 4 on DNFBPs, Section 5 on legal arrangements and this section on national and international cooperation.

**6.1.2. Recommendations and Comments**

None.

**6.1.3. Compliance with Recommendation 31 & 32 (criterion 32.1 only)**

	Rating	Summary of factors underlying rating
R.31	C	
R. 32	C	

**6.2. The Conventions and UN Special Resolutions (R.35 & SR.I)**

**6.2.1. Description and Analysis**

**Legal Framework**

1215. The Bailiwick, as a dependency of the British Crown, may not sign or ratify international conventions on its own. By constitutional convention, the U.K. government acts for the Bailiwick in international matters. The U.K. can extend its ratification of international conventions to the Bailiwick. This occurs at the Bailiwick's request. It must satisfy itself and the U.K. authorities that it has in place the legislative and other measures necessary to satisfy the requirements of the convention in issue. Once the U.K. government is satisfied that all requirements are in place, it will inform the Secretary General of the United Nations that its ratification of the convention has been extended to the Bailiwick.

1216. The U.K.'s ratifications of the Vienna and Terrorist Financing Conventions have been extended to the Bailiwick. The Bailiwick has not yet requested the extension of the Palermo Convention to it as issues for resolution have arisen in the course of the Bailiwick's consultation with the U.K.

**Ratification of AML-Related UN Conventions (c. 35.1):**

1217. The Vienna Convention was extended to the Bailiwick on April 9, 2002. The Convention is implemented by the Drug Trafficking Law (DTL). As noted above, the Bailiwick has not yet requested the extension of the Palermo Convention to it. This is because, in consultation with authorities in the U.K., a question has been raised regarding whether the extradition laws that apply currently in the Bailiwick meet fully all Palermo Convention requirements in particular with respect to the requirement for simplified extradition. The authorities indicated that once this issue, currently under study by U.K. authorities in the context of a review of extradition issues generally, is resolved, the Bailiwick intends to request an extension of the ratification of the Palermo Convention to it.

**Ratification of CFT-Related UN Conventions (c. I.1):**

1218. The Terrorist Financing Convention was extended to the Bailiwick on September 25, 2008. The requirements of this Convention are implemented through provisions of the Terrorism Law (TL), the Police Powers Law, the Interpretation Law, Extradition Act and International Cooperation Law.

1219. Of the remaining 15 international counter-terrorism related legal instruments, four have been extended to the Bailiwick: the Unlawful Seizure Convention, the Civil Aviation Convention, the Diplomatic Agents Convention, and the Nuclear Material Convention Extension of the Airport Protocol has been requested but not yet been granted.

**Implementation of AML-related UN Conventions**

1220. The provisions of the Vienna and Palermo Conventions that require criminalization of ML have been entirely implemented in that the Bailiwick's legal provisions that make ML criminal meet Convention requirements. However, there is a question regarding the effective application of the provisions in that there have been few ML cases involving financial sector participants, and there remains a disconnect between the number of ML cases investigated versus the cases prosecuted and eventually resulting in a conviction. This calls into question the effective

application of the ML provisions. A question remains whether the extradition procedures in the Bailiwick meet all of the requirements of the Palermo convention.

### **Implementation of SFT Convention**

1221. The provisions of the SFT Convention relating to the criminalization of FT have been fully implemented.

### **Implementation of UN SCRs relating to Prevention and Suppression of FT (c. I.2):**

1222. As discussed under Special Recommendation III, the Bailiwick implements UNSCR 1267 and 1373 through two Order-in-Council, the Al-Qa'ida and Terrorism Orders. However, limited legal – as well as some practical – shortcomings remain. The legal framework does not make explicit that designated persons are not to receive prior notice of a freeze action. Guidance regarding lists and their application in the Bailiwick could be improved. There could be greater clarity in a criminal provision for enforcement.

### **Additional Element—Ratification or Implementation of other relevant international conventions (c. 35.2):**

1223. The ratification of the following conventions has been extended to the Bailiwick:

- Hague Convention for the Suppression of Unlawful Seizure of Aircraft, extended on 22nd December 1971, implemented by the Hijacking Act (Guernsey) Order.
- Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, extended on 25<sup>th</sup> October 1973, implemented by the Protection of Aircraft Act (Guernsey) Order.
- UN Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, extended on 2<sup>nd</sup> May 1979, implemented by the Internationally Protected Persons Act (Guernsey) Order.
- Vienna Convention on the Physical Protection of Nuclear Material, extended on 11th December 1991, implemented by the Nuclear Material (Offe<sup>nc</sup>es) Act (Guernsey) Order.
- 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, extended on 23rd September 2<sup>002</sup>, implemented by the Proceeds of Crime Law, the Drug Trafficking Law and the Terrorism Law.
- 1959 Council of Europe Convention on Mutual Assistance, extended on 23/09/2002, implemented by the Proceeds of Crime Law, the Drug Trafficking Law, the Terrorism Law and the International Cooperation Law.
- United Nations Convention against Corruption, extended in November 2009, implemented by the Prevention of Corruption Law.

1224. The Bailiwick has also requested extension of the ratification of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

### 6.2.2. Recommendations and Comments

- The Bailiwick should work to resolve issues with the United Kingdom in order to be in a position to request an extension of the ratification of the Palermo Convention to it.
- The authorities should continue efforts to improve the effective application of the ML provisions with the development of cases involving financial sector participants, and by addressing the disconnect between the number of ML cases investigated versus the cases prosecuted and eventually resulting in a conviction.
- The recommendations set forth in the section on SR III should be addressed in order to fully implement the applicable UN Security Council resolutions.

### 6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
<b>R.35</b>	<b>LC</b>	<p><b>Vienna and Palermo Conventions</b></p> <ul style="list-style-type: none"> <li>• Palermo Convention not yet extended to the Bailiwick.</li> <li>• Questions regarding the effective application of ML provisions with few ML cases involving financial sector participants, and disconnect between investigations and prosecutions/convictions.</li> </ul>
<b>SR.I</b>	<b>LC</b>	<p><b>UNSCR implementation:</b></p> <ul style="list-style-type: none"> <li>• In the legal framework, it is not explicit that designated persons are not to receive prior notice of a freeze action.</li> <li>• Guidance regarding lists and their application in the Bailiwick should be improved.</li> <li>• Criminal provision for enforcement could have greater clarity as identified in SR III section.</li> </ul>

## 6.3. Mutual Legal Assistance (R.36-38, SR.V)

### 6.3.1. Description and Analysis

#### Legal Framework

1225. There is no overarching legislation regulating the mutual legal assistance (MLA) practice of Guernsey. In the context of assistance in cases involving ML, FT or predicate offenses, the judicial authorities rely mainly on the provisions of the following laws:

- The provisions of the POCL, DTL and TL apply to criminal activity both in and outside Guernsey, except when expressly restricted to Guernsey, and may thus also be used in the context of MLA. Before the enactment of a legislative amendment to these laws in July 2010, assistance in restraining and confiscating proceeds of crime, was only granted to a limited number of designated countries and territories or based on an emergency ordinance as outlined below.
- The Criminal Justice (International Cooperation) (Bailiwick of Guernsey) Law (“International Cooperation Law”) is used mainly to restrain and confiscate instrumentalities of crime. Whereas most provisions of this law are and always have been applied to requests coming from any country, until July 2010 assistance in the restraint and confiscation of assets and property was only granted to a limited number of designated countries or territories or based on an emergency ordinance.
- The Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law (“Fraud Law”) extends in scope to any “serious or complex fraud,” whereby Guernsey does not have specific offenses under this category but would consider a range of offenses to fall under the scope of the law. In the context of MLA, the Fraud Law has in the past been used by the authorities to assist other countries in fraud related ML cases. The measures are and always have been available with respect to any country.

1226. As indicated above, prior to July 2010, the restraint and confiscation measures pursuant to the POCL, DTL, TL and International Cooperation Law were generally taken only based on a request by a designated country or territory or an emergency ordinance. The authorities indicated that designations were made by way of Guernsey Ordinances but, substantively, the list of countries was a replication of the U.K. designations. In addition, designations were made by a parliamentary sub-committee which had the power to enact emergency ordinances even without parliamentary consent if this was considered necessary and expedient. The authorities stated that the designation requirement had never caused any problems to the granting of MLA in the past and that no requests had ever been denied on these grounds. In three cases, requests had been received from non-designated countries and were granted after the sub-committee had designated those countries through an emergency ordinance. The authorities stated that an emergency ordinance could be obtained within a matter of days and thus unreasonable delays in the implementation of a request had ever been experienced.

1227. The assessors raised concern that even though in practice the designation mechanisms did not seem to pose an obstacle to the implementation of MLA requests from non-designated countries, the sheer existence of such a mechanism may have deterred countries from sending MLA requests to Guernsey. This is particularly true in light of the fact that only the designation mechanisms but not the emergency ordinance option were set out in the law. Not all non-designated countries may thus have been aware of the avenues available to them to request assistance from Guernsey. The authorities stated that while they were certain that the existence of the designation mechanism had not had a negative impact on the effectiveness of the MLA

system, to eliminate any external perception of a negative impact the existing legislative framework was revised in July 2010. All countries are now considered to be designated countries or territories.

1228. Guernsey may not provide MLA directly based on the provisions of international conventions. Any form of cooperation may only take place based on domestic law. By way of background, the U.K.'s ratification of the Vienna, Merida and Suppression of the Financing of Terrorism have been extended to Guernsey, all of which contain MLA provisions. Furthermore, 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 have been extended to Guernsey.

1229. The AG is the designated authority to receive and deal with mutual legal assistance requests. The U.K. Central Authority for Mutual Legal Assistance is generally not involved in the process.

**Widest Possible Range of Mutual Assistance (c. 36.1):**

**Production, search and seizure of information, document or evidence:**

1230. The main provisions for the production, search, and seizure of information, documents or other evidence for the purposes of providing mutual legal assistance in criminal matters are contained in the POCL, the DTL, the TL and the International Cooperation Law.

1231. Sections 45 POCL and 63 DTL both provide for the issuance of production orders by the Bailiff for the purpose of an investigation as to whether a person has engaged in or benefited from criminal conduct or to locate or determine the extent of criminal proceeds. To issue the order, the Bailiff has to be satisfied that there are reasonable grounds to suspect that a specific person has engaged in or benefited from criminal conduct and the material to which the order relates is likely to be of substantive value to the investigation, and it is in the public interest to issue the order.

1232. Sections 46 POCL and 64 DTL further provide for the issuance of search and seizing warrants if the conditions outline above are met but a production order would not be practical or would seriously prejudice the ongoing investigation and access to the premises in question would not be granted in the absence of a search warrant.

1233. Information and evidence subject to confidentiality may be compelled pursuant to Sections 48A POCL and 67A DTL, both of which allow for the issuance of "customer information orders". Account monitoring orders are available as well (Sections 48H POCL and 67H DTL).

1234. The TL in its Schedules 5 and 7 allows for the issuance of search and seizing warrants in the context of "terrorist investigations" if there are reasonable grounds to believe that the material sought is likely to be of substantial value to the investigation and must be seized to prevent it from being concealed, lost, damaged, altered or destroyed. Production orders may be issued under similar conditions pursuant to Section 4 of Schedule 5. Schedule 6 and 7 mirror the

provisions in the DTL and POCL with respect to customer information and account monitoring orders.

1235. All orders may be issued ex parte and items subject to legal privilege are exempted from the provisions.

1236. Further to the provisions outlined above, Section 7 of the International Cooperation Law allows for the issuance of search and seizing warrants if (1) criminal proceedings have been or are reasonably expected to be instituted in the requesting country (2) the conduct would constitute a criminal offense punishable with imprisonment under Guernsey law and (3) there are reasonable grounds to believe that evidence is located in Guernsey. The authorities stated that this provision would mainly be used to seize instrumentalities as opposed to proceeds of crime.

1237. None of the provisions outlined in the preceding paragraphs require that the requesting country has been “designated”.

#### **Taking of evidence or statements from persons**

1238. Section 4 and Schedule 1 of the International Cooperation Law give the AG the power to require any person or witness to appear before the authority specified in the notice and to provide a voluntary witness statement, including under oath, or to provide testimony in relation to evidence produced. If a person to whom a notice has been given does not comply with the AG’s request, the court may secure the attendance of that person through coercive measures.

1239. Furthermore, pursuant to Section 1 of the Fraud Law, the AG may require a 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.

#### **Providing originals or copies of relevant documents and records as well as any other information and evidentiary items**

1240. For information and evidence obtained pursuant to the International Cooperation Law, Section 7 of the Law provides that evidence received by the court in the context of MLA has to be forwarded to the AG for transmission to the court, tribunal or other authority which made the request. The provision further specifies that the AG may transmit to the requesting country any evidence provided to him based on the request, including the original document or evidence or a copy, picture, description or other representation thereof, as may be necessary to comply with the request.

1241. With respect to information and evidence obtained pursuant to all other laws, Section 8 of the Disclosure (Bailiwick of Guernsey) Law 2007 (“the Disclosure Law”) provides that information obtained by a police officer may be disclosed to any other person if the disclosure is for the purpose of preventing, detecting, investigation, or prosecuting a criminal offense in Guernsey or elsewhere.

#### **Effecting service of judicial documents**

1242. Section 1 of the International Cooperation Law provides that the AG may grant the serving of summons or other processes issued in the course of criminal proceedings in the requesting jurisdiction and any document issued by and recording the decision of a foreign court exercising criminal jurisdiction to be served in Guernsey.

### **Voluntary Appearances**

1243. Facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country does not require any specific legal provision, but is a normal form of assistance based on the general practice of the AG.

### **Identification, freezing, seizure and confiscation of criminal proceeds and instrumentalities:**

1244. See analysis under Recommendation 38 below.

### **Provision of Assistance in Timely, Constructive, and Effective Manner (c. 36.1.1):**

1245. There are no formal time requirements in place when dealing with mutual legal assistance requests. In the guidelines issued to the public and posted on Guernsey's government homepage (<http://www.gov.gg/ccm/navigation/government/law-officers/advice/>) it is stated that requests would generally be dealt with in a speedy manner but no specific timeframes are provided. The statistics provided by the AG's office suggest that between 2003 and 2007, the average timeframe for dealing with mutual legal assistance requests was 3.6 months. Only one case took more than one year to be fully implemented.

### **No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):**

1246. There are no binding guidelines, policy statements or statutory provisions setting out grounds for refusal of MLA requests. The authorities stated that Guernsey's MLA policy is rather flexible and grounds for refusal are few. Most types of assistance can be provided once a criminal investigation has been initiated in the requesting country.

1247. Reciprocity is not a prerequisite for the provision of MLA. None of the laws described in the above sections contain a de minimis rule or make reference to the refusal of "fishing expeditions". Dual criminality is required for some but not all measures as outlined under Recommendation 37 below. The authorities stated that in cases where a request relates to offenses of a political character, the AG would get in contact with the U.K. Foreign Office to obtain further background information. In addition, in reviewing the admissibility of a request, general human rights considerations would be taken into account. Requests relating to offenses sanctioned with capital punishment in the requesting country would generally not be granted unless the requesting country provides an undertaking that the death penalty would not be imposed in a specific case.

1248. The authorities stated that in the past the most common grounds for refusal of requests would be a lack of evidence. Overall, the assessors consider Guernsey's MLA framework to be flexible and not subject to any unduly or unreasonably restrictive provisions.



**Efficiency of Processes (c. 36.3):**

1249. There are no legislative provisions governing the processing of MLA requests. However, the authorities stated that in practice requests would be processed as described below.

1250. Urgent requests would be dealt with immediately by the AG's mutual legal assistance lawyer or in his absence by the Solicitor General. Non-urgent requests would be subject to an initial review by a paralegal and together with a recommended course of action be then forwarded to the mutual assistance lawyer or in his absence to the Solicitor General. The mutual legal assistance lawyer would then decide as to whether to grant or reject a request or seek further clarification from the requesting country. The authorities stated that minor deficiencies would not generally preclude preliminary enquiries from being undertaken in Guernsey.

1251. All MLA requests are then forwarded to the FIS, which prepares drafts of the necessary notices or court applications. The authorities stated involvement of the FIS would be useful in two ways: First, the FIS would have an opportunity to review any request for valuable intelligence information; second, to ensure that law enforcement agencies (LEAs) and the AG's office work in close collaboration, including in cases where a specific MLA request was received by Guernsey as a direct result of a voluntary disclosure of information by the FIS to the FIU of the requesting country. The authorities stated that they would not consider the FIS involvement as an additional and time consuming hurdle.

1252. Any documents produced as a result of an order or notice have to be reviewed by the FIS and the Law Officers to ensure that the order or notice has been fully 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):**

1253. Guernsey law does not preclude the provision of MLA where a request relates to fiscal matters. The authorities stated that as a matter of practice Guernsey would not refuse the provision of MLA in such cases. This view is also presented in the guidelines issued to the public and posted on Guernsey's government homepage (<http://www.gov.gg/ccm/navigation/government/law-officers/advice/>). The authorities stated that in the past, Guernsey has provided MLA in a large number of cases involving tax evasion and Value-Added Tax (VAT) fraud.

**Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):**

1254. As outlined under criterion 36.1 above, the existence of confidentiality does not pose an impediment to the provision of MLA in ML or FT cases. However, items and information subject to legal privilege are precluded from the scope of the relevant provisions and their production may thus not be compelled.

**Availability of Powers of Competent Authorities (applying R.28, c. 36.6):**

1255. 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 in the International Cooperation Law as detailed above.

**Avoiding Conflicts of Jurisdiction (c. 36.7):**

1256. There are no formal proceedings in place dealing with conflicts of jurisdiction, nor has any such difficulty presented itself in practice. The authorities stated that if the case was to arise, the issue would be dealt with on an ad-hoc basis, taking into account the prospects of a successful prosecution in each jurisdiction involved.

**Additional Element—Availability of Powers of Competent Authorities Required under R28 (c. 36.8):**

1257. There is no direct requesting process between the FIS and its foreign counterparts or other law enforcement authorities. All requests for mutual legal assistance (to secure information for evidential purposes) have to go through the Law Officers' Department.

**International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1):**

1258. The provisions of the POCL, the TL and the International Cooperation Law as outlined above apply equally to FT.

**Additional Element under SR V (applying c. 36.7 & 36.8 in R.36, c. V.6):**

1259. See answers to criteria 36.7 and 36.8 above.

**Dual Criminality and Mutual Assistance (c. 37.1 & 37.2); International Cooperation under SR V (applying c. 37.1-37.2 in R. 37, c. V.2):**

1260. Many measures under the International Cooperation Law are applicable even in the absence of dual criminality. Any measures under the POCL, DTL and TL as amended by the Ordinances as well as under the International Cooperation Law are however only available with respect to offenses that meet dual criminality, whereby different thresholds apply depending on the measure requested and law applied.

1261. For search warrants pursuant to Section 7 of the International Cooperation Law, it is required that the conduct with respect to which assistance is requested would be punishable with imprisonment under Guernsey law, regardless of the categorization of the offense as triable on indictment or summarily.

1262. For restraint and confiscation measures pursuant to Section 8 International Cooperation Law and for any measures under the POCL, dual criminality is met if the case in question relates to an act that would have constituted an indictable offense had it been committed in Guernsey. Measures pursuant to the Fraud Law require that the conduct in question would constitute serious or complex fraud had it been committed in Guernsey. Dual criminality pursuant to the TL and DTL means that the request relates to an act that would have constituted an offense under the relevant law had it been committed in Guernsey.

1263. The authorities confirmed that for those forms of MLA where dual criminality is required, mere technical differences between the law of the requesting state and Guernsey law do not pose an impediment to the provision of MLA. It was further stated that no request for MLA had ever been denied based on lack of dual criminality.

**Timeliness to Requests for Provisional Measures including Confiscation (c. 38.1):**

1264. The most pertinent provisions for assistance in freezing, seizing and confiscating assets in cases relating to ML, FT and predicate offenses are set out in the POCL as amended by Proceeds of Crime (Enforcement of Confiscation Orders) Ordinance, the DTL as amended by Drug Trafficking Offences (Designated Countries and Territories) Ordinance and the TL as amended by the Terrorism and Crime (Enforcement of External Orders) Ordinance. In addition, the International Cooperation Law provides for the seizure and confiscation of instrumentalities used in the commission of any offense that would be triable on indictment under Guernsey law. As indicated in the general section above, the restraint and confiscation provisions under all four laws may only be applied to requests from designated countries and territories or on the basis of an emergency ordinance.

1265. The scope of the POCL as amended by the Ordinance extends to any “payments or other rewards received in connection with criminal conduct or their value” and may apply to any specified property (without differentiation of property held by the defendant or a third party) or in the absence of a specification to any property held by the defendant or by a third party to whom the defendant has made a gift or to which the defendant is beneficially entitled. The law thus allows for assistance in restraining and confiscating proceeds from criminal conduct, whether they are held by the defendant or by third parties, and of legitimate assets equivalent in value to such proceeds. Instrumentalities could be restrained. The POCL is supplemented by the International Cooperation Law as amended by the Ordinance, which allows for assistance in restraining and confiscation of “anything in respect of which a[n indictable] offence has been committed or which was used or intended for use in connection with the commission of such an offence”.

1266. The DTL as amended by the Ordinance contains the same provisions as the POCL with respect to the proceeds of crime but goes beyond the POCL in that it also allows for the restraint and confiscation of “anything in respect of which [an offense under the DTL] has been committed or which was used or intended for use in connection with the commission of such an offence”.

1267. The TL as amended by the Ordinance applies to any property in the possession or under control of a person prosecuted or investigated for FT offenses or terrorism related ML offenses. Just like the DTL, the TL thus allows for the taking of measures against both proceeds and their equivalent value as well as of intended and actual instrumentalities of any offenses under the act. Based on this rather broad language, legitimate assets used to finance terrorism could also be restrained or confiscated.

1268. In summary, the restraint and confiscation measures available under Guernsey law in the context of MLA apply to proceeds of ML, FT and predicate offenses and their equivalent value as well as to instrumentalities used or intended for use in the commission thereof.

### **Provisional Measures based on Foreign Order**

1269. Guernsey gives effect to foreign restraint orders through issuance of domestic mirror orders. A review on the merits of the case is not required. With exception of the TL, which makes express reference to the registration of foreign restraint orders, the power of the court to do so is not set out in statute but is implied.

### **Provisional Measures based on Foreign Request**

1270. In the absence of a foreign order, under the POCL and DTL the Guernsey authorities may restrain assets upon foreign request if (1) a criminal investigation or criminal proceedings have been initiated in the requesting country and (2) an external confiscation order has been made or is expected to be made based on reasonable grounds. Restraint orders may also be issued based on Section 3 Schedule 2 TL if proceedings or a criminal investigation for FT or terrorism related ML have been instituted, a forfeiture order has been made or is expected to be made with respect to the targeted property or the property is possessed or controlled by the suspect. Subject to these same conditions, Section 8 of the International Cooperation Law allows for the retraining of instrumentalities upon foreign request. In addition, Section 7 of the International Cooperation Law provides for the seizure of instrumentalities as outlined above.

### **Confiscation in the context of MLA**

1271. Foreign confiscation orders may be registered in Guernsey and subsequently implemented like domestic orders through appointment of a receiver. Orders have to be final and in force to be registered in Guernsey.

1272. Registration of foreign confiscation orders is provided for under the POCL, the DTL, and the TL as amended by the Ordinances. Based on the scope of these three statutes, the measures are available for all types of ML, FT and predicate offenses and with respect to both proceeds or their equivalent value and instrumentalities used or intended for use in the commission of such offenses.

### **Coordination of Seizure and Confiscation Actions (c. 38.3):**

1273. No formal procedures are in place to coordinate seizure and confiscation actions with other countries. However, the authorities stated that if such case was to arise, Guernsey may cooperate and liaise with other countries on a case-by-case basis.

### **International Cooperation under SR V (applying c. 38.1-38.3 in R. 38, c. V.3):**

1274. See analysis under Recommendation 38 above.

### **Asset Forfeiture Fund (c. 38.4):**

1275. Guernsey has set up an asset forfeiture fund in which any assets realized as a result of local confiscation orders and money shared by other jurisdictions are paid into. Money in the fund can only be used for special purposes associated with law enforcement and crime prevention.

**Sharing of Confiscated Assets (c. 38.5):**

1276. Guernsey does not have a statutory provision allowing for asset sharing. However, the authorities stated that the absence of permissive legislation to that effect would be interpreted to allow Guernsey to share assets. In practice, Guernsey has returned (as opposed to shared) assets confiscated as a result of a MLA request to Norway and at the time of the assessment was in the process of negotiating an asset sharing agreement with Belgium.

**Additional Element (R 38)—Recognition of Foreign Orders for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6):**

1277. The Civil Forfeiture Law provides for a wide range of mutual legal assistance in civil proceedings, including the obtaining of evidence and the enforcement of foreign restraint and civil asset recovery orders.

**Additional Element under SR V (applying c. 38.4-38.6 in R. 38, c V.7):**

1278. See answer to criterion 38.5 above. There have been no cases in which Guernsey has shared assets relating to terrorism funding with another jurisdiction.

**Statistics (applying R.32):**

1279. Based on statistics provided by the AG's Office and the FIS, between 2007 and 2009 Guernsey received 178 requests for MLA in criminal cases involving proceeds of crime, whereby 37 cases related to offenses designated by the requesting country as partially or exclusively relating to ML. The authorities stated, however, that in some cases the conduct in question seem to have involved ML even though the criminal offense was either not specified at all by the requesting country or did not refer to the offense of ML as such. The authorities thus consider that the actual cases in which they assisted in conduct that constituted ML was higher. In most cases, the criminal conduct in question related to fraud, followed by ML, fiscal offenses and corruption.

1280. At the time of the onsite mission, 75 of the 178 cases were still pending and 25 had been rejected. The remaining 78 requests have been partially or fully granted by the Guernsey authorities. Of the 178 requests, the majority related to measures under the Fraud Investigation Law, followed by the POCL, the DTL and finally International Cooperation Law. In each of the three years, about half of all requests were received from the UK.

1281. The measures most often requested through MLA were production orders and the serving of fraud notices. In eight cases, the request related to the issuance of a restraint order (none of them were based on a foreign restraint order). In all eight cases the restraint order was issued but in three cases the order was later lifted based on a notice by the requesting country that a specific confiscation order has been satisfied. In five cases the request was for the registration and enforcement of a foreign confiscation order. At the time of the assessment, two of the five external confiscation orders had already been enforced and the remaining three had been registered. As of May 2010, the amount of assets restrained in Guernsey in the context of MLA request was £216,747,075 and the amounts realized were £216,747,075.

1282. Between 2007 and 2009 the most common ground for refusal of MLA requests was that the evidence was not located in Guernsey; that the witness had left the jurisdiction; or the requesting jurisdiction no longer sought the evidence with respect to which a request was issued. The majority of requests (about 73 percent) were dealt with within three months. In the last four years there have been only eight cases which have taken a year to be more than fully implemented. The authorities advised that in all cases the time taken was due to the ongoing nature of the investigation or the failure of the requesting jurisdiction to provide further information to take the matter forward.

<b>Mutual legal assistance matters 2007</b>	
<b>2007</b>	
<i>Fraud Investigation Law</i>	
<b>Requests received</b>	<b>35</b>
<b>Fraud Notices served</b>	<b>41 (7 were from previous years)</b>
<i>Proceeds of Crime Law</i>	
<b>Requests received</b>	<b>13</b>
<b>Production Orders served</b>	<b>10 (2 were from previous years)</b>
<i>Drug Trafficking Law</i>	
<b>Requests received</b>	<b>4</b>
<b>Production Orders served</b>	<b>2</b>
<i>Insider Dealing Law</i>	
<b>Requests received</b>	<b>0</b>
<b>Requests completed</b>	<b>0</b>
<i>International Co-operation Law</i>	
<b>Requests received</b>	<b>4</b>
<b>Requests completed (inc Hearings)</b>	<b>2 (from requests received previous year)</b> <b><u>Other notes:</u></b> <b>4 hearings were conducted in 2008</b>
<i>Matters Pending at year end</i>	
<i>Requests either pending review/consideration, or dormant awaiting further information from requesting authority before allocating the appropriate legislation to proceed under etc.</i>	
<b>Case Name</b>	<b>Requesting Jurisdiction</b>
<i>Case names have been removed</i>	<b>Switzerland</b>
	<b>Switzerland</b>
	<b>UK</b>
	<b>Poland</b>

	<b>UK</b>	
	<b>Spain</b>	
	<b>USA</b>	
<b>Matters still under Investigation at year end</b>		
<i>Requests that have been approved and which are still under active investigation pending production notice or order or other action.</i>		
<b>Case Name and Legislation</b>	<b>Requesting Jurisdiction</b>	
<i>Case names have been removed</i>		
<b>Fraud Investigation Law</b>	<b>USA</b>	
<b>Fraud Investigation Law</b>	<b>UK</b>	
<b>Fraud Investigation Law</b>	<b>Guernsey</b>	
<b>Fraud Investigation Law</b>	<b>Finland</b>	
<b>Fraud Investigation Law</b>	<b>UK</b>	
<b>Fraud Investigation Law</b>	<b>France</b>	
<b>Fraud Investigation Law</b>	<b>UK</b>	
<b>Proceeds of Crime Law</b>	<b>UK</b>	
<b>Proceeds of Crime Law</b>	<b>Cyprus</b>	
<b>Drug Trafficking Law</b>	<b>UK (Scotland)</b>	
<b>International Cooperation Law</b>	<b>Finland</b>	
<b>International Cooperation Law</b>	<b>Norway</b>	
<b>International Cooperation Law</b>	<b>Norway</b>	
<b>International Cooperation Law</b>	<b>Hong Kong</b>	
<b><u>Restraint Orders (2007)</u></b>		
<b>2 Restraint Orders made under the Proceeds of Crime Law (both UK);</b>		
<b>2 Restraint Orders under the Proceeds of Crime Law varied (both UK);</b>		
<b>1 Restraint Order under the Drug Trafficking Law discharged (UK).</b>		
<b><u>Overseas Orders (2007)</u></b>		
<b>1 Overseas Forfeiture Order registered (USA).</b>		
<b>1 Overseas Forfeiture Order enforced (Belgium).</b>		
<b><u>Matters not proceeded with - 2007</u></b>		
<b>Origin</b>	<b>Person or Entity under Investigation</b>	<b>Notes</b>
<b>Lithuania</b>	<i>Case names have been removed</i>	<b>Witness has left Jurisdiction</b>

Italy		Information no longer required by the requesting authority
Zambia		No additional information available. All evidence sent as result of previous request in March 2005
Moldova		Witnesses have left the jurisdiction
Spain		One witness left jurisdiction and other holds no records as required by requesting authority.
UK Financial Services Authority		Information no longer required by the requesting authority. Individual named on Guernsey request is no longer a suspect in this matter.
USA		Evidence not in Guernsey, held in Guernsey.
UK CPS		Evidence not in Guernsey now held in Monaco.
UK CPS		Enquiries made reveal that <i>(names removed)</i> do not hold nor have they ever held material relevant to the letter of request.

#### Mutual legal assistance matters 2008

<b>2008</b>	
<i>Fraud Investigation Law</i>	
Requests received	20
Fraud Notices served	30 (9 were from previous years)
<i>Proceeds of Crime Law</i>	
Requests received	8
Production Orders served	12 (2 from a 2007 request)
<i>Drug Trafficking Law</i>	



<b>Requests received</b>	<b>2</b>
<b>Production Orders served</b>	<b>4 (1 from a 2007 request)</b>
<i>Insider Dealing Law</i>	
<b>Requests received</b>	<b>0</b>
<b>Requests completed</b>	<b>0</b>
<i>International Co-operation Law</i>	
<b>Requests received</b>	<b>4</b>
<b>Requests completed (inc Hearings)</b>	<b>4 (from requests received 2007)</b> <b><u>Other notes:</u></b> <b>2 were not proceeded with</b> <b>2 hearings were conducted in 2009</b>
<i>Civil Forfeiture Law</i>	
<b>Requests received</b>	<b>1</b>
<b>Requests completed</b>	<b>0</b>
<i>Matters Pending at year end</i> <i>Requests either pending review/consideration, or dormant awaiting further information from requesting authority before allocating the appropriate legislation to proceed under etc.</i>	
<b>Case Name</b>	<b>Requesting Jurisdiction</b>
<i>Case names have been removed</i>	<b>Switzerland</b>
	<b>Switzerland</b>
	<b>UK</b>
	<b>Spain</b>
	<b>Poland</b>
	<b>Spain</b>
	<b>Latvia</b>
	<b>Iran (via UK)</b>
	<b>South Africa</b>
	<b>Argentina</b>
	<b>Poland</b>
	<b>UK</b>
	<b>Spain</b>
<i>Matters still under Investigation at year end</i> <i>Requests that have been approved and which are still under active investigation pending production notice or order or other action.</i>	
<b>Case Name and Legislation</b>	<b>Requesting Jurisdiction</b>
<i>Case names have been removed</i>	
<b>Fraud Investigation Law</b>	<b>Slovenia</b>
<b>Fraud Investigation Law</b>	<b>Trinidad &amp; Tobago</b>
<b>Fraud Investigation Law</b>	<b>UK</b>

<b>Fraud Investigation Law</b>	<b>USA</b>
<b>Fraud Investigation Law</b>	<b>South Africa</b>
<b>Fraud Investigation Law</b>	<b>UK</b>
<b>Proceeds of Crime Law</b>	<b>UK</b>
<b>Proceeds of Crime Law</b>	<b>UK</b>
<b>International Cooperation Law</b>	<b>Norway</b>
<b>International Cooperation Law</b>	<b>Hong Kong</b>

**Restraint Orders (2008)**

**2 Restraint Orders under the Proceeds of Crime Law discharged (Cyprus and UK).**

**Overseas Orders (2008)**

**1 Overseas Forfeiture Order registered (USA).**

**Matters not proceeded with - 2008**

<b>Origin</b>	<b>Person or Entity under Investigation</b>	<b>Notes</b>
<b>Finland (Received 2007)</b>	<i>Case names have been removed</i>	<b>Company only registered in Guernsey but administered in Switzerland where all records are held.</b>
<b>Sweden</b>		<b>Requesting Authority decided not to seek further assistance as request did not fit with requirements of Gsy Law for serious and complex fraud.</b>
<b>Germany (Received 2007)</b>		<b>No evidence available in Guernsey.</b>
<b>France</b>		<b>No evidence available in Guernsey.</b>
<b>UK (Crown Court Chelmsford)</b>		<b>Evidence to be obtained from UK</b>
<b>Guernsey</b>		<b>No evidence available in Guernsey. The institution is no longer operating in</b>

		<b>Guernsey and has relocated to Luxembourg.</b>
<b>Latvia</b>		<b>No evidence or information available in Guernsey</b>
<b>Germany</b>		<b>Service not obtained as current location of person not known</b>
<b>France (Received 2007)</b>		<b>Information no longer required by the requesting authority.</b>
<b>UK (Crown Court Guildford)</b>		<b>No evidence available in Guernsey. The institution is no longer operating in Guernsey and has relocated to Switzerland.</b>

#### Mutual legal assistance matters 2009

<b>2009</b>	
<i><b>Fraud Investigation Law</b></i>	
<b>Requests received</b>	<b>25 (4 requests were consent letters only)</b>
<b>Fraud Notices served</b>	<b>15 (9 were from previous years)</b>
<i><b>Proceeds of Crime Law</b></i>	
<b>Requests received</b>	<b>14 (5 requests were consent letters only)</b>
<b>Production Orders served</b>	<b>4 (1 from a 2008 request)</b>
<i><b>Drug Trafficking Law</b></i>	
<b>Requests received</b>	<b>1</b>
<b>Production Orders served</b>	<b>1</b>
<i><b>Insider Dealing Law</b></i>	
<b>Requests received</b>	<b>0</b>
<b>Requests completed</b>	<b>0</b>
<i><b>International Co-operation Law</b></i>	
<b>Requests received</b>	<b>9</b>
<b>Requests completed (inc Hearings)</b>	<b>7 (inc 2 hearings from 2008)</b> <b><u>Other notes:</u></b> <b>9 were requests for service of overseas process</b>

	<b>3 were not proceeded with 1 matter is still pending further info from jurisdiction</b>
<b>Civil Forfeiture Law</b>	
<b>Requests received</b>	<b>0</b>
<b>Production Orders served</b>	<b>1</b>
<i>Matters Pending at year end Requests either pending review/consideration, or dormant awaiting further information from requesting authority before allocating the appropriate legislation to proceed under etc.</i>	
<b>Case Name</b>	<b>Requesting Jurisdiction</b>
<i>Case names have been removed</i>	<b>UK</b>
	<b>Poland</b>
	<b>Spain</b>
	<b>Latvia</b>
	<b>Iran (via UK)</b>
	<b>South Africa</b>
	<b>Argentina</b>
	<b>Italy</b>
	<b>Bangladesh</b>
	<b>Czech Republic</b>
	<b>Belgium</b>
	<b>Argentina</b>
	<b>Portugal</b>
	<b>Portugal</b>
	<b>Latvia</b>
	<b>UK</b>
	<b>Poland</b>
	<b>Spain</b>
	<b>Holland</b>
<i>Matters still under Investigation at year end Requests that have been approved and which are still under active investigation pending production notice or order or other action.</i>	
<b>Case Name and Legislation</b>	<b>Requesting Jurisdiction</b>
<i>Case names have been removed</i>	<b>Swiss</b>
<b>Proceeds of Crime Law</b>	
<b>Proceeds of Crime Law</b>	<b>UK</b>
<b>Proceeds of Crime Law</b>	<b>Guernsey</b>
<b>Proceeds of Crime Law</b>	<b>UK</b>
<b>Fraud Investigation Law</b>	<b>UK</b>
<b>Fraud Investigation Law</b>	<b>Guernsey</b>

Fraud Investigation Law	UK
Fraud Investigation Law	Russia
Fraud Investigation Law	Slovenia
Fraud Investigation Law	Swiss
Proceeds of Crime Law	UK
Other	UK

**Restraint Orders (2009)**

**1 Restraint Order under the Proceeds of Crime Law (UK).**

**Overseas Orders (2009)**

**1 Overseas Forfeiture Order enforced (USA)**

**1 Overseas Forfeiture Order registered (UK)**

**Matters not proceeded with - 2009**

Origin	Person or Entity under Investigation	Notes
Switzerland (from 2007 request)	<i>Case names have been removed</i>	Request not within terms of Guernsey law – no evidence of fraud.
Switzerland (from 2007 request)		Request not within terms of Guernsey law – no evidence of fraud.
Germany		No evidence available in Guernsey.
Italy (Court of Treviso)		Witnesses (former Sark residents) have now left the jurisdiction.
Portugal (Judicial Court of Valongo)		LOR sent via UKCA – did not enable sufficient time to serve on defendant under terms of Portuguese Law.
Portugal (Judicial Court of Valongo)		Recipient who was in custody at the States Prison had already been paroled and deported by the time LOR arrived.

	<b>Jurisdictions</b>	<b>Exclusively ML related cases</b>	<b>Partially ML related cases</b>	<b>TOTAL</b>
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2007	UK, Jersey	2	12	14
2008	UK x 2	2	9	11
2009	UK	1	11	12

**Statistics on response times 2007 - 2009**

Response Time	2007	2008	2009
< 1 month	13	14 (2 from previous year)	19
< 2 months	18 (4 from previous year)	8 (2 from previous year)	6 (2 from previous year)
< 3 months	18 (2 from previous year)	14 (7 from previous year)	
<4 months	6 (1 from previous year)	6 (2 from previous year)	2
< 5 months	4	2	2 (2 from previous year)
< 6 months	1	2	1
< 7 months	1 ( from previous year)	1	2 (1 from previous year)
< 8 months	1		2 (1 from previous year)
< 9 months			1
< 10 months	1( from previous year)		1 (from previous year)
< 11 months			
< 12 months	1( from previous year)		2
> Over 12 months	1( from previous year)		
<b>Requests Not Proceeded</b>	<b>9</b>	<b>10</b>	<b>6</b>
<b>Pending at year end</b> <i>Includes: Requests either pending review/consideration, or dormant awaiting further information from requesting authority before allocating the appropriate legislation to proceed under etc, and; Requests that have been</i>	<b>21</b>	<b>23</b>	<b>31</b>

<i>approved and which are still under active investigation pending production notice or order or other action.</i>				
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### Implementation and effectiveness:

1283. Guernsey's legal framework for MLA is comprehensive and addresses all criteria under the FATF standard. The provision of MLA is not subject to any unreasonable, disproportionate or unduly restrictive conditions and the statistics provided by the authorities indicate that since 2007 the majority of requests have been implemented in an efficient and timely manner.

1284. While the authorities do not consider that even prior to the legislative amendments in July 2010 the designation mechanism with respect to restraint and confiscation measures was an obstacle to the provision of MLA in asset recovery, the assessors remain concerned that the mechanism may have caused a number of non-designated countries to refrain from requesting assistance from Guernsey. The impact the designation mechanisms had on the overall effectiveness of the system is thus unclear.

### 6.3.2. Recommendations and Comments

- While the recent legislative amendments *de facto* eliminate the designation mechanism and thus any concern on this point for future cases, prior to July 2010 the designation mechanism may have had a negative impact on the overall effectiveness of Guernsey's MLA framework.

### 6.3.3. Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors underlying rating
<b>R.36</b>	<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>
<b>R.37</b>	<b>C</b>	
<b>R.38</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Prior to July 2010, the designation mechanism may have had a negative impact of the overall effectiveness of the MLA system.</li> </ul>
<b>SR.V</b>	<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>

## 6.4. Extradition (R.37, 39, SR.V)

### 6.4.1. Description and Analysis

#### Legal Framework

1285. Guernsey has not introduced its own legislation on extradition. Extradition is still governed by the U.K. Extradition Act 1989, which in Section 29 (1) provides that Parts I to V of the Act shall extend to the Channel Islands and the Isle of Man, so they are considered part of the United Kingdom for the purposes of the Act. Although repealed within the United Kingdom in 2003, it remained in force in the Bailiwick of Guernsey by reason of the Extradition Act 2003 (Commencement and Savings) Order 2003 (Section 5 (2)).

1286. Guernsey is signatory to the Council of Europe Convention on Extradition 1957 under article 27(2), including its additional protocols. The Convention became applicable in Guernsey on 13 February 1991. The authorities would use this instrument whenever they address an outgoing extradition request to other countries party to the Convention. Incoming requests remain governed by the 1989 Extradition Act. The European Arrest warrant however does not apply in the Bailiwick.

1287. So in practice the extradition process will be managed by the U.K. authorities. Warrants issued by a U.K. court in the framework of extradition procedures require an exequatur by the Guernsey Royal Court, but otherwise the Guernsey judicial authorities are not involved. However, no active or passive extradition procedures have taken place in Guernsey under the 1989 Act yet.

**Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):**

1288. By virtue of Section 2 of the Extradition Act the dual criminality principle strictly applies to all extradition requests. To qualify as an “extradition crime” the criminal conduct on which the request is based must constitute an offence punishable with at least twelve months’ imprisonment both in the foreign state and in the “United Kingdom” (i.e., Guernsey). Also, according to this provision it does not matter how this conduct is described in the foreign law, so the relevant issue is the conduct underlying the offence. As explained below, the correct law for the purposes of the dual criminality test is considered to be the law of the United Kingdom, although the relevant Guernsey legislation would also satisfy the dual criminality requirement.

**Money Laundering as Extraditable Offense (c. 39.1):**

1289. As mentioned earlier, Section 2 of the U.K. Extradition Act 1989 defines an “extradition crime” as conduct that is punishable with a minimum of 12 months’ imprisonment in the requesting state, and would be so punishable if committed in the United Kingdom (where Guernsey is considered part of the United Kingdom for extradition purposes). The official position of the Guernsey authorities is that the relevant reference provisions in this context are the offenses such as they are criminalized in the United Kingdom. Consequently in the AML context the relevant money laundering offences are those covered by sections 327 to 329 of the U.K.’s Proceeds of Crime Act 2002 which carry a maximum of 14 years imprisonment, as does the money laundering offence in respect of terrorist property at section 18 of the U.K.’s Terrorism Act 2000. From the Guernsey perspective these offences would therefore constitute extradition crimes assuming that the equivalent penalty in the requesting state were 12 months’ imprisonment or more.



1290. The issue is rather academic, as the same result would be obtained if the Bailiwick legislation would serve as reference, considering the money laundering offences at section 38 to 40 of the Proceeds of Crime Law, section 57 to 59 of the Drug Trafficking Law and section 11 of the Terrorism Law (see 2.1 above) all carry penalties of up to 14 years imprisonment.

**Extradition of Nationals (c. 39.2):**

1291. As in other common law countries, no law or legal principle would stand in the way for the U.K./Guernsey to extradite its own nationals. The grounds for restrictions on granting extradition listed in Section 6 of the Extradition Act in any case do not comprise the possibility for refusal based on nationality.

**Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):**

1292. Generally, if extradition would be refused for whatever reason Guernsey would consider any request to take over the prosecution of the suspect or could mount its own prosecution if appropriate, provided it has jurisdiction over the facts. Extraterritorial jurisdiction is available under sections 61 and 62 of the Terrorism Law, or pursuant to Article 6(2) of the Council of Europe Convention in cases involving another signatory state. The possibility to initiate criminal proceedings based on money laundering activity is restricted to instances where Guernsey can assume jurisdiction *ratione loci*, as no extraterritorial jurisdiction is provided for under the Proceeds of Crime Law. Cooperation would be sought in accordance with the Bailiwick's existing practices of mutual legal assistance and in cases governed by the Council of Europe Convention; articles 6(2) and 12(1) of the Convention would be relied on.

**Efficiency of Extradition Process (c. 39.4):**

1293. As Guernsey has no experience with extradition procedures, there are no cases or practical examples to be assessed on the efficiency and expediency of the processing of incoming extradition requests. Although the process can be lengthy before all legal means to oppose extradition are exhausted, any request to Guernsey would be treated as urgent. The procedures to be followed, as spelled out in detail in Sections 7 to 12 of the Extradition Act, are common to most jurisdictions and do not appear to be obstructive. Moreover the refusal grounds are justified and universally accepted.

**Extradition under SR V (applying c. 39.1 to 39.4, c.V.4):**

1294. The reference terrorist financing offences at sections 15 to 18 of the United Kingdom's Terrorism Act 2000, like the offences under both the Terrorism Law (Sections 8 to 11) and the Terrorism Order in the Bailiwick, carry a maximum of 14 years imprisonment and are therefore extraditable offences within the scope of the Extradition Act 1989 and the Convention. Extradition based on such conduct follows the same principles and procedures as with those related to money laundering described above.

**Additional Element (R.39)—Existence of Simplified Procedures relating to Extradition (c. 39.5, c. V.8):**

1295. An extradition request can be addressed by direct facsimile transmission to the U.K. Home Secretary by an equivalent authority in a foreign state (Section 7 Extradition Act). A response can be provided without having to wait for the original to arrive. Section 9 allows for extradition simply on the basis of arrest warrants. Section 14 provides for the possibility of simplified extradition procedures when the person who is the subject of the extradition request waives his rights.

**Statistics (R.32):**

1296. No extraditions are on record under the 1989 Extradition Act.

**Implementation and effectiveness:**

1297. In the absence of actual precedents, only the theory and formal provisions of the extradition regime in respect of Guernsey can be assessed. The applicable U.K. legal framework is comprehensive and compliant with the international standards. According to the U.K. MER it was found to work effectively.

**6.4.2. Recommendations and Comments**

None.

**6.4.3. Compliance with Recommendations 37 & 39, and Special Recommendation V**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.39</b>	C	
<b>R.37</b>	C	
<b>SR.V</b>	C	

**6.5. Other Forms of International Co-Operation (R.40 & SR.V)**

**6.5.1. Description and Analysis**

**Legal Framework**

1298. International cooperation outside the mutual legal assistance sphere is a matter of daily practice, given the importance of the offshore industry in Guernsey. The Disclosure and the Proceeds of Crime Law provide for a formal legal basis for the FIU/FIS and Police to supply relevant information to FIUs and other law enforcement agencies outside the Bailiwick for, in general, the prevention, detection, investigation or prosecution of criminal offences. Reciprocity is no prerequisite, nor is the signing of an MOU. The provisions and practices for the exchange of information described below apply to all criminal conduct, including money laundering and terrorist financing.

**Widest Range of International Cooperation (c. 40.1):**

1299. **FIS:** The FIS actively exchanges information with its counterparts, particularly the FIUs that participate in the Egmont network of FIUs over the Egmont Secure Web. As stated a bilateral MOU is not a requisite, but the FIS will sign such an agreement if required by the law of the foreign State. The FIU to FIU cooperation is governed by the Egmont principles of information exchange ensuring that no further use of the information is made without the consent of the supplying FIU. Cooperative assistance is also granted to counterpart agencies that operate outside the Egmont network on the basis of the same Egmont principles. In principle consent is given for intelligence purposes. Any other use, particularly in evidence, would require a request through the Mutual Legal Assistance mechanism.

1300. **Police:** Besides direct bilateral contacts, the police use the international communication network of Interpol. The Police Fraud Department is the central point of contact for Interpol requests and actions. The Financial Investigation Unit is a member of the CARIN Group and is also associated to the U.K. financial Network (FFIN-Net). Assistance to other police authorities is routinely granted, as long as it does not involve coercive measures, such as taking voluntary witness statements and conducting informal enquiries. Such cooperation is done at intelligence level, and can, in principle, not be used in evidence without being confirmed in an MLA procedure.

1301. **Customs:** A customs to customs exchange of information for law enforcement purposes does not need any formal arrangement, MOU or agreement. The Data Protection Law explicitly permits the exchange of information for the prevention and detection of crime. The Bailiwick Customs and Excise is represented by the United Kingdom in the World Customs Organisation and their members exchange information with their counterparts on the basis of an established protocol. Being part of the customs territory of the EU, Customs and Excise is able to cooperate with a large number of foreign countries in customs-related matters under mutual assistance agreements between those countries and the EU.

1302. **Supervisory authorities:** The GFSC has established an intelligence function that is responsible for coordinating requests from international regulators. This includes establishing relationships with regulators in the banking, insurance and securities field. The GFSC uses these channels widely. Since 2004 the GFSC has responded to 152 queries from other non-Guernsey agency including foreign regulators. Conversely, the GFSC has made 29 requests to regulators in the UK and Channel Islands.

1303. The AGCC does not have a separate intelligence function as it does not regulate anything like the same number or variety of entities as the GFSC. The AGCC is authorized to hold information sharing relationships with other regulatory bodies and jurisdictions under paragraph 12(2) of Schedule 1 of the Gambling (Alderney) Law, 1999. Under this provision the AGCC may:

- (a) obtain information relating to gambling in Alderney and the supervision and regulation of similar forms of gambling carried on outside Alderney,
- (b) consult or seek information from such persons or bodies as it considers appropriate, and

- (c) transmit to other persons or bodies, in such manner as it considers appropriate, such information relating to its functions as it thinks fit.

1304. The AGCC indicated that they maintain information sharing relationships with other casino regulators, including those with responsibilities for land-based casinos and eCasinos. These channels are used in order to verify information supplied during the application process as well as obtaining ongoing regulatory information to ensure that the AGCC fully understands the operations of its licensees. As a consequence, the AGCC verifies fitness and properness of potential licensees, licensees and key individuals and whether any risk issues, including AML/CFT issues, might arise.

1305. The AGCC indicated that they cooperate with all gambling regulators across the world. The AGCC is a member of the International Association of Gaming Regulators (chairing the Association in 2009) and the Gaming Regulators European Forum. In both associations it actively participates in various working groups, and meets formally and informally at least twice per year. One of the Working Groups on eGambling focuses on the development of common standards and includes AML/CFT standards.

1306. The AGCC also cooperates on a bilateral basis with several gaming regulatory authorities around the world, both land-based and ecasino regulators including the United Kingdom, Nevada, New Jersey, the Isle of Man, Gibraltar, Malta, Singapore, Denmark, South Africa, Antigua and Barbuda, and Kahnawake during which the AGCC exchanges due diligence and/or compliance information. The AGCC has entered into formal information sharing agreements with Kahnawake and Antigua and Barbuda.

1307. In addition the AGCC has hosted delegations from the United Kingdom, and more recently the South African National Gambling Board and the Danish Gambling Regulator, each seeking to ensure that their new eCasinos sector will be appropriately regulated. These entailed six members of the South African National Gambling Board and two members of the Danish regulator attending the offices of the AGCC to gain a full understanding of how to regulate the eCasinos sector from application and due diligence through to approval and the commencement of operations.

1308. The AGCC makes regular use of these information obtaining and sharing channels. The AGCC has obtained information in respect of all applicants who are licensed in other jurisdictions.

**Provision of Assistance in Timely, Constructive and Effective Manner (c. 40.1.1):**

1309. **Law enforcement:** All police and FIU ML/FT-related requests are handled by the FIU/FIS. Requests are dealt with promptly in practice. In the period 2003 to year-end 2009, the average response time to intelligence requests was 3.2 days. As for the other law enforcement agencies, no instances of undue delays have been signaled in the context of police and customs cooperation.

1310. **Supervisory authorities:** The consolidation of requests within the Fiduciary and Intelligence division facilitates the coordination of responses in a constructive and effective

manner. The GFSC does not maintain statistics on timeliness related to responses to international requests. The authorities indicated that the policy is to respond to international requests on the basis that it would like others to respond to their own requests, i.e., promptly and fully. In the securities sector, IOSCO maintains statistics on the timeliness of responses to requests made under the IOSCO MMoU. In this respect, the authorities indicated that Guernsey has an excellent record in responding to requests made under the IOSCO MMoU.

**Number of enquiries\* received by the GFSC's Investment Business Division from other regulators.**

Subject Matter	2007	2008	2009	Up to April 30, 2010
Money Laundering	0	0	0	0
Terrorist Financing	0	0	0	0
Insider Dealing/Market Abuse	7	5	5	1
Other	0	0	3	0
<b>Total</b>	<b>7</b>	<b>5</b>	<b>8</b>	<b>1</b>

\*All request for information were granted.

**GFSC disclosures to the FIS relating to AML/CFT.**

Year	2007	2008	2009	Up to April 30, 2010
Number of disclosures	9	9	10	2

**Number of enquiries made by the GFSC's Policy & International Affairs Division to other regulators.**

Regulator	2008	2009	Up to April 30, 2010
Jersey Financial Services Commission	4	5	6
Isle of Man Financial Supervisory Commission	2	2	1
HMT	2	1	0
UK FSA	3	2	1
<b>Total</b>	<b>11</b>	<b>10</b>	<b>8</b>

**Clear and Effective Gateways for Exchange of Information (c. 40.2):**

1311. **FIS:** As mentioned earlier, there is no need for the FIS to enter into MOUs in order to exchange information, but it has done so with 13 counterpart agencies that required such agreement. As a matter of practice, FIS disseminates information directly to overseas jurisdictions, subject to authorization from a senior officer. Whenever dealing with an Egmont FIU, the FIS uses the Egmont Secure Web.

1312. **Police and Customs:** Information supplied by the Police/Customs to their counterparts in accordance with Section 8 of the Disclosure Law and Section 44 of the Proceeds of Crime Law

will normally pass through the Interpol or the customary customs channels or is disseminated directly on a bilateral basis.

1313. **Supervisory Authorities:** The Fiduciary and Intelligence Division coordinates requests from other supervisors. No MOUs is needed to exchange information. Under Section 21A of the Financial Services Commission Law the GFSC is empowered to take such steps as it considers appropriate to cooperate with any person or body:

- (a) who or which appears to the Commission to exercise in a place outside the Bailiwick functions corresponding to any of the functions of the Commission; or
- (b) 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.

1314. Section 21B of the Financial Services Commission Law establishes that any relevant power conferred on the GFSC by an enactment may, at the request of any authority which exercises in a place outside Guernsey a function corresponding to any function of the GFSC, be exercised for the purpose of enabling or assisting the requesting authority to carry out any of its functions. This provision allows the GFSC to use its powers to obtain information and documents on behalf of foreign supervisors and to provide such information and documents to those supervisors.

1315. Furthermore, under section 41I of the Protection of Investors Law, establishes that where an overseas authority notifies the GFSC that it requires assistance in connection with the investigation of market abuse, the GFSC may exercise its investigative powers to assist the other authority. This assistance extends to obtaining information from members of the public.

1316. Sections 21(2)(b) and (d) of the Financial Services Commission Law, sections 44(f) and (h) of the Banking Supervisory Law, sections 34B(f) and (h) of the Protection of Investors Law sections 80(f) and (h) of the Insurance Business Law, sections 57(f) and (h) of the Insurance Managers and Insurance Intermediaries Law, sections 44(f) and (h) of the Regulation of Fiduciaries Law, sections 29 (e) and (g) of the Registered FSBs Law and sections 21(e) and (g) of the PB Law permit the GFSC to provide information to foreign supervisory authorities exercising any of the functions of the GFSC (which include supervision and the countering of financial crime and the financing of terrorism) and/or for the purposes of preventing, detecting, investigating or prosecuting crime of any kind.

1317. The current legal framework in place provides clear and effective gateways for the GFSC to provide information to other supervisors.

### **Spontaneous Exchange of Information (c. 40.3):**

1318. **FIS/Law enforcement:** Based on the relevant Sections of the Disclosure Law and the Proceeds of Crime Law information can be disseminated both spontaneously or on request. 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. The statistics show a high

frequency of spontaneous dissemination of STR information to counterpart FIUs, amounting to 418 STRs in 2008 and 542 in 2009.

1319. **Supervisory authorities:** The GFSC has the authority to provide information spontaneously. The GFSC authorities indicated that they are able to provide the widest range of cooperation to its foreign counterparts. The authorities stated that cooperation may take the form of sharing any information which the GFSC may lawfully disclose. The relevant powers to provide information are contained in the Financial Services Commission Law, the Protection of Investors Law and the regulatory laws as described above under c.40.2.

1320. There are not provisions in the legislation requiring bilateral agreements such as Memorandum of Understanding to be in place before the GFSC exchanges information. The GFSC has signed 20 bilateral MoUs, and 2 multilateral information agreements allowing it to participate in exchanging information. Guernsey is also a signatory to the IOSCO multilateral memorandum of understanding and has applied to be a signatory to the IAIS multilateral memorandum of understanding.

1321. The GFSC authorities indicated that they do provide information spontaneously. For example, the authorities indicated that during 2009 the GFSC pro-actively provided information to the United States Commodities and Futures Trading Commission, the United Kingdom Office of Fair Trading, the French Autorite des Marches Financiers and various police forces. Additionally, in 2010 the GFSC pro-actively provided information to the JFSC and the U.K. FSA in respect of an entity which has a presence in Guernsey, Jersey, and the United Kingdom and whether or not it should be regulated for AML/CFT purposes in Jersey and the United Kingdom. The GFSC has also provided information to Bafin (Germany) due to concerns of insider dealing.

1322. In the eCasinos sector, the AGCC has the authority to provide information spontaneously. Under paragraph 12(2) of Schedule 1 of the Gambling (Alderney) Law, 1999 the AGCC may “transmit to other persons or bodies, in such manner as it considers appropriate, such information relating to its functions as it thinks fit.” Spontaneous information is provided. As an example, in May 2010 upon a review of betting related news in the Sporting Press the AGCC’s Chief Inspector noted mention of strange betting patterns relating to racing taking place on the previous day. The Chief Inspector made enquiries of Alderney licensees and found that five licensees had suffered significant losses in respect of those betting patterns. The Chief Inspector’s actions identified the possibility of a deniable transaction for licensees, a concert party perpetrated on a number of Alderney licensees (and potentially licensees in other jurisdictions) made by a consortium of bettors.

1323. As a result of the information obtained from Alderney licensees the Chief Inspector made spontaneous contact with three other regulators whose licensees may have been similarly targeted. As a result of this dissemination of information a review is currently taking place in the United Kingdom where the consortium of bettors resides, to establish if a formal investigation into potentially criminal offences should take place.

1324. The AGCC indicated that they will provide such support as it is able to assist the ongoing investigation and any prosecution which may ensue. The initiative has coincided with the United Kingdom launch by UKGC of a Sports Betting Intelligence Unit, and given the

international nature of sports betting fraud, has at the least served as a useful bridge into that operation.

**Making Inquiries on Behalf of Foreign Counterparts (c. 40.4); FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1):**

1325. **FIS/Law enforcement:** Section 44 of the Proceeds of Crime Law allows the police and customs officers to use the powers available to them for domestic enquiries to obtain further information at the request of their foreign colleagues. The same applies to the FIU/FIS when collecting intelligence in ML/FT matters. Checking its own database and all other relevant sources accessible to the FIS—such as law enforcement databases, administrative sources and information from the supervisory authorities (indirectly), and Company registry information—is a routine part of the assistance provided. The FIU also checks if there is a bank account in Guernsey (see stats below), though there is no legal obligation for the banks to respond.

1326. **Supervisory authorities:** As indicated under c.40.1, there is express provision in the Financial Services Commission Law and the Protection of Investors Law for the use of the investigatory powers under those laws by the GFSC to assist another jurisdiction. In addition, the authorities confirmed that the GFSC's is a signatory to the IOSCO MMoU and complies with its undertaking of enquiries in relation to requests made to it under the MMoU.

**Conducting of Investigations on Behalf of Foreign Counterparts (c. 40.5):**

1327. **Law enforcement:** Outside the Mutual Legal Assistance context, police requests to perform investigative actions can be complied with if they do not imply coercive measures and are done on voluntary basis, such as taking witness statements, requesting documents and collecting other information. Customs are empowered to conduct investigations in cross-border cases within their specific legal remit, mostly related to drug trafficking, smuggling and fraudulent evasion of duties.

1328. **Supervisory authorities:** As indicated by the legislation referred to under c.40.2, the GFSC can conduct investigations on behalf of a foreign counterpart.

**No Unreasonable or Unduly Restrictive Conditions on Exchange of Information (c. 40.6):**

1329. **Law enforcement/FIS:** All information exchanged is subject to the conditions contained in the Data Protection Law 2001, particularly paragraph 8 of part I of Schedule 1 and Schedule 4. Basically, this refers to the other jurisdiction ensuring an adequate level of protection in relation to the processing of personal data or to reasons of substantial public interest. The FIU to FIU cooperation is governed by the Egmont Principles of Information Exchange, which emphasize the confidentiality aspect. The general rule is that the information supplied can only be used for intelligence purposes and that any evidentiary use requires a formal MLA request.

1330. **Supervisory authorities:** The Data Protection Law contains some conditions in respect of the transfer of information 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, Argentina, Canada, the Faroe Islands, Jersey, the Isle of Man, Switzerland, and organizations that subscribe to the U.S. Safe Harbour agreement are deemed to adequate levels of protection in place.

1331. Disclosure to other jurisdictions is permissible if it comes with 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.

1332. In addition to these provisions of general application, Section 21(6) of the Financial Services Commission Law states that when disclosing confidential information the GFSC shall impose conditions or take such other steps to safeguard the confidentiality of that information as the GFSC thinks fit. The authorities indicated that in accordance with the GFSC's procedures on the disclosure of information, the following statement is made: "This information is confidential. It is provided in accordance with the provisions of section 21 of the Financial Services Commission Law. It should not be disseminated further without the written consent of the GFSC and should only be used for supervisory purposes."

**Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 40.7):**

1333. The fact that the request relates to fiscal matters is irrelevant. Co-operation in respect of fiscal matters is provided both at an intelligence and evidential level in exactly the same way as other types of crime. Offences such as tax evasion constitute a crime within the Bailiwick and intelligence is disseminated in support of such fiscal investigations. Even if the fiscal aspect would not be qualified as a crime, exchange of information is still allowed under Section 8 of the Disclosure Law to administrative authorities such as tax administration or supervisory authorities.

**Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 40.8):**

1334. **Law enforcement/FIS:** Except in the case of legal privilege, there is no obligation of secrecy on financial institutions and DNFBS, who are only bound to the contractual principle of confidentiality. There is ample legislation overriding the confidentiality rule when a request to

obtain information from those institutions is made by counterpart agencies<sup>41</sup>. The exchange of information between FIUs takes place at intelligence level and information is shared on an intelligence basis with foreign FIUs under the Egmont rules. The general principle is that all information/intelligence must be confirmed by way of letters rogatory if it is to be used in evidence.

1335. **Supervisory authorities:** There are no restrictions with respect to exchanging information with respect to fiscal matters. 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 authorities indicated that this would only be relevant to a request for cooperation if it prevented the Bailiwick authorities from obtaining information from those institutions. As such, this is not the case because the legislation governing the obtaining of evidence or information contains provisions that specifically override duties of confidentiality, as follows:

- Sections 45 (9) (b), 48(10), 48F and 48L of the Proceeds of Crime Law,
- Sections 63(9) (b), 67(10), 67F and 67L of the Drug Trafficking Law,
- Schedule 5 section 5(4)(b), Schedule 6 section 1(3) and Schedule 7 section 5 (2) of the Terrorism Law,
- Sections 23 (2), 33, 39 45(5) 47(5) and 52(4) of the Civil Forfeiture Law
- Schedule 1, Para 5 of the International Cooperation Law applying the Bankers Books Law
- Section 2 of the Fraud Investigation Law
- Section 41M of the Protection of Investors Law
- Section 11(5) of the Insider Dealing Law
- Section 21 and 21E of the Financial Services Commission Law.

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 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.

1336. In addition, Section 21(4) of the Financial Services Commission Law, section 43 of the Banking Supervision Law, section 34A of the Protection of Investor Law, section 79 of the

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<sup>41</sup> Sections 45 (9) (b), 48(10), 48F and 48L of the Proceeds of Crime Law, Sections 63(9) (b), 67(10), 67F and 67L of the Drug Trafficking Law, Schedule 5 section 5(4)(b), Schedule 6 section 1(3) and Schedule 7 section 5 (2) of the Terrorism Law, Sections 23 (2), 33, 39 45(5) 47(5) and 52(4) of the Civil Forfeiture Law Schedule 1, Para 5 of the International Cooperation Law applying the Bankers Books Law Section 2 of the Fraud Investigation Law Section 41M of the Protection of Investors Law Section 11(5) of the Insider Dealing Law Section 21 and 21E of the Financial Services Commission Law.

Insurance Business Law, section 56 of the Insurance Managers and Insurance Intermediaries Law, section 43 of the Regulation of Fiduciaries Law, section 28 of the Registered FSB Law and section 20 of the PB Law contain confidentiality provisions to which the GFSC and its officers are subject. There are gateways which provide for the GFSC to provide cooperation and confidential information to third parties—pertinent gateways are specified under c. 40.2. There are no secrecy provisions and requests for requirements. The authorities indicated that even when the GFSC may not itself be able to provide assistance it liaises with the Attorney General's Chambers to ascertain if that body can assist a foreign supervisor requesting information.

**Safeguards in Use of Exchanged Information (c. 40.9):**

1337. **FIS:** Information supplied by counterpart FIUs is registered in the FIS database, but access to foreign FIU intelligence and sensitive domestic intelligence are both subject to security restrictions, namely enforced computer protocols and physical security systems to ensure that access is restricted to authorized personnel only. Moreover the Egmont rules imposing general confidentiality guarantees and prior consent conditions for the use of supplied information are observed.

1338. **Police:** All relevant information, including requests for assistance and other information from foreign law enforcement sources, is stored in the secured central police database, to which the police and customs officers of the FIS have access. Use of the information is purpose bound under the Data Protection rules, namely for the prevention and detection of crime.

1339. **Supervisory authorities:** The authorities indicated that confidential information in the possession of the GFSC must only be used for carrying out the GFSC's functions. Should such information be used for any other purposes then any legal protection of the GFSC, and its members, officers and servants, from being prosecuted for acting in bad faith or being sued would be in doubt.

1340. Confidential information is held securely. Appropriate measures are taken to prevent unauthorized access or unlawful use of that information. Confidential information must not be disclosed to a third party except in accordance with the statutory gateways for disclosure. Any request for information is considered by the GFSC on a case-by-case basis.

1341. Schedule 1 to the Data Protection Law contains eight principles relating to the handling of personal data (i.e. data relating to a living individual). Those that particularly relate to the disclosure of information are:

- a) the second principle, which states that personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes. The term "further processed" would include the disclosure of information to other bodies.
- b) the seventh principle, which states that appropriate technical and organizational measures shall be taken against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. And,

- c) the eighth principle, which states that 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.

1342. The GFSC requires all staff to adhere to a code of conduct. All staff must re-affirm this annually. Similar to the GFSC, confidential information in the possession of the AGCC must only be used for carrying out the AGCC's functions. Should such information be used for any other purposes then any legal protection of the AGCC, and its members, officers and servants contained within Section 4 of the Gambling (Alderney) law, 1999, from being sued for acting in bad faith would be in doubt.

1343. The AGCC has internal policies in respect of the physical retention of information and data details of which can be found in the AGCC's office procedures manual as well as a policy in respect of security which includes information security.

1344. The AGCC is a Data Controller for the purposes of the Data Protection (Bailiwick of Guernsey) Law, 2001 and maintains a notification with the Data Protection in Guernsey. Unauthorized disclosure by AGCC staff members would be a criminal offence under Section 55 of the Data Protection (Bailiwick of Guernsey) Law, 2001.

**Additional Element—Exchange of Information with Non-Counterparts (c. 40.10 & c. 40.10.1):**

1345. The Bailiwick law enforcement authorities are able to undertake exchanges of information with non-counterparts in accordance with the provisions of section 8 of the Disclosure Law 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 FSA 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.

**Additional Element—Provision of Information to FIU by Other Competent Authorities pursuant to request from Foreign FIU (c. 40.11):**

1346. The requesting authority will need not only to disclose the nature and purpose of the enquiry but to demonstrate that the request is justified and proportionate. The requesting authority will be required to identify the nature of criminality under investigation and the reason why they believe both that the information held in Guernsey will benefit their investigation and that the investigation relates to an offence that would be an offence if it was committed in Guernsey

**International Cooperation under SR V (applying c. 40.1-40.9 in R. 40, c. V.5):**

1347. All answers above related to international cooperation and information exchange outside the MLA context, equally apply in TF matters.

**Additional Element under SR V (applying c. 40.10-40.11 in R. 40, c. V.9):**

1348. See comments cr. 40.10 & 40.11.

**Statistics (R.32) FIS:**

1349. Detailed statistics on international requests for intelligence/assistance are kept by the FIS, including the number of refusals and spontaneous referrals.

1. Requests to foreign authorities since 2006<sup>42</sup>

The FIS stated that none of their requests were formally refused.

2. Requests from foreign authorities for the last 3 years (2008 – 31<sup>st</sup> March 2010)

Year	Overseas Requests FIU	Overseas Responses to FIU	Refused Response
2008	33	33	0
2009	54	54	0
2010	17	17	0

The FIS responds to all overseas requests for assistance even if the result is negative.

3. Statistics in respect of spontaneous referrals (i.e. without request to that effect) to foreign authorities for the last 3 years (2008 – 31<sup>st</sup> March 2010)

Year	Overseas Referrals FIU	Overseas Referrals Non FIU	Response to Referrals
2008	403	142	205
2009	549	200	277
2010	123	30	188

Note that one STR may have been disseminated to several FIUs or other LE agencies

4. Financial Account Requests (FAE)

Police

1350. Following table refers to the operational international contacts of the PCFD:

	2007	2008	2009	2010*
Total Preliminary Investigations	254	282	195	109
Interpol	17	17	5	1

<sup>42</sup> FIM: Financial Intelligence Messages. This refers to outgoing requests to counterpart FIUs or other foreign law enforcement agencies.

HMRC/Border Agency	3	1	1	-
UK Police	18	14	8	-
SOCA	3	1		-
Crown Dependencies	3	-	1	-
International	7	8	2	1
Other (non LE)	2	-	2	-

\* Data to the May 15, 2010

## Customs

1351. As for the formal dissemination of operational intelligence by the customs to foreign LE agencies, a total of 126 formal reports were sent during the three year period from January 1, 2007 to December 31, 2009, 82 to Customs agencies and 44 to other law enforcement agencies (Police and SOCA). A total of 41 formal intelligence reports were received by the Service during this same period.

### Implementation and effectiveness:

1352. **FIU/ Law enforcement:** Considering the importance of the Bailiwick as a financial offshore centre, international cooperation at financial intelligence or law enforcement level constitutes an essential part of the assignment of the Guernsey FIU and police. The statistical figures show a relatively high volume of information exchange traffic, taking into account the size of the population and financial industry of the island: of the STRs disseminated, some 60 percent have an overseas destination. Most referrals to foreign FIUs or other authorities are done spontaneously, when it is deemed of interest for the AML/CFT effort or other law enforcement purposes. The FIS is an active member of the Egmont Group and makes effective use of its secure communication system. Remarkably the FIS registered more outgoing request than requests received: in 2008/2009 200 outgoing requests were registered against 87 incoming.

1353. The powers of the FIU/FIS to collect information or make further enquiries at the request of its counterparts are adequate where they relate to law enforcement, administrative or commercial sources, but limited in respect of financial information. While information of that nature can be obtained when in possession of the supervisory authorities and financial institutions may (voluntarily) divulge the existence of financial accounts at the request of the FIU/FIS, confidential substantive financial information resting within the financial services requires the intervention of a judge, and consequently cannot be obtained in the intelligence/pre-investigative phase. On the other hand the FIU/FIS follows a constructive approach to all serious requests and consent to use the supplied information for intelligence purposes has never been refused. Requests aimed at collecting evidence, however, need to follow the appropriate MLA procedures. The same approach is taken by the Guernsey Police and Customs and Excise.

1354. **Supervisory:** The establishment of an intelligence function within the GFSC allows for a coordinated approach to coordination with foreign supervisors. Statistics demonstrate a good level of cooperation with foreign counterparts.

### 6.5.2. Recommendations and Comments

- Although limited in its possibilities to directly collect financial information at intelligence level, the cross-border cooperation capacity and practice of the FIU/FIS complies with the relevant international standards, both on money laundering and terrorism financing.

### 6.5.3. Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.40	C	
SR.V	C	

## 7. OTHER ISSUES

### 7.1. Resources and Statistics

	Rating	Summary of factors underlying rating
R.30	C	
R.32	C	

### 7.2. Other relevant AML/CFT Measures or Issues

1355. None.

**Table 1. Ratings of Compliance with FATF Recommendations**

<b>Forty Recommendations</b>	<b>Rating</b>	<b>Summary of factors underlying rating<sup>43</sup></b>
<b>Legal systems</b>		
1. ML offense	<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 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>
2. ML offense—mental element and corporate liability	<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 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>	<ul style="list-style-type: none"> <li>Although the Bailiwick's provisions are robust, and they are used routinely in all prosecutions where they can be applied, they have not yet been used in a fully effective manner because of the few cases instituted in proceeds-generating matters other than drug trafficking.</li> </ul>
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	<b>C</b>	
5. Customer due diligence	<b>LC</b>	<ul style="list-style-type: none"> <li>List of customers to which EDD must be applied omits higher-risk categories relevant to Guernsey.</li> </ul>
6. Politically exposed persons	<b>C</b>	
7. Correspondent banking	<b>C</b>	
8. New technologies & non face-to-face business	<b>C</b>	
9. Third parties and introducers	<b>LC</b>	<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</li> </ul>

<sup>43</sup> These factors are only required to be set out when the rating is less than Compliant.



		<p>be relied upon, as is now permitted pursuant to a recent amendment to the Bailiwick regulations, raises an effectiveness issue.</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>
10. Record-keeping	<b>C</b>	
11. Unusual transactions	<b>C</b>	
12. DNFBP–R.5, 6, 8–11	<b>PC</b>	<p>ECasinos</p> <ul style="list-style-type: none"> <li>• On-line verification methods used by eCasinos should be complemented by additional evidence of identity of the client.</li> <li>• Requirements to mitigate against the risk associated with non face-to-face transactions in the eCasinos sector are not in line with the standard.</li> <li>• Not all eCasinos have effectively implemented the requirement to pay special attention to complex and unusual transactions.</li> </ul> <p>TCSPs, legal profession, accountants and estate agents</p> <ul style="list-style-type: none"> <li>• The exemption for individuals who act as a director for six companies or less is not in line with the standard.</li> <li>• The GFSC should identify legal arrangements or fiduciaries as high risk.</li> <li>• Reliance should not be placed on introducers or intermediaries who are DNFBPs.</li> </ul>

13. Suspicious transaction reporting	<b>C</b>	
14. Protection & no tipping-off	<b>C</b>	
15. Internal controls, compliance & audit	<b>LC</b>	<ul style="list-style-type: none"> <li>• There is no requirement to maintain an adequately resourced independent audit function to test compliance with AML/CFT policies, procedures and controls.</li> </ul>
16. DNFBP–R.13–15 & 21	<b>LC</b>	<ul style="list-style-type: none"> <li>• The number of suspicious transaction reports submitted by the eCasinos sector is insufficient.</li> <li>• Ecasinos were not specifically required to provide training to their employees on money laundering techniques or employee obligations regarding CDD and reporting.</li> <li>• The requirement to provide training does not apply to all eCasinos employees.</li> </ul>
17. Sanctions	<b>LC</b>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
18. Shell banks	<b>C</b>	
19. Other forms of reporting	<b>C</b>	
20. Other NFBP & secure transaction techniques	<b>C</b>	
21. Special attention for higher risk countries	<b>C</b>	
22. Foreign branches & subsidiaries	<b>C</b>	
23. Regulation, supervision and monitoring	<b>C</b>	
24. DNFBP—regulation, supervision and monitoring	<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 on-site inspections for TCSPs.</li> </ul>
25. Guidelines & Feedback	<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>
<b>Institutional and other measures</b>		
26. The FIU	<b>LC</b>	<ul style="list-style-type: none"> <li>• Limited effectiveness of the overall reporting system in terms of domestic law enforcement results in respect of money laundering.</li> </ul>

		<ul style="list-style-type: none"> <li>• Lack of effectiveness due to a limited direct access to financial information.</li> </ul>
27. Law enforcement authorities	<b>LC</b>	<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	<b>C</b>	
29. Supervisors	<b>LC</b>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
30. Resources, integrity, and training	<b>C</b>	
31. National co-operation	<b>C</b>	
32. Statistics	<b>C</b>	
33. Legal persons–beneficial owners	<b>C</b>	
34. Legal arrangements – beneficial owners	<b>LC</b>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
<b>International Cooperation</b>		
35. Conventions	<b>LC</b>	<p><b>Vienna and Palermo Conventions</b></p> <ul style="list-style-type: none"> <li>• Palermo Convention not yet extended to the Bailiwick.</li> <li>• Questions regarding the effective application of ML provisions with few ML cases involving financial sector participants, and disconnect between investigations and prosecutions/convictions.</li> </ul>
36. Mutual legal assistance (MLA)	<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>
37. Dual criminality	<b>C</b>	
38. MLA on confiscation and freezing	<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. Extradition	<b>C</b>	
40. Other forms of co-operation	<b>C</b>	
<b>Nine Special Recommendations</b>		
SR.I Implement UN instruments	<b>LC</b>	<b>UNSCR implementation:</b>

		<ul style="list-style-type: none"> <li>• In the legal framework, it is not explicit that designated persons are not to receive prior notice of a freeze action.</li> <li>• Guidance regarding lists and their application in the Bailiwick should be improved.</li> <li>• Criminal provision for enforcement could have greater clarity as identified in SR III section.</li> </ul>
SR.II Criminalize terrorist financing	<b>C</b>	
SR.III Freeze and confiscate terrorist assets	<b>LC</b>	<ul style="list-style-type: none"> <li>• It is not explicit in the legal framework that a designated person is not to receive prior notice of a freeze action.</li> <li>• 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.</li> <li>• Although guidance to financial sector and other persons on the import of the lists appearing on the HM Treasury website and specifically which lists apply in Guernsey 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 is too soon to assess the effectiveness of the new measures.</li> </ul>
SR.IV Suspicious transaction reporting	<b>LC</b>	<ul style="list-style-type: none"> <li>• The reporting requirement under the TL does not extend to Section 5 of the Terrorism (UN Measures) (Channel Islands) Order 2001.</li> </ul>
SR.V International cooperation	<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>
SR.VI AML/CFT requirements for money/value transfer services	<b>C</b>	
SR.VII Wire transfer rules	<b>C</b>	
SR.VIII Nonprofit organizations	<b>PC</b>	<ul style="list-style-type: none"> <li>• The NPO registration system is not comprehensive.</li> <li>• Outreach is not provided to the entire NPO sector.</li> </ul>

		<ul style="list-style-type: none"> <li>• Information on the purpose and objectives of the NPO and the identity of the persons who own, control or direct their activities is not publicly available.</li> <li>• NPOs are not subject to supervisory activities.</li> <li>• Sanctions for non-compliance with registration requirements are not effective and dissuasive.</li> </ul>
<p>SR.IX Cross-Border Declaration &amp; Disclosure</p>	<p><b>LC</b></p>	<ul style="list-style-type: none"> <li>• (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).</li> <li>• No unified regime for all cross-border cash transportation. (effectiveness)</li> </ul>

**Table 2. Recommended Action Plan to Improve the AML/CFT System**

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

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

	supervision for a sufficient period.
<b>3.4 Financial institution secrecy or confidentiality (R.4)</b>	
<b>3.5 Record keeping and wire transfer rules (R.10 &amp; SR.VII)</b>	
<b>3.6 Monitoring of transactions and relationships (R.11 &amp; 21)</b>	
<b>3.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25, &amp; SR.IV)</b>	<p><b>R.13</b></p> <ul style="list-style-type: none"> <li>• Consider amending DL and TL and/or relevant guidance to explicitly require the reporting of attempts, or issuing guidance to clarify the requirement.</li> <li>• Review STR process to determine whether timeliness could be improved by revising and possibly simplifying the procedure.</li> </ul> <p><b>SR IV</b></p> <ul style="list-style-type: none"> <li>• The reporting requirement in the TL should be amended to also extend to conduct under Section 5 of the Terrorism (UN Measures) (Channel Islands) Order 2001.</li> </ul>
<b>3.8 Internal controls, compliance, audit and foreign branches (R.15 &amp; 22)</b>	<ul style="list-style-type: none"> <li>• The authorities should establish a direct obligation for FSB maintain an adequately resourced and independent audit function to test compliance with the AML/CFT policies, procedures, and controls.</li> </ul>
<b>3.9 Shell banks (R.18)</b>	
<b>3.10 The supervisory and oversight system—competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 &amp; 25)</b>	<ul style="list-style-type: none"> <li>• The authorities should consider enhancing the discretionary financial penalties regime and establishing a sanctions regime that is dissuasive and proportionate to the severity of the violation or level of non compliance.</li> </ul>
<b>3.11 Money value transfer services (SR.VI)</b>	
<b>4. Preventive Measures— Nonfinancial Businesses and Professions</b>	
<b>4.1 Customer due diligence and record-keeping (R.12)</b>	<p><b>Legal profession, accountants and real estate agents</b></p> <ul style="list-style-type: none"> <li>• The GFSC authorities are recommended to: <ul style="list-style-type: none"> <li>• amend the exemption for individuals who act as a</li> </ul> </li> </ul>



	<p>director for six companies or less in line with the standard.</p> <ul style="list-style-type: none"> <li>• identify legal arrangements or fiduciaries as high risk given their vulnerability to money laundering and their prevalence in the Bailiwick.</li> <li>• determine when PB could rely on foreign introducers or intermediaries who are DNFBPs.</li> </ul> <p><b>ECasinos</b></p> <ul style="list-style-type: none"> <li>• The AGCC authorities are recommended to require e-Casinos to: <ul style="list-style-type: none"> <li>• apply additional specific and effective CDD measures to mitigate against the impreciseness of on-line verification methods.</li> <li>• implement methods and measures to manage and mitigate the specific risks on non face-to-face transaction, including having additional CDD procedures in place when using on-line verification software for non face-to-face transactions.</li> <li>• Monitor gambling transactions and pay special attention to complex and unusual transactions.</li> </ul> </li> </ul>
<p><b>4.2 Suspicious transaction reporting (R.16)</b></p>	<ul style="list-style-type: none"> <li>• The authorities are recommended to consider amending the DL and TL to create direct, explicit obligations to report suspicions of ML and TF and to explicitly require the reporting of suspicious attempted transactions.</li> </ul> <p><b>ECasinos</b></p> <ul style="list-style-type: none"> <li>• The authorities are recommended to require eCasinos to provide AML/CFT training to all eCasinos employees. The training should specifically include, <i>inter alia</i>, money laundering techniques and employee obligations regarding CDD and reporting.</li> </ul>
<p><b>4.3 Regulation, supervision, monitoring, and sanctions (R.17, 24, &amp; 25)</b></p>	<ul style="list-style-type: none"> <li>• Police record checks are not conducted systematically on key individuals seeking an eGambling license. The absence of police record checks increases the risk that a license may be granted to criminals or their associates.</li> <li>• The GFSC should, as it has recognized, increase the frequency of its on-site inspections for TCSPs. Examinations have been</li> </ul>

	<p>reduced by nearly half in the TCSP sector since 2006. All TCSPs should be inspected on a more frequent basis.</p> <ul style="list-style-type: none"> <li>• The AGCC should provide more guidance with respect to AML requirements particularly in the area of customer due diligence.</li> </ul>
<b>4.4 Other designated non-financial businesses and professions (R.20)</b>	
<b>5. Legal Persons and Arrangements &amp; Nonprofit Organizations</b>	
<b>5.1 Legal Persons–Access to beneficial ownership and control information (R.33)</b>	
<b>5.2 Legal Arrangements– Access to beneficial ownership and control information (R.34)</b>	<ul style="list-style-type: none"> <li>• The authorities should put in place specific measures to ensure the availability of accurate and complete beneficial ownership information for trusts and general partnerships that are not administered by licensed TCSPs.</li> </ul>
<b>5.3 Nonprofit organizations (SR.VIII)</b>	<ul style="list-style-type: none"> <li>• Manumitted organizations could be vulnerable to terrorism financing activities and should be subject to registration.</li> <li>• Outreach focused on the raising awareness on the risks of terrorist abuse and the available measures to protect against such abuses should be provided to the entire NPO sector.</li> <li>• Information on the purpose and objectives of the NPO and the identity of the persons who own, control or direct their activities is not publicly available.</li> <li>• Supervision of manumitted organizations should be undertaken with respect to their obligations under the NPO Law.</li> <li>• Sanctions for non-compliance with registration requirements should be strengthened to ensure that they are effective and dissuasive.</li> </ul>
<b>6. National and International Cooperation</b>	
<b>6.1 National cooperation and coordination (R.31)</b>	
<b>6.2 The Conventions and UN Special Resolutions (R.35 &amp; SR.I)</b>	<ul style="list-style-type: none"> <li>• The Bailiwick should work to resolve issues with the United Kingdom in order to be in a position to request an extension of the ratification of the Palermo Convention to it.</li> <li>• The authorities should continue efforts to improve the effective application of the ML provisions with the development of cases</li> </ul>

	<p>involving financial sector participants, and by addressing the disconnect between the number of ML cases investigated versus the cases prosecuted and eventually resulting in a conviction.</p> <ul style="list-style-type: none"> <li>• The recommendations set forth in the section on SR III should be addressed in order to fully implement the applicable UN Security Council resolutions.</li> </ul>
<b>6.3 Mutual Legal Assistance (R.36, 37, 38 &amp; SR.V)</b>	<ul style="list-style-type: none"> <li>• While the recent legislative amendments <i>de facto</i> eliminate the designation mechanism and thus any concern on this point for future cases, prior to July 2010 the designation mechanism may have had a negative impact on the overall effectiveness of Guernsey's MLA framework.</li> </ul>
<b>6.4 Extradition (R. 39, 37 &amp; SR.V)</b>	
<b>6.5 Other Forms of Cooperation (R. 40 &amp; SR.V)</b>	
<b>7. Other Issues</b>	
<b>7.1 Resources and statistics (R. 30 &amp; 32)</b>	

## **Annex 1. Authorities' Response to the Assessment**

The Bailiwick authorities are fully committed to meeting the standards set by the FATF Forty Recommendations on Money Laundering and the Nine Special Recommendations. This commitment is reflected in the report, which identifies that the Bailiwick of Guernsey has a comprehensive AML/CFT legal framework and that this framework provides a sound basis for an effective AML/CFT regime. As evidenced by the effectiveness of the AML/CFT Advisory Committee, there is comprehensive co-ordination and co-operation between the AML/CFT authorities in the Bailiwick. The Bailiwick will continue to place a very high priority on co-operation, co-ordination and information exchange with authorities both locally and in other jurisdictions.

The Bailiwick has an on-going programme to review and enhance AML/CFT legislation, regulation, rules and guidance; monitor effectiveness of compliance with the AML/CFT regime; and address identified shortcomings. The recommendations made by the IMF have been, and will continue to be, taken seriously. Work on addressing the shortcomings began as soon as the IMF evaluation team left the Bailiwick.

Most of the recommendations made by the assessors are technical in nature, with some relating to the improvement of implementation of legislation. Even since the on-site element of the IMF's evaluation, steps taken by the Bailiwick's AML/CFT authorities over several years have produced enhanced results.

The first prosecution for autonomous money laundering has come to trial and the defendant has been convicted on nine different counts. There has also been a further successful money laundering prosecution involving two counts of self-laundering. This trend is expected to continue, with further successful money laundering prosecutions for both self laundering and autonomous money laundering anticipated.

As identified by the assessors, the confiscation and provisional measures within the Bailiwick are robust and are used routinely in all prosecutions where they can be applied. Since the on-site element of the IMF's evaluation a confiscation order in the sum of £268,556 has been made. This is the biggest domestic confiscation order made to date and arose from a non-drug trafficking case. In addition, following the successful prosecution for autonomous money laundering, an application will be made for a confiscation order in excess of £300,000.

Since the on-site visit, the effectiveness of the sanctions for breaching controls on cross border cash movements has also been demonstrated by the first prosecution under the cash controls legislation, which resulted in a £2,000 fine and confiscation of all the money involved (nearly £10,000) even though it was legitimately sourced.

The assessors had a concern that the then designation mechanism may have had a negative impact on the overall effectiveness of the mutual legal assistance system. The designation requirement was removed with effect from 28 July 2010.

Recommendations were made by the assessors to enhance the requirements for the freezing and confiscation of terrorist assets. These will be addressed in the legislation which is being drafted to replace the current framework. In addition, further guidance has been provided to the financial

sector in respect of the freezing and confiscation of terrorist assets and the Sanctions Committee will continue to monitor its effectiveness.

Several of the assessors' recommendations will be considered in the context of the proposed revisions to the FATF Recommendations.

## **Annex 2. Details of All Bodies Met During the On-Site Visit**

(List of ministries, other government authorities or bodies, private sector representatives and others.)

### **Ministries**

Attorney General's Office  
 The Royal Court House  
     - Bailiff's Chambers  
 State of Guernsey Income Tax

### **Operational, Law Enforcement and Intelligence Agencies**

AML/CFT Advisory Committee  
     - AML/CFT Financial Crime Group  
 Attorney General's Office  
 Guernsey Police  
     - Guernsey Police Fraud Department  
 Financial Intelligence Unit  
 Customs and Excise, Immigration and Nationality Service

### **Supervisory Bodies**

Guernsey Financial Services Commission  
 Guernsey and Alderney Registrars of Companies  
 Alderney Gambling Control Commission

### **Financial Institutions**

Credit Suisse (Guernsey) Limited  
 Network Securities Limited  
 Trident Trust Company (Guernsey) Limited  
 Generali International  
 Northern Trust International Fund Administration Services (Guernsey) Ltd  
 EFG Bank  
 Northern Trust (Guernsey) Limited  
 Rothschild Trust Guernsey Limited  
 Cenkos Channel Islands  
 Lloyds TSB

### **Designated Non Financial Businesses and Professions (DNFBP)**

Grant Thornton Limited  
 Bruce Russell & Son

Carey Olsen  
Swoffers Commercial Ltd  
Tombola Alderney Ltd  
Guernsey Post Limited

**Professional Bodies**

- **Financial**

Guernsey Association of Compliance Officers  
Association of Guernsey Banks  
GIIA (Guernsey Insurance Company Management Association)

- **DNFBP**

Association of Guernsey Notaries  
Guernsey Society of Chartered and Certified Accountants  
Guernsey Bar Council

**Annex 3. List of All Laws, Regulations, and Other Material Received**

<b>Legislation, Regulations, and Other Material Received</b>	<b>Full title</b>
Aiding and Abetting Law	Criminal Justice (Aiding and Abetting etc.) (Bailiwick of Guernsey) Law, 2007
Al-Qa'ida Order	Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002 (SI 2002/258)
AML/CFT Guidance	Alderney Gambling Control Commission – The Prevention of Money Laundering and Combating the Funding of Terrorism
Attempts Law	Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law, 2006
Banking Supervision Law	Banking Supervision (Bailiwick of Guernsey) Law, 1994
Cash Controls Law	Cash Controls (Bailiwick of Guernsey) Law 2007
Charities and NPOS (Exemption) Regulations	Charities and Non Profit Organisations (Exemption) Regulations, 2008
Charities and NPOS Registration Law	Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008
Civil Forfeiture Law	Forfeiture of Money in Civil Proceedings (Bailiwick of Guernsey) Law, 2007
Civil Forfeiture Law Regulations	Forfeiture of Money, etc in Civil Proceedings (Designation of Countries) (Bailiwick of Guernsey) Regulations, 2008  Forfeiture of Money, etc in Civil Proceedings (Designation of Countries) (Bailiwick of Guernsey) Regulations, 2009
Companies (Alderney) Law	Companies (Alderney) Law, 1994
Companies Law	Companies (Guernsey) Law, 2008
Compensation Law	Criminal Justice (Compensation) Bailiwick of Guernsey Law, 1990



Control of Borrowing Ordinance	Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959
Customs Law	Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972
Data Protection Law	Data Protection (Bailiwick of Guernsey) Law, 2001
Data Protection (Transfer in the Substantial Public Interest) Order	Data Protection (Transfer in the Substantial Public Interest) Order, 2002
Disclosure Law	Disclosure (Bailiwick of Guernsey) Law 2007
Disclosure Regulations	Disclosure (Bailiwick of Guernsey) Regulations, 2007
Drug Trafficking (Designated Countries and Territories) Ordinance	Drug Trafficking (Bailiwick of Guernsey) Law (Designated Countries and Territories) Ordinance, 2000
Drug Trafficking (Enforcement of External Forfeiture Orders) Ordinance	Drug Trafficking (Bailiwick of Guernsey) Law (Enforcement of External Forfeiture Orders) Ordinance, 2000
Drug Trafficking Law	Drug Trafficking (Bailiwick of Guernsey) Law, 2000
eGambling Ordinance	Alderney eGambling Ordinance 2009
eGambling Regulations	Alderney eGambling Regulations 2009
European Communities (Implementation) Law	European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994
Export of Goods (Control) Order 1994	Export of Goods (Control) Order 1994
Extradition Act 1989	Extradition Act 1989
Extradition Act 2003 (Commencement and Savings) Order 2003	Extradition Act 2003 (Commencement and Savings) Order 2003  (SI 2003/3103)
Financial Services Commission Law	Financial Services Commission (Bailiwick of Guernsey) Law, 1987
Fraud Investigation Law	Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991
Fraud Law	Fraud (Bailiwick of Guernsey) Law, 2009
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
Gambling (Alderney) Law	Gambling (Alderney) Law, 1999
Gambling (Guernsey) Law	Gambling (Guernsey) Law, 1971
Gambling (Sark) Law	Gambling (Sark) Law, 2002
Government of Alderney Law	Government of Alderney Law, 2004
Guernsey Bar Law	Guernsey Bar (Bailiwick of Guernsey) Law 2007
Hotel Casino Concession (Guernsey) Law	Hotel Casino Concession (Guernsey) Law, 2001
Human Rights Law	Human Rights (Bailiwick of Guernsey) Law, 2000
ICS Guidance	Alderney Gambling Control Commission - Technical Standards and Guidelines for Internal Control Systems and Internet Gambling Systems
Income Tax Law	Income Tax (Guernsey) Law, 1975
Insider Dealing Law	Companies Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996
Instruction (Number 1) for Financial Services Businesses	Instruction (Number 1) for Financial Services Businesses
Instruction (Number 2) for Financial Services Businesses	Instruction (Number 2) for Financial Services Businesses
Instruction (Number 3) for Financial Services Businesses	Instruction (Number 3) for Financial Services Businesses
Instruction (Number 4) for Financial Services Businesses	Instruction (Number 4) for Financial Services Businesses
Instruction (Number 5) for Financial Services Businesses	Instruction (Number 5) for Financial Services Businesses
Instruction (Number 6) for Financial Services Businesses	Instruction (Number 6) for Financial Services Businesses
Instruction (Number 7) for Financial Services Businesses. REPEALED	Instruction (Number 7) for Financial Services Businesses. REPEALED
Instruction (Number 8) for Financial Services	Instruction (Number 8) for Financial Services

Businesses	Businesses
Instruction (Number 9) for Financial Services Businesses. Business from Sensitive Sources	Instruction (Number 9) for Financial Services Businesses. Business from Sensitive Sources
Instruction (Number 1) for Prescribed Businesses	Instruction (Number 1) for Prescribed Businesses
Instruction (Number 2) for Prescribed Businesses	Instruction (Number 2) for Prescribed Businesses
Instruction (Number 3) for Prescribed Businesses	Instruction (Number 3) for Prescribed Businesses
Instruction (Number 4) for Prescribed Businesses	Instruction (Number 4) for Prescribed Businesses
Instruction (Number 5) for Prescribed Businesses. REPEALED	Instruction (Number 5) for Prescribed Businesses. REPEALED
Instruction (Number 6) for Prescribed Businesses	Instruction (Number 6) for Prescribed Businesses
Instruction (Number 7) for Prescribed Businesses. Business from Sensitive Sources	Instruction (Number 7) for Prescribed Businesses. Business from Sensitive Sources
Insurance Business Law	Insurance Businesses (Bailiwick of Guernsey) Law, 2002
Insurance Managers and Insurance Intermediaries Law	Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002
International Cooperation (Enforcement of Overseas Orders) Ordinance	Criminal Justice (International Co-operation) (Enforcement of Overseas Forfeiture Orders) (Bailiwick of Guernsey) Ordinance, 2007
International Cooperation Law	Criminal Justice (International Cooperation ) (Bailiwick of Guernsey) Law, 2001
Interpretation Law	Interpretation (Guernsey) Law, 1948
Limited Partnerships Law	Limited Partnerships (Guernsey) Law, 1995
Misuse of Drugs Law	Misuse of Drugs (Bailiwick of Guernsey) Law, 1974
Money Laundering Laws	Money Laundering (Disclosure of Information) (Guernsey) Law, 1995
	Money Laundering (Disclosure of Information)

	(Alderney) Law, 1998
	Money Laundering (Disclosure of Information) (Sark) Law, 2001
PB Handbook	Handbook for Legal Professionals, Accountants and Estate Agents 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
Police Powers Law	Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003
Police Property and Forfeiture Law	Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006
Post Office Law	Post Office (Bailiwick of Guernsey) Law, 2001
Post Office Ordinance	Post Office (Postal Packages) Ordinance, 1973
Prevention of Corruption Law	Prevention of Corruption (Bailiwick of Guernsey) Law, 2003
Proceeds of Crime (Enforcement of Overseas Confiscation Orders) Ordinance	Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Enforcement of Overseas Confiscation Orders) Ordinance, 1999
Proceeds of Crime Law	Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999
Proceeds of Crime Regulations	Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999
Proceeds of Crime (Restriction on Cash Transactions) Regulations	Criminal Justice (Proceeds of Crime) (Restriction on Cash Transactions) (Bailiwick of Guernsey) Regulations, 2008
Protection of Investors Law	Protection of Investors (Bailiwick of Guernsey) Law, 1987
Reform Law	Reform (Guernsey) Law, 1948
Registered FSBs Law	Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008
Regulation of Fiduciaries Law	Regulation of Fiduciaries, Administration Businesses

	and Company Directors etc. (Bailiwick of Guernsey) Law, 2000
Regulation of Investigatory Powers Law	Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003
Site Visits Ordinance	Financial Services Commission (Site Visits) (Bailiwick of Guernsey) Ordinance, 2008
Summary Offences Law	Summary Offences (Bailiwick of Guernsey) Law 1982
Terrorism and Crime Regulations	Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007
Terrorism and Crime (Enforcement of External Orders) Ordinance	Terrorism and Crime (Enforcement of External Orders) (Bailiwick of Guernsey) Ordinance, 2007
Terrorism Law	Terrorism and Crime (Bailiwick of Guernsey) Law 2002
Terrorism Order	Terrorism (United Nations Measures) (Channel Islands) Order 2001
Trusts Law	Trusts (Guernsey) Law, 2007
Wire Transfer Ordinances	Transfer of funds (Guernsey) Ordinance, 2007
	Transfer of funds (Alderney) Ordinance, 2007
	Transfer of funds (Sark) Ordinance, 2007

**Part 2:** Legislation relevant to predicate offences and offences under conventions

<b>Legislation, Regulations, and Other Material Received</b>	<b>Full title</b>
Aviation Security (Guernsey) Order	Aviation Security (Guernsey) Order 1997 (SI 1997/2989)
Aviation Security Act	Aviation Security Act 1982
Copyright Ordinance	Copyright (Bailiwick of Guernsey) Ordinance, 2005
Currency Offences (Guernsey) Law	Currency Offences (Guernsey) Law, 1950
Firearms Law	Firearms (Guernsey) Law, 1998
Food and Environmental Protection Act	Food and Environmental Protection Act 1985

(Guernsey) Order	(Guernsey) Order 1987
Food and Environmental Protection Act 1985	Food and Environmental Protection Act 1985
Hijacking Act (Guernsey) Order	Hijacking Act 1971 (Guernsey) Order 1971
Immigration (Guernsey) Order	Immigration (Guernsey) Order 1993 (SI 1993/1796)
Internationally Protected Persons Act (Guernsey) Order	Internationally Protected Persons Act 1978 (Guernsey) Order 1979
Nuclear Material (Offences) Act (Guernsey) Order	Nuclear Material (Offences) Act 1983 (Guernsey) Order 1991
Performers Rights Ordinance	Performers' Rights (Bailiwick of Guernsey) Ordinance, 2005
Prevention of Pollution Law	Prevention of Pollution (Guernsey) Law, 1989
Protection of Aircraft Act (Guernsey) Order	Protection of Aircraft Act 1973 (Guernsey) Order 1973
Protection of Children Law	Protection of Children (Bailiwick of Guernsey) Law, 1985
Protection of Women and Girls Law	Loi Relative a La Protection des Femmes et des Filles Mineures
Registered Designs Ordinance	Registered Designs (Bailiwick of Guernsey) Ordinance, 2005
Registered Patents and Biotechnological Inventions Ordinance	Registered Patents and Biotechnological Inventions (Bailiwick of Guernsey) Ordinance, 2009
Registered Plants Breeders Rights Ordinance	Registered Plant Breeders' Rights (Bailiwick of Guernsey) Ordinance, 2007
Sodomy Law	Loi Relative À La Sodomie
Taking of Hostages (Guernsey) Order	Taking of Hostages (Guernsey) Order 1982 (SI 1982/1539)
Theft Law	Theft (Bailiwick of Guernsey) Law, 1983
Trade Marks Ordinance	Trade Marks (Bailiwick of Guernsey) Ordinance, 2006
Transfrontier Shipment of Waste Ordinance	Transfrontier Shipment of Waste Ordinance, 2002