

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information  
on Request

# GUERNSEY

2018 (Second Round)





# **Global Forum on Transparency and Exchange of Information for Tax Purposes: Guernsey 2018 (Second Round)**

PEER REVIEW REPORT ON THE EXCHANGE  
OF INFORMATION ON REQUEST

July 2018  
(reflecting the legal and regulatory framework  
as at April 2018)

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## Reader's guide

**The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum)** is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 145 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic). Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

### **Sources of the Exchange of Information on Request standards and Methodology for the peer reviews**

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. the implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. the implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

## **Consideration of the Financial Action Task Force Evaluations and Ratings**

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.



The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

## **More information**

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and <http://dx.doi.org/10.1787/2219469x>.



## Abbreviations and acronyms

<b>2010 Terms of Reference</b>	Terms of Reference related to EOIR, as approved by the Global Forum in 2010.
<b>2016 Assessment Criteria Note</b>	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
<b>2016 Methodology</b>	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
<b>2016 Terms of Reference</b>	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015.
<b>4th AMLD</b>	EU Fourth Anti-Money Laundering Directive
<b>AEOI</b>	Automatic Exchange of Information
<b>AML</b>	Anti-Money Laundering
<b>AML/CFT</b>	Anti-Money Laundering/Countering the Financing of Terrorism
<b>CDD</b>	Customer Due Diligence
<b>CIV</b>	Collective Investment Schemes
<b>CLG</b>	Company Limited by Guarantee
<b>CRS</b>	Common Reporting Standard
<b>DTC</b>	Double Tax Convention
<b>EOIR</b>	Exchange Of Information on Request
<b>EU</b>	European Union
<b>FATCA</b>	Foreign Account Tax Compliance Act
<b>FATF</b>	Financial Action Task Force
<b>FSB</b>	Financial Service Business

<b>Global Forum</b>	Global Forum on Transparency and Exchange of Information for Tax Purposes
<b>Multilateral Convention (MAC)</b>	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
<b>PRG</b>	Peer Review Group of the Global Forum
<b>TIEA</b>	Tax Information Exchange Agreement
<b>VAT</b>	Value Added Tax

### Terms specific to Guernsey

**Alderney Companies Law** Companies (Alderney) Law, 1994 as amended.

**Appendix C Countries** Appendix C to the Handbook was established to reflect those countries or territories which the Guernsey Financial Services Commission 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. These are 40 jurisdictions: Australia, Austria, Belgium, Bermuda, Bulgaria, Canada, Cayman Islands, Cyprus,<sup>a</sup> Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hong Kong (China), Hungary, Iceland, Ireland, Isle of Man, Italy, Japan, Jersey, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Portugal, Singapore, Slovenia, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States

**Bailiff** The Bailiff is Guernsey’s leading citizen and representative in non-political matters, with functions embracing judicial and civic duties, and a more limited parliamentary role. The Bailiff is, ex officio, a Judge of the Court of Appeal and that Court’s President. He also sits in the Royal Court, either a single Judge or presiding over such sittings with the Jurats.

<b>Banking Supervision Law</b>	Banking Supervision (Bailiwick of Guernsey) Law, 1994 as amended.
<b>beneficial ownership law</b>	Beneficial Ownership of Legal Persons (Guernsey) Law, 2017
<b>CIU</b>	Compliance and Investigation Unit, a dedicated section within the Income Tax Office.
<b>DDCI</b>	Deputy Director of Income Tax (Compliance and International).
<b>Data Protection Law</b>	The Data Protection (Bailiwick of Guernsey) Law 2001. Note that this is in the process of being repealed and replaced with a new Data Protection (Bailiwick of Guernsey) Law, 2017, which will enter into force on 25 May 2018
<b>DTA (Comprehensive)</b>	Comprehensive DTA refers to full double tax arrangements excluding the UK 1951 DTA.
<b>EDM</b>	Electronic Document Management System. A system used by the Income Tax Office.
<b>Foundations Law</b>	Foundations (Guernsey) Law, 2012 as amended.
<b>FSB Regulations</b>	Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations 2007 as amended.
<b>GFSC</b>	Guernsey Financial Services Commission.
<b>GFSC Handbooks</b>	The GFSC Handbook for Financial Services Businesses on Combatting Financial Crime and Terrorist Financing (FSB Handbook) and the GFSC Handbook for Prescribed Businesses on Combatting Financial Crime and Terrorist Financing (PB Handbook).
<b>Guernsey Companies Law</b>	The Companies (Guernsey) Law, 2008 as amended
<b>Guernsey Competent Authority</b>	The Competent Authority in Guernsey is the Director of Income Tax. References to the Competent Authority include the delegated Competent Authorities, being the two Deputy Directors, the Compliance and International Manager and the Inspector – Exchange of Information.

<b>Insurance Law</b>	Insurance Businesses (Bailiwick of Guernsey) Law, 2002 as amended.
<b>ICC</b>	Incorporated Cell Companies
<b>Keeping of Records Regulations</b>	The Income Tax (Keeping of Records, etc.) Regulations, 2006 and The Income Tax (Keeping of Records, etc.) (Amendment) Regulations, 2012
<b>LLP Law</b>	Limited Liability Partnerships (Guernsey) Law, 2013 as amended.
<b>LP Law</b>	Limited Partnerships (Guernsey) Law, 1995 as amended.
<b>NPO Law</b>	The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 as amended.
<b>Partnership Law</b>	Partnership (Guernsey) Law, 1995.
<b>PB Regulations</b>	Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 as amended.
<b>PCC</b>	Protected Cell Company
<b>PRISM</b>	Probability Risk and Impact System. The risk based approach utilised by the GFSC.
<b>Proceeds of Crime Law</b>	The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 as amended.
<b>Regulation of Fiduciaries Law</b>	Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 as amended.
<b>Tax Law</b>	The Income Tax (Guernsey) Law, 1975 as amended
<b>TCSP</b>	Trust and Company Service Provider
<b>Trusts Law</b>	Trusts (Guernsey) Law, 2007.

*Note:* a. Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

## Executive summary

1. This 2nd Round report analyses the implementation of the standard of transparency and exchange of information on request by Guernsey against the 2016 Terms of Reference. It assesses the legal and regulatory framework as well as the practical implementation of this framework in respect of EOIR requests processed during the period of 1 January 2014-31 December 2016. This report concludes that Guernsey is to be rated Compliant overall. In 2011 the Global Forum evaluated Guernsey against the 2010 Terms of Reference for legal implementation of the EOIR standard (2011 Phase 1 report) and in 2013 for its operation in practice (2013 Phase 2 report). The 2013 Phase 2 report concluded that Guernsey was rated Largely Compliant overall.

### Comparison of ratings for First Round Report and Second Round Report

Element	First Round Report (2013)	Second Round EOIR Report (2018)
A.1 Availability of ownership and identity information	C	LC
A.2 Availability of accounting information	LC	C
A.3 Availability of banking information	C	C
B.1 Access to information	C	C
B.2 Rights and Safeguards	C	C
C.1 EOIR Mechanisms	C	C
C.2 Network of EOIR Mechanisms	C	C
C.3 Confidentiality	LC	C
C.4 Rights and safeguards	C	C
C.5 Quality and timeliness of responses	C	C
<b>OVERALL RATING</b>	<b>LC</b>	<b>C</b>

C = Compliant; LC = Largely Compliant; PC = Partially Compliant; NC = Non-Compliant

## Progress made since previous review

2. The 2013 Report made recommendations in respect of three elements:
  - i. On availability of accounting information (element A.2) Guernsey was recommended to monitor the implementation of the recently introduced provisions for keeping accounting records.
  - ii. Guernsey was recommended to expand its EOI network (element C.2).
  - iii. Guernsey was recommended to not disclose information about the taxpayer when collecting information for exchange, when it was not necessary to (element C3).
  - iv. Guernsey has addressed the recommendations on Element C.2 with the entry into force of the multilateral Convention on Mutual Administrative Assistance in Tax Matters and on Element C.3 with an amendment made in the Income Tax Law. The recommendation in relation to monitoring the availability of accounting information (element A.2) has not been adequately addressed in respect of foreign companies.

## Key recommendation(s)

3. Guernsey received more than 50 requests which related to legal and beneficial ownership information in 2014-16 and has provided all requested information in all cases and successfully handled them in a timely manner. Guernsey heavily relies on the anti-money laundering (AML) framework and the service providers obligated under the AML framework to maintain beneficial ownership information on their clients (but see below regarding The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017).

4. The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 came into force on 15 August 2017, which requires all legal entities in Guernsey to maintain accurate and up to date beneficial ownership information as per the standard and report the same to a central Registry, wherever it is necessary to have a resident agent/general partner. The beneficial owner central register is fully populated with effect from 28 February 2018. Given its recent enactment, Guernsey is recommended to continue to monitor the implementation of the new Beneficial Ownership of Legal Persons (Guernsey) Law, 2017. Under the beneficial ownership Law and regulations, it is recognised that there may be circumstances where a Resident Agent may not be able to ascertain the identity of beneficial owners in relation to a relevant legal person under the 3-tier test and record the same in the beneficial ownership register of the entity, which the Guernsey authorities advise as exceptional cases. Guernsey is recommended to continue to monitor the



application of this provision (10(5)) in the beneficial ownership Law and regulations to ensure availability of beneficial ownership information of all relevant legal entities at all times.

5. Since the 2013 Report, Guernsey continues to perform well in responding to requests related to accounting information. Guernsey has responded to all of the 61 requests related to accounting information in the review period in a timely manner. There are approximately 9 000 foreign companies which have some degree of activities performed for them by fiduciaries, in Guernsey. For some of these, it may be determined, on facts and circumstances, that Guernsey is a jurisdiction of nexus (Headquarters) under the standard. Such companies would have an obligation to notify their chargeability to tax to the Director of Income Tax, and to file tax returns. However, Guernsey is recommended to monitor that the compliance activity conducted by Guernsey (including monitoring by the Director of Income Tax) provides assurance that all foreign companies with nexus are registered with the tax authorities. As a consequence, it is also difficult to assess the availability and retention of reliable accounting information in respect of those companies and Guernsey should ensure that all foreign companies for which Guernsey is a jurisdiction of nexus are maintaining accounting records as per the international standard.

6. In respect of banking information and beneficial ownership information being available for all account holders, in the case of trusts, the FSB regulations exempt them from the verification of identity of corporate trustees from 40 listed jurisdictions. Guernsey is recommended to take appropriate measures to ensure the availability of accurate beneficial ownership information in all cases of trustees, when they establish relationships with banks.

7. Guernsey has recently created a new internal unit to handle the EOIR and AEOI matters with a view to improve the timeliness of responses as well as to ensure that regular status updates are provided whenever the replies cannot be provided within 90 days. It is recommended that Guernsey monitor the performance of the reorganised International Co-operation Unit.

## Overall rating

8. Guernsey has addressed all the recommendations contained in the 2013 Report, although not sufficiently with respect to monitoring the compliance with accounting record-keeping requirements under the Tax Law. In addition, Guernsey has the legal framework to ensure the availability of beneficial ownership information, albeit there are a few deficiencies with respect to the scope of application and the definition of beneficial owners. In light of the above, all elements are rated Compliant, except for element A.1 which is

rated Largely Compliant. On balance, Guernsey is overall rated Compliant with the EOIR standard.

9. In the current review period, Guernsey received a total of 136 requests and did not send any requests.

10. This report was approved at the PRG meeting in June 2018 and was adopted by the Global Forum on 13 July 2018. A follow up report on the steps undertaken by Guernsey to address the recommendations made in this report should be provided to the PRG no later than 30 June 2019 and thereafter in accordance with the procedure set out under the 2016 Methodology.

**Summary of determinations, ratings and recommendations**

<b>Determinations and Ratings</b>	<b>Factors underlying Recommendations</b>	<b>Recommendations</b>
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities ( <i>ToR A.1</i> )		
<b>The legal and regulatory framework is in place but needs improvements</b>		
<b>EOIR Rating: Largely Compliant</b>	The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 came into force on 15 August 2017, which requires all legal entities in Guernsey to maintain accurate and up to date beneficial ownership information as per the international standard and report the same to Registry. The beneficial owner central register is fully populated with effect from 28 February 2018; however there has not yet been sufficient implementation to ensure that all provisions will always be implemented in accordance with the standard.	Guernsey is recommended to continue to monitor the implementation of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017. In particular, Guernsey should ensure Section 10(5) that requires Resident Agents to register an absence of any beneficial owners, is strictly implemented, such that beneficial ownership information is available in all cases in accordance with the standard.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements ( <i>ToR A.2</i> )		
<b>The legal and regulatory framework is in place</b>		
<b>EOIR Rating: Compliant</b>	There are currently at least 9 000 foreign companies being serviced by TCSPs in Guernsey. As per Guernsey Tax Law, all foreign companies doing business in Guernsey have to file tax returns and maintain accounts in compliance with ToR A.2. While about 1600 foreign companies are in the Tax Database and may also be subject to tax audits, there is scope for improvement in respect of monitoring all foreign companies with nexus to Guernsey to ensure compliance with ToR A.2.	Guernsey should monitor that all foreign companies, for which Guernsey is a jurisdiction of nexus, are maintaining accounting records as per the international standard.
Banking information and beneficial ownership information should be available for all account-holders ( <i>ToR A.3</i> )		
<b>The legal and regulatory framework is in place</b>	In the case of trusts, the FSB regulations exempt the verification of identity of corporate trustees from some countries.	Guernsey is recommended to take appropriate measures to ensure the availability of accurate beneficial ownership information in all cases of trustees, when they establish relationships with banks.
<b>EOIR Rating: Compliant</b>		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) ( <i>ToR B.1</i> )		
<b>The legal and regulatory framework is in place</b>		
<b>EOIR Rating: Compliant</b>		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information ( <i>ToR B.2</i> )		
<b>The legal and regulatory framework is in place</b>		
<b>EOIR Rating: Compliant</b>		
Exchange of information mechanisms should provide for effective exchange of information ( <i>ToR C.1</i> )		
<b>The legal and regulatory framework is in place</b>		
<b>EOIR Rating: Compliant</b>		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )		
<b>The legal and regulatory framework is in place</b>		
<b>EOIR Rating: Compliant</b>		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received ( <i>ToR C.3</i> )		
<b>The legal and regulatory framework is in place</b>		
<b>EOIR Rating: Compliant</b>		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties ( <i>ToR C.4</i> )		
<b>The legal and regulatory framework is in place</b>		
<b>EOIR Rating: Compliant</b>		
The jurisdiction should request and provide information under its network of agreements in an effective manner ( <i>ToR C.5</i> )		
<b>Legal and regulatory framework determination:</b>	This element involves issues of practice. Accordingly no determination on the legal and regulatory framework has been made.	
<b>EOIR Rating: Compliant</b>	Timeliness of responses by Guernsey as compared to the previous review period and during the three year period under review deteriorated. In addition, Guernsey did not systematically provide status updates of pending requests by 90 days. Organisational redeployments have been implemented by Guernsey to improve the timeliness of responses and to provide status updates in all cases.	It is recommended that Guernsey should continue to monitor its organisational design and processes to ensure compliance with the standards in respect of timeliness as well as providing 90 day status updates in all outstanding cases.



## Overview of Guernsey

1. This overview provides some basic information about Guernsey that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of Guernsey’s legal, commercial or regulatory systems.

### Legal system

2. The Bailiwick of Guernsey consists of a group of islands located in the English Channel off the coast of France. As a British Crown Dependency, the Bailiwick of Guernsey is independently administered and is neither a part of the United Kingdom nor a member of the European Union. The Head of State is the Queen, represented by the Lieutenant Governor. The relationship between the Bailiwick of Guernsey and the United Kingdom is based on practice, custom, convention, and usage. The Bailiwick of Guernsey is also subject to the uncodified constitution of the United Kingdom governing the relationship of the United Kingdom with the Crown Dependencies. The official currency is the Pound Sterling (GBP); the Bailiwick is in currency union with the United Kingdom.

3. As described in the 2013 Report (in paragraphs 36 to 42), the Bailiwick of Guernsey is a jurisdiction comprising three self-governing legislatures; this evaluation does not cover the Island of Sark (and Brecqhou) and only covers in detail the other two principal entities of the Bailiwick, i.e. Guernsey (which includes the island of Herm) and Alderney (which has concluded a tax agreement (in 1948) and therefore Guernsey and Alderney represent a single tax jurisdiction with a same system of taxation, even though Alderney has a legal system that is in part separate from Guernsey, e.g. with separate legislation on companies and partnerships).

4. Guernsey is the largest and most populous island in the Bailiwick, and the legislative competence of the States of Guernsey is wider than that of the States of Alderney; for example, it is able to enact criminal legislation which has effect throughout the Bailiwick. Alderney is also subject to the Bailiwick-wide regulation of the finance sector which is carried out by the

Guernsey Financial Services Commission (GFSC) and to the Bailiwick's Anti-Money Laundering and the Countering the Financing of Terrorism (AML/CFT) regime. The court system is comprised of Magistrates' Courts, and the Royal Court, which is made up of a Bailiff and 16 permanently elected Jurats. The Royal Court of Guernsey is (in both criminal and civil matters) the appellate court for the Court of Alderney. The ultimate court of appeals is the Judicial Committee of the Privy Council. The Bailiwick also has an Attorney General and a Solicitor General, Her Majesty's Procureur and Her Majesty's Comptroller respectively, who serve as legal advisors to the Crown and to the legislatures and executive bodies of the Bailiwick.

## Tax system

5. As a result of a 1948 agreement, Guernsey and Alderney are effectively a single jurisdiction for taxation purposes and as such Guernsey's income tax legislation applies directly to Alderney, which includes agreements for the exchange of information on tax matters. Therefore, the term "Guernsey" as used below also includes Alderney.

6. Under the Tax Law, the tax residency of individuals is determined as follows: Individuals are considered "principally resident" if they stay in Guernsey for 183 days or more days or "solely resident" if they stay in Guernsey for 91 days or more and not in any other jurisdiction for 91 days or more. Other individuals in Guernsey between 91 and 183 days are considered "resident only". A person spending 35 days in a year and an aggregate of 365 days over the preceding four years in Guernsey will also be considered "resident only" in Guernsey. "Principally resident" and "solely resident" individuals are both liable to Guernsey income tax on their worldwide income. "Resident only" individuals are either taxed on their worldwide income or can opt to pay a standard charge of GBP 30 000 in which case no liability will arise on their non-Guernsey source income and Guernsey bank interest. Tax is payable at the rate of 20% on net income after allowances.

7. Companies that are resident in Guernsey are subject to income tax on their worldwide income wherever such income may arise or accrue. The residence of companies for tax purposes in Guernsey is determined on the basis of (a) control; or (b) incorporation in Guernsey when the company has not been granted an exemption from tax for the year of charge. Persons exercising a profession or carrying on a business in Guernsey in a partnership are taxed on their separate shares of the partnership income.

8. Non-resident individuals and companies are subject to limited taxation in respect of their Guernsey-source income (including income derived through a permanent establishment therein) other than bank deposit interest.



9. There are three rates of taxation for companies depending upon the source of income.

- The Company Standard tax on income from business, offices, employments, and other sources at a rate of 0%.
- The Company Intermediate rate is 10% and covers income from banking business, domestic insurance business, regulated fiduciary business, insurance intermediary business and insurance manager business, fund administration business and, with effect from 1 January 2016, this is extended to the provision of custody services by banks.
- The Company Higher Rate is 20% and covers income from trading activities regulated by the Office of the Director General of Utility Regulation, income from the ownership of lands and buildings and, with effect from 1 January 2016, this is extended to the importation and/or supply of hydrocarbon oil or gas in Guernsey, and large retail business carried on in Guernsey where the company has a taxable profit of more than GBP 500 000.

10. Guernsey levies no capital gains, inheritance, capital transfer, value added tax (VAT) or general withholding taxes. However, there are a number of forms of indirect taxation, such as duties upon alcohol, tobacco and petroleum spirit.

## Financial services sector

11. Guernsey is a major international financial centre with a mature legal and regulatory system. The finance sector is the largest single contributor to GDP of the Bailiwick, contributing an estimated 33.4% of GDP in 2015. While deposits taken by the banking sector have almost halved since its highest peak in 2008, the funds under management and administration by the collective investment fund sector have more than doubled during the same period and stood at GBP 255.94 billion at the end of 2016, hence Guernsey is globally one of the largest fund domiciles (especially private equity). A significant amount of assets is also managed and administered by the fiduciary sector.

12. Guernsey has four distinct parts of its finance industry: Banking, Fiduciary, Insurance and Investment Funds. There are a multiplicity of variations within each sector with different business models, clients, and target markets, however, those four sectors remain the core of Guernsey's financial services business.

13. There are no domestically owned banks in Guernsey – all banks are subsidiaries or branches of banks from other jurisdictions. They represent a range of countries with concentrations of banks with head offices in the UK and Switzerland. The banking sector in Guernsey has materially reduced over recent years. Total deposits have dropped considerably from GBP 157 billion at its highest peak in 2008 to GBP 93.2 billion in 2016. There is no data available on their total assets under management (i.e. the total value of assets managed or administered for their customers and themselves). The assets managed by the Guernsey banking sector are included in the figure of the net asset value of total funds under management and administration (at almost GBP 255.94 billion at the end of 2016) and the gross assets under management in the area of asset management and stockbroking (GBP 79.5 billion). The financial crisis has accelerated a shift from retail deposit-taking towards private banking for high net worth individuals and tax-neutral services to international companies.

14. There are 20 international private banks that take deposits from high net worth individuals, trust and fiduciary companies and the liquid un-invested balances of fund administration companies. These international private banks account for approximately 85% of all deposits with Guernsey banks. They also provide treasury services (specialised money market and foreign exchange services) as well as custody services (asset management has been a mainstay of Guernsey's banking sector). These services are provided to all other financial services sectors on the Island (Fiduciary, Insurance and Investment Funds).

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

16. The Bailiwick also hosts captive insurance companies. The primary purpose of a captive is to insure the exposures of the parent company and its subsidiaries. Such captives are known as pure captives and these account for the majority of the Bailiwick's captive market. There are also a number of small commercial insurers writing niche general insurance products for the international market (predominantly the United Kingdom). Specialist insurance management companies manage most of the international insurers. The GFSC requires such insurance managers to be licensed.

17. As at 31 December 2016, of the 365 licensed international insurers there were 48 life and employee benefits insurers, including 7 PCCs (Protected Cell Companies) and 11 ICCs (Incorporated Cell Companies) licensed in respect of life business, operating in the Bailiwick. These provide insurance for non-residents, for example expatriate workers in overseas territories, many of them on short-term assignments, which mean that their careers might embrace employment in several overseas countries. The main products offered

in the Bailiwick include pensions, group life and other group employee benefit plans for companies and single premium and other portfolio bonds.

## Investment sector

18. The most important sub-sector of the investment sector is the collective investment funds business, which has been the driver of significant growth in the Guernsey finance industry over the past decade. Guernsey is now the largest fund domicile in the Crown Dependencies. At the end of 2016, the total value of funds under management stood at almost GBP 255.94 billion.

19. The geographical spread of clients is diverse. In the collective investment fund sector, the trend over the past decade has been towards establishing funds for high net worth individuals and institutions. Guernsey is one of the most important fund domiciles for private equity, which accounts for about GBP 110 billion of funds business. Other asset classes include funds of hedge funds as well as property and infrastructure. The majority of funds both by number and value are closed-ended funds (650 closed-ended investment schemes (of which 110 were umbrella schemes resulting in a total of 1 112 pools of assets). A Guernsey closed-ended fund is not required to appoint a local custodian or a local manager or adviser. Unlike a closed-ended fund, every open-ended fund generally must appoint a Guernsey licensed custodian to hold its assets on trust. Both open-ended and closed-ended funds are required to appoint a locally licensed administrator.

20. The Protection of Investments Law further distinguishes between two categories of Guernsey funds: authorised collective investment schemes and registered collective investment schemes. Both open-ended and closed-ended funds may be either authorised or registered schemes under the Protection of Investments Law and funds may take the form of companies, limited partnerships, unit trusts or other entities. The most significant advantage that registered schemes have over authorised schemes is the fast-track three day approval process for the fund. There are no restrictions on who can invest in a registered fund. The GFSC introduced, in November 2016, a sub-set of a registered scheme called a private investment fund. This fund requires the manager to warrant that investors can suffer loss and relies upon the close relationship between a manager and the investor, or the firm taking fiduciary duty for investors. Authorised funds remain subject to the lengthier, traditional approval process. The relevant rules are not prescriptive concerning the features of the fund (for example, in relation to investment powers) but require full disclosure of all material matters and ongoing notification of specific events.

## Non-Regulated Financial Services Businesses

21. The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 as amended creates a public register of non-regulated financial services businesses. Applications for registration must be made to the GFSC, which maintains the register on its website. Non-regulated financial services businesses are mainly providing lending, financial leasing, financial guarantees or commitments, participating in securities issues and related financial services and other non-Core Principle activities. Non-regulated financial services businesses are also permitted to provide money or value transmission services as well as currency exchange (bureau de change) and cheque cashing.

## FATF Evaluation

22. Guernsey's most recent review compliance with the AML/CFT standard was conducted by the MONEYVAL in 2014. Guernsey was found to be Largely Compliant with FATF's recommendations 10 (Customer due diligence), 22 (DNFBPs: Customer due diligence), 24 (Transparency and beneficial ownership of legal persons) and 25 (Transparency and beneficial ownership of legal arrangements). The report noted among others that financial institutions clearly demonstrated that they are highly knowledgeable about their AML/CFT obligations and that professional TCSPs met by the evaluation team demonstrated a high level of professionalism and good knowledge of their obligations with respect to the identification and verification of the beneficial ownership. The report also found that there was a potential technical gap in the beneficial ownership information held in respect of legal persons and legal arrangements with no TCSP involved in the formation, management or administration of these entities. In addition, it was found that insufficient measures were in place to ensure that accurate, complete, and current beneficial ownership information is available on authorised or registered open-ended or closed-ended investment companies/trusts where reliance can be placed on intermediary provisions.

23. In respect of Customer Due Diligence (recommendation 5), it was noted that Enhanced Due Diligence is not applied for some higher-risk categories which are relevant to some financial institutions in Guernsey. It was further noted that FSB Regulations and the FSB Handbook provide for the discretion to refrain entirely from the application of certain CDD measures in defined circumstances, including on underlying beneficial owners of regulated collective investment schemes. The MONEYVAL report recommended that where a regulated or authorised collective investment scheme has only a very limited number of investors this discretion within the FSB regulations and handbook should not be available. It also noted that the application of simplified

or reduced CDD measures (including intermediary provisions) to customers in another country was not limited in all instances to customers resident or domiciled in countries that Guernsey is satisfied to be in compliance with and have effectively implemented the FATF Recommendations or not limited to listed companies that are subject to adequate disclosure requirements.

24. The 2014 evaluation is available at <https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/16807160f3>.

## Recent developments

25. As mentioned in the discussion under Element A.1, Guernsey has introduced a new legislation “The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017” which came into force on 15 August 2017, and which has set up an online Registry of beneficial ownership for legal entities. As per the new law, the Guernsey Register of beneficial ownership (the Register) is intended to include information in respect of all companies, LLPs and foundations incorporated or created in Guernsey. From 15 August 2017, all the newly created entities have to submit beneficial ownership information to the Guernsey Registrar of beneficial ownership of legal persons (the Registrar). The existing Guernsey entities were required to do the same by 31 October 2017, with the exception of companies, which had been provided time until 28 February 2018.

26. The information in the beneficial owner Registry is not publically accessible and legal gateways would be established to permit sharing of such information with domestic and foreign authorities. The legal gateways referred to are bilateral agreements to facilitate the quicker sharing of information, and all necessary legal powers to share information with other jurisdictions are already in place. Guernsey advises that an agreement has been reached with the UK and no other formal gateways with other jurisdictions have yet been established. Further, access by the Guernsey competent authority is permitted by virtue of the Income Tax information powers. The office of Registrar is responsible for the oversight and has enforcement powers including the ability to impose administrative financial penalties. There are criminal and financial sanctions that can be imposed for breach of obligations in respect of beneficial ownership information.

27. The AML/CFT framework, including the CDD obligations in relation to legal persons and legal arrangements, is currently being revised to take full account of the changes to the FATF standards. This includes amendment of both the regulatory framework setting out the legal basis for AML/CFT obligations and the rules and guidance issued by the GFSC in the form of Handbooks. The revised framework is currently the subject of consultation and scheduled to come into force in the summer of 2018.



## Part A: Availability of information

28. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

### A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that legal and beneficial ownership and identity information for all relevant entities and arrangements is available to their competent authorities

29. The 2013 Report found that, in respect of legal ownership and identity information, the obligations imposed by Guernsey and Alderney on companies, partnerships and trusts are generally sufficient to meet the 2010 Terms of Reference. These obligations are imposed directly by legislation governing the formation of these entities, as well as customary law, the AML/CFT obligations and licensing requirements imposed on persons performing regulated activities by way of business (such as Resident Agents, corporate or individual directors, fiduciaries, nominees and financial services businesses). Bearer shares are prohibited under both the Guernsey and the Alderney Companies Laws as the identity of all members of a company must be kept in the register of members. Penalties are generally available to enforce these obligations. The 2013 Report recommended that although the existence of trustees not acting by way of business (non-professional trustees) has not affected EOI to date, the effect of this on EOI in practice should be monitored by Guernsey on an ongoing basis. Further, in view of the then recently brought about legislation related to foundations, and since there were no EOI requests in the previous review period, it was recommended that Guernsey monitor the operation of these new provisions and their enforcement.

30. With respect to the aforementioned in-text recommendations on trusts and foundations, Guernsey reported that a significant proportion of Guernsey's requests have related to trusts, identifying their beneficiaries and obtaining copies of trust documentation, such as deeds. Guernsey has not encountered any difficulty in obtaining trust information to date but

continues to monitor this aspect. Although there has been only one EOI request in relation to a Guernsey-based foundation during the period of review, which was successfully answered, the monitoring system of foundations in Guernsey is found adequate to ensure such availability. Accordingly, these two recommendations contained in the 2013 Report are now removed.

31. With respect to the new requirement under the 2016 Terms of Reference on availability of beneficial ownership information, Guernsey heavily relied on the AML framework and the service providers obligated under the AML framework to maintain the beneficial ownership information on their clients during the period under review but the AML framework does not cover the whole scope of relevant entities and arrangements since it is not mandatory for all of them to have a relationship with a Guernsey AML-obligated person.

32. In addition, the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 came into force on 15 August 2017, and requires all legal entities in Guernsey to maintain accurate and up to date beneficial ownership information as per the standard and report the same to a central Registry, wherever it is necessary to have a resident agent/general partner. The Guernsey authorities explained that the beneficial owner central register is fully populated with effect from 28 February 2018. Guernsey's Registrar has been monitoring the Register from the day of its inception i.e. from 15 August 2017. Guernsey is recommended to continue to monitor the implementation of the new Beneficial Ownership of Legal Persons (Guernsey) Law, 2017.

33. Under the beneficial ownership Law and regulations, there may be circumstances where a Resident Agent may not be able to ascertain the identity of beneficial owners in relation to a relevant legal person under the 3-tier test and record the same in the beneficial ownership register of the entity, which the Guernsey authorities advise as exceptional cases. This may not always be compensated by the AML framework which better frames these situations of absence of any beneficial owner (or manager), requiring the Resident Agent (if an obligated AML person) to disengage with the customer. Guernsey is recommended to continue to monitor the implementation of the new Beneficial Ownership of Legal Persons (Guernsey) Law, 2017; in particular, Guernsey should ensure Section 10(5) that requires Resident Agents to register an absence of any beneficial owners after following the 3-tier procedure, is strictly implemented, such that beneficial ownership information is available in all cases in accordance with the standard.

34. Information on beneficial ownership of legal persons and legal arrangements is obtainable in Guernsey where licensed TCSPs are involved in the formation, management or administration of these entities. However, their involvement or that of another licensed service provider is not mandatory with some exceptions. According to the authorities' estimates, the



number of these legal persons amounts to 25% of all companies. It is also reported by Guernsey that 10% of the companies are collective investment schemes (CIVs), and hence exempt from the Resident Agent requirement but they are administered by a licensed administrator subject to AML/CFT obligations. No such estimates exist with respect to legal arrangements, Limited Partnerships and General Partnerships. Guernsey clarified that none of the General Partnerships have any corporate partners and therefore the beneficial owners will be individual partners. In addition, the situation with respect to companies, foundations, LLPs and LPs (with legal personality) is well addressed with the new beneficial owner Regulations, that are effective from 15 August 2017, because such entities had to provide the identity of their beneficial owners to the beneficial owner register by 28 February 2018. However, the beneficial owner Regulations do not apply to trusts, General Partnerships, Limited Partnerships (without legal personality) and CIVs. Further, there is no mandatory requirement to engage an AML-obligated person for these entities/arrangements (except CIVs), which could present a legal gap in availability of accurate and updated legal and beneficial ownership in these cases. In the case of CIVs, please refer to the detailed discussion below on the intermediary regime and availability of beneficial ownership information.

35. During the current peer review period Guernsey received a total of 136 requests, 51 of which related to ownership and identity information. Peers were generally very satisfied with the information received. Guernsey was expressly asked to provide beneficial ownership information in all 51 requests and this information was provided to the satisfaction of the requesting peers. The Competent Authority reports that it has never been unable to respond to a request for information due to the fact that information was not available in accordance with the law.

36. The updated table of recommendations, determination and rating is as follows:

<b>Legal and Regulatory Framework</b>		
	<b>Underlying Factor</b>	<b>Recommendations</b>
<b>Deficiencies identified in the implementation of the legal and regulatory framework</b>		
<b>Determination: The element is in place</b>		

Practical Implementation of the standard		
	Underlying Factor	Recommendations
<b>Deficiencies identified in the implementation of EOIR in practice</b>	The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 came into force on 15 August 2017, which requires all legal entities in Guernsey to maintain accurate and up to date beneficial ownership information as per the international standard and report the same to Registry. The beneficial owner central register is fully populated with effect from 28 February 2018; however there has not yet been sufficient implementation to ensure that all provisions will always be implemented in accordance with the standard.	Guernsey is recommended to continue to monitor the implementation of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017. In particular, Guernsey should ensure Section 10(5) that requires Resident Agents to register an absence of any beneficial owners, is strictly implemented, such that beneficial ownership information is available in all cases in accordance with the standard.
<b>Rating: Largely Compliant</b>		

### *A.1.1. Availability of legal and beneficial ownership information for companies*

37. The 2013 Report analysed the legal framework with regard to company formation in Guernsey and Alderney (see 2013 Report, paras. 61-78). The main pieces of legislation at that time were the Companies (Guernsey) Law 2008 and Companies (Alderney) Law 1994, to which there have been no significant changes. Generally, companies formed under the Companies Law could be limited (cellular or non-cellular) or unlimited. Cellular companies is a concept developed in Guernsey to address risk-management concerns of the insurance industry; their particularities are explained in the section dedicated to them below.

38. During the previous review period, the vast majority of companies were non-cellular companies. At the end of the current review period, Guernsey had 19 338 non-cellular companies (including six States Regulated Companies) and 575 cellular companies (247 PCC, 54 ICC and 274 ICs). As at June 2017, there were 377 companies on the Alderney Companies Register (there are only non-cellular companies in Alderney).

### *Legal ownership and identity information requirements*

39. As described in the 2013 Report in section A.1 (see 2013 Report, paras 60), legal ownership and identity requirements for companies are mainly found under the company law and AML/CFT regulatory framework. The following table<sup>1</sup> shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

**Legislation regulating legal ownership information of companies**

Type	Company law	Tax law	AML law
Cellular company	All	None	Some
Non-cellular company	All	None	Some
Unlimited liability	All	None	Some
Foreign companies	None	None	Some

### *Companies Law 2008 requirements*

40. As noted in the 2013 Report, the Guernsey Companies Law 2008 requires every company incorporated in Guernsey to maintain at their Guernsey registered office a register of members (legal owners), including their name and address, and the date on which a person became and ceased to be a member. Where the company is a protected cell company, the register must distinguish between members of cells and members of the core (section 123). Similarly, an ICC must keep a register of the members of each of its incorporated cells. Any person may request sight of that register (s. 127). Changes of ownership are effective once the name of the new member is entered in the company's register of members (section 121). The information must be maintained for ten years after a person ceased to be a member (s. 125). A company which fails to maintain that information is guilty of a criminal offence. Companies must keep a record of beneficial owners prepared by their Resident Agent (see below) at their registered office (section 487).

41. As noted in the 2013 report (para. 63), every year, before 31 January, every company incorporated under the Guernsey Companies Law must submit an annual validation with the Guernsey Registry (sections 234 and

1. The table shows each type of entity and whether the various rules applicable require availability of information for “all” such entities, “some” or “none”. “All” in this context means that every entity of this type created is required to maintain ownership information for all its owners (including where bearer shares are issued) and that there are sanctions and appropriate retention periods. “Some” in this context means that an entity will be required to maintain information if certain conditions are met.

235). The annual validation confirms the accuracy of the data held on the Registry and requires a positive declaration of compliance with the requirements imposed by law, e.g. that the company's register of members is current as at 31 December of the year to which the annual validation relates. Guernsey informed that in practice 90% of companies provide timely annual validations. On a yearly average 150 companies have been struck off in the review period for lack of annual validation.

42. Under the Alderney Companies Law, a company must keep a register of members (legal owners) at its registered office with the names and addresses of all persons who are or who have since the formation of the company been shareholders therein (sections 71 and 73) and changes must be effected within 14 days from the receipt of written notice from the member (section 72). A company which fails to maintain that information is guilty of a criminal offence. Statistics provided by the Registrar indicate, as at May 2018, the number of Guernsey companies in "normal" status are 18 508, of which 2 010 are resident agent exempt (10.86% of total normal companies). Guernsey further reported that based on a sample check of 1 000 randomly selected "non-regulated" companies (those that have a locally resident director acting as resident agent) the percentage of companies where resident agent and beneficial owner are the same are 76.2%.

43. Guernsey and Alderney companies must maintain up-to-date identity information on their legal owners.

### *Tax law requirements*

44. Under the Tax Law of Guernsey, Guernsey shareholders of a company must declare all dividends to the Income Tax Office, so the Income Tax Office will have the details of (name, address) such shareholders (legal owners). In addition, companies are required to make returns of distributions in respect of Guernsey resident "beneficial members", in which the "details" will be name and tax reference number. Beneficial member is defined in section 62D(1) of the Income Tax Law. Guernsey residents must also complete a company interest form in respect of any company in which they have an interest as a beneficial member where their shareholding is more than 1% of the company's share capital. The tax files of companies do not contain any ownership information, unless the information is included in financial statements which might accompany tax returns. As a result, the tax authorities have some partial information on ownership of Guernsey companies, but in practice this does not represent the main source of information in the case of an EOI request. Therefore the provisions under tax law do not always ensure the complete availability of a chain of legal ownership and beneficial ownership information in line with the standards.

*Legal ownership information – Enforcement measures and oversight*

45. The 2013 Report concluded that enforcement provisions are in place in respect of the relevant obligations to maintain legal ownership and identity information for all relevant entities and arrangements. It was noted that necessary tools exist to address non-compliance through a combination of obligations under tax law, company law, licensing provisions and AML/CFT law. In all cases, the size of the applicable penalties, including winding up or being struck off, is dissuasive enough to ensure compliance. In practice, in the previous review period, ownership information on relevant entities and arrangements has been available in all cases where this was requested by an exchange of information partner, most of the time within 90 days and in the remainder within 180 days.

46. During the current review period also, similar practices of supervision and enforcement continue to apply. The Guernsey and Alderney Registries actively supervise compliance with the Law through the annual validation process and the ongoing monitoring of filings at the Registry. Where a breach is identified, or merely suspected, the Registry goes through a process of notification and requests to remedy where any breaches are identified. This involves writing to the company, directors or administrator when the registry knows, or suspects, that there may not be compliance with the Law. The Registrar's first approach is to seek to have the error remediated before resorting to strike off action. Guernsey companies may also be struck off for failing to appoint a Resident Agent or for being persistently in contravention with the law (sections 355 and 519).

47. In practice, for those companies who fail to meet the obligations of the annual validation, strike-offs may be delayed to allow time to ascertain whether there is an outstanding tax liability, however, to restore a company after strike off, all company records must be provided as if it had not been struck off. The policy in Guernsey is that a company which has been listed for strike-off three times is not eligible to be restored. Further, directors of such companies may be disqualified from acting as directors of other Guernsey companies. Guernsey authorities reported that this has substantially reduced the number of companies which do not complete their annual validation in order to be struck-off, and thus using this process to be wound down. On average, two companies per year that have been struck off seek the court's assistance to be restored. If a Guernsey or Alderney company is struck off the Register its assets become *bona vacantia* belonging to the Crown (section 369 Guernsey Companies Law, section 107, Alderney Companies Law).

48. As noted by the 2013 Report, provisions also exist for disqualifications of directors, which are however most commonly sought by the GFSC, Commerce and Employment Department or HM Procureur (i.e. Attorney

General). Since 2008, the Registry has taken action against an average of two directors per year for not being considered fit to act. The list of disqualified directors is available on the Guernsey Registry website at <http://guernseyregistry.com>. A person cannot be appointed as a director in Guernsey if they have previously been disqualified there or any other jurisdiction.

### *Resident Agent*

49. The 2013 Report noted that a company that does not comply with its obligation to have a Resident Agent, or to keep a record of its Resident Agent's name and address, is guilty of an offence under sections 484 and 485 of the Guernsey Companies Law and is liable to be struck off the Register of Companies. This continues to be the position in the current review period.

50. In case the company does not disclose its legal and beneficial ownership to the Resident Agent (either due to the unwillingness of its owners or other reasons), the following measures can be applied:

- A Resident Agent may give a corporate legal owner a notice, requiring that owner to disclose whether it holds its interest in the company for its own benefit or the benefit of another person, and if so, the details in respect of that other person. Failure to answer the notice or providing a false answer is an offence (section 488) and should be reported to the company.
- In turn, the company may restrict the rights of the member or even cancel the member's interest in the company (section 489).
- Moreover, if the member of the company refused to provide the information, the Resident Agent may refer the matter to the Police for investigation as it is a criminal offence. However, in practice, since the introduction of the Guernsey Companies Law, there have not been any referrals for investigation or prosecution.

51. Guernsey authorities reported that the usual practice for CSPs acting as Resident Agents is to file a notice under section 32 of the Guernsey Companies Law where they are unable to contact the underlying shareholders, or there have otherwise been concerns about failures to obtain relevant information from a shareholder or underlying principal. The process under section 32 is that the CSP notifies the Registrar that they are no longer providing a company with an effective registered office. That notice must also be served on the directors of the company. The Registrar will then take steps to strike the company off the register of companies pursuant to Part XX of the Guernsey Companies Law. During the current review period, Guernsey authorities reported that, on average the Registry receives 50 such notices per year, leading to 137 companies being struck off during the review period,

with the remainder of companies being retained or returned to “good standing”. The company can be restored to the Register; however, the Registrar requires an undertaking from the CSP that the company is in compliance with all the provisions of the Guernsey Companies Law. Given the relatively straightforward and low-cost means of striking the company off the Register, this is the preferred route of CSPs to enforce compliance. The Registrar monitors CSPs using the section 32 procedure and has not observed excessive use of the procedure in non-compliance with the provisions of the Law which would lead the Registrar to take steps to investigate and refer the matter to the GFSC for investigation.

52. In practice, as noted in the 2013 Report, and in the current review period also, the Registry regularly reviews compliance with the Resident Agent requirements for companies that have obtained Resident Agent exempt status under section 483 of the Guernsey Companies Law (companies not required to have a Resident Agent are those listed on a recognised stock exchange, open-ended or closed-ended investment companies or any GFSC supervised companies, as well as States Trading Companies and subsidiaries of these exempt companies). The Guernsey authorities indicated that 10% of companies are Resident Agent exempt at the time of formation and that the figure does not substantially change post formation. The Guernsey authorities also confirmed that in the vast majority of cases where the Resident Agent is a locally resident director as opposed to a TCSP, the directors of the company are also the owners. Therefore the Resident Agent will be aware of any change of ownership and amend their records accordingly. Resident Agents are regularly reminded of the need to ensure the records are kept up to date and this will be declared on the Annual Validation ensuring that, even in the minority of cases where the directors of the company are not the beneficial owners, the records will be kept up-to-date.

### *Availability of legal ownership information in Practice*

53. The 2013 Report noted that in the period 2009 through 2011, the Guernsey Competent Authority received 11 requests relating to ownership of companies, all information relating to companies was provided within 90 days. Similarly, in the current review period, Guernsey has received 65 requests for ownership information (6 requests for legal ownership, 29 requests for both legal and beneficial ownership, and 30 requests for beneficial ownership, i.e. 59 for beneficial ownership, 35 for legal ownership) which have been responded to by the Guernsey authorities without any difficulty. There has been no adverse input from peers with respect to availability or quality of legal ownership information in Guernsey. No EOI requests were received concerning an Alderney company in the period under review.

### *Availability of beneficial ownership information*

54. Under the 2016 Terms of Reference, a new requirement of the EOIR standard is that beneficial ownership information on companies should be available. In Guernsey, this aspect of the standard is largely met through requirements of the recently enacted beneficial ownership Law complemented by the associated beneficial ownership regulations. Similar Law and Regulations were taken in Alderney. Under the new beneficial ownership legislation, all Resident Agents, whether AML-obligated or not, of companies incorporated in Guernsey must provide beneficial ownership information to a central register (or to the Alderney Register).

55. This new legislation complements the existing AML/CFT framework. Under the AML legislation applicable in Guernsey and Alderney, beneficial owner information generally in line with the standard is available with AML-obligated persons to the extent the company engages a TCSP, has a bank account in Guernsey or engages another AML-obligated person (e.g. certified accountant). Each of these legal regimes is analysed below.

#### **Legislation regulating beneficial ownership information of companies**

Type	Company law	Tax law	Aml law	Beneficial owner regulations 2017
Cellular company	Some	None	Some (including all CIVs where the licensed fund administrator is treated as the Customer)	All (except CIVs)
Non-cellular company	Some	None	Some	All
Unlimited Liability	Some	None	Some	All
Foreign companies (having nexus and relationship with an AML-obligated service provider)	None	None	Some	None

### *Beneficial Ownership Law, 2017*

56. Guernsey introduced new legislation, The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, which came into force on 15 August 2017, which covers companies, LLPs and foundations to ensure the availability of beneficial ownership information, in line with the international standard, in a centralised location that is easily accessible by the Competent Authority of Guernsey. The Law establishes the Office of the Registrar, with a mandate to ensure the accuracy of information in the central beneficial ownership register to be populated by the Resident Agents. The Law empowers the Registrar to monitor and enforce compliance with the Law (including



accuracy of data on the register and the record keeping requirements) by Resident Agents which are not TCSPs licensed and supervised by the GFSC and to obtain information in relation to nominee relationships (section 3). Resident Agents also have an ongoing duty to identify any nominees or nominators. They also have duties and powers in respect of the service of information notices on persons believed to be nominees or nominators, or on third parties that may hold relevant information. Resident Agents must keep an up to date record of the required particulars of a nominee or nominator in a separate part of the record of beneficial owners and must notify the Registrar of Beneficial Ownership of any relevant changes. Nominees have a positive duty to notify resident agents about their status and about any subsequent changes, where that information is not already known to the resident agent and they have not been served with an information gathering notice. The central register is populated with the information required about nominee relationships under the nominee relationships regulations since February 2018.

57. The States of Alderney made an identical commitment to Guernsey in 2016 and legislation came into force in Alderney on 15 August 2017 which provides for the establishment of the Office of the Alderney Registrar of beneficial ownership of Legal Persons and a framework governing the registration of accurate beneficial ownership information for legal persons. This legislation, the Beneficial Ownership of Legal Persons (Alderney) Law, 2017 covers all Alderney legal persons, namely Alderney companies. The obligations under the Alderney law are identical to those described above. The beneficial ownership (Alderney) Regulations, 2017 are identical to the Guernsey regulations.

### *Coverage of the 2017 beneficial owner Regulations*

58. All Guernsey companies registered prior to 15 August 2017 were required to file their beneficial ownership information by 28 February 2018.<sup>2</sup> All Guernsey limited liability partnerships and foundations registered prior to 15 August 2017 were required to file their beneficial ownership information by 30 November 2017. Alderney companies in existence at 15 August 2017 were required to provide beneficial ownership information to the Alderney beneficial ownership Registrar by the end of January 2018.

59. Whilst it is noted that the closed and open ended investment companies that do not have the requirement to appoint Resident Agents are not covered by the new beneficial ownership regulations per se, beneficial ownership information ought to be available on these companies as, by law, they must have an administrator licensed under the Protection of Investors Law

2. [www.guernseyregistry.com/beneficialownership](http://www.guernseyregistry.com/beneficialownership).

who is required to apply AML/CFT measures on the intermediary. Please refer to the detailed discussion on CIVs in a detailed section below.

### *Definition of beneficial owners and requirements*

60. The definition of beneficial owner for the purposes of the beneficial ownership Law is specified in the Beneficial Ownership (Definition) Regulations, 2017, which came into force on 15 August 2017. “The beneficial owner, in relation to a relevant legal persons is:

- a. the natural person who ultimately controls the relevant legal person through ownership; or, if no such person exists or can be identified,
- b. the natural person who ultimately controls the relevant legal person through other means; or, if no such person exists or can be identified,
- c. the natural person who holds the position of senior managing official of the legal person.”

61. The Beneficial Ownership (Definition) Regulations, 2017 further provide that “In any case where – (a) the natural person who controls the relevant legal person through ownership has been identified, (b) there are reasonable grounds to believe that the relevant legal person is also ultimately controlled by another natural person through other means, and that other natural person can be identified then the beneficial owners in relation to the legal person are the persons described in (a) and (b)”. This ensures more persons are identified.

62. In addition, Guernsey has issued comprehensive guidance in relation to the new beneficial owner regulations.<sup>3</sup> This guidance notably provides examples of how to determine control.

63. Under the beneficial owner Regulations, ownership control under point (a) is defined as a direct or indirect holding (i) of more than 25% of the company’s shares; (ii) of more than 25% of the voting rights of the company; or (iii) the holding of the direct or indirect right to appoint or remove a majority of the board of directors of the company. The Regulations also allow for a listed company on a recognised stock exchange<sup>4</sup> to be listed as a “corporate beneficial owner”. The definition of beneficial owner along with the method of identifying the beneficial owner is in line with the international standards.

64. The beneficial ownership information to be maintained includes the following elements: (a) name (b) nationality (c) date of birth (d) principal

3. [www.guernseyregistry.com/beneficialownership](http://www.guernseyregistry.com/beneficialownership).

4. The Beneficial Owner (definition Ownership (Definition) Regulations 2017 provides a list of such recognised stock exchanges.

residential address (e) if she/he became a beneficial owner after 14 August 2017, the date on which she/he became a beneficial owner (f) the grounds on which she/he is considered to be the beneficial owner (section 10).

65. Three different stakeholders have requirements under the law: the Resident Agent, the beneficial owners and the company.

66. First, the Resident Agent must provide updated and accurate information to the Registrar within 21 days of receiving information that beneficial ownership has changed (sections 10 and 11). In addition, the Resident Agent must record the beneficial ownership information and maintain the record at the legal person's registered office or, subject to approval by the Registrar, at another location within Guernsey (section 10).

67. Section 19 of the Guernsey beneficial ownership Law also includes revisions to the Guernsey Companies Law (sections 17 and 486 onwards) to ensure that before incorporating a company, the Resident Agent must take reasonable steps to ascertain the identity of the beneficial owners of a company, provide to the Registrar of beneficial ownership a statement of the required particulars of the beneficial owners, take reasonable steps to verify the information in the statement and provide the Registrar with a statement that he/she has taken reasonable steps to verify the information. The required particulars are the same as those specified above.

68. Second, to assist Resident Agents in their tasks, the beneficial owner is also obligated to supply information to the Resident Agent of the fact of her/his becoming a beneficial owner within 21 days from the date on which she/he acquired that status (with the required particulars), and any change to that information so that the Resident Agent can complete the record of beneficial ownership information and provide information to the Registrar (sections 15 and 16).

69. To ensure the co-operation of beneficial owners, the Law fastens responsibility on the Resident Agent of a legal person to take reasonable steps to ascertain the identity of beneficial owners and to keep the record of beneficial owners up to date (section 11). Accordingly, the provisions empower Resident Agents to serve notices on persons they believe are or may be beneficial owners in order to seek confirmation of beneficial ownership except where the Resident Agent has already been informed by the beneficial owner, or a person with the knowledge of the beneficial owner, that she/he is the beneficial owner. Resident Agents also have wide power to seek information from other persons (section 9).

70. Finally, the beneficial ownership regulations mandate that every Guernsey company (except the CIVs) has to provide details of its beneficial owners in the register maintained by the Companies Registrar. In addition to the requirements in the beneficial ownership Law for Resident Agents

as discussed above, the Companies (Annual Validation) Regulations, 2017 provide that the annual validation from the Resident Agent must specify that the legal person's record of beneficial ownership is current at the date of the annual validation.

71. Records of beneficial ownership information are to be maintained for at least five years after the dissolution, termination or striking off of the legal person by the liquidator if appointed (or the Resident Agent, if a liquidator has not been appointed) (section 14) and by the Registrar (section 2 and paragraph 9 of Schedule 2).

72. Two potential deficiencies appear in the Beneficial Ownership Law. First, despite the broad definition of beneficial owners as per the standards, there is an inconsistency in the recently introduced beneficial ownership Law (Section 10(5)), where a Resident Agent may record he/she is unable to identify the beneficial owners in relation to a relevant legal person in the record of beneficial owners maintained by him/her at the registered office of the legal entity. The beneficial ownership regulations which were brought in subsequently to provide the definition of beneficial ownership, explain that the provisions of Section 10(5) relate to situations where the Resident Agent cannot identify the beneficial owner. This is despite the failsafe provision already existing in the 3-tier procedure which allows for identification of senior managing officials as the beneficial owner. Section 135 of the Company Law requires companies to have a director at all times so this situation should remain exceptional. If there is a change in director, that has to be notified to the Registrar within 14 days under section 145 of Company Law.

73. Second, although the beneficial ownership Law allows for resignation of Resident Agents, there are no clear regulations/instructions which mandate a resident agent to initiate the process of resignation (by issuing notice) as a consequence of not being able to identify any beneficial owner. Further, there are no legal requirements to strike-off such a company whose resident agent has not resigned and has not obtained the beneficial ownership information. Therefore it is not ensured that beneficial ownership information will be available in all cases and that the situation will always be detected by the authorities for remedial actions. It is noted that the AML obligations may act as a second source of beneficial ownership (see below for analysis). However, the AML obligations might not mitigate this situation since the Resident Agent is not always AML obligated and the AML framework does not always ensure identification of the beneficial owner in line with the standard (see AML analysis below).

74. Notwithstanding the foregoing, the Guernsey authorities have pointed out that the reference to non-existence of a beneficial owner, where section 10(5) is triggered, is expressly defined as meaning a situation where no beneficial owner can be identified. They consider it does not detract in

any way from the statutory obligation (subject to criminal penalties) to apply each tier in the 3 tier definition in the Beneficial Owner Regulations. Its purpose is simply to alert the authorities to situations where the Resident Agent claims that there is difficulty in establishing beneficial ownership. This is a failsafe provision only, given that in reality it is highly unlikely that there will be any situation where a senior managing official cannot be identified. If the notification to the Registrar of the termination of a director did not show a replacement director (as must be the case if section 10(5) had been relied upon), the authorities indicate that the Registrar would issue a notice to the company to rectify the position. If it did not, the company would be struck off after 2 months. It has not arisen in practice, as the Register is now fully populated and there have been no cases whatsoever of a Resident Agent stating that there is no beneficial owner (the Registrar checked the register as part of his ongoing verification activity). If a case were to occur it would be taken up with the Resident Agent by the Registrar or the GFSC, depending on whether or not the Resident Agent was a TCSP. The steps taken by the Resident Agent to establish beneficial ownership would be looked at in detail with a view to taking enforcement action (including but not limited to strike off) in the event that the Resident Agent was found not to have discharged his or her obligations under the legislation.

75. The Attorney General (AG) of Guernsey (HM Procureur), has clarified that given that the 3rd tier of definition of beneficial owner applies to a natural person holding the position of a senior managing official, it would be difficult to envisage a situation in which it would be not possible to identify any beneficial owner. The AG has also stated that if a Resident Agent were found to be in violation of the legal requirement to apply the 3-tier test, it would amount to a criminal offence and a prosecution may be initiated if appropriate. The AG's letters are attached and the Guernsey authorities will issue guidance to clarify the position regarding section 10(5). The authorities are also confident that the TCSPs are fully aware that beneficial owners must always be registered. The Chairman of the Guernsey Association of Trustees has also advised that there has not been any case to date where a Resident Agent has claimed not to be able to identify the beneficial owners of a legal person; in addition, when confronted with a position where it appears that no individual beneficial owner would be registered, the Association is confident that a TCSP would take advice from the Registrar, or their own legal counsel, and on doing so be advised that the 3-tier test must be applied. Finally, the Registrar indicated that an instance has never occurred where a person, obligated to provide beneficial ownership information, has been unable to do so or has attempted to make a return detailing no beneficial ownership information was held, as the system required to be used does not allow for such an entry.

76. Considering that the legislation was passed only in 2017, Guernsey is recommended to continue to monitor the application of section 10(5) to ensure that there is no room for misinterpretation about the need for beneficial ownership information of all relevant legal entities at all times.

### *Supervision and enforcement mechanisms*

77. Relevant changes in the Guernsey and Alderney AML/CFT framework have been brought about to (a) appoint the GFSC as the authority for Guernsey and Alderney responsible for monitoring and enforcing compliance by TCSPs which are Resident Agents with responsibilities under the registration of beneficial ownership information framework; (b) provide that the Financial Services Commission Law and the regulatory legislation administered by the GFSC apply to compliance by TCSPs which are Resident Agents within the registration of beneficial ownership information framework; (c) engage the powers in the legislation administered by the GFSC or otherwise applicable to the GFSC (such as powers of onsite inspection, sanction and obtaining and disclosing information) to compliance by TCSPs which are Resident Agents within the registration of beneficial ownership information framework. These powers also expressly extend to exchanging information with the Guernsey and Alderney beneficial ownership Registrars.

78. In case of non-compliance by Resident Agents, there are civil/administrative sanctions by the Guernsey Registrar, specifically financial penalties of up to GBP 20 000, disqualification orders against Resident Agents, private reprimands and public statements (sections 17, 25, 26 and 27) and there are also powers to place restrictions on rights attaching the relevant member's interests (sections 19 to 21). Strong criminal sanctions in the form of penalties also exist for the offence of providing false or misleading information to the Guernsey Registrar (section 18), and on summary conviction a guilty person is liable to a fine of up to GBP 10 000 and a prison sentence of up to three months. On conviction on indictment a guilty person is liable to a limitless fine and imprisonment for up to two years. The Financial Services Commission Law and the regulatory laws have also been amended so that compliance with the beneficial ownership legislation forms part of the standards required for persons subject to AML/CFT supervision by the GFSC, and the GFSC is allowed to disclose information to the Guernsey and Alderney Registrars to carry out their functions and investigate matters relating to their functions.

79. Where a member or beneficial owner fails to comply with an information gathering notice issued by the Resident Agent or where a beneficial owner has not provided information on his/her beneficial ownership status to the Resident Agent, the Registrar has power to place restrictions on rights attaching to the relevant member's interests, including, without limitation, any right to transfer the interest; any voting rights; and any right of payment due to the

member's interest in respect of capital or otherwise. These powers also apply when a member or beneficial owner has not complied with the requirements in the beneficial ownership Law to provide information or has produced information or made a statement which is false, deceptive or misleading. The changes to Guernsey's Companies Law also include express provisions on the resignation of Resident Agents (which would lead to a company being struck off).

80. The beneficial ownership register is fully populated with effect from 28 February 2018. The Guernsey authorities have reported that subsequent to the onsite visit, the Registrar of Beneficial Ownership began to use information-gathering powers in the beneficial ownership Law to carry out ongoing oversight with a risk based approach. This includes developing a detailed methodology and identifying those entities which have a non-TCSP resident agent who is identified in the register as the beneficial owner (where the beneficial owner, director and Resident Agent are all the same person, the beneficial ownership information is certain to be accurate). Guernsey authorities further reported in April 2018 that, as established by analysis of the beneficial ownership database, this applies in 80% of the 2 940 cases where a company has a non-TCSP resident agent. It is also stated that, in addition, the Registrar has issued a survey to entities with a non-TCSP resident agent to obtain information about various matters relating to risk (e.g. areas of activity and any international links) and the accuracy of the data on the register. This is a rolling programme which will involve surveys being sent to them all, and will be completed by the end of June 2018. The Registrar is stated to be planning to undertake a thematic review of information on the Register that will involve a consideration of legal entities that are owned by other legal entities (this review is expected to be completed in the first half of June 2018). Accordingly, Guernsey authorities emphasise that verification of the accuracy of beneficial ownership information in the register is seen as crucial by the Registrar. Guernsey is recommended to continue to monitor the implementation of the new beneficial ownership regulations and the reporting to the Register to ensure the availability of accurate, updated beneficial ownership information for companies, LLPs and foundations in all cases.

### *AML law requirements*

81. As noted by the 2013 Report, Guernsey has a significant insurance and investment fund business and financial services business (including fiduciary licensees), subject to the AML/CFT framework (2013 Report see paras 104-109). The Proceeds of Crime Law (POCL), defines money laundering, specifies which businesses are considered to be financial services businesses (FSBs), and provides that the GFSC may implement rules and issue guidance for FSBs. Under Section 49 of the POCL the GFSC has powers to issue rules on how FSBs should comply with the FSB Regulations. These rules are enforceable, breaches of which can lead to the GFSC applying the powers it has to sanction

firms and individuals under the FSC Law and Regulatory Laws. In December 2007, the then Policy Council (now the Policy and Resources Committee) issued the FSB Regulations, which impose on FSBs obligations of Customer Due Diligence (CDD), monitoring of transactions and activity, the reporting of suspicion of money laundering, and record keeping etc. Pursuant to regulation 17 of the FSB Regulations, breaches are subject to criminal sanctions and liable (a) on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both, (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding GBP 10 000 or both.

82. Whilst the Beneficial Ownership Law 2017, is a source of beneficial ownership information for companies, LLPs, foundations and LPs with legal personality, the AML is another source, whenever an AML obligated service provider is engaged. However, the AML framework remains as the only source of beneficial ownership information in Guernsey in respect of foreign companies, trusts, LPs without legal personality.

#### *Definition of beneficial owner(s) under the AML Legislation*

83. Regulation 4 of the FSB Regulations requires that the beneficial owner and underlying principal be identified and reasonable measures be taken to verify such identity using identification data, and such measures must include, in the case of a legal person or legal arrangement, measures to understand the ownership and control structure of the customer.

84. “Beneficial owner” is defined in the FSB Regulations as, in relation to a business relationship or occasional transaction –

- a. The natural person who ultimately owns or controls the customer, and
- b. A person on whose behalf the business relationship or occasional transaction is to be or is being conducted and, in the case of a foundation or trust or other legal arrangement, this shall mean –
  - i. any beneficiary in whom an interest has vested, and
  - ii. any other person who benefits from that foundation or trust or other legal arrangement.”

85. “Underlying principal” who ought to be identified usually along with the beneficial owner(s) under CDD is defined in the FSB Regulations as:

“in relation to a business relationship or occasional transaction, any person who is not a beneficial owner but who –

- a. is a settlor, trustee, protector or enforcer of a trust, or a founder or foundation official of a foundation which is the customer or the beneficiaries of which are the beneficial owners, or



- b. exercises ultimate effective control over the customer or exercises or is to exercise such control over the business relationship or occasional transaction.”

86. The aforementioned definition of underlying principal does not refer to a “natural person” but rather to “a person”, which means it could be a corporate person. However, the Guernsey authorities explain that in view of Rule 109 and Rule 113 wherein underlying principals are referred to as “individuals”, the industry in Guernsey widely interprets the term as a natural person exercising ultimate effective control over a customer. These individuals are nonetheless qualified as those “who have the power to direct movement of the customer’s funds or assets” or “with ultimate effective control over capital or assets of a legal body”, which might not capture all relevant persons. The authorities noted that this gap is only potential and interpreted broadly in practice. Under the FSB regulations, the beneficial owner definition for all relevant entities and arrangements taken along with the coverage of underlying principal is generally in line with the international standard.

87. In terms of method of identifying the beneficial owners of a company, Rule 113 of the FSB Handbook requires FSBs to identify and verify the individuals with ultimate effective control over the capital or assets of a legal person. These are described as individuals ultimately holding a 25% or more interest in the capital or net assets of a legal person, beneficial owners and underlying principals, and directors, authorised signatories or equivalent.

88. In the case of a foreign company in Guernsey, with sufficient nexus (having headquarters), and with its ownership chain having trust(s) or shareholder(s) being trust(s), since the FSB rule (No. 139) exempts the verification of identity of corporate trustees from the 40 Appendix C Countries, it might impact the availability of beneficial ownership information in respect of such foreign companies. This may present a minor gap in the availability of beneficial ownership information in such cases, and Guernsey is recommended to ensure that there is no impact on practice in all such cases (see paras 146, 147 below in Element A.3 also, for more details wherein Guernsey authorities indicate that the exemption only applies in low risk cases and that too in the case of corporate trustees who are GFSC licensed fiduciaries and act as financial intermediaries, whereas the Rule 139 is not unambiguous about this interpretation).

89. Further, there are two gaps in coverage under AML obligations that could marginally impact the availability of accurate and updated beneficial ownership information, in practice, when the only source of beneficial ownership information in a given situation is expected to be available with the Directors of a legal entity who is expected to be in possession of CDD information of the legal entity/arrangement. Guernsey is recommended to take appropriate measures to address the following gaps:

- a. There is an exemption from seeking a fiduciary licence if an individual acts as a Director in less than 6 companies at a time and is not acting by way of business, and thereby a possibility of exemption from being AML obligated and yet being responsible for any legal entity/arrangement.
- b. CDD requirements are not mandatory and do not have to be fulfilled where such a person is acting on an entirely voluntary basis, irrespective of the number of directorships held.

90. The Guernsey authorities have nevertheless explained that the “up to 6 directorships” exemption is only available to an individual and Paragraph 23 of Schedule 1 of the Proceeds of Crime Law clearly includes individuals who are using the “up to six directorship” exemption (3(1)(g) of the Fiduciaries Law) as being financial services businesses who must then apply the Proceeds of Crime Regulations to their appointments. The authorities further state that the GFSC also engages with professional associations representing individuals who use this exemption, including the local branch of the Institute of Directors and the Non-Executive Directors Forum and the GFSC also maintains a record of the individuals who contact it to enquire about the legislation, including their AML/CFT requirements which would apply if they were to take up a directorship. Guernsey reports that in 2017, 20 individuals contacted the GFSC about this, which suggests a good awareness that taking up a directorship could entail obligations under the AML/CFT framework as well as the Fiduciaries Law. Furthermore, where an individual using the exemption, as well as an individual acting in a voluntary capacity, is the Resident Agent of the company which the individual is a director of, he/she is required to collect and disclose beneficial ownership information on the company under the beneficial ownership legislation.

91. With regard to the requirement to be acting by way of business in order to come within the AML/CFT framework, the Guernsey authorities have explained that it applies to activity for which any income, fee, emolument or other consideration in money or money’s worth is received, in line with the definition of “by way of business” at section 58(3) of the Fiduciaries Law. This definition is very wide and covers even small gifts and meets international norms for AML/CFT regulation.

92. As noted in the 2015 MONEYVAL Report (Para. 950) there were 5185 individuals acting as Directors for not more than 6 companies. Guernsey authorities advise that this will include individuals who are directors of their own company or that of their employer who is a supervised entity or a local non-financial services trading company. However, it is not clear if there have been cases of non-compliance in respect of CDD information in these cases, and if they are supervised to detect any such non-compliance and remediate the same.

### *Beneficial Ownership of Protected Cell Companies (PCCs)*

93. As discussed in the 2013 Report (para. 55), the idea of PCCs was first developed in Guernsey in the 1980s and formalised in 1997 to respond to concerns of risk contagions in the insurance industry. A PCC is a single legal entity with separate and distinct cells within it. Assets and liabilities in a cell of a PCC are, by law, segregated from those of other cells and those assets are not available to creditors of other cells in insolvency. A cell of a PCC is not a company and cannot contract in its own name.

94. A PCC cannot be incorporated unless it has the written consent of the GFSC pursuant to section 10 of The Companies (Guernsey) Law, 2008 (“Companies Law”). In order to grant such consent the GFSC requests details of the proposed beneficial owners, the nature and purpose of the company and the name of the licensed person who will administer the structure. When granting the consent, the GFSC imposes the conditions that no significant change is to be made to the activities of the PCC unless the GFSC has received prior notification and has consented to the change, and the PCC and its affairs will continue to be administered by a licensed person with a place of business in Guernsey. There are currently 292 PCCs of which 87 are regulated collective investment schemes and 60 are licensed insurers. The remaining PCCs (currently totalling 145) are often used as vehicles to hold pensions or multiple property developments.

95. PCCs are covered under the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, except in the case of being Collective Investment Schemes (see below). Guernsey has clarified that whilst the assets and liabilities of cells are kept separate, this has no bearing on the beneficial ownership of the PCC. The test for control through ownership of a PCC is assessed in respect of the shares and rights in the PCC as a whole, in the same way as with any other company. Guernsey has also clarified that the beneficial ownership requirements of all PCCs are tested as part of the GFSC’s day-to-day supervisory onsite visit programme. Guernsey has further reported that the GFSC recently undertook a survey of those licensed fiduciaries who administer a third of the non-regulated PCCs. As per the results obtained, all of the surveyed firms demonstrated that: 1) they assess beneficial ownership control by an individual across multiple cells and 2) the three tier test in relation to beneficial ownership of PCCs is understood. Therefore, Guernsey authorities advise that accurate beneficial ownership information in respect of PCCs would be available by also taking into account the ultimate effective control (by ownership across cells resulting in more than 25% ownership or control by other means) on the cells of a PCC and it needs to be reported to the central registry. The general recommendation to continue to monitor the implementation of 2017 beneficial ownership Law, also applies to the PCCs.

*Beneficial Ownership of Collective Investment Schemes (CIVs)*

96. In the case of collective investment schemes, the funds have a designated administrator who might treat an investment manager or custodian as the customer and therefore carry out CDD on that person rather than on the investors in a collective investment scheme, based on the discretion provided by section 6.5 of the FSB Handbook. The intermediary provisions set out in the AML/CFT Handbook are only permissible where a relationship is rated low risk and the financial intermediary (an Appendix C financial services business) is investing in a regulated collective investment scheme.

97. Guernsey has also clarified that a vehicle containing a small number of shareholders who have day-to-day control over investment decisions of the vehicle does not meet the criteria to be a regulated Guernsey collective investment scheme, and therefore, the intermediary provisions set out in the AML/CFT Handbook do not apply, and furthermore, the Resident Agent of such a vehicle (wherever it is a legal entity) is obliged to submit beneficial ownership information to the Registrar of Beneficial Ownership of Legal Persons. Schedule 1 to the Protection of Investors Law, 1987 (POI Law) sets out that a regulated collective investment scheme must satisfy three tests: (i) it has a spread of risk; (ii) a pooling of investors and (iii) the investors do not have day-to-day control over the management of the property to which the arrangement relates (paragraph 1(1)(b)). It also sets out those arrangements which do not fulfil the attributes of a regulated collective investment scheme, such as closely held family vehicles or vehicles where the investors are in the same group as the manager (i.e. those that control the investment decisions).

98. In order to determine if a proposed venture should be regulated as a Guernsey collective investment scheme, detailed information has to be provided on the proposed nature of the underlying assets, the number and profile of the proposed investors and how the venture will be controlled. As further explained by Guernsey, under international norms of IOSCO, the Basel Committee and the European Supervisory Authority, it is the intermediary who has the obligation to identify the beneficial ownership of investments. Since a chain of intermediaries can exist across multiple jurisdictions, it is not clear whether the intermediary would be able to make available the accurate beneficial ownership information in all cases, particularly since it is not clear as to what is the median size of number of investors in CIVs and whether purchase/sale or redemption is implicitly/explicitly restricted to a limited group of investors. Guernsey has clarified that collective investment schemes, regulated under the POI Law are akin to public collective investment schemes, which need not maintain beneficial ownership information.

### *Foreign companies*

99. The 2013 Report noted that foreign companies administered locally are generally not required to be registered in Guernsey and there is no “place of effective management” principle recognised in the Income Tax Law, but they would be covered by the Bailiwick’s AML/CFT regime where a Guernsey licensed fiduciary may provide corporate services, such as providing directors or officers, maintaining certain business records, etc. Nevertheless, under the Income Tax Law, they would be required to register with the tax authorities, if their activities in Guernsey amounted to the carrying on of a business, which would include all companies with a nexus with Guernsey by virtue of them having their Headquarters in Guernsey.

100. There is no legal requirement for foreign companies to be administered locally by a person licensed by the GFSC (see next section), or to be registered in Guernsey, except where there is a specific statutory requirement (such as for financial services businesses or for tax purposes – see above). The 2013 Report also noted that licensed fiduciaries provided corporate services to approximately 14 500 non-Bailiwick incorporated companies. Corporate services included approximately 13 000 directorships, and company administration.

101. Guernsey fiduciaries provided corporate services (including directorships and administration) to approximately 9 000 non-Bailiwick companies at the end of 2016. Therefore the estimated number of non-resident companies being served by TCSPs during the review period is 9 000. Whilst the number of non-resident (foreign) companies in Guernsey that are not engaging a professional service provider could not be ascertained, the Guernsey authorities advise that, because foreign companies would only have a nexus with Guernsey, under the standard, by virtue of carrying on substantial activities in Guernsey (such as having their Headquarters in Guernsey – see the following paragraph), it is difficult to imagine a scenario where a foreign company would have a nexus with Guernsey without having a relationship with a TCSP as the professional provision of corporate services requires a fiduciary licence, so the foreign company would therefore be represented in Guernsey by a TCSP who is an AML obligated person required to maintain the foreign company’s business records. Provision of corporate services without a licence is a criminal offence. In the current review period 10 requests related to ownership information of foreign companies have been received and all were successfully responded to by Guernsey in a timely manner.

102. The 2016 Terms of Reference require that Guernsey ensures the availability of legal ownership information of foreign companies having a “sufficient nexus” with Guernsey. Sufficient nexus under the standard is defined as including the cases of tax residence (for example by reason of its place of effective management or administration) or where the concept

of residence for tax purposes is not relevant in that other jurisdiction, one possible alternative nexus is that the company has its Headquarters there. The concept of effective management is not part of the tax residence criteria in Guernsey and the Guernsey authorities consider that, under the standard, therefore, Guernsey does not have a nexus with foreign companies unless they carry on substantial activities in Guernsey such as having their Headquarters there. A company is resident in Guernsey, for tax purposes, (a) if it is controlled by way of share, voting rights or other means<sup>5</sup> in Guernsey or (b) incorporated in Guernsey (but not granted an exemption from tax under the ordinance made under section 40A of the Tax Law, e.g. CIVs established inside/outside Guernsey). Permanent Establishments are also subject to a charge of income tax on profits of business carried on in Guernsey. Guernsey indicated that there are 1 585 foreign companies as per the Tax Database, that are required to file tax returns annually. However, the Income Tax Law in Guernsey does not require the companies to be distinguished as between whether they are PEs or Headquarters, as the only relevant parameter is whether they carry on business in Guernsey. Other than the requirement to register with the tax authorities, and file annual tax returns, there is no mechanism to identify on a yearly basis, in respect of all such foreign companies, whether they may have a Headquarters for that year in Guernsey.

103. As mentioned in the 2013 Report, it is the AML framework that ensures legal and beneficial ownership information in the case of non-resident companies in Guernsey. Therefore legal and beneficial ownership information is generally available in line with the standards except for the deficiencies in AML framework discussed above in respect of beneficial ownership. However, while there was no practical impact in Guernsey's ability to exchange information with partners, since there is no legal obligation to engage an AML obligated service provider by all relevant foreign companies,

5. Section 122(1) of the Income Tax Law: “control” means –

(a) in relation to a body corporate, the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person,

(b) in relation to a partnership, the right to a share of more than one half of the assets, or of more than one half of the income of the partnership,

(c) in relation to a body corporate or a partnership, the power of a person, who is a loan creditor thereof and who is, in the opinion of the Director, able to exercise that power, to secure that the affairs thereof are conducted in accordance with the wishes of that person.

Guernsey is also invited to ensure the availability of legal ownership information in all cases.

*Beneficial ownership information – Enforcement measures and oversight*

104. The beneficial ownership aspect of the 2016 standard is new and was therefore not specifically evaluated in the 2010 Report. As described above, the main requirements to maintain beneficial ownership information arose under the AML/CFT framework in the review period.

105. The GFSC is the designated prudential and AML/CFT supervisor for all financial services businesses, including TCSPs, and the AML/CFT supervisor for all prescribed businesses (accountants, lawyers and estate agents) and receives its general powers of supervision and sanctioning through the Financial Services Commission Law and Regulatory Laws. The GFSC employs 105 staff and comprises four main Supervisory Divisions, each headed by a Director: Fiduciary, Banking and Insurance, Investment and the Financial Crime (AML/CFT). These Divisions undertake the Commission's day-to-day risk based prudential, conduct and financial crime supervision. Although each division is responsible for the supervision of the firms in their sector, they work very closely together and often undertake joint on-site inspections to firms.

106. The GFSC also has an Authorisations Unit which undertakes the GFSC's gatekeeper role of authorising, licensing or registering new entrants, an Enforcement Division which investigates a range of enforcement matters, particularly those involving significant breaches of regulatory requirements and poor conduct which are referred to it by the Supervisory Divisions, and an Intelligence unit manages sensitive information about FSBs and liaises as appropriate with the relevant supervisory divisions of the GFSC and externally with law enforcement authorities. The GFSC applies a risk based approach to the supervision of licensees which is underpinned by a system known as PRISM (Probability Risk and Impact System). It is a structured system which enables the GFSC to focus its supervisory activity on prudential, financial crime and conduct-related matters utilising data provided by firms it supervises and confidential and open source information. Although firms are risk assessed individually, the information gathered allows the GFSC to conduct analyses of risk on a sector by sector basis and to identify vulnerability and focus resources on areas deemed to present the highest risk to the financial services in the Bailiwick as a whole.

107. In the current review period, as per the information provided by the GFSC, every FSB which is obliged to comply with the AML/CFT regime was risk assessed annually, using client and business data provided by every FSB annually together with open source and confidential information available

to the GFSC. In recognition of the generally higher ML and TF risks in the banking sector and TCSPs, a greater weighting is given to those sectors who are also required to provide substantially more information about their business including geographic origin of clients/funds to enable the GFSC to target supervision more effectively at firm and sector level based upon risk. The average percentage of coverage of AML/CFT onsite inspections (as opposed to other AML/CFT supervisory engagements such as meetings and requests for information and records, as well as prudential and conduct supervision) during the review period was a third of the TCSPs and all the banks. The GFSC undertakes regular supervisory engagement visits to the two largest legal services firms and the two largest accountancy practices. The remaining Prescribed Businesses are subject to event-driven on-site inspections and thematic reviews in accordance with the GFSC's risk based approach.

108. In respect of AML/CFT visits, the GFSC uses a detailed questionnaire which firms must complete in advance, which provides information about their business and how they comply with AML/CFT requirements. The firm must also provide copies of Board meeting minutes, audit and compliance reports and policies and procedures. Using the completed questionnaire and supporting materials, the on-site inspection team undertakes a comprehensive pre-visit analysis and risk assessment of the business to assess whether the firm has a clear understanding of its ML/TF risks and AML/CFT requirements and how the institution has developed its compliance arrangements. The pre-visit assessment and analysis enables the GFSC to focus when it is onsite on the effectiveness of a firm's AML/CFT controls and those areas of its business where risks may be greater.

109. During on-site inspections the GFSC will undertake a detailed review of approximately 20 client files across the risk spectrum on a structured sample basis which reflects the products and services the firm offers, sources of its business relationship, the value of the relationship to the firm, the risk rating attributed to clients and whether any specific AML/CFT issues have been raised in relation to a specific client. As part of the client file reviews, the GFSC will test that appropriate CDD is held on key parties, in particular, the thoroughness of measures applied by the firm to establish who is the ultimate beneficial owner, to a legal person/legal arrangement at commencement of the firm's relationship with a customer, its monitoring arrangements particularly where beneficial ownership may change, and suspicious activity reporting framework. The GFSC will also interview a wide range of staff, which will include Board members, Compliance Officer, Money Laundering Reporting Officer and Client Relationship Managers.

110. The number of dedicated AML/CFT on-site inspections by the GFSC during the review period, as provided by the Guernsey authorities, is as follows:



	2014	2015	2016
<b>Banking</b>	7	11	9
<b>Fiduciary</b>	11	12	25
<b>Insurance</b>	4	1	3
<b>Investment business (including the stock exchange)</b>	6 (inspections of fund administrators also covered 118 funds and 32 licensees administered by those fund administrators)	31 (Inspections of fund administrators also covered 254 funds and 191 licensees administered by those fund administrators)	27 (Inspections of fund administrators also covered 210 funds and 96 licensees administered by those fund administrators)
<b>Registered financial services businesses</b>	4	3	3
<b>Prescribed businesses</b>	21	2	0
<b>Total entities covered by onsite inspections</b>	203 (includes funds and administered licensees)	505 (includes funds and administered licensees)	373 (includes funds and administered licensees)
<b>Total number of on-site inspections of licensees</b>	53	60	67

111. In addition, the GFSC's prudential teams also have structured engagement plans, including onsite inspections, with significant banks, insurers, investment companies and TCSPs and will liaise closely with the Financial Crime Division in relation to prudential issues such as governance, or operational matter which would also raise concerns about the FSB's effective management of ML or TF risks.

112. The GFSC has a wide range of sanctions and uses this range. Sanctions imposed include written warnings, prohibitions on individuals, discretionary penalties and public statements. The GFSC also has the ability to suspend or cancel licences. It can also prevent directors using the exemption in section 3(1)(g) of the Fiduciaries Law which enables an individual to hold up to six directorships, which although still subject to the Proceeds of Crime legislation (AML/CFT measures), does not require the individual to hold a fiduciary licence. Between the start of 2014 and end of 2016 the GFSC has made 12 public statements regarding the sanctions it has imposed.<sup>6</sup>

6. a) In 2014, the GFSC imposed a financial penalty of GBP 30 000 on a trust and company service provider and issued a public statement; b) In 2014, the GFSC fined a branch of a UK bank GBP 70 000 and issued a public statement; c) In 2015, the GFSC fined four executive directors of a TCSP GBP 50 000 each and its non-executive director was fined GBP 10 000 and issued a public statement. d) In 2016, the GFSC fined a trust and company service provider GBP 42 000,

*Availability of beneficial ownership information in practice  
(Peer Experience)*

113. The availability of beneficial ownership information was not evaluated under the 2010 Terms of Reference. During the current review period Guernsey was expressly asked to provide beneficial ownership information in 59 cases to at least 6 of its EOI partners, who were satisfied with the quality of the information received. Guernsey did not face any difficulties in providing the beneficial ownership information.

**A.1.2. Bearer shares**

114. The 2013 Report noted that Guernsey’s legislation for legal persons does not permit the issue of bearer shares as shareholdings in companies and interests held in other legal persons must be registered (See 2013 report, paras 119-121). However, there are no explicit prohibitions in Guernsey’s company law in relation to bearer warrants. Guernsey has however further clarified that none of the Guernsey authorities has ever received intelligence or other information that a Guernsey company has issued bearer warrants. It is further noted that even if there is a possibility that a company may issue a bearer warrant, any shares issued as a consequence of a warrant would have to be registered shares and not bearer shares. It is noted that there were no EOI requests related to bearer warrants issued by any Guernsey company in the review period. None of Guernsey’s peers have reported that they have had difficulty obtaining information on the ownership of a company due to the existence of outstanding share warrants to bearer.

115. Nevertheless, Guernsey may wish to continue to monitor the compliance in practice so that issuance of bearer warrants in future or for those issues in the past (if any), does not pose any impediments to availability of accurate legal and beneficial ownership information of companies incorporated in Guernsey, at all times.

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fined a director GBP 18 375 and two other directors GBP 10 500 each. A public statement was also issued. Full details of the GFSC’s public statements can be found at: <https://www.gfsc.gg/>. e) 21 individuals are currently prohibited from undertaking activities such as a controller, manager and director of licensed entities; f) GFSC has also disappplied the exemption under section 3(1)(g) of the Regulation of Fiduciaries Law for 15 individuals. Full details of the GFSC’s prohibition orders can be found at: <https://www.gfsc.gg/commission/enforcement/prohibitions>. g) The GFSC has also applied to the Royal Court under section 427(1) and (2) of the Companies (Guernsey) Law 2008 for Disqualification Orders. Please see the following link for further details: <https://www.gfsc.gg/commission/enforcement/disqualified-directors>.

### *A.1.3 Partnerships*

116. The 2013 Report noted that identity and legal ownership information for Ordinary Partnerships, under the Partnership (Guernsey) law, 1995 and Limited Partnerships (LPs) under the Limited Partnerships (Guernsey) Law, 1995 are available in accordance with the standard, with a combination of tax filing requirements of partners, registration with the Greffier (for LPS only) and with the AML obligated service providers (2013 Report see paras 124-134). The legal framework which ensures the availability of ownership and identity information in respect of GPs and LPs (without legal personality) has not changed in the current review period. Since then, the Limited Liability Partnerships (Guernsey) Law, 2013 came into force on 13 May 2014, which is analysed below. At the end of the current review period, there were 239 ordinary partnerships registered for tax purposes, and as per the information available with the Registrar of Companies (acting as Deputy Greffier), 514 LPs with legal personality, 1360 without legal personality, while the number of LLPs stood at 66. As noted by the 2013 report (see para. 124), There is no statutory partnership law in Alderney but a partnership formed therein under customary law is similar to a Guernsey partnership formed under the Partnership Law, as the customary law of Alderney is the same as that of Guernsey.

#### *Limited Liability Partnerships (LLPs) under the Limited Liability Partnerships (Guernsey) Law, 2013*

117. The Limited Liability Partnerships (Guernsey) Law, 2013 came into force on 13 May 2014. Under this law, a Limited Liability Partnership (LLP) may be formed in Guernsey for the carrying on within Guernsey or elsewhere of any lawful business with a view to profit, or any other lawful activity. An LLP must have two or more members who are admitted to the LLP in accordance with the members' agreement. An LLP is a body corporate and has legal personality separate from that of its members. A natural person or a body corporate may be a member of an LLP. Every LLP shall have a members' agreement. A member of an LLP is not liable for any debt of the LLP, or of any other member of the LLP, by virtue solely of his/her membership of the LLP. Under the LLP Law, 2013, all Guernsey LLPs must be registered with the Guernsey Registry. Upon creation, LLPs have separate legal personality.

118. Every LLP must keep at its registered office a detailed register of all partners (in accordance with Schedule 4 of the LLP Law), which is open to public inspection upon payment of a fee. Failing to properly maintain the register of limited partners is an offence punishable on summary conviction to a fine up to GBP 10 000 (applicable to the partnership and each general partner). All LLPs must have at least two members. LLP members can be a body corporate or a natural person.

119. The required information for the incorporation of a LLP is: the proposed date; name (which must end with Limited Liability Partnership, LLP or llp); the registered office address (which must be in Guernsey); the nature of business; the principal place of business; the economic activity code; the members' details (name, date of birth/entity registration date; unique identity number/registered entity number with Guernsey Registry and member service address); Resident Agent details; CSP presenter details and a declaration that the application complies with the requirements of s. 8 of the Limited Liability Partnerships (Guernsey) Law, 2013.

120. Applications to incorporate LLPs can only be made by TCSPs, who are regulated and supervised by the GFSC for both prudential and AML/CFT purposes and therefore subject to CDD and record keeping obligations. There is no obligation to keep the engagement with a TCSP after incorporation.

121. In addition to the above, ownership and identity information is held by the Registrar in the incorporation statement to which every member has subscribed his/her name. Further an LLP must, within the period of 14 days from the occurrence of (a) any change in its members, or (b) any change in the particulars contained in its register of members, give notice to the Registrar of the change and of the date on which it occurred (paragraph 3, Schedule 4 of the LLP Law). Ownership and identity information of resident partners is also held by Income Tax authorities, since, like ordinary partnerships, partners of an LLP resident in Guernsey must include their share of the partnership's income in their tax return.

122. In addition to the above requirements, as per Schedule 2, section 7 of the LLP Law, every LLP must have a Resident Agent who is either (a) an individual, resident in Guernsey, who is a member of the LLP, or (b) a corporate services provider. An LLP is exempted from the requirement to have a Resident Agent if the LLP is (a) a closed-ended investment scheme or an open-ended investment scheme, both within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, or (b) a member of a class of LLPs prescribed for this purpose by the Committee. An LLP which fails to comply with this paragraph is guilty of an offence. The primary duty of a Resident Agent (irrespective of whether or not they are acting in a professional capacity) is to take reasonable steps to ascertain the identity of the persons who are the beneficial owners of members' interests in that LLP, which is maintained at the LLP's registered office. However, in respect of a class of beneficial owners of such a size that it is not reasonably practicable to identify each member of the class, information sufficient to identify and describe the class of individuals who are beneficial owners shall be the "required details" in respect of beneficial owners for the purposes of LLP law (see below).

### *Beneficial ownership information*

123. There are no requirements under the Partnership (Guernsey) law, 1995, the Limited Partnerships (LPs) and the Limited Partnerships (Guernsey) Law, 1995 to either maintain beneficial ownership information or to have a Resident Agent who can provide the same. There are no explicit requirements under the Tax Law in this respect either, although Guernsey indicates that if a partner declares in their tax return that they are personally liable to tax on their share of the profits this is an indication that they may also be a beneficial owner.

124. Essentially, beneficial owner information as per the 2016 Terms of Reference in respect of any Ordinary Partnerships or LPs (without legal personality), is only likely to be available if these entities engage an AML obligated service provider, for running the business or engaging them in the course of any transaction with financial institutions. However, with effect from 31 December 2017, the Beneficial Ownership of Legal Persons (Guernsey), Law is applicable to Limited Partnerships with legal personality, except for the Collective Investment Schemes. It is clarified that the references to resident agent may be read as “General Partner” in respect of Limited Partnerships (with legal personality).

125. The definition of “beneficial owner” under the LLP Law is not in line with the 2016 Terms of Reference, since it allows companies also to be beneficial owners. The recent beneficial ownership Regulations enacted on 15 August 2017 shall take care of this lacuna, subject to the possibility that a Resident Agent may not be able to identify the beneficial owners as discussed above in A.1.1. In addition to the requirements in the beneficial ownership Law for Resident Agents as discussed above, the LLPs (Annual Validation) Regulations, 2017 provide that the annual validation from the Resident Agent must specify that the legal person’s record of beneficial ownership is current at the date of the annual validation. However, Guernsey is recommended to continue to monitor the implementation of the new requirements in order to ensure the availability of beneficial ownership information in respect of LLPs in practice.

126. Under the AML framework, the same beneficial owner definition and beneficial owner identification as per the CDD guidelines discussed above in A.1.1, are applicable in the case of partnerships as customers. Also, the new beneficial owner regulations do not cover the Limited Partnerships (without legal personality). There are no requirements under the ordinary partnership or limited partnership laws to ensure the availability of beneficial owner information. There are no obligations to have an AML obligated person to be available for running the ordinary partnership or LP (without legal personality) on a day to day basis. It is noted that there is no legal requirement under the partnership laws to maintain the ownership information and further,

in the cases where there is no requirement to engage an AML obligated service provider, retention of legal and beneficial ownership information is not ensured. However, the materiality in respect of ordinary partnerships is limited in view of the advice by Guernsey authorities that most of them are locally owned businesses and thereby might not pose any risk in the context of international EOIR for tax purposes. In respect of the LPs (without legal personality), as most of them are CIVs, see the separate section on CIVs in A.1.1 (above), since the provisions under AML obligations and discussion on availability of ownership information is applicable to all CIVs which are LPs (without legal personality). Finally, as discussed in A.1.1, in the case of LPs (without legal personality), having corporate partners with trustee(s) from Appendix C as shareholder, it might impact the availability of beneficial ownership information in respect of such LPs (without legal personality). This may present a minor gap in the availability of beneficial ownership information in such cases, and Guernsey is recommended to ensure that there is no impact on practice in all such cases. However, Guernsey authorities advise that in their experience the private sector applies the exemption only in respect of corporate trustees that are also GFSC licensed fiduciaries. Please see para. 147 for more details.

### *Oversight and enforcement*

127. As there are no specific requirements for partnerships to retain information under the Partnership Law, there is no offence for failing to do so under the Partnership Law. Every LP must keep at its registered office a register of all limited partners, and every LLP must keep at its registered office a detailed register of all partners (in accordance with Schedule 4 of the LLP Law). Failing to properly maintain the register of limited partners is an offence punishable on summary conviction to a fine up to GBP 10 000 (applicable to the partnership and each general partner).

### *Availability of partnership information in practice*

128. The 2013 Report noted that one request had been received in the period 2009-11 that asked for information from a limited partnership, which was gathered from general partner. During the current review period at least two peers have reported receiving information regarding partnerships and peers did not raise any significant issue in their input except that a peer indicated that it took more than 180 days to receive information related to Limited Partnerships. The Guernsey authorities clarify that both the requests were in reality one issue, and the requesting partner was regularly consulted and the delay on account of added complexity in terms of “anti-tipping off request” particularly in respect of a part of the information sought by the partner and therefore was not related to availability of accounting information.

#### *A.1.4. Trusts*

129. The 2013 Report noted that trusts in Guernsey are governed by the Trusts (Guernsey) Law, 2007 and there is no trust legislation in Alderney (thus it is only possible to set up trusts there under customary law). The 2013 Report found that although there are no registration requirements under the Guernsey Trust Law, information related to trusts (having nexus with Guernsey) like the details of settlor, trustees and beneficiaries is generally available, in line with the standard, with a combination of the AML obligations, trustee obligations under common law to maintain all the information related to beneficiaries to effectively discharge their fiduciary duties, and income tax filing requirements by trustees (where they are not exempted by the Director of Income Tax) (see 2013 Report, paras 138 – 146). The legal framework continues to be the same, which would ensure availability of ownership and identity information in respect of trusts, in general.

130. The data collected by the GFSC from the 30 June 2016 Fiduciary Annual Return indicates that there were 21 222 trusts where a Guernsey licensed TCSP acted as trustee and 529 trusts where a Guernsey licensed TCSP was providing administration, i.e. this equates to 21 751.

#### *Beneficial ownership information on trusts*

131. The revised Terms of Reference 2016 requires the availability of beneficial ownership information including information on the identity of the settlor, trustee(s), protector (if any), all of the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust. This information is generally available under the AML legislation, subject to certain limitations as discussed below.

132. The Tax Law requirements do not appear sufficient to adequately capture this information, particularly given the possibility of exemptions from filing requirements that may be granted by the Director of Income Tax if the Director is satisfied that there are no Guernsey resident beneficiaries of the trust and the trust has no taxable Guernsey source income. In view of this, if these circumstances are met, there will be no requirement to file a tax return and the Director will not hold, within his records, the identity of the trustees, beneficiaries, settlors or protectors. In the current review period a total of 72 trusts have been registered with the Income Tax Office, whereas the number of trusts that were provided the exemption to file income tax returns could not be ascertained.

133. In cases where the trusts are administered by non-professionals, there is no coverage under the AML framework. While the GFSC has reasonably effective supervision in regulating licensed provision of trust related services (please see below for further details), the possibility of managing trusts say,

e.g. non-resident customers (as settlors and/or beneficiaries) by non-professional trustees without any AML obligations, presents a legal gap in terms of adequate coverage for availability of beneficial owner information in all cases of trusts having nexus with Guernsey. It is noteworthy that in the absence of any registration requirements or compulsory income tax filings, Guernsey authorities are unable to determine the total number of such trusts. However the “by way of business” test for licensing in section 58(3) of the Fiduciaries Law is very wide, capturing whether the service provider “receives any income, fee, emolument or other consideration in money or money’s worth for doing so” and this would include gifts in exchange for services. The GFSC indicated that in a particular case, its enquiries revealed that four individuals acting as co-trustees to more than 100 trusts should in fact have been licensed. Although these individuals had provided these trust services free of charge, they received commission payments through related insurance services. The GFSC determined that this practice amounted to acting as trustee by way of business. The GFSC has confirmed that in the case cited in the text, beneficial ownership information was available. Not only were the individuals acting as trustees but they were also retailing insurance products and as a consequence had to carry out CDD. The sanction in this case, taking into account that all affected persons were local residents and all the trusts concerns had been notified to the Director of Income Tax, was to require the individuals concerned to resign as trustees.

134. In terms of identifying the beneficial owners of Trusts as per standards, as noted in para. 142 of the 2015 report, the licensed fiduciaries dealing with trusts must (i) verify the identity of the trustees (unless these trustees are themselves subject to the AML handbook or carry on business from countries listed on Appendix C of the handbooks, i.e. which have in place AML/CFT legislation compliant with FATF Recommendations); (ii) identify and verify the underlying principals and beneficial owners, i.e. the settlor(s), any protector(s) or trustee(s) and any beneficiary with a vested interest or who is likely to benefit from the trust; and (iii) understand the nature of the trust structure and the nature and purpose of activities undertaken by the structure. As discussed in A.1.1, although the definition of “underlying principal” which captures the aspect of “exercising ultimate effective control” is not defined as a natural person, Guernsey authorities have explained that it is treated as an individual in practice.

135. However, the requirements of the handbook are not entirely clear that where the trustee is a corporate trustee, the exemption from verifying the identity of the (corporate) trustee is limited solely to corporate trustees licensed by the GFSC. This is because FSB rule 139 indicates that this exemption would apply to a corporate trustee from a country listed on Appendix C of the handbook which lists countries which have in place AML/CFT legislation compliant with FATF Recommendations. The Guernsey authorities have explained that the caveat at the start of Rule 139 limits the



application of Rule 139 only to relationships where the risk has been assessed as low and to where the corporate trustee is licensed by GFSC. The assessors take the view that the text of rule 139 is ambiguous; however the Guernsey authorities have explained that the private sector understands the interplay between Rule 139 and the rules in section 6.5 of the handbook and have correctly interpreted it into their policies, procedures and controls to mean that other than where the trustee is licensed by the GFSC, the identity of a corporate trustee must always be verified. Through its supervision the GFSC advises that it has identified no instances where these controls are not being properly applied. Nevertheless the assessors believe that the rules in this areas could be expressed more clearly.

136. While the TCSPs interviewed at the onsite demonstrated a high level of professionalism and general awareness with the AML obligations in respect of identification and maintenance of updated beneficial owner information for timely access by competent authorities, as per the responses provided, it was not evident that they were in practice trying to seek and verify the current beneficial owners, unless the customer requests for a change of the same. However, it is also noted that GFSC regularly verifies the risk profiling strategy of the TCSPs and the frequency with which they verify the beneficial ownership information.

### *Oversight and enforcement*

137. The supervisory authority in respect of professional trustees is the GFSC, which licenses TCSPs and conducts prudential and AML/CFT desk based and on-site inspections. The GFSC AML/CFT desk based supervision is based on annual financial crime and fiduciary returns (which has a near 100% compliance rate) from about 150 licensed fiduciaries providing trustee services to 21 222 trusts. The GFSC has been supervising the sector since 2001 and had undertaken onsite inspections to all TCSPs by the time of the IMF assessment of Guernsey against the FATF Recommendations in 2010. It has long experience and detailed knowledge of the TCSP sector. As per the data provided by Guernsey authorities, in the review period, on average a third of the TCSPs were inspected on-site. Given the risk based model employed by GFSC (explained further below), the same service provider could be visited more than once in 10 years, but is also likely to be subject to themed survey work by the GFSC on a specific issue. This themed work has included AML/CFT training and governance, risk and compliance control frameworks in firms. The GFSC also issues guidance – for example on interpretation of applying CDD to beneficiaries and it holds annual presentations to industry to convey messages on CDD matters. The GFSC's public statements on its enforcement cases also act as an educational reference as well as a significant deterrent.

*Availability of trust information in practice*

138. The 2013 Report noted that in the years 2009 through 2011, Guernsey received a total of 32 requests, 11 of these pertaining to trusts, and wholly or in part Guernsey had been able to answer EOI requests received in 10 such cases, mostly within 90 days. In the current review period, the Guernsey authorities reported that at least 30 of the 136 EOI requests Guernsey received included a requirement to obtain information concerning trusts; including requesting information and documentation to identifying the settlors, beneficiaries, etc. and obtaining copies of relevant trust documentation, such as trust deeds, letters of wishes, etc., together with documents concerning transactional matters, such as bank statements, etc. Guernsey has not encountered any difficulty in obtaining trust information to date but continues to monitor this aspect. Peer inputs received in relation to obtaining trust related information from Guernsey were generally satisfactory.

***A.1.5. Foundations***

139. The 2013 report noted the availability of legal ownership information as per international standards, in respect of private foundations established in Guernsey under the Foundation Law (Guernsey), 2012. It is not possible to establish foundations in Alderney. The 2013 Report further noted that foundations in Guernsey are legal persons registered by a Corporate Service Provider (CSP) (who is AML obligated) with the Company Registrar, acting as the Registrar of Foundations (with a unique identifying number). Founders (corporate or individual), when creating a foundation, must subscribe their name, as founders, to the Constitution of the foundation (section 1). The beneficiaries are the persons who may benefit from a foundation and as such must be identified and kept with the foundation itself. The details of the foundation officials (councillors, and guardian if any) and of its registered office in Guernsey are provided to the Registrar at the time of registration. Providing false or misleading information to the Registrar is an offence (section 47). (See 2013 Report paras 153-158).

140. As noted in the 2013 Report, the Registrar and the GFSC exercise oversight functions in respect of foundations. Foundations have to file an annual return with the Registry, with the Registrar being able to strike foundations off the Register for failure to comply with the filing obligations or otherwise being in breach of the Law. If details of the foundation officials change, the Registrar must be notified of the change within 21 days (paragraph 10, Schedule 1 of the LLP Law). Upon strike off, the foundation will be dissolved and its assets will pass to the Crown. However, there are no specific statistics available with respect to onsite visits of the GFSC or desk based supervision with respect to foundations, in the review period.

141. Since the formation of Guernsey foundations is restricted to licensed fiduciaries, they are regulated by the GFSC, thus ensuring compliance with AML/CFT obligations as well as regulatory oversight of the administrators of foundations. In addition, if at any time, no officials of a foundation are Guernsey licensed fiduciaries or authorised persons, the foundation must have a Resident Agent (section 12). The fiduciary licensee subject to oversight by GFSC, whether a councillor or Resident Agent, has access to all documents of the foundation to establish ownership information.

142. In practice, the 2013 Report noted that, in the previous review period, only 5 foundations were formed and no EOI requests were received. In view of the then recently brought in provisions of enforcement, in respect of foundations, Guernsey was recommended to monitor the operation of these new provisions. There are now 70 foundations in Guernsey and one EOI request has been received and answered in the current review period. Further, in the absence of any adverse peer input and overall satisfactory supervision of GFSC, the monitoring recommendation issued in the 2013 Report does not appear necessary any longer and stands removed.

### *Beneficial ownership Information*

143. Availability of beneficial ownership information for foundations is ensured by a combination of Foundation Law, AML Framework (PB and FSB Handbooks) and the 2017 beneficial owner Regulations. As in the case of other entities or arrangements, an explicit requirement to take measures to identify beneficial owners of a foundation is contained in the PB and FSB Handbooks which obligate financial institutions and other AML obligated persons to conduct CDD measures. The CDD procedure requires obligated entities to collect information sufficient for the identification and verification of each customer, to identify their beneficial owners and to take reasonable measures to verify the identity of these beneficial owners. The obligated entity is also required to obtain additional information to understand the customer's circumstances and business (Section 4.6.2 in FSB as well as PB Handbook). They are required to record and keep data which identify beneficial owners for five years and sanctions are applicable in cases of non-compliance.

144. The definition of beneficial owner for foundations under the beneficial ownership law, 2017 is the same as for companies: (a) the natural person who ultimately controls the relevant legal person through ownership; or, if no such person exists or can be identified (b) the natural person who ultimately controls the relevant legal person through other means; or, if no such person exists or can be identified, (c) the natural person who holds the position of a senior managing official of the relevant legal person. Similar measures as required for companies are therefore required for foundations.

145. Therefore it is not clear whether the definition of beneficial owner under the beneficial ownership regulations 2017 captures the founders and beneficiaries (along with their beneficial owners, where applicable).

146. Under the Beneficial Ownership (Definition) Regulations 2017, to determine control by ownership in a Foundation or whenever a Foundation is relevant for the ownership chain of another legal entity, the beneficial owner(s) of a foundation is/are defined broadly as the natural person or the “corporate beneficial owner” (i.e. a company listed on a recognised stock exchange), trust or a legal arrangement who:

- Holds, directly or indirectly, more than 25% of the voting rights in the conduct and management of the foundation
- Holds the right, directly or indirectly, to appoint or remove a majority of the officials of the foundation
- Is a beneficiary in whom an interest has vested
- Is the default recipient of the assets of the foundation in the event of a liquidation
- Any other person who benefits from that foundation.

147. While the aforementioned definition does not directly refer to Founder or Guardians, the Guernsey authorities explain that they may be identified as beneficial owners based on points (a) or (b) of the above definition in para. 155, i.e. natural persons controlling the Foundation. Similarly, point (c) may capture Members in Council but would be identified only if identification through the previous tiers fails. In any case, as per the Foundation Law, the identity of foundation councillors and guardians has to be provided to the Registrar when the foundation is established (Schedule 1 paragraph 4 of the Foundations Law) and must be kept up to date (Schedule 1 paragraph 10 of the Foundations Law). Paragraph 10 refers to foundation officials, which includes both councillors and guardians under the interpretation provisions at section 52. However where the founders do not exercise control, they (and their beneficial owners, if applicable) would not be identified, since point (a) clearly refers to control, and therefore would not be entered into the record of beneficial owners maintained by the resident agent of the foundation.

148. Under the AML Law, which could also be the second source of information on founders and beneficial owners, all founders (with or without control) are to be identified under the category of “Underlying Principals”. “Underlying principal” who ought to be identified usually along with the beneficial owner(s) under CDD is defined in the FSB Regulations as:

“in relation to a business relationship or occasional transaction, any person who is not a beneficial owner but who –

- a. is a settlor, trustee, protector or enforcer of a trust, or a founder or foundation official of a foundation which is the customer or the beneficiaries of which are the beneficial owners, or
- b. exercises ultimate effective control over the customer or exercises or is to exercise such control over the business relationship or occasional transaction.”

149. Since the “Underlying Principal” is a person, and where the founder is a legal person, the beneficial ownership information of that legal person will be available in line with the standards. Therefore the beneficial ownership information in respect of Foundations is available in Guernsey in line with ToR A.1.5.

150. Section 21 of the recently enacted beneficial ownership Law (and Schedule 1A to the law) also introduced Resident Agent provisions to the Foundations Law consistent with those which apply in respect of companies and LLPs. In addition to the requirements in the beneficial ownership Law for Resident Agents as discussed above, the LLPs (Annual Validation) Regulations, 2017 and the Foundations (Annual Renewal) (Amendment) Regulations, 2017 provide that the annual validation from the Resident Agent (the annual renewal in the case of foundations) must specify that the legal person’s record of beneficial ownership is current at the date of the annual validation/renewal. However, the Foundations (Investment Schemes) (Exemption) Regulations, 2017 establish the same exemptions for closed or open ended investment companies to foundations as apply to Guernsey companies and LLPs, but as with companies and LLPs, a foundation which is an investment scheme has to have a licensed administrator which is subject to CDD obligations.

### *Other relevant entities and arrangement*

151. The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 as amended (NPO Law) governs the Charities or non-profit organisations (NPOs) based in Guernsey (and similar obligations apply in Alderney). The concept of non-profit organisation has a very wide definition and includes any organisation established solely or principally for social, fraternal, educational, cultural or religious purposes. Few NPOs fall within the exemptions in the regulations made under the law as evidenced by the large number of NPOs which are registered.

152. Companies (as well as partnerships and trusts) that are non-profit organisations (NPOs) based in Guernsey, which (a) have gross assets and

funds of at least GBP 10 000 or an annual income of at least GBP 5 000, and (b) are not administered, controlled or operated by a person holding a licence from the GFSC or acting in the course of activities regulated by the GFSC, must apply to be registered on the Register of Non Profit Organisations (see paragraph 2(1) of Schedule 1 to the NPO Law). This Register is maintained by the Registrar of Non Profit Organisations (see s.1 of the NPO Law), a public officer holder whose duties are set out in the NPO Law. NPOs (which include charities) are obliged to provide the names and addresses of all persons owning, directing or controlling the activities of the NPO (but not on the beneficiary, settlor and protector), the NPO's contact address within the Bailiwick, details of the purposes, objectives and objects of the NPO and details of the manner in which the assets, funds and income of the NPO are applied or used (see paragraph 2(2) of Schedule 1 to the NPO Law).

153. Each NPO is required to renew its registration annually, either confirming or updating the information on the Register, and to provide annual financial statements to the Registrar (see paragraphs 5, 6 and 8 of Schedule 1 to the NPO Law). Failure to register when required to do so is a criminal offence punishable by a fine of up to GBP 10 000 and the provision of false or misleading information is a criminal offence punishable with a term of imprisonment not exceeding 2 years or by a fine of up to GBP 10 000.

## A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements

154. The 2013 Report concluded that the legal and regulatory framework for ensuring the availability of accounting records and underlying documentation is in place in Guernsey. All relevant entities and arrangements are subject to the obligations under the amended Keeping of Records Regulations and AML/CFT legislation to keep reliable accounting records, including underlying documentation for a period of at least five years. In addition, companies, trustees and partnerships are required to keep accounting records under their respective governing laws (see 2013 Report, paras 216-217). These aspects have not changed since 2013 and the analysis of the 2013 Report remains applicable. The 2013 Report noted that, since the Keeping of Records Regulations were amended only in 2012, the effectiveness and enforcement of the amended statutory obligations in practice could not be assessed during the period under review. Accordingly, the legal and regulatory framework to implement Element A.2 was determined to be “in place” and its implementation in practice rated “Largely Compliant”, with a recommendation that the implementation and enforcement of the new legal provisions on the availability of accounting information should be monitored by Guernsey.

155. With respect to the aforementioned monitoring recommendation in the 2013 Report, Guernsey authorities stated that during the period of review, there had not been any record keeping failures associated with an EOI request. There are approximately 9000 foreign companies which have some degree of activities performed for them by fiduciaries, in Guernsey. For some of these, it may be determined, on facts and circumstances, that Guernsey is a jurisdiction of nexus (Headquarters) under the standard. Whilst such companies would have an obligation to notify their chargeability to tax to the Director of Income Tax, and to file tax returns, it is difficult to assess whether the compliance activity conducted by Guernsey (including monitoring by the Director of Income Tax, to ensure that all persons subject to tax are registered with the tax authorities) is sufficiently robust in respect of about 7400 companies outside the Tax Database. As a consequence, it is also difficult to assess the availability and retention of reliable accounting information in respect of those companies and Guernsey should put in place a sufficiently rigorous monitoring regime to ensure that such foreign companies are maintaining accounting records as per the international standard.

156. The Director of Income Tax has published detailed guidance on the Keeping of Records Regulations, including the amendments enacted in 2012, and, in addition to oversight by the Director of Income Tax, the Guernsey Financial Services Commission (GFSC) advised that in its inspections it does verify the availability of accounting records, including in cases where the accounting function is outsourced to entities outside Guernsey. However, the authorities have not been able to provide sufficient supporting data on the number of such inspections of GFSC that covered the record maintenance requirements under the Keeping of Records Regulations in respect of foreign companies with nexus to Guernsey.

157. Whilst it is not mandatory for every legal entity or legal arrangement to engage a licensed professional under the purview of GFSC, and it is further possible that the accounting functions may be outsourced to a non-resident service provider, who would not be subject to on-site inspections of GFSC, the Guernsey authorities advise that the majority of foreign companies having nexus to Guernsey will only have nexus as a consequence of the activities carried out on their behalf by the local TCSP administering the entity being so significant as to constitute the entity having its Headquarters in Guernsey (and it might be the activities carried out by that TCSP that gives the nexus), and may nevertheless thus be subject to GFSC oversight. The GFSC actively polices the perimeter to ensure that no regulated trust or corporate services are being provided on a by way of business basis without a fiduciary licence. It will investigate information received from other domestic authorities including Income Tax and the Guernsey Registry, TCSPs, complaints from the public, information identified through supervision and from intelligence sources. Paragraph 145 contains an example in relation to unlicensed trustees.

Additionally on 10 May 2017 the GFSC prohibited an individual from acting as a controller, director, partner or manager in the finance industry for two years for providing registered office services to a company without a licence. There are four to five other cases being investigated to establish if enforcement sanctions should be applied. The Guernsey authorities further clarified that there is an effective framework for the exchange of relevant information between the GFSC and Income Tax, in accordance with section 9 of the Disclosure (Bailiwick of Guernsey) Law, 2007 and section 21 of the Financial Services Commission (Bailiwick of Guernsey) Law 1987, under which during the period under review the authorities have exchanged relevant information in at least 10 cases.

158. The GFSC have further confirmed that if they were to discover a TCSP carrying on sufficient activities for a foreign company to the extent that the company would be considered to have its Headquarters in Guernsey, and that company had not notified the Director of Income Tax of its chargeability to Income Tax, the GFSC would make the appropriate report of this to the Director of Income Tax in accordance with section 21 of the Financial Services Commission (Bailiwick of Guernsey) Law 1987, there has, however, been no occasion where the use of this procedure has been found to be necessary in practice. It also remains that the GFSC is not the statutory supervisory authority in respect of the Income Tax Record Keeping Regulations and as discussed above, it is difficult to assess whether the compliance activity conducted by Guernsey (including monitoring by the Director of Income Tax, to ensure that all persons subject to tax are registered with the tax authorities) is sufficiently robust. As a consequence, it is also difficult to assess the availability and retention of reliable accounting information in respect of those foreign companies having a nexus with Guernsey which have failed to register for tax purposes and Guernsey should put in place a sufficiently rigorous monitoring regime to ensure that such foreign companies are maintaining accounting records as per the international standard.

159. The standard now more specifically requires that accounting information be available even after a relevant entity to arrangement ceased to exist. In this respect, Guernsey authorities clarified that as per the advice of the Attorney General of Guernsey, the Keeping of a Records Regulations address the retention requirements of records in the cases of liquidation of all relevant entities and arrangements (including for Trusts that may not file income tax returns).

160. During the current review period Guernsey received 61 requests for accounting information and reports that there were no issues in obtaining such information in practice. This is supported by peer input. In view of the above discussion, the legal and regulatory framework for Element A.2 is determined to be “in place”, and in view of the supervisory gap limited to



foreign companies with nexus discussed above, an in-box recommendation is made while the implementation of Element A.2 is rated as “Compliant”.

161. The updated table of determination and rating is as follows:

<b>Legal and Regulatory Framework</b>		
	<b>Underlying Factor</b>	<b>Recommendations</b>
<b>Deficiencies identified in the implementation of the legal and regulatory framework</b>		
<b>Determination: in place</b>		
<b>Practical Implementation of the standard</b>		
	<b>Underlying Factor</b>	<b>Recommendations</b>
<b>Deficiencies identified in the implementation of EOIR in practice</b>	There are currently at least 9 000 foreign companies being serviced by TCSPs in Guernsey. As per Guernsey Tax Law, all foreign companies doing business in Guernsey have to file tax returns and maintain accounts in compliance with ToR A.2. While about 1 600 foreign companies are in the Tax Database and may also be subject to tax audits, there is scope for improvement in respect of monitoring all foreign companies with nexus to Guernsey to ensure compliance with ToR A.2.	Guernsey should monitor all foreign companies, for which Guernsey is a jurisdiction of nexus, are maintaining accounting records as per the international standard.
<b>Rating: Compliant</b>		

### *A.2.1. General requirements*

162. The Standard is met by a combination of tax law and commercial law requirements. The various legal regimes are analysed below.

### *Company Law*

163. The 2013 Report noted that every Guernsey company must keep accounting records under the Guernsey Companies Law (See 2013 report paras 187-189). The same Company Law rules apply to Alderney companies also and there have been no significant changes to Company Law in this regard.

### *Partnerships and trusts*

164. In the case of other legal entities and arrangements also, as noted by the 2013 Report (paras 190-196), accounting information is generally available as per the standard. Under the Partnerships Law, partners must render true accounts and full information of all things affecting the partnerships to any partner or his/her personal representatives (section 27 of the Partnerships Law). Limited Partnerships (LPs) must keep accounting records but there is no express obligation to retain underlying documentation under the Partnerships Law. LLPs must keep accounting records as per the standard including all underlying documentation such as invoices, receipts and contracts. With respect to trusts, the application of the requirements of the Trusts Law and the common law fiduciary duties ensures that trustees are required to keep accurate accounts and records of their trusteeship as per the standard. For foundations, accounting records including all underlying documentation, must be kept by the foundations.

### *Fiduciary duty*

165. The fiduciary duty of directors of companies, partners or partnerships, trustees and foundation officials, would extend to the keeping of underlying documentation. Directors of companies in Guernsey and Alderney have a fiduciary duty to act in good faith in the best interest of the company and to promote the success of the company. As such this duty requires the directors to ensure that the “accounting records” include sufficient information to enable it to comply with its lawful obligations as well as ensuring that proper financial controls are maintained. The 2013 Report also notes that the Guernsey Society of Chartered Accountants has confirmed that, as a matter of practice, it regards the term “accounting records” as including the underlying documentation in line with its fiduciary duties. These obligations are supplemented by the requirements in the tax legislation as detailed below.

### *Tax Law*

166. As noted in the 2013 Report, the Tax Law provides for broad accounting record keeping requirements, amended in 2012 to cover all underlying documents. Under the Keeping of Records Regulations, any person in receipt or possession of any income or profits arising from a business, the letting of a property or other income, whether or not that person is required to make an income tax return to the Director of Income Tax in Guernsey, must keep accounting records (including underlying documents) to the standard.

167. The sanctions for the failure to keep accounting records and underlying documentation are contained within the Keeping of Records Regulations; pursuant to section 5(1), the Director may impose a penalty not exceeding GBP 2 500 if in his opinion that failing is likely to prejudice his performance under the ITL. Further, pursuant to section 6, a person who without reasonable excuse fails to make, maintain, or keep accounting records as required under the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding GBP 10 000. If a person intentionally falsifies, conceals, destroys or otherwise disposes of accounting records, she/he is required to keep under the Regulations; or makes false, deceptive or misleading statements; or produces or furnishes accounting records she/he knows or has reasonable cause to believe to be false, she/he is guilty of an offence and liable on summary conviction to imprisonment for up to two years and/or a fine up to GBP 20 000.

### *Liquidated entities/arrangements*

168. LLPs, LPs (with legal personality), trusts and foundations need to retain documentation after liquidation as per the Keeping of Records Regulations. With respect to legal entities, the Registrar currently maintains all filings in perpetuity. However there is no legal requirement to register trusts. In this respect, Guernsey authorities clarified that as per the advice of the Attorney General of Guernsey, the Keeping of Records Regulations address the retention requirements of records in the cases of liquidation of all relevant entities and arrangements.

#### ***A.2.2. Underlying documentation***

169. Neither the Alderney nor Guernsey Companies Law expressly imposes an obligation to retain underlying documentation, such as invoices, contracts, etc. The 2013 Report found that Guernsey companies and LPs must keep their accounting records for at least six years (section 15 LP Law and section 21 LLP Law). A trustee is under an implicit duty to keep such records for the duration of his/her role (Trusts Law, section 25). A guardian of a foundation must keep and retain accounts and records of his/her guardianship

for so long as his/her guardianship subsists and for the six years thereafter (section 22, Foundations Law). Charities and other Non Profit Organisations are also required to keep accounting records for six years (section 8, The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 as amended). Under the NPO Law, records must be retained for six years. Under the AML/CFT regime, financial services businesses must keep transaction documents for a minimum of five years. Whilst these record-keeping obligations are not expressly extended under the laws mentioned in this paragraph to cover underlying documentation, the Keeping of Records Regulations were amended in 2012 by the Income Tax (Keeping of Records, etc.) (Amendment) Regulations, 2012, in particular to extend the retention period to 6 years for all legal entities and arrangements.

170. In addition, under Tax Law, the documents referred to above have to be kept for a period of six years where it relates to the income of a trust or foundation, or if the person concerned is a legal person (such as a company) for a period of six years, in any other case (such as an employee, someone living on pensions or someone living on investment income) for a period of two years. In all of the cases above, the period for which records have to be retained runs from the end of the year in which the relevant income tax return is submitted, or where no such return is required to be submitted, from the end of the year in which the record or document was created, received or obtained.

### *Oversight and enforcement of requirements to maintain accounting records*

#### Oversight and enforcement by Tax Authorities

171. The Guernsey authorities have informed that enforcement measures are conducted during the normal tax investigation process, i.e. a taxpayer's records will form part of the review being undertaken and their conformity with the Regulations would also form part of that review.

172. The Guernsey income tax return also requires a specific, annual, declaration that the necessary records have been maintained as well as highlighting the possibility of penalties or prosecution if the person making the return makes a false statement in the declaration or fails to make/keep the appropriate records. As such, anyone subsequently found not to have complied with the Regulations will have made a false statement and may, therefore, be subject to pecuniary and possible criminal sanctions. In practice, in domestic cases, breaches of the accounting obligations of the Keeping of Records Regulations are normally dealt with together with the offence of failure to make a correct return.

173. The Guernsey authorities indicated that out of the 19 697 companies registered in the Income Tax Office records, about 13 000 engage the services of a CSP, being an AML obligated person. As mentioned above, there is a requirement for all TCSPs to ensure their clients preserve proper accounting records and file returns and accounts as required by any applicable law. With respect to the remaining approximate 6 700 companies, 6 138 have provided the Director of Income Tax with a form of authority enabling the Director to discuss the company's tax affairs with the company's appointed accountant (being an AML obligated person). The remaining approximate 550 companies would include companies that prepare their financial statements themselves (such as clubs and associations) and those that do not require financial statements for tax purposes (for example, asset holding companies with no income). It is not required that an accountant, preparing financial statements for a Guernsey company, must be established in Guernsey. The Guernsey authorities confirm that there are some companies included in the 550 referred to above that are represented by non-Guernsey accountants, but such companies still have obligations under the Keeping of Records Regulations and have to make the income tax return annual declaration.

174. With respect to the monitoring of the tax obligations, the annual income tax returns of all companies and individuals are subject to screening by the tax administration. Companies with certain activities are subject to full review annually (i.e. banking, large local trading companies, captive insurance and life assurance). Other persons are reviewed either as issues arise or every 5 years.

175. If issues arise in any given year the case will be selected for an aspect enquiry or a full enquiry (dependent on the perceived risk). During either of these enquiries it is possible that the Director will require sight of relevant accounting and other records. The Guernsey authorities indicate that in the absence of an aspect or full enquiry being undertaken as a result of the screening process, all business cases are subject to an in depth review every 5 years. During such reviews, relevant accounting records may be requested for inspection. Guernsey further reported that about 4 500 (see table below) business cases are subject to review and enquiry per annum, during which time the maintaining and retaining of relevant accounting records of the company/individual will be considered.

Legal Entity/ Legal Arrangement	Number registered as per Income Tax Records/ ascertained otherwise	Number of tax filings	Number of cases selected for review	Number of cases which ensure that the taxpayer's accounting records are adequate
<b>Companies</b>	19 697	19 697	4 240	4 240
<b>Partnerships</b>	239	239	118	118
<b>Trusts</b>	72	72	72	72
<b>Foundations</b>	Included as companies for the purposes of income tax (included in the statistics above)	N/A	N/A	N/A
<b>Non-resident companies</b>	Foreign incorporated companies carrying on a business in Guernsey or having Guernsey source income are included in the statistics above. However, it is not clear whether most/all of the foreign companies that have a nexus to Guernsey (by having their Headquarters in Guernsey), do file a tax return.	N/A	N/A	N/A
<b>Foreign partnerships</b>	N/A	N/A	N/A	N/A

176. During the period under review the number of cases where, following aspect and full reviews, necessary adjustments have been made when raising assessments on the taxpayer represent about 10% of the reviews:

Number of tax cases	2016	2015	2014	Total
Aspect audits where adjustment made to taxable income	246	250	354	<b>850</b>

177. The screening process may result in the assignment of a case as a full investigation into suspected tax evasion. Alternatively, assignment of such cases may be intelligence led, meaning that the Director of Income Tax receives information from various sources (including through a dedicated confidential telephone hotline, confidential email address or online form, and information received from other intelligence services under the Disclosure (Bailiwick of Guernsey) Law, 2007). Information is then analysed and developed into intelligence, which, if it highlights a potential risk of loss of tax revenues, will be rated (based on the level of risk) for assignment to a relevant officer to carry out an investigation.

178. Based on the statistical data held by the Director of Income Tax, the following statistics are available in respect of investigation cases undertaken and completed during the period under review:

Year	No. of cases	Total settlement
2014	240	GBP 930 472.59
2015	132	GBP 914 619.28
2016	142	GBP 1 324 269.95

*Note:* The above figures detail the total number of Back Duty (investigation) cases concluded during the relevant years and also the total settlement figure relating to these cases. The settlement figure relates to the total of the additional tax arising following the conclusion of the investigation, the late payment surcharges applied (at a rate of 5% on a 6 monthly application from the original due date of payment, had the income been correctly declared on the return) and also any civil penalties imposed under the Tax Law.

179. The Guernsey authorities indicated that the statistics are currently not recorded in a manner which enables the extraction to distinguish investigations involving companies, trusts, foundations, etc.

180. Guernsey authorities stated that during the period of review, there have not been any record keeping failures associated with an EOI request. Further, while Guernsey has not been able to provide the number/proportion of cases where sanctions have been imposed in respect of or including issues related to non-availability/maintenance or reliable accounting records in respect of the specific monitoring of accounting information by tax authorities under the full review/aspect reviews or back duty investigations, the Director of Income Tax has nevertheless provided the following partial statistical data where the adjustments made by the Director were as a result of establishing incomplete or inaccurate accounting records:

Year	Omission	Tax arising	Total sanctions
2014 Total	GBP 943 637.00	GBP 184 452.92	GBP 77 274.00
2015 Total	GBP 531 862.96	GBP 143 413.96	GBP 183 574.22
2016 Total	GBP 2 781 408.20	GBP 453 765.69	GBP 369 221.17
Overall total	GBP 4 256 908.16	GBP 781 632.57	GBP 630 069.39

181. The “Omission” refers to the total income omitted from the tax return. The “Tax arising” column details the additional tax raised as a result of the Director identifying the omission and the “Total sanctions” details the total amount of penalties and late payment surcharges applied to the case. Such sanctions would be determined by including an element related to the failure to keep adequate or accurate accounting information.

*Availability of reliable accounting records in respect of foreign companies having nexus to Guernsey*

182. As per the international standard jurisdictions should ensure that reliable accounting records in respect of companies that are effectively managed/administered in their jurisdiction is available, although they may be incorporated elsewhere. The JAHGA Report, referenced in footnote 16 on ToR A.2, clarifies in its para. 10:

In the case of a company, it is the responsibility of the country or territory of incorporation to oblige the company to keep reliable accounting records. This means in particular that this country or territory must have the necessary powers to require the company to produce its accounting records. ***Notwithstanding the responsibility of the country of incorporation of a company to be able to obtain accounting records, a requesting partner may, for example, also address a request to the country or territory of effective management or administration. In case it receives such a request, the country of effective management or administration must respond directly to the requesting country. (emphasis supplied)***

183. All foreign incorporated companies which are controlled by Guernsey resident shareholders and all foreign companies carrying on business in Guernsey are covered by the record keeping obligations under the Income Tax Record Keeping Regulations and would also be required to submit income tax returns. The Global Forum has accepted that where, as is the case in Guernsey, the definition of “resident” for tax purposes for a company does not include the place of effective management, the mere carrying on of a business in a jurisdiction does not constitute a nexus under the Standard, and has set a “bright line” test that nexus is established on the basis of more substantial activities being conducted in the jurisdiction, such as where the company has its Headquarters.

184. Guernsey has clarified that if a foreign company existed where its Headquarters was in Guernsey it would amount to carrying on a business in Guernsey (as detailed in section 47G of the Tax Law and the definition of permanent establishment as defined in section 209 of the Tax Law) and, therefore, it would have a legal obligation to register with the Director of Income Tax and be subject to annual returns, accounts and tax computations (detailing the appropriate attribution of profits arising from the activity carried on in Guernsey). Guernsey has further clarified that there are 1 585 foreign companies, as per the Tax Database, that are registered with the Director of Income Tax and required to file tax returns annually. These 1585 companies will include foreign companies which operate Headquarters from Guernsey amongst a wider population of foreign companies that carry



on business in Guernsey without having Guernsey as their Headquarters (because, whilst all companies carrying on business in Guernsey have a tax liability, not all companies carrying on business in Guernsey will also have their Headquarters in Guernsey).

185. Guernsey does not have any non-tax registration requirements for foreign companies (under commercial laws, right at the stage of entering Guernsey) which would specifically capture whether the companies activities in Guernsey would amount to Headquarters, which means Guernsey authorities rely on the tax registration requirements to establish, on a case-by-case basis, the facts and circumstances of foreign companies which carry out, or have carried out on their behalf, activities in Guernsey which would constitute the carrying on of a business (and thus require registration for tax purposes). It is difficult to assess whether the compliance activity conducted by Guernsey (including monitoring by the Director of Income Tax, to ensure that all persons subject to tax are registered with the tax authorities) is sufficiently robust. As a consequence, it is also difficult to assess the availability and retention of reliable accounting information in respect of those foreign companies having a nexus with Guernsey which have failed to register for tax purposes and Guernsey should put in place a sufficiently rigorous monitoring regime to ensure that such foreign companies are maintaining accounting records as per the international standard.

186. It is also not clear whether the GFSC through its supervision ensures that reliable accounting records are available in respect of the those out of the 9 000 foreign companies which have a nexus with Guernsey under the standard, although they may be incorporated elsewhere. There was no data available in respect of any specific verifications in this area or if there were any non-compliances detected thereof to indicate effective supervision in place in respect of accounting records of these foreign companies, although GFSC does conduct onsite visits to TCSPs (details in para. 197 below). Guernsey authorities have, however, explained, that inspections of clients files by the GFSC (see the statistics on on-site inspections detailed in paragraph 122 above) includes reviewing the business records of the managed company to establish that the TCSP is properly discharging its professional duties as directors and or administrators of the company which is as an important element to the supervisory regime TCSPs are subject to in Guernsey. It is noted that it is not mandatory for every foreign company having a nexus in Guernsey to engage the services of a GFSC licensed TCSP on a regular basis. However, the Guernsey authorities have advised that there are 3 principal types of foreign company present in Guernsey:

187. – Branches of overseas companies operating in the financial sector (e.g. banks and insurance companies) and the retail sector (e.g. High Street shops). Such companies are only carrying on business in Guernsey and do

not have their Headquarters in Guernsey, so do not have a nexus under the standard;

188. – Companies controlled by persons who live in Guernsey. These are resident for tax purposes in Guernsey and are required to file annual tax returns; and

189. – Companies where the owners live outside of Guernsey, and services of some type are provided to the companies by Guernsey based licenced fiduciaries. All such companies would therefore be represented in Guernsey by a person who is AML obligated.

190. Guernsey has further clarified that the monitoring by the Tax Office with respect to foreign companies is a part of the overall tax compliance approach. Guernsey rates the risk posed by foreign companies as medium to low. They are captured by a risk management applied to all potential non-registered businesses, comprising of a number of strands: (a) one officer is dedicated to performing onsite visits to buildings and other sites of non-resident persons carrying on business without registration; (b) the use of spontaneous exchange of information or EOIR from treaty partners about foreign companies operating in Guernsey; (c) scanning the advertisements in newspapers, public domain sources (such as property and land sales/purchases) etc. which may indicate the presence of new businesses; (d) details of payments to foreign companies claimed in the returns/accounts of existing taxpayers (such as rental payments etc.); (e) notifications and declarations by individuals that they are employees of companies which are not themselves registered with the tax authorities. In practice, Guernsey has given examples where it detected non-compliance by one company as a result of information by a treaty partner, and another recent case as a result of verification about third party payments by an existing taxpayer. On the whole, Guernsey has indicated that a handful of cases have been detected where foreign companies had not complied with their tax registration obligations.

191. The Guernsey authorities believe that a combination of the overall compliance strategy and practice detailed above, the fact that there is little experience of foreign companies carrying on business in Guernsey being identified as not notifying their chargeability to tax, and noting that over 1 500 foreign companies are already registered in the tax office records, provides assurance to the Director that Guernsey based TCSPs providing services to foreign companies are aware of their clients obligations to register with the tax authorities, when their activities in Guernsey constitute the carrying on of a business, such that there is no systemic issue in Guernsey that foreign companies carrying on a business in Guernsey are failing to notify her of their chargeability with tax and this is, to a great extent, self-regulating.

192. However, it remains that there are about 7 400 foreign companies outside the tax database and it is unclear whether the risk management approach described above provides assurance that those with a nexus to Guernsey are known to the Tax Office and further that they are indeed not carrying on any business. While there have been no requests in practice in relation to accounting records from foreign companies in Guernsey, considering the number of foreign companies represented by TCSPs in Guernsey, Guernsey is recommended to monitor that all foreign companies for which Guernsey is a jurisdiction of nexus are maintaining accounting records as per the international standard.

### *Oversight and enforcement by the GFSC in practice*

193. During the onsite visit, Guernsey has informed that the Guernsey Financial Services Commission (GFSC) in its inspections does verify the availability of accounting records, including in cases where the accounting function is outsourced to entities outside Guernsey. The GFSC indicated that the production and maintenance of accounting records is assessed when the GFSC carries out on-site inspections to TCSPs. The GFSC reviews management information to ensure that accounts on client entities are being prepared in a timely manner and it discusses with the TCSP any backlogs on accounts preparations that there might be. If there are any backlogs, this could lead to the GFSC imposing a risk mitigation programme on the TCSP, which requires the firm to undertake an action(s) such as bringing accounts preparation up to date by a specified date.

194. The GFSC indicated that it also undertakes regular thematic reviews of the fiduciary sector and the maintenance of books and records is being reviewed as part of the 2017 Pensions Thematic. This thematic survey was sent to 53 licensees in February 2017 and included an analysis of bookkeeping and reconciliation of transactions and the maintenance and retention of accounting records.

195. The Codes of Practice issued by the GFSC are a set of best practices principles which TCSPs are expected to adhere to, to prepare, file and maintain accounts as per extant laws (unless the agreement with the client provides that the client will do so).

196. Further, except for foundations, every protected and incorporated cell company and collective investment schemes authorised or registered under the Protection of Investors Law, it is not mandatory for other legal entities or arrangements to engage a licensed professional under the purview of the GFSC and it is possible that the accounting functions may be outsourced to a non-resident service provider. The code of practice (2009) under which the GFSC also monitors the accounting obligations of service providers is not a

statement of law. Non-compliance does not entail automatic sanctions/proceedings, although the GFSC and Courts may take note of the breaches and the GFSC can and has sanctioned a TCSP for material failure with the Codes. On average 10% of the TCSPs were subject to AML/CFT on-site inspections annually during the review period.

### *Availability of accounting information in practice and Conclusion*

197. During the current review period Guernsey received 61 requests for accounting information and did not report any issues in obtaining such information in practice. There were no adverse peer inputs to indicate any issues in practice with respect to providing accounting information from Guernsey.

198. Regarding accounting records held outside Guernsey, the 2012 amendments to the Keeping of Records Regulations provide that accounting records must be within the control or power of the person that must maintain them (i.e. the Guernsey legal entity or arrangement). In addition, effective arrangements must be in place and implemented for their expeditious removal to Guernsey and for their production and disclosure as requested by the Director of Income Tax. However, for Guernsey legal entities and arrangements that have been liquidated, it is not clear how the Guernsey authorities would secure the effective supervision of the obligation to maintain accounting records after the liquidation if the service provider was a non-resident. Guernsey explains that if there is a person in Guernsey with a residual obligation to have access to the records after cessation of the legal entity/arrangement (e.g. for a trust, the trustee) that obligation would still exist whether or not the records are held in or outside Guernsey; i.e. the obligation on the person to keep the records after the end of the existence of the entity subsists, no matter where the records are. However, since there are no binding legal obligations for liquidator to be resident in Guernsey, Guernsey should ensure that accounting records for liquidated entities, arrangements are available in all cases.

199. Therefore, to ensure quality of accounting information exchanged in practice, it is recommended that the Guernsey tax authorities may design and implement appropriate measures for verification of compliance with the Income Tax Record Keeping Regulations (2012) and also ensure compliance with the standards in terms of retention requirements in practice in the cases of liquidated entities/arrangements (other than companies).

### A.3. Banking information

Banking information and beneficial ownership information should be available for all account holders.

200. The 2013 Report concluded that element A.3 was in place and Compliant, with respect to the standard, with a combination of the AML/CFT regime and licensing requirements for deposit-taking institutions to ensure that all records pertaining to accounts, as well as related financial and transactional information, are available in Guernsey. The 2013 Report also noted that, in practice, compliance with registration, licensing and AML/CFT requirements is closely monitored by the Guernsey Financial Services Commission (GFSC) through means such as initial and/or ongoing registration vetting, as well as on-site inspections.

201. The EOIR standard now requires that beneficial ownership information (in addition to legal ownership) in respect of accountholders be available. In this regard the requirements under the AML framework as laid out in the FSB Handbook are applicable and the same analysis and conclusions as in Element A.1.1 apply here.

202. As indicated in paragraph 146, the FSB Rule 139 exempts the verification of identity of corporate trustees from the 40 countries on Appendix C. Therefore the Guernsey authorities are recommended to revise the FSB rules to express more clearly the requirement to verify the identity of corporate trustees which are not licensed by the GFSC.

203. During the previous review period Guernsey had no issues in respect of the availability of bank information and had been able to answer the 8 requests for banking information it had received. During the current review period, Guernsey received 52 requests for banking information and was able to provide the information in all cases in a timely fashion.

204. The updated table of determination and rating is as follows:

<b>Legal and Regulatory Framework</b>		
	<b>Underlying Factor</b>	<b>Recommendations</b>
<b>Deficiencies identified in the implementation of the legal and regulatory framework</b>	In the case of trusts, the FSB regulations exempt the verification of identity of corporate trustees from some countries.	Guernsey is recommended to take appropriate measures to ensure the availability of accurate beneficial ownership information in all cases of trustees, when they establish relationships with banks.
<b>Determination: in place</b>		

Practical Implementation of the standard		
	Underlying Factor	Recommendations
<b>Deficiencies identified in the implementation of EOIR in practice</b>		
<b>Rating: Compliant</b>		

### *A.3.1. Record-keeping requirements*

205. As noted by the 2013 Report, FSB Regulation 14(1) requires a bank to keep a transaction document and any CDD information, or a copy thereof, for the minimum retention period, defined by Regulation 19 as being, in the case of a transaction document, a period of five years starting from the date that both the transaction and any related transaction were completed, or such other longer period as the GFSC may direct. A transaction document is defined as a document which is a record of a transaction carried out by a financial institution with a customer or introducer. The Rules in section 12 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 bank, 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.

### *Beneficial ownership information on account holders*

206. The 2016 Terms of Reference specifically requires that beneficial ownership information be available in respect of all account holders. In Guernsey, as per the FSB regulations, financial institutions including banks have to conduct CDD to establish beneficial owners. Furthermore, banks have to ensure that in order to meet the record keeping requirements for transactions, documentation is maintained which must include:

- the name and address of the customer, beneficial owner and underlying principal
- if a monetary transaction, the currency and amount of the transaction
- account name and number or other information by which it can be identified
- details of the counterparty, including account details
- the nature of the transaction
- the date of the transaction.

207. During the onsite visit it was indicated that in the case of high net worth individuals, annual meetings are held by relationship managers and requisite changes to the beneficial ownership information is effected as required. It is also noted that in the case of trusts, the FSB regulations exempt the verification of identity of corporate trustees from Appendix C Countries. Therefore the Guernsey authorities are recommended to take appropriate measures to ensure the availability of beneficial owner information in all cases of trustees, when they establish relationships with banks.

*Enforcement provisions to ensure availability of banking information*

208. The GFSC is the designated supervisor for all financial services businesses and prescribed businesses and receives its general powers of supervision and sanctioning through the Financial Services GFSC Law. As mentioned earlier the GFSC inspects about 35% of the banks annually in Guernsey and typically the inspection process leads to verification of up to 20 CDD files. The GFSC also verifies the CDD information from independent sources and takes appropriate penal action in the cases of improper CDD.

209. The GFSC carried out 7, 11 and 9 onsite visits to banks in 2014, 2015 and 2016, respectively. The GFSC indicated that during on-site inspections it will undertake a detailed review of approximately 20 client files across the risk spectrum on a structured sample basis which reflects the products and services the bank offers, sources of its business relationship, the value of the relationship to the bank, the risk rating attributed to clients and whether any specific AML/CFT issues have been raised in relation to a specific client. As part of the client file reviews the GFSC will test that appropriate CDD is held on key parties, in particular, the thoroughness of measures applied by the bank to establish who is the ultimate beneficial owner, to a legal person/legal arrangement at commencement of the bank's relationship with a customer, its monitoring arrangements particularly where beneficial ownership may change, and its suspicious activity reporting framework. The GFSC will also interview a wide range of staff, which will include Board members, Compliance Officer, Money Laundering Reporting Officer and Client Relationship Managers.

210. The Financial Intelligence Service (FIS) is the competent authority for receiving reports of suspicion (Suspicious Activity Reports – SARs), analysing these reports and disseminating the results of that analysis. The analysis is carried out at both an operational and a strategic level. The FIS also receives information from other sources that are relevant to money laundering, associated predicate offences and terrorist financing. In addition, it responds to requests for assistance from other domestic and international authorities. During the review period, the FIS received annually about

300 SARs on an average, which indicates an active application of CDD procedures by Guernsey banks.

211. The FIS have quarterly meetings with the GFSC Enforcement and Intelligence Divisions in respect of current operational matters. The purposes of the meetings are to discuss current cases and ensure that there is a collaborative approach and the opportunity to share intelligence and avoid any conflict of interest for either party. There is a good channel of communication between the GFSC and Money Laundering Reporting Officers (MLROs) via a dedicated AML/CFT enquiries line and through regular engagement with firms and sector trade associations. The GFSC also liaises with the Guernsey Association of Compliance Officers which represents individuals holding compliance and reporting officer roles. This includes periodic meetings with the executive of the association to raise current supervisory issues and periodic presentations to the association's members on issues such as findings from enforcement cases (March 2016) and lessons learned from mutual evaluation of a comparable MONEYVAL jurisdictions.

### *Introduced businesses*

212. Guernsey's AML/CFT framework allows banks to rely on introduced businesses. FSB Regulation 10 provides for the circumstances in which a financial services business may place reliance on an introducer to have verified the identity of the customer, beneficial owners and any underlying principals provided that the financial services business also requires copies of identification data and any other relevant documentation to be made available by the introducer to the financial services business upon request and without delay.

213. Rule 161 of the FSB Handbook requires financial services businesses to have in place a programme of testing to ensure that introducers are able to fulfil the requirement that certified copies or originals of the identification data will be provided upon request and without delay. Testing of reliable introducer arrangements forms a key part of the GFSC's onsite inspection programme. For example, the GFSC undertook an inspection of a Guernsey licensed bank in 2017 and noted that the bank had undertaken an on-site inspection to a reliable introducer to specifically test the quality of their CDD documentation and identified issues with the scope and level of CDD undertaken by that introducer. The bank therefore imposed restrictions on that reliable introducer. The GFSC used this intelligence to undertake a visit to the reliable introducer to ascertain the scope and level of CDD undertaken by that introducer. The GFSC is currently considering the findings from that on-site inspection.



214. However, it may be noted that in case the banks rely on the introduced business from an Appendix C country, the CDD performed in such cases is usually on the corporate service provider who acts on behalf of the overseas investor. Although the bank remains responsible for identifying the beneficial owner in accordance with Regulation 4 and the rules in Chapter 4 of the Handbook and Rule 167 states chains of introducers are not permitted, there is a possibility that Guernsey banks may not have the beneficial ownership information of the ultimate investor with them in all cases. Guernsey clarified that the number of accounts where reliable introducers are used is declining and stood at less than 10% of bank clients in October 2017. Additionally, 12 of the 24 banks did not rely on reliable introducers at all. Further, robust testing programmes are run by the banks on these reliable introducers. Although the Guernsey banks remain responsible for identifying the beneficial owner, there is no requirement that a copy of all the CDD files (identification of beneficial owner and supporting documents) be transmitted to Guernsey by the introducer from Appendix C country. This may restrict the Guernsey authorities' access to information in a timely manner. Guernsey should ensure that it has adequate access to all due diligence files.

#### *Availability of bank information in practice*

215. Guernsey received 52 requests related to banking information. Most of the requests have been addressed in a timely manner. Peer inputs have not indicated anything adverse in this regard.



## Part B: Access to information

216. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information, and whether rights and safeguards are compatible with effective EOI.

### B.1. Competent authority’s ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

217. The 2013 Report found that Guernsey’s tax laws provide the competent authority with broad access powers to information foreseeably relevant for EOI purposes. Guernsey’s competent authority has powers to obtain ownership, identity and accounting information, whether it is required to be kept under the Tax Law or other laws, and whether or not it is required to be kept. It can obtain information from any person who has in his/her possession or power such information. Guernsey’s competent authority also has access to bank information for EOI purposes. Finally, the competent authority has the power to obtain a warrant to search premises and to seize information. As to the attorney-client privilege, Guernsey’s laws provide that documents subject to the legal professional privilege (and information contained therein) do not have to be disclosed to the Director of Income Tax or pursuant to a court order, but the Guernsey application of the principle meets the standard.

218. Since the 2013 Report, no changes have been made to access powers of the Competent Authority (Director of Income Tax) under the Tax Law.

219. In practice, since the Income Tax Office keeps no or very limited ownership, accounting and banking information, the access powers are used to answer most of the EOI requests Guernsey receives. In the current review

period, Guernsey received a total of 136 requests and the Guernsey competent authority has not encountered any issues in accessing the information. While there are no time limits to provide responses, Guernsey authorities advise that the normal timeframe indicated is 30 days.

220. The table of determination and rating remains as follows:

<b>Legal and Regulatory Framework</b>		
	<b>Underlying Factor</b>	<b>Recommendations</b>
<b>Deficiencies identified in the implementation of the legal and regulatory framework</b>		
<b>Determination in place</b>		
<b>Practical Implementation of the standard</b>		
	<b>Underlying Factor</b>	<b>Recommendations</b>
<b>Deficiencies identified in the implementation of EOIR in practice</b>		
<b>Rating: Compliant</b>		

### ***B.1.1. Ownership, identity and bank information***

221. The 2013 Report analysed the procedures applied in the case of obtaining information generally and found them to be in line with the standard. Generally, the same rules continue to apply for this review period. In practice the Guernsey competent authority has used its access powers for the 136 requests received during the period under review, as none was simple enough to relate to information fully available with the Income Tax Office.

#### *Accessing information generally*

222. The Director has broad information gathering powers to enable him to carry out his statutory duties as set out in sections 75A to 75Q of the Tax Law. Section 75C expressly authorises the Director of Income Tax to use his information gathering powers for EOI purposes based on a TIEA or DTC which is an “approved international agreement”. In 2014, the expression “approved international agreement” was redefined as “an agreement or arrangement providing for the obtaining, delivery, making available, furnishing and/or exchanging of documents and information in relation to tax, which is made between the States of Guernsey and the government of another territory, or which is otherwise binding upon Guernsey and governed

by international law (including, without limitation, an agreement which has been acceded to or ratified by the United Kingdom on behalf of Guernsey), and which is specified for the purposes of this Law by Ordinance of the States”, which extended the definition to cover, inter alia, the Multilateral Convention.

223. In accordance with the above provisions, the Director may obtain information from a taxpayer (or any other third party) who has in his/her possession or power any information or document falling within the scope of an EOI request by sending a notice. This is regardless of whether or not the person is legally required to keep that information or documents. The law does not limit the type of document or information that may be requested, and therefore all ownership, identity and accounting information can be accessed. There is also no restriction of the time period for which documents and information may be requested, notwithstanding any restrictions regarding the entry into force of the relevant EOI mechanism. The only information that does not have to be disclosed, by the recipient of a notice, are documents subject to legal professional privilege (see B.1.5 below).

#### *Accessing bank information*

224. Guernsey’s competent authority has broad information gathering powers, as set out in sections 75A to 75Q of the Tax Law. As such, the Director can request information from any other third party, including, without limitation, information held by banks or other financial institutions. In practice, the Director issues notices to the bank directly.

#### ***B.1.2. Accounting records***

225. The powers described in section B.1.1 can also be used to obtain accounting information. During the current review period Guernsey received 61 requests for accounting information which were responded to within a reasonably quick time. In practice, the Director generally issues notices to the Resident Agent of the company.

#### ***B.1.3. Use of information gathering measures absent domestic tax interest***

226. The information gathering powers of the competent authority are not subject to Guernsey requiring such information for its own domestic tax purposes. Consequently, the issue of a domestic tax interest does not arise. There were no issues in this regard during the earlier review and no such issues have arisen in the current review period either.

#### ***B.1.4. Effective enforcement provisions to compel the production of information***

227. Under the Director’s information gathering powers, the Director may issue a notice to obtain information from a taxpayer (or any other person) who has in their “possession or power” any information or document falling within the scope of an EOI request, whether or not the person is legally required to keep that information or documents.

228. Any person who fails to comply with a Notice issued under section 75A or 75B, and who does not do so without reasonable excuse, is guilty of an offence. On summary conviction they are liable to a fine not exceeding GBP 20 000 and a further fine not exceeding GBP 2 000 for each day that the failure continued after conviction. In addition, if a person intentionally falsifies, conceals or destroys or otherwise disposes of a document which has been requested by the Director or by a court order, she/he is punishable by imprisonment by up to two years and/or a fine up to GBP20 000. The same sanction is applicable against persons who knowingly or recklessly make statements or provide information which are false, deceptive or misleading in accordance with section 75L of the Tax Law. However, during the review period there was no occasion to use the enforcement powers under the Tax Law.

229. If a person disputed an obligation to keep information, the Director would refer them to the specific legislation/common law obligation that placed the obligation to maintain and retain the relevant records. If the person continued to dispute the matter and failed to comply with the formal notice the Director may refer them to Her Majesty’s Procureur (Attorney General) for the consideration of prosecution under the Tax Law and in setting out the details of the case would enable Her Majesty’s Procureur to consider whether any lack of record keeping created further criminal offences (such as under the Income Tax (Keeping of Records, etc.) Regulations, etc.). The potential fines that the Court could impose for non-compliance with a Notice could include daily penalties of up to GBP 2 000 per day, which could continue until such time as the person complied with the Notice.

230. If, however, the person provided the Director with the details of the person who did hold the relevant records and the Director was able to obtain them this would be taken into consideration with regard to whether a criminal prosecution would be pursued (ultimately this may be a decision of Her Majesty’s Procureur).

231. If necessary, the Director further has the ability to apply to the Court, to utilise the powers of seeking an order of the court, or a warrant to search premises. It has not, however, been necessary for the Director to utilise these powers during the period under review in respect of an EOI request (although

these powers have been used for domestic tax purposes in the past), as all Notices issued by the Director to banks or any other financial institutions parties to provide information in their possession or control have been complied with.

### ***B.1.5. Secrecy provisions***

232. There are three relevant types of secrecy or confidentiality provisions: bank secrecy, corporate secrecy and professional secrecy.

#### *Bank and fiduciary secrecy*

233. The 2013 Report noted that a customary/common law duty of confidentiality imposes an obligation on banks to keep their customers' affairs confidential. In addition, the Banking Supervision Law provides for confidentiality with regards to banking information under sections 43 to 45. Likewise, the Fiduciaries Law also contains provisions on confidentiality of information obtained by the licensed fiduciaries under section 43 to 49. Section 75M of the Tax Law lifts the duty of confidentiality of banks and fiduciaries imposed by statute, contract or otherwise, to allow them to answer a notice for the production of documents or information from the competent authority or a court order. The information gathering powers of the competent authority described above apply equally to banks, or any other financial institution, as they would do to any other person who is subject to these provisions (see paras 269-272 of 2013 Report)

#### *Corporate Secrecy*

234. Some ownership and identity information is confidential under the Guernsey Companies Law. The confidentiality of this information is sometimes lifted in the Companies Law itself. For instance, a director's residential address is not freely publicly available in cases where the address in the register is a service address. In those circumstances, disclosure of the address is permitted if required by the Director of Income Tax for the proper exercise of her/his functions (Guernsey Companies Law, section 151).

235. Personal data is protected under the Data Protection (Bailiwick of Guernsey) Law, 2001, which incorporates the principles of the EU Data Protection Directive (95/46/EC). Accordingly, section 29 expressly exempts personal data processed for the purpose of assessment or collection, within or outside the Bailiwick, of any tax or duty or of any imposition of a similar nature.

236. Section 75M of the Income Tax Law lifts all duties of confidentiality on any person imposed by statute, contract or otherwise, to allow them

to answer a notice for the production of documents or information from the competent authority or a court order pursuant to an EOI request. Thus any confidentiality obligations or restrictions are not contravened by the making of a disclosure pursuant to a notice, order or warrant.

### *Professional secrecy*

237. The only provision that prohibits or restricts disclosure to the competent authority for the purposes of responding to a specific EOI request concerns legal professional privilege material. Attorney client privilege cannot be overridden, unless waived. The Guernsey authorities confirm that legal professional privilege covers two broad circumstances, pursuant to the principles of English Common Law: legal advice privilege and litigation privilege (the Guernsey authorities have previously provided local case law that supports the fact that the Guernsey courts follow the UK precedent on attorney-client issues). Documents subject to the legal professional privilege (and information contained therein) do not have to be disclosed to the Director of Income Tax or pursuant to a court order. To further clarify, communications between the client and a third party would be protected only if made for the purpose of obtaining information to be submitted to the client’s professional legal advisors for the “dominant purpose” of obtaining legal advice on pending or contemplated litigation. Examples of the types of documents which may be subject to litigation privilege include witness statements, expert reports and copies of documents made in the course of litigation. Items held with the intention of furthering a criminal purpose are not items subject to legal professional privilege. The overall legal position and applicable jurisprudence is the same as per the findings of Phase 2 report (see paras 266-267) which appears to be generally in line with the international standards. Guernsey has received no EOI requests where information was requested from a lawyer, or any other person subject to professional confidentiality obligations in the review period.

## **B.2. Notification requirements, rights and safeguards**

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

238. The 2013 Report found that there were no issues regarding notification requirements or appeal rights. There was no significant exercise of appeal rights in the previous review period and the rights and safeguards have been found to be compatible with the requirements of effective exchange of information practices by Guernsey. The legal framework implementing this element was determined to be in place and its application in practice rated as Compliant with the standard.



239. In Guernsey, there are no requirements under the Tax Law to directly notify the taxpayer upon receipt of a request or after providing a response to the requesting partner.

240. The Tax Law contains appeal rights to the Royal Court against decisions made by the Director. Any person to whom the Guernsey competent authority has given a notice may apply for the consent of the Bailiff to appeal, within a 30 days' time period. The decision of the Bailiff may itself be appealed against to the Court of Appeal within seven days. There are however, no express rights of appeal for the taxpayers under investigation, as mentioned in the request of the partner, to appeal against the notice of the Director. The grounds of appeal are limited (section 75k(6) of the Tax Law) to where the decision was *ultra vires*, unreasonable in law, subject to an error of law, or where there is a material error of fact.

241. Guernsey authorities advise that in any such appeal, or any application for judicial review, the Director is subject to orders of the Court, but would disclose the minimum information necessary, and would only disclose the actual request letter if ordered to do so by the Court and with the consent of the requesting party (in the absence of which, and with the agreement of the partner, the relevant notice would be withdrawn and the legal proceedings conceded). Normally the Notice would be suspended while the appeal process was ongoing. The Director does have the right under the Income Tax Law to ask the Royal Court or the Court of Appeal, as appropriate, to give effect to the Notice even though the appeal process hasn't been completed. The Director would only do this in exceptional circumstances, and particularly he may consider doing so if he believed that documents or information could be destroyed, defaced, removed from the island, etc., during the course of the appeal process. The Income Tax Law also gives the Bailiff, the Royal Court or the Court of Appeal, as appropriate, the power to require any documents sought under the Notice to be lodged with the relevant Court while the appeal process is ongoing. It can also require information about the documents (such as where they are kept) and it can also require the appellant to enter into undertakings concerning the documents (such as requiring them to be lodged with the appellant's advocate, bank, etc., for safe keeping). Anyone who fails to comply with an Order or requirement of the Bailiff, Royal Court or Court of Appeal is punishable as if they committed contempt of court.

242. In the current review period, there has been an application to the Royal Court and eventually to the Court of Appeal seeking a judicial review of the notice issued by the Director under section 75B(2) on the power to call for documents. Although the Guernsey authorities could not provide further details on this case, being subject to an existing and ongoing Order of the Royal Court of Guernsey on this pending case, based on the published judgment in the public domain, it is seen that this judgment for the first time

has clarified the rights of judicial review available to the taxpayers under investigation against the notices issued by the Director to a third party. This is the first ever case in Guernsey of judicial review being sought in relation to an EOIR matter. As it may set an example for future cases, Guernsey is recommended to continue to monitor the situation in terms of the outcomes of this case for compliance with international standards on balancing the rights and safeguards for taxpayers with effective exchange of information (timeliness/no undue delay or prevention of exchange of information). Further, the implications of this judgment for possible requests for access to the Director’s EOI file by the taxpayer in this case is also examined in the section for Element C.3 below.

243. The table of determination and rating remains as follows:

<b>Legal and Regulatory Framework</b>		
	<b>Underlying Factor</b>	<b>Recommendations</b>
<b>Deficiencies identified in the implementation of the legal and regulatory framework</b>		
<b>Determination: in place</b>		
<b>Practical Implementation of the standard</b>		
	<b>Underlying Factor</b>	<b>Recommendations</b>
<b>Deficiencies identified in the implementation of EOIR in practice</b>		
<b>Rating: Compliant</b>		

### ***B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information***

#### *Notification*

244. The 2016 Terms of Reference have introduced a new requirement in circumstances where an exception to notification has been granted – in those cases there must also be an exception from time-specific post-notification. In Guernsey, there are no requirements under the Tax Law, to directly notify the taxpayer upon receipt of a request or after providing a response to the requesting partner. There has been no change in the Tax Law as compared to the previous report, in this regard.

245. Unless a request for invocation of “anti-tipping off” provisions is specifically sought by the requesting partner in its request for information,

Guernsey’s Tax Law would not prevent the information holder, on whom a notice is served calling for information, to inform the foreign taxpayer under investigation of such notice. Tipping off is not directly covered by the standard.

246. The Guernsey authorities have reported that their practice in respect of the “anti-tipping off” provisions, as detailed in the 2013 Report, has not changed whereby, the Tax Law expressly provides for the possibility to prevent the taxpayer from being aware of the information gathering activities taking place (see 2013 Report, paras 274-278). In practice, Guernsey reported that it has only received requests from two jurisdictions to exercise the anti-tipping off provisions and all such requests have been agreed to by the Director.

### *Other rights and safeguards*

247. There are rights of appeal to the Royal Court against the decisions made by the Director, pursuant to section 75K of the Tax Law. Any person to whom the Guernsey competent authority has given a notice may, within 30 days, apply for the consent of the Bailiff to appeal. The decision of the Bailiff may itself be appealed against to the Court of Appeal within seven days. The Bailiff’s consent is required, in order to ensure that appeals are not lodged on improper grounds or designed to delay or frustrate the investigative powers of the Director. Ultimately, the decision of the Royal Court can be appealed to the Court of Appeal. The notice of the Director is of no effect for so long as the appeal is not decided upon by the Bailiff or the Court, unless the Court decides otherwise, as provided in section 75K(12) of the Tax Law.

248. There are however, no express rights of appeal in the Tax Law for the foreign taxpayers under investigation, to appeal against a notice of the Director which has been issued to a third party, in the current review period, there has been an application to the Royal Court and immediately thereafter to the Court of Appeal seeking a judicial review of the decision, by the Director, to issue a notice under section 75B(2) calling for information. The Guernsey authorities could not provide further details on this case, being subject to an existing and ongoing Order of the Royal Court of Guernsey. Based on the published judgment, it is seen that the grounds of appeal were; (a) the notice sought information which pre-dated the entry into force provision of the TIEA, and was thus ultra vires. (b) the notice sought information which was not foreseeably relevant to the tax investigation. (c) the notice was premature in that it was issued prior to the relevant tax authority having exhausted its domestic measures.

249. In the Royal Court leave to appeal was refused because the appellant, not being the recipient of the notice had no statutory right of appeal and the Court refused permission for the appellant to proceed with a claim for judicial review.

250. In the Court of Appeal the appellant accepted there was no statutory right of appeal. The Court found that determining the lawfulness of the Director's exercise of power under the Tax Law could only be properly assessed by the Guernsey Courts. The Court, therefore, granted permission for judicial review, but in so doing expressed the view that whilst the Director must be satisfied that a request accords with the EOI Agreement, the Director is unlikely to be required to make an exhaustive investigation of foreign law so to be satisfied. The Director is entitled to assume that the requesting partner is acting lawfully until material is put before her that this is not the case. In addition, whilst the Director must act rationally in exercising her powers this does not mean she must examine critically the letter of request nor that the applicant for judicial review is necessarily entitled to receive that request. Some plausible ground needs to be advanced to support the appellant's claim to see the letter of request.

251. The Court also confirmed that current legislation contained no obligation to advise the taxpayer of the Director's provisional intention to respond affirmatively to a request.

252. This is the first ever case in Guernsey, since the information powers were enacted in 2006, of judicial review being sought in relation to an EOIR matter and confirms that there is no automatic right for the taxpayer (or the recipient of the notice calling for information) to be granted permission to seek judicial review nor is there an automatic right to see the letter of request, which will be determined by the Court on a case by case basis. Further, the implications of this judgment for possible requests for access to the Director's EOI file by the taxpayer in this case is also examined in the section for Element C.3 below.

253. The peer concerned has not provided any adverse inputs on the timeliness of the response in this case. The peer has instead noted the regularity of contact and a face to face meeting in 2017. Guernsey and the peer are both working collaboratively in order to resolve this matter, to the satisfaction of both EOI partners.

254. Further, the implications of this judgment for possible requests for access to the Director's EOI file by the taxpayer in this case is also examined in the section for Element C.3 below.

## Part C: Exchanging information

255. Sections C.1 to C.5 evaluate the effectiveness of Guernsey’s network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Guernsey’s relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Guernsey’s network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Guernsey can provide the information requested in a timely manner.

### C.1. Exchange of information mechanisms

Exchange of information mechanisms should provide for effective exchange of information.

256. The 2013 Report concluded that Guernsey’s network of EOI mechanisms was “in place” and was rated Compliant. At that time, Guernsey had 3 Double Tax Conventions (DTCs) and 37 Tax Information Exchange Agreements (TIEAs). In addition to these bilateral mechanisms, Guernsey was also able to exchange information under bilateral agreements with each EU Member State equivalent to the EU Directive on the Taxation of Savings Income (2003/48EC). Those agreements provided for (i) withholding tax to be levied in respect of interest and similar payments made to residents of EU Member States or (ii) information to be exchanged automatically where the taxpayer has made voluntary disclosure. These agreements have recently been replaced by automatic exchange of financial information under the Common Reporting Standard.

257. However, the 2013 report noted that the 1955 DTC between Guernsey and Jersey only provided for the exchange of information available to the competent authorities under their respective income tax laws, and accordingly, Guernsey was recommended to bring this relationship to the standard. A revised DTC with Jersey was under negotiation at that time and was signed in January 2013, with an exchange of information article (Article 24) equivalent to Article 26 of the Model Convention. This came into force on 9 July

2013. Therefore the previous recommendation with regard to a DTC with Jersey is removed.

258. Since the 2013 Report, with Guernsey's agreement, the United Kingdom extended the territorial application of the MAC to Guernsey, with effect from 1 August 2014. In addition, Guernsey had concluded a further 33 new EOI agreements (23 new TIEAs and 10 DTAs). To date, Guernsey has bilateral EOI relationships to the standard with 73 jurisdictions, of which 5 are non-signatories to MAC, resulting in a total of 121 EOI relationships for Guernsey.

259. The 2016 Terms of Reference now includes a reference to group requests in line with paragraph 5.2 of the Commentary. The foreseeable relevance of a group request should be sufficiently demonstrated, and the requested information assist in determining compliance by the taxpayers in the group. Guernsey was able to process some group requests over the review period without any difficulty and to the satisfaction of the peers concerned.

260. The updated table of determination and rating is as follows:

<b>Legal and Regulatory Framework</b>		
	<b>Underlying Factor</b>	<b>Recommendations</b>
<b>Deficiencies identified in the implementation of the legal and regulatory framework</b>		
<b>Determination in place</b>		
<b>Practical Implementation of the standard</b>		
	<b>Underlying Factor</b>	<b>Recommendations</b>
<b>Deficiencies identified in the implementation of EOIR in practice</b>		
<b>Rating: Compliant</b>		

### *Other forms of exchange*

261. Guernsey has also been able to exchange information under bilateral agreements with each EU Member State equivalent to the EU Directive on the Taxation of Savings Income (2003/48EC). Those agreements provided for (i) withholding tax to be levied in respect of interest and similar payments made to residents of EU Member States or (ii) information to be exchanged automatically where the taxpayer has made voluntary disclosure. These agreements have recently been replaced by exchanges under the Common Reporting Standard.

262. Outside the EU, Guernsey applies the Common Reporting Standard in matters of automatic exchange of information and exchanged first financial information in September 2017 on the basis of the multilateral Convention, and from income year 2014 with the United-States pursuant to an Intergovernmental Agreement to improve compliance with international tax obligations and implement the Foreign Account Tax Compliance Act. In addition, the first exchange of information on tax rulings and advance agreements on transfer pricing in the context of the BEPS project took place in September 2017. Guernsey is also committed to exchanging information on Country-by-Country Reports in 2018.

263. Guernsey also engages in other types of exchange, such as spontaneous exchange, and Guernsey has consented to the entry of foreign tax officials to meet with Guernsey residents on a voluntary basis.

### ***C.1.1. Foreseeably relevant standard***

264. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. The 2013 Report found that Guernsey’s network of DTCs and TIEAs is applied consistent with the standard on foreseeable relevance.

265. Guernsey continues to interpret and apply its DTCs and TIEAs, as well as the MAC, consistent with these principles. All of the new EOI arrangements which Guernsey has signed since the 2013 Report include the term “foreseeably relevant” in their EOI Article.

266. Guernsey requires that, when making a request under a TIEA, the requesting jurisdiction provide sufficient information to demonstrate the foreseeable relevance of the information requested in accordance with Article 5(5) of the Model TIEA:

- The identity of the person(s) (including groups) under examination or investigation (to the extent possible)
- A statement of the information or documents sought, including the format in which to provide it
- The tax purpose for which the information is sought
- Grounds to believe that the information requested is available in Guernsey or in the possession or control of a person in Guernsey
- The person believed to be in possession or control of the information (to the extent known)
- A statement of conformity with the laws of the applicant party

- A statement that the requesting Party has pursued all means available within its own territory to obtain the information, except those that would give rise to disproportionate difficulty.

267. In addition to the above, all of Guernsey's TIEAs (with the exception of the TIEAs with Switzerland and India) contain an additional requirement that the requesting Party shall provide details of the reasons for believing that the information requested is foreseeably relevant to the tax administration and enforcement of the requesting Party. This additional requirement to the provisions of the OECD Model TIEA were agreed during the negotiations with each relevant TIEA partner on the basis that the provision of this information, up front, would invariably assist in facilitating the efficient exchange of information. These partners have not indicated any difficulty or extra burden due to this provision.

268. In the review period, no requests were declined (See the table in C5). Clarifications had to be sought for a number of reasons in 38 cases. Of these, 22 were subsequently withdrawn by the requesting jurisdiction or confirmed as completed, the rest were revised, or further information was provided, which validates the clarifications requested. See para. 307 and 308 for discussion on clarifications. Guernsey further clarified that 42% of these total clarifications (i.e. 16 cases) were only sought after the Guernsey information holder had been approached, i.e. the initial request was considered to be in conformity with the relevant agreement and had been processed accordingly, but subsequently queries were raised by the information holder (such as, that the taxpayer was in fact co-operating fully with domestic enquiries; documentation had already been provided domestically; the matter had already been concluded between taxpayer and tax authority).

269. Guernsey further explained that only 7 of the 38 clarifications queried an aspect of foreseeable relevance, and these were on either specific questions, or a specific named party rather than on the whole request. Of these 7 clarifications 2 were made only sought after the Guernsey information holder had been approached on the basis of specific concerns raised by the information holder. In both of those cases the requesting Party subsequently confirmed the request could be considered closed or withdrawn.

### *Group requests*

270. Guernsey's procedures to deal with group requests are very similar to those used for dealing with an individual request and are detailed in Guernsey's EOI Work Manual (see element C.5 for details). The main difference relates to the information that must be included in the request as per paragraph 5.2 of the Commentary to Article 26 of the OECD Model Convention, which includes the following information: (i) a detailed



description of the group, (ii) the specific facts and circumstances that have led to the request; (iii) an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law, supported by a clear factual basis; and (iv) showing that the requested information would assist in determining compliance by the taxpayers in the group.

271. During the review period, Guernsey received two group requests. These are the first group requests that Guernsey has received. Once it had been established that the EOI requests were in conformity with the relevant TIEA, Guernsey has not encountered any difficulties in answering the group requests. In both instances, Guernsey initially received draft requests, which Guernsey was able to agree were in conformity with the relevant TIEA and to invite the EOIR Partner to make the formal request. The receipt of draft requests from the jurisdiction in particular was not carried out specifically because it was a group request, as this is the requesting peer's preferred method for engaging in all EOI requests of any complexity.

### ***C.1.2. Provide for exchange of information in respect of all persons***

272. The 2013 Report found that none of Guernsey's EOI agreements restricts the jurisdictional scope of the exchange of information provisions to certain persons, for example those considered resident in one of the contracting parties. No issues arose in the previous review period in this regard.

273. The additional agreements that Guernsey has entered into since the 2013 Report similarly do not have such restrictions. Peers have not raised any issues in practice during the current review period.

### ***C.1.3. Obligation to exchange all types of information***

274. The 2013 Report did not identify any issues with Guernsey's network of agreements in terms of ensuring that all types of information could be exchanged and no issues arose in practice.

275. The new agreements that Guernsey has entered into since the 2013 Report all include language similar to paragraph 5 of the Article 26 of the OECD Model Tax Convention which provides that a contracting party may not decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. Peers have not raised any issues in practice during the current review period.

#### ***C.1.4. Absence of domestic tax interest***

276. The 2013 Report did not identify any issues with Guernsey's network of agreements regarding a domestic tax interest and no issues arose in practice. None of the EOI requests received by Guernsey during the period had a domestic tax interest. The additional agreements that Guernsey has entered into since the 2013 Report all include paragraph 4 of Article 26 of the OECD Model Tax Convention which provides that a contracting party may not decline to supply information solely because it has no interest in obtaining the information for its own tax purposes.

277. The requests received in the review period covered ownership, accounting, banking and tax information in relation to companies, partnerships, trusts, foundations and non-resident individuals.

278. As such, Guernsey has encountered no difficulties in processing EOI requests that do not have a domestic tax interest. Peers have not raised any issues in practice during the current review period.

#### ***C.1.5. Absence of dual criminality principles***

279. The 2013 Report did not identify any issues with Guernsey's network of agreements in respect of dual criminality and no issues arose in practice.

280. The additional agreements that Guernsey has entered into since then do not include dual criminality provisions. The requests related to criminal matters have not raised any issues in practice.

#### ***C.1.6. Exchange information relating to both civil and criminal tax matters***

281. The 2013 Report found that Guernsey's network of agreements provided for exchange in both civil and criminal matters and no issues arose in practice.

282. The additional agreements that Guernsey has entered into since then provide for exchange of information in both civil and criminal tax matters. During the review period 29 requests were made on the basis of a criminal tax matter and were dealt with by Guernsey.

#### ***C.1.7. Provide information in specific form requested***

283. The 2013 Report noted that Guernsey applies its EOI mechanisms consistent with the OECD Model and so is prepared to provide information in the specific form requested to the extent such form is known or permitted under Guernsey's law or administrative practice. The 2013 Report noted

positive experience with this in the period 2011-13. Similarly, no issues arose in practice during the current review period.

### ***C.1.8. Signed agreements should be in force***

284. The 2013 Report noted that Guernsey had signed agreements which allowed for the exchange of information for tax purposes with 40 partners. Of the 37 TIEAs and 3 DTCs (there being both a DTC and TIEA with the United Kingdom), 30 were in force. As regards the agreements not in force (9 TIEAs and the recent DTC), Guernsey had completed all domestic steps necessary to bring those into force except for the most recently concluded agreements with Chile (TIEA) and Malta (DTC). Subsequently, the agreement with Chile came into force on 2 August 2016 and that with Malta is in force since 10 March 2013.

#### **Bilateral EOI mechanisms**

	<b>Total</b>	<b>Total bilateral instruments not complemented by the MAC</b>
<b>A</b> Total number of DTCs/TIEAs (A=B+C)	73	5 (Botswana, Hong Kong (China), Lesotho, Macau (China), Swaziland)
<b>B</b> Number of DTCs/TIEAs signed (but pending ratification), i.e. not in force (B=D+E)	4	1
<b>C</b> Number of DTCs/TIEAs signed and in force (C=F+G)	69	4
<b>D</b> Number of DTCs/TIEAs signed (but pending ratification) and to the Standard	4	1
<b>E</b> Number of DTCs/TIEAs signed (but pending ratification) and not to the Standard	0	0
<b>F</b> Number of DTCs/TIEAs in force and to the Standard	69	4
<b>G</b> Number of DTCs/TIEAs in force and not to the Standard	0	0

285. There are 4 TIEA agreements that have been signed that are not yet entered into force, being Botswana, Brazil, Costa Rica and Spain. These TIEA agreements have all been ratified in Guernsey and as such all necessary steps to bring the agreement into force by Guernsey have been fulfilled. As such these 5 TIEA agreements will come into force once the relevant partner jurisdictions have completed their necessary internal requirements/procedures.

### *C.1.9. Be given effect through domestic law*

286. Guernsey has in place the legal and regulatory framework to give effect to its EOI mechanisms. No issues were raised in the 2013 Report in this regard, and similarly no issues arose in practice during the current review period.

## **C.2. Exchange of information mechanisms with all relevant partners**

The jurisdiction's network of information exchange mechanisms should cover all relevant partners.

287. The 2013 Report found that element C.2 was “in place” and rated “Compliant”. During the last review, Guernsey received the standard recommendation on element C.2: “Guernsey should continue to develop its exchange of information network with all relevant partners”. Since the 2013 Report, the number of EOI partners of Guernsey grew from 40 to 121, mainly thanks to the extension of the multilateral Convention on Mutual Administrative Assistance in Tax Matters to Guernsey, in force in Guernsey since 1 August 2014.

288. Since the 2013 Report, Guernsey's EOI network of bilateral instruments has expanded considerably with 30 new agreements (10 DTCs and 23 TIEAs) concluded. At present Guernsey has 60 EOIR partners, with whom a TIEA agreement has been signed and 13 EOIR partners, with whom a DTC has been signed (all of which include an Exchange of Information article – however see above re the DTC with the UK).

289. Guernsey reports it is engaged in negotiations with several jurisdictions in relation to TIEAs and DTCs, some of which are simply awaiting signing arrangements being agreed, and having not been approached by any other jurisdictions for the purpose of entering into or amending an existing agreement for EOIR which has been declined. Guernsey should continue to conclude EOI agreements with any new relevant partner who would so require. Guernsey indicates that it is open to all approaches from other jurisdictions to consider new requests for negotiation of EOIR agreements.

290. The updated table of determination and rating is as follows:

<b>Legal and Regulatory Framework</b>		
	<b>Underlying Factor</b>	<b>Recommendations</b>
<b>Deficiencies identified in the implementation of the legal and regulatory framework</b>		
<b>Determination in place</b>		

<b>Practical Implementation of the standard</b>		
	<b>Underlying Factor</b>	<b>Recommendations</b>
<b>Deficiencies identified in the implementation of EOIR in practice</b>		
<b>Rating: compliant</b>		

### C.3. Confidentiality

The jurisdiction's information exchange mechanisms should have adequate provisions to ensure the confidentiality of information received

291. The 2013 Report concluded that the applicable treaty provisions and statutory rules that apply to officials with access to treaty information and the practice in Guernsey regarding confidentiality were in accordance with the standard. However, a recommendation was issued stating that Guernsey, in its notices, should not disclose to third parties information that is not needed to obtain the information requested.

292. In view of the changes made by Guernsey to the procedure of issuing notices to information holders, under its Tax Law (a new section 75CB has been brought into force from April 2014), whereby the name of the taxpayer under investigation is no longer provided to the financial institution, unless it is necessary to do so in order to obtain the specific information being sought by the request, and further in view of advice by Guernsey authorities that in practice, the taxes covered and the type of request are not disclosed, the recommendation is no longer necessary, and stands removed.

293. The updated table of determination and rating is as follows:

<b>Legal and Regulatory Framework</b>		
	<b>Underlying Factor</b>	<b>Recommendations</b>
<b>Deficiencies identified in the implementation of the legal and regulatory framework</b>		
<b>Determination: in place</b>		

Practical Implementation of the standard		
	Underlying Factor	Recommendations
<b>Deficiencies identified in the implementation of EOIR in practice</b>		
<b>Rating: Compliant</b>		

### *C.3.1. Information received: disclosure, use and safeguards*

294. The 2013 Report concluded that the TIEAs and DTCs concluded by Guernsey met the standards for confidentiality including the limitation on disclosure of information received and use of the information exchanged, which are reflected in Article 26(2) of the Model Tax Convention and Article 8 of the OECD Model TIEA. These confidentiality obligations form part of Guernsey's domestic law by the incorporation of Guernsey's EOI instruments into its domestic law, and are also reflected in specific domestic provisions.

295. Treaty obligations are complemented by domestic law. All persons who are concerned with tax matters in Guernsey are required, under section 206 of the Tax Law, to take an oath of secrecy. A person violating the oath is guilty of an offence and liable on conviction to imprisonment for a term not exceeding six months and/or to a fine not exceeding GBP 5 000. The secrecy obligation does not prevent, however, the competent authority exchanging information with any person, body or authority for the purposes of a TIEA or DTC, pursuant to section 205(3) of the Tax Law. In addition to the confidentiality duties described above, the use and disclosure of information by the Income Tax Office is governed by Guernsey's Data Protection Law and the Code of Practice on Data Protection. The same provisions apply to the MAC which has applied to Guernsey since 2014.

296. The 2016 Terms of Reference clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the authority supplying the information authorises the use of information for purposes other than tax purposes, and where tax information may be used for other purposes in accordance with their respective laws. Such an exception is in accordance with the amendment to Article 26 of the OECD Model Tax Convention introducing this element, which previously appeared in the commentary to this Article.

297. In Guernsey, the confidentiality obligations have some exceptions, primarily in relation to the States Social Security Department (Tax Law, section 206A). The law enforcement authorities may also request information held by the Director of Income Tax if the disclosure is made for the purpose

of facilitating the carrying out of the functions of an intelligence service or any criminal investigation or proceeding in the Bailiwick or elsewhere. Information so disclosed may not be further disclosed except with the consent of the Director of Income Tax (Disclosure (Bailiwick of Guernsey) Law, 2007 (“the Disclosure Law”). Guernsey’s competent authority has confirmed that information relating to a request made under an international agreement would not be disclosed to law enforcement, under the Disclosure Law, unless the consent of the requesting Party has been obtained. Even once information is then shared, further onward disclosure would only occur with the consent of the relevant competent authority (which would necessitate a further reference back to the originating requesting Party). There have been no such cases to date in practice.

### ***C.3.2. Confidentiality of other information***

298. The 2013 Report notes that Guernsey should not disclose to third parties information that is not needed in order to obtain the information requested. The recommendation related to the content of the formal notice to third parties (considered to be in possession of the required information), issued under the information powers contained in Part VIA of the Tax Law and the practice of including within it the legal basis for the request; the type of request (whether it was civil or criminal); the taxes covered and the identity of the person subject to the request.

299. In December 2013, the States of Guernsey approved the Income Tax (Guernsey) (Amendment) Ordinance, 2014 introducing a new section 75CB(1) into the Tax Law, which came into force on 30 April 2014. The new procedure provides for disapplication of the necessity to name the taxpayer under enquiry by the requesting jurisdiction, in a formal notice, where the competent authority and a single Member of the Guernsey Tax Tribunal (which is Guernsey’s appellate body in relation to tax matters) are satisfied that this is appropriate. The Guernsey authorities have reported that in practice, the Guernsey Tax Tribunal has always agreed with the proposal of the Director of Income Tax to not mention the name of the taxpayer in the notice issued to the information holder. Since these new amendments satisfy the 2013 Report’s recommendation therefore it stands removed.

300. The 2013 Report did not raise any issue with regard to confidentiality in practice, other than the recommendation referred to above, that Guernsey should not disclose in a notice to third parties information that is not needed in order to obtain the information requested. During the current review period, there were no issues reported by peers with respect to Guernsey’s practice of confidentiality. During the onsite, Guernsey officials confirmed that they did not encounter any difficulty in implementing the new notice. It was also seen at the onsite visit that the EOI files were stored in a restricted

access area and the officials were well aware of the international standards in respect of ensuring confidentiality of EOI requests and responses.

301. In the ongoing case of judicial review, discussed in Element B.2 above,<sup>7</sup> it has been confirmed in Guernsey’s Court of Appeal that there is no automatic right for the taxpayer (or the recipient of the notice calling for information) to be granted permission to seek judicial review nor is there an automatic right to see the letter of request, which will be determined by the Court on a case by case basis. It is noted that Guernsey and the peer concerned are working collaboratively in order to resolve this matter, to the satisfaction of both EOI partners. That said, the case being still ongoing, the Guernsey authorities are invited to report the outcome of the final decision in their follow-up report.

302. Guernsey Authorities have explained that in any case involving court proceedings they would keep the relevant EOI Partner informed throughout the process, therefore, ensuring the confidentiality of the information continues to be managed in accordance with the wishes of the EOI Partner.

#### C.4. Rights and safeguards of taxpayers and third parties

The information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties.

303. The 2013 Report concluded that Guernsey’s information exchange mechanisms allow the parties to decline to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*). The new EOI mechanisms entered into by Guernsey contain the same provisions. In practice, during the current review period, the Guernsey authorities confirmed that it did not experience any practical difficulties in responding to EOI requests due to the application of rights and safeguards in Guernsey. Guernsey has never declined any element of a request for any of the above reasons nor has it ever received information/documentation (from the third party information holder) which has sought the redaction or non-disclosure of documents on the grounds that it was covered by the three elements detailed above.

7. The judicial decision that has been published in Guernsey can be found, under the reference 54/2016 on the Guernsey Legal Resources webpage: [www.guernseylegalresources.gg/article/151109/2016](http://www.guernseylegalresources.gg/article/151109/2016).



304. The table of determination and rating remains as follows:

<b>Legal and Regulatory Framework</b>		
	<b>Underlying Factor</b>	<b>Recommendations</b>
<b>Deficiencies identified in the implementation of the legal and regulatory framework</b>		
<b>Determination: in place</b>		
<b>Practical Implementation of the standard</b>		
	<b>Underlying Factor</b>	<b>Recommendations</b>
<b>Deficiencies identified in the implementation of EOIR in practice</b>		
<b>Rating: Compliant</b>		

#### ***C.4.1. Exceptions to provide information***

305. In respect of rights and safeguards of persons, the OECD Model TIEA provides that they remain applicable “to the extent that they do not unduly prevent or delay effective exchange of information”. The majority of Guernsey’s TIEAs employ this wording. Guernsey officials have confirmed that existing variations do not materially affect the exchange of information to the standard. No issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice, nor have they been raised by any of Guernsey’s exchange of information partners.

306. With regard to attorney client privilege, if faced with a matter in which legal professional privilege was considered to possibly apply to the requested information (or an element of the requested information) the Director would follow the procedure and interpretation which is set out in Chapter 8 of the EOI Procedural Manual. Guernsey officials would at first confirm that the information holder sought legal advice, upon which it was determined that each document was subject to legal privilege and they have acted solely on the basis of that legal advice. Guernsey’s EOI Manual explicitly refers to legal privilege as the communication between lawyer and client which has arisen for the purpose of obtaining legal advice and assistance. Privilege will not attach to any communications undertaken with the intent of committing a crime or fraud.

## C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

307. In order for exchange of information to be effective, jurisdictions should request and provide information under its network of EOI mechanisms in an effective manner. In particular:

- *Responding to requests*: Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or provide an update on the status of the request.
- *Organisational processes and resources*: Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.
- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions

308. The 2013 Report concluded that Guernsey had an effective system for exchanging information and element C.5 was rated Compliant with the standard. Within the Guernsey Income Tax Office, all EOI requests received by the competent authority are dealt with in the Compliance and Investigation Unit (CIU) which is responsible for the exchange of information under all of Guernsey's EOI mechanisms. The day-to-day operation was handled by an experienced and competent staff of five officers and the system for handling requests was efficient and well-organised. The 2013 Report noted Guernsey's good working relationship with exchange of information partners, who were satisfied in general with the quality of the responses provided by Guernsey. However, two peers noted that it was challenging to address the level of details required for obtaining information from Guernsey. The 2013 Report made a recommendation that the situation should be monitored and that Guernsey should work closely with its EOI partners to reduce the need for clarifications.

309. Guernsey has addressed the recommendations made in the 2013 Report by corresponding with partners in a constructive manner, by seeking to provide possible solutions to any perceived issues with the request. Guernsey has taken further steps to maintain effective communication by holding telephone conversations, and some visits to partner jurisdictions to have face-to-face meetings to discuss respective policies and procedures, to ensure both competent authorities have a good understanding of how they can best assist one another in order to enable the effective exchange of information, or on specific cases where requests are anticipated or have been made. For example, Guernsey authorities have visited the United Kingdom, France,

India and Sweden where a meeting was considered to be the most effective way of co-operating with these partners. Guernsey also co-operates with its partners by accepting draft requests, which then enable both Parties to ensure the final requests are best formulated in accordance with the EOI mechanism and will provide the requesting Party with the foreseeably relevant information to progress their enquiries. The recommendation is therefore considered as having been appropriately implemented.

310. In all other respects Guernsey continues to perform to the standard in terms of responding to requests, which totalled 136 during the period under review. The organisation and procedures are reasonably complete and coherent and peers were generally very satisfied with the responses sent. However, during the review period, Guernsey has not been able to update its partners on the status of pending requests by 90 days in all cases. Also, the timeliness of responses has deteriorated compared to the previous review period. Guernsey authorities have explained that competing requirements to handle the EOIR, AEOI (CRS and FATCA) and BEPS commitments, combined with a domestic restructuring of the Income Tax Office have resulted in this relative fall in timeliness of responses by Guernsey authorities, and necessary organisational redeployments have been effected as a consequence by creating a separate unit within the Income Tax Office, called the International Co-operation Unit (ICU) from July 2017.

311. The ICU consists of five members of staff. The majority of the staff members within ICU have been redeployed from CIU and were those officers who have had previous experience in EOIR/AEOI. In doing so, there are 5 members of staff who are now dedicated solely to the EOIR/AEOI function, removing competing pulls on their time to deal with domestic compliance and investigation activities. Particular training and development needs of some officers within ICU are also being addressed. Also, from July 2017 the EOIR tracking spreadsheet has been enhanced to clearly identify cases where the request is nearing 90 days from the date of receipt, in order that the relevant officer is alerted to the need to send an update to the EOIR Partner. Combined with this, from July 2017, the Inspector – Exchange of Information and Deputy Director (Compliance and International) had also set weekly meetings to review the EOIR activities and discuss any complex matters with the view to come to a suitable resolution. It is recommended that Guernsey continue to monitor its organisational design and processes to ensure compliance with the standards in respect of timeliness as well as providing 90 day status updates in all outstanding cases.

312. The updated table of determination and rating is as follows:

<b>Legal and Regulatory Framework</b>
This element involves issues of practice. Accordingly, no determination has been made.

Practical Implementation of the standard		
	Underlying Factor	Recommendations
<b>Deficiencies identified in the implementation of EOIR in practice</b>	Timeliness of responses by Guernsey as compared to the previous review period and during the three year period under review deteriorated. During the review period, Guernsey did not systematically provide status updates of pending requests by 90 days. Nevertheless Guernsey has been able to effectively exchange information in the review period to the general satisfaction of all the peers and subsequently further necessary organisational redeployments have been implemented by Guernsey to improve the timeliness of responses and to provide status updates in all cases.	It is recommended that Guernsey should continue to monitor its organisational design and processes to ensure compliance with the standards in respect of timeliness as well as providing 90 day status updates in all outstanding cases.
<b>Rating: Compliant</b>		

### *C.5.1. Timeliness of responses to requests for information*

313. The Guernsey competent authority has a comprehensive internal procedural manual that details the specific processing and procedures for dealing with EOI requests. This manual contains the timeframes whereby the various processes should be completed in order to ensure the effective exchange of information. When a request for information is received, acknowledgment will be sent within 5 days of the date of receipt; a first review of the request will be carried out within 30 days of the receipt of the request; a second review of the request will be carried out within 60 days of the receipt of request (and if clarification of the request is required from the requesting Party the clarification communication should be sent to the requesting Party within this same timeframe); and as per section 5.17, regular progress updates should be provided to the requesting Party, at least every 90 days from the date of the receipt of the request until the request is considered to have been satisfied. In practice, it is the Inspector – Exchange of Information’s responsibility to monitor the progress of EOI requests and review matters on a weekly basis, discussing any issues with the Deputy Director (Compliance and International) as necessary.

314. Over the period under review (1 January 2014 – 31 December 2016), Guernsey received a total of 136 requests for information. The information requests in these requests related to<sup>8</sup> (i) ownership information (65 cases), (ii) accounting information (61 cases), (iii) banking information (52 cases) and (iv) other type of information (88 cases). The entities for which information was requested pertained to (i) companies (112 cases), (ii) individuals (75 cases), (iii) bearer shares (0 cases), (iii) trusts (40 cases), (iv) foundations (1 case), and (v) other entities (3 cases). Guernsey's most significant EOI partners for the period under review (by virtue of the number of exchanges with them) are France, India, United Kingdom, Sweden and Australia. For these years, the number of requests where Guernsey answered within 90 days, 180 days, one year or more than one year, are tabulated below.

### Statistics on response time

	2014		2015		2016		Total		
	Num.	%	Num.	%	Num.	%	Num.	%	
Total number of requests received [A+B+C+D+E]	25	18	60	44	51	38	136	100	
Full response: ≤ 90 days	17	68	40	67	22	43	79	58	
≤180 days (cumulative)	19	76	46	77	30	59	95	70	
≤ 1 year (cumulative)	[A]	20	80	46	77	40	78	106	78
> 1 year	[B]	1	4	0	-	0	-	1	0.7
Declined for valid reasons	0	-	0	-	0	-	0	-	
Outstanding cases after 90 days	4		7		23		34		
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days)	3	75	4	57	4	17	11	32	
Requests withdrawn by requesting jurisdiction	[C]	4	16	13	22	6	12	23	17
Failure to obtain and provide information requested	[D]	0	-	0	-	0	-	0	-
Requests still pending at date of review	[E]	0	-	1	1%	5	10	6	4.4

*Notes:* Guernsey counts each request with multiple taxpayers as one request, i.e. if a partner jurisdiction is requesting information about 4 persons in one request, Guernsey counts that as 1 request. If Guernsey received a further request for information that relates to a previous request, with the original request still active, Guernsey will append the additional request to the original and continue to count it as the same request. If a request is withdrawn and subsequently replaced with a revised request, that is treated as two requests.

The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued.

8. Some requests entailed more than one type of information or more than one type of entity.

315. Guernsey explained that requests that are not fully dealt with within 90 days typically relate to complex queries covering a variety of types of information. The Guernsey competent authority does not prioritise any kind of EOIR request over another and there is no particular “type” of request which is more, or less, likely to be fulfilled within 90 days. However, requests for a comprehensive amount of information, or those with complicated or extensive underlying structures are more likely to take longer than 90 days to fulfil. While Guernsey’s most recent review which covered the period 1 July 2009 to 31 May 2012 did not have any outstanding requests at the end of the period of review, there are currently 6 EOI requests pending, including 5 received in 2016. One request was received on 30 December 2015, about which the Director is unable to provide any further detail due to an existing and ongoing Order of the Royal Court of Guernsey in this case, which is now pending for about two years. The peer concerned has not provided any adverse inputs on the timeliness of the response in this case. The peer has instead noted the regularity of contact and a face to face meeting in 2017. Guernsey and the peer are both working collaboratively in order to resolve this matter, to the satisfaction of both EOI partners.

316. Of the EOI requests outstanding from 2016, i.e. from more than one year, one was received in April 2016, concerning primarily banking information. A response providing what was thought to be all of the requested information was sent to the requesting Party in June 2016. Subsequently, Guernsey has corresponded with both the requesting Party and the Guernsey information holder, as the requesting Party was of the belief that some of the information/documents that were requested were missing. Further information was obtained and forwarded to the requesting Party in March 2018. One EOI request was received in November 2016 and 3 received on 30 December 2016. These requests related to:

1. various information and documentation concerning trusts (including accounting information, banking information and beneficial ownership information)
2. establishing whether a permanent establishment existed and, in the event that it did, the underlying accounting and banking information
3. company beneficial ownership, accounting and banking information.

317. Guernsey authorities reported that owing to the technical complexities of these cases the processing is taking longer than usual combined with historical limitations of human resources.

318. Overall, the Statistics Table above reflects that the timeliness of responses has deteriorated compared to the previous review period during which Guernsey had always been able to respond to request within 180 days (except one case, i.e. 3.1% of cases). In the current review period this

happened in 15.9% of cases (i.e. answered provided after 180 days and including pending cases since they are all pending for more than 180 days).

319. The response time also deteriorated over the three years under review, especially the last year, which also correspond to a sharp increase in the number of requests received. Guernsey authorities have explained that competing requirements to handle the EOIR, AEOI (CRS and FATCA) and BEPS commitments have resulted in this relative fall in timeliness of responses by Guernsey authorities, and necessary organisational redeploys have been effected by Guernsey to address the issue. In addition the Income Tax Office has been undergoing significant internal restructuring as part of an overall service improvement programme.

320. In the period under review, 38 requests for clarification (or 28% of total EOI requests received) were made by Guernsey to the requesting jurisdiction. Of the 38 requests with clarification, 16 were subsequently withdrawn by the requesting jurisdiction. Of the 22 remaining, sufficient clarification was subsequently provided to enable Guernsey to proceed and these were completed. One request concerning an ongoing case is subject to continued, detailed, discussions with the requesting party. The Director is unable to provide any further information owing to the fact that this is subject to an existing and ongoing Order of the Royal Court of Guernsey. One request received in December 2016 is subject to ongoing discussions with the requesting party.

321. Guernsey has reported that the main reasons that clarification was sought, prior to being able to confirm a request was in conformity with the relevant agreement, was:

- To establish that nexus of the information being held in Guernsey
- Period covered by the request included periods prior to entry into force of relevant agreement and there was no clear indication contained within the request that this related to a criminal tax matter
- Lack of clarity by the requesting party in detailing what information is sought.

322. The other instances where Guernsey may have to seek clarification is after Guernsey has reviewed the requests, determined they were in conformity with the relevant agreement, and had commenced the process of obtaining the information by use of the information gathering powers, as a result of which a comment is made by the Guernsey person (information holder), or their legal representatives, either challenging an aspect of the request (i.e. taxpayer began co-operating with the foreign domestic investigation), or providing new information, which necessitates going back to the requesting competent authority.

323. The 2013 Report recommended (in text) that the Guernsey authorities work closely with its EOI partners to reduce the need for clarifications. Guernsey explained that it has actively endeavoured to form positive working relationships with all its EOI partners in order to help make the process of making an EOI request as effective and efficient as possible. This has been effected by corresponding with partners in a constructive manner, when seeking clarifications to requests (on the occasions when it is necessary to clarify a request, then where possible, and in order to assist EOI partners, Guernsey will always seek to provide possible solutions to any perceived issues with the request, or the underlying questions in the request). This has also included holding telephone conversations, on specific cases, when it is considered that this will facilitate more effective exchange, and some visits to partner jurisdictions to have face to face meetings, either general meetings, to discuss respective policies and procedures, to ensure both competent authorities have a good understanding of how they can best assist one another in order to enable the effective exchange of information, or on specific cases where requests are anticipated or have been made and a meeting is considered to be the most effective way of proceeding. Examples of the latter include visits to the United Kingdom, France, India and Sweden.

324. In order to increase the effectiveness of Guernsey's ability to exchange information, the Guernsey competent authority is agreeable to accept draft requests, which then enable both Parties to ensure the final requests are best formulated in accordance with the EOI mechanism and will provide the requesting Party with the foreseeably relevant information to progress their enquiries. As described above, Guernsey has continued to be prepared to hold discussions with EOIR partners to discuss potential EOI requests to determine whether the proposed request meets the requirements of the EOI mechanism and, given the basis of the underlying enquiry, assisting in formulating the appropriate information and documents the requesting party requires in order to best assist in the underlying tax enquiry. Furthermore, Guernsey considered it would be helpful to provide all EOIR partners with some case studies it had established when dealing with EOI requests which had previously required Guernsey having to seek clarification. These "Guernsey EOI Case Studies" have been uploaded to the Global Forum secure database for competent authorities. The intention was that this document would provide helpful practical information to EOIR partners when making EOI requests of the type that Guernsey was frequently receiving, designed to assist in formulating questions particularly in respect to areas that they may not be familiar with, such as trusts. Guernsey has provided further comprehensive details, intended to provide EOI partners with helpful, practical, information concerning EOIR with Guernsey, such as EOI request templates – the completion of which is not mandatory but is provided to assist EOI partners in formulating their requests. It also provides



background to Guernsey’s domestic tax regime and the Director’s information gathering powers. To summarise, the Guernsey competent authority and delegated competent authorities, when dealing with EOIR requests, all work on the basis that they will only seek to clarify issues concerning a request where it is absolutely necessary, and then do so in a constructive manner aimed at resolving issues as swiftly as possible.

### *Internal process for status updates*

325. During the review period, Guernsey has not been able to update its partners on the status of pending requests by 90 days in all cases. Guernsey addresses the status updates obligation under the standards through an EOIR tracker spreadsheet. Following the recent modification of the EOIR Tracking Spreadsheet (July 2017), when a request falls within a timeframe of 80 to 90 days of the date of receipt, the cell turns orange, so as to be an easy visual reminder that the officer should, without delay, review the file and seek to compile and send a letter to the requesting Party. Such a letter is required to include: (a) reference to the fact that it will not be possible to exchange the requested information within 90 days of the date of the request; (b) the reasons for the delay in exchanging the information (including any obstacles encountered); and (c) the anticipated timeframe of being in a position to exchange the requested information.

326. Whilst at least half of the peers who received responses beyond 90 days commented that Guernsey did not always provide timely status updates, all the peers were very satisfied with the communication and ease of access to Guernsey Competent Authority to discuss their cases. Guernsey authorities have, subsequently, explained that the ongoing monitoring of EOIR requests has shown a marked improvement, and at the end of March 2018, where it has not been possible to provide a full response to a request within 90 days, 100% of those cases have had an update letter sent to the requesting Party within the 90 days.

### ***C.5.2. Organisational processes and resources***

327. In Guernsey, the exchange of information function under DTCs, TIEAs, the Multilateral Convention and with the European Union is centralised in a single unit called the International Co-operation Unit (ICU) which is part of the Income Tax Office of Guernsey.

328. The competent authority in Guernsey is the Director of Income Tax. There are two Deputy Directors, both of whom, by law, are empowered to act as competent authority. The Deputy Director of Income Tax (Compliance and International) (DDCI) has oversight of the ICU. The ICU has prime responsibility, inter alia, for dealing with exchange of information under Guernsey’s

international agreements. The Inspector – Exchange of Information has direct management of the ICU and is a delegated competent authority. The ICU is affiliated with the Compliance and Investigation Unit (CIU), both of which fall under the oversight of the DDCI. CIU is directly headed by the Compliance and International Manager who is also a delegated competent authority.

329. All of Guernsey’s EOI mechanisms name the Director of Income Tax as competent authority. The Agreements and identities of Guernsey’s competent authorities are also available on the States of Guernsey website ([www.gov.gg/tiea](http://www.gov.gg/tiea)) and the Global Forum secure Competent Authorities Database.

330. When an Agreement enters into force, Guernsey provides a letter to the relevant EOI partner, explaining contact details of the competent authority and the principal officers involved in EOI. EOI partners are encouraged to discuss any issues they may have in relation to making a request of Guernsey, whether that be by way of email, telephone discussions or meetings.

331. The ICU comprises of five staff working full time in exchange of information on request and automatic exchange of information. Since July 2017 they are no longer involved with domestic compliance and investigation matters.

332. It is recommended that Guernsey continue to monitor its organisational design and processes to ensure compliance with the standards in respect of timeliness as well as providing 90 day status updates in all outstanding cases.

### *Incoming requests*

333. For all EOI requests, the first step by the Guernsey authorities is to log and acknowledge the request. There was no adverse peer input on non-receipt of acknowledgements from Guernsey.

### *Procedure for obtaining requested information which are in the hands of the tax authorities or other authorities*

334. If the review of the request identifies the fact that the only information required was available in the Director’s records, it is anticipated that the review process would be straightforward and would also not require the use of the information gathering powers contained in the Income Tax Law, therefore, the information would be exchanged in as short a timeframe as possible (and far sooner than the 60 day timeframe for the second review). However, the Guernsey authorities have clarified that a request of this type is rare, and they have not received any such request in the review period.

335. If the review of the request would identify the fact that the only information required was held with a government authority (which in Guernsey's experience are usually the details held by the Company Registrar, which is also extremely rare) the review process would be straightforward and would also not require the use of the information gathering powers contained in the Tax Law, therefore, the information would be obtained from the Company Registry and exchanged with the requesting Party in as short a timeframe as possible (and far sooner than the 60 day timeframe for the second review).

#### *Obtaining information from third parties and verification of the information gathered*

336. Considering the size of the jurisdiction, the ICU directly requests information from the information holders without requesting assistance from the Guernsey tax auditors. Upon receipt of information from a person in response to the notice issued by the Director of Income Tax, the received information will be carefully reviewed by a member of the ICU team in order to confirm that all of the information required by the notice has been included. If it appears that the information/documents provided may be deficient, this will be immediately referred to the Inspector – Exchange of Information or DDCI for further action. The verification process also includes careful checks for any areas of redaction which will need to be explained by the information holder, and which have to be reasonable (e.g. names of other unrelated individuals in a client book). The Inspector – Exchange of Information will also further correspond with the information holder in order to obtain any outstanding documentation, to clarify the reasons for redaction and/or require explanation as to why a particular piece of information has not been provided.

#### *Practical difficulties Guernsey experienced in obtaining requested information*

337. Guernsey authorities have reported that during the review period, in general, they have not experienced any practical difficulties in obtaining information, with the exception of one case which has involved considerable detailed liaison with the requesting Party and required the Director to produce substantial documents within set timeframes that have been prescribed by the Court. The case is subject to legal proceedings, which in turn are subject to an injunction prohibiting the parties from disclosing matters concerning the ongoing case. Prior to the instigation of the court proceedings the matter of seeking a better understanding of the TIEA request required collaboration and dialogue between the competent authorities.

*Outgoing requests*

338. The 2016 Terms of Reference now evaluates the quality of requests made. In the current review period, Guernsey has not made a request to any of its partner jurisdictions in its network. The Guernsey authorities have clarified that the personnel involved in sending EOI requests consist of the same dedicated staff authorised to deal with incoming EOI requests within the specialist ICU, who are already trained and qualified to deal with EOI matters.

339. In the event a potential need to make a request were identified, Guernsey authorities inform that a request would be made as per procedures in section 12 of the EOI Procedural Manual, which is summarised, as follows: If any tax officer identified a requirement for information/documents held by an EOI partner, they would make a referral to the EOI team in ICU. This referral would then be reviewed by a member of the EOI team and assessed as to whether a suitable request could be made to the applicable jurisdiction. Further, if such a request was made, whether they consider it would be in conformity of the applicable international agreement. If the member of ICU believes the above to be the case, they would then draft the EOI request, using Guernsey's template for EOI requests.

340. Guernsey authorities would also check the Global Forum secure Competent Authorities Database to ascertain whether the jurisdiction had any particular requirements or preferences as to the form and manner of receiving an incoming request or if there is any other relevant information to the request. If there was no such requirement, the DDCI would submit the Guernsey request using the Guernsey request template as the unit has found this assists in clearly setting out all of the required information. This draft request would then be reviewed by the DDCI. In the event that the DDCI was satisfied that the request was in conformity with the relevant international agreement pursuant to which the request were to be made, she/he would duly authorise that the request could be sent. A member of the ICU team would then send the signed request to the applicable EOI partner. Where pre-established relationships to send secure information electronically have already been established with EOI partners, the request would be sent electronically via encrypted email. In all other events the request would be sent by registered courier mail.

341. If the DDCI, or any member of ICU is subsequently contacted to request use of a template or other particular method of EOI request presentation, the DDCI would always seek to comply with the requirements insofar as it was practical to do so (i.e. a request to submit or translate in a language not agreed in the equivalent Article 11 of the Model Convention in the relevant TIEA would have resource obligations that would need to be accounted for). In the event Guernsey sends an EOI request and subsequently received

a request for clarification in connection with it, initially the letter of clarification would be assigned to the ICU officer who was dealing with the EOI Request. If the issue could not be resolved by the member of staff within ICU they would liaise with the relevant tax officer/inspector to seek to resolve the matter and then prepare a letter of response, as soon as possible, for the DDCI's signature. Guernsey appears to have a good system to ensure that its requests would meet the requirements of its EOI mechanisms.

### ***C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI***

342. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI. As mentioned in Element B.2, there is a case that is currently under judicial review which was received in Guernsey about two years ago. The peer concerned has not provided any adverse inputs on the timeliness of the response in this case. The peer has instead noted the regularity of contact and a face to face meeting in 2017. Guernsey and the peer are both working collaboratively in order to resolve this matter, to the satisfaction of both EOI partners.



## Annex 1: List of in-text recommendations

The Global Forum may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. A list of such recommendations is reproduced below for convenience.

### Section A.1.1

- In the case of a foreign company in Guernsey, with sufficient nexus (having headquarters), and with its ownership chain having trust(s) or shareholder(s) being trust(s), since the FSB rule (No. 139) exempts the verification of identity of corporate trustees from the 40 Appendix C Countries, it might impact the availability of beneficial ownership information in respect of such foreign companies. This may present a minor gap in the availability of beneficial ownership information in such cases, and Guernsey is recommended to ensure that there is no impact on practice in all such cases (see A.3 also, for more details).
- In the case of LPs(without legal personality), having corporate partners with trustee(s) from Appendix C as shareholder, it might impact the availability of beneficial ownership information in respect of such LPs(without legal personality). This may present a minor gap in the availability of beneficial ownership information in such cases, and Guernsey is recommended to ensure that there is no impact on practice in all such cases.
- As per the current method of identifying beneficial owners for Trusts, it is also noted that the FSB rule (No. 139) exempts the verification of identity of corporate trustees from the 40 Appendix C Countries. This may also, to the extent required on a case-by-case basis, impact the determination of natural person “exercising ultimate effective

control” over the Trust. Therefore Guernsey authorities are recommended to take appropriate measures to ensure the availability of beneficial owner information in all cases of trustees, when they establish relationships with banks.

- There are a few gaps in coverage under AML obligations that could marginally impact the availability of accurate and updated beneficial ownership information, in practice, when the only source of beneficial ownership information is the Directors of a legal entity who are expected to be in possession of CDD information of the legal entity/arrangement. Guernsey is recommended to take appropriate measures to address the gap below:
  - i. There is an exemption from seeking a fiduciary licence if an individual natural person acts as a Director in less than 6 companies at a time and not acting by way of business, and thereby a possibility of exemption from being AML obligated and yet being responsible for any legal entity/arrangement.
  - ii. CDD requirements are not mandatory and do not have to be fulfilled where such a person is acting on an entirely voluntary basis, irrespective of the number of directorships held.
- **Section A.3:** Although the Guernsey banks remain responsible for identifying the beneficial owner, there is no requirement that a copy of all the CDD files (identification of beneficial owner and supporting documents) be transmitted to Guernsey by the introducer from Appendix C country. This may restrict the Guernsey authorities’ access to information in a timely manner. Guernsey should ensure that it has adequate access to all due diligence files.
- **Section C.2:** Guernsey should continue to conclude EOI agreements with any new relevant partner who would so require.
- **Section C.3:** The Guernsey authorities are invited to report the outcome of the final decision of the ongoing court case in their follow-up report.



## Annex 2: List of Guernsey EOI mechanisms

### 1. Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Argentina	TIEA	22-Jul-11	04-Jan-12
2	Australia	TIEA	07-Oct-09	27-Jul-10
3	Austria	TIEA	14-May-14	23-Nov-14
4	Bahamas	TIEA	29-Jul-11	28-Mar-12
5	Belgium	TIEA	25-Apr-14	10-May-18
6	Bermuda	TIEA	19-Sep-13	05-Apr-14
7	Botswana	TIEA	10-May-13	Not in force
8	Brazil	TIEA	06-Feb-13	Not in force
9	British Virgin Islands	TIEA	17-Apr-13	11-Nov-14
10	Bulgaria	TIEA	11-Jun-15	21-Mar-16
11	Canada	TIEA	19-Jan-11	18-Jan-12
12	Cayman Islands	TIEA	29-Jul-11	05-Apr-12
13	Chile	TIEA	04-Apr-12	02-Aug-16
14	China	TIEA	27-Oct-10	17-Aug-11
15	Costa Rica	TIEA	05-Mar-14	Not in force
16	Cyprus	DTA	29-Jul-14	04-Mar-15
17	Czech Republic	TIEA	15-Sep-11	09-Jul-12
18	Denmark	TIEA	28-Oct-08	06-Jun-09
19	Faroe Islands	TIEA	28-Oct-08	21-Aug-09
20	Finland	TIEA	28-Oct-08	05-Apr-09
21	France	TIEA	24-Mar-09	04-Oct-10
22	Germany	TIEA	26-Mar-09	22-Dec-10
23	Gibraltar	TIEA	22-Oct-13	12-Mar-14

	EOI partner	Type of agreement	Signature	Entry into force
24	Greece	TIEA	08-Oct-10	07-Mar-14
25	Greenland	TIEA	28-Oct-08	25-Apr-09
26	Hong Kong (China)	DTA	28-Mar-13	05-Dec-13
27	Hungary	TIEA	11-Sep-13	07-Mar-14
28	Iceland	TIEA	28-Oct-08	26-Nov-09
29	India	TIEA	20-Dec-11	11-Jun-12
30	Indonesia	TIEA	27-Apr-11	22-Sep-14
31	Ireland	TIEA	26-Mar-09	10-Jun-10
32	Isle of Man	DTA	24-Jan-13	05-Jul-13
33	Italy	TIEA	05-Sep-12	10-Jun-15
34	Japan	TIEA	06-Dec-11	23-Aug-13
35	Jersey	DTC	1955	01-Jan-56
		DTC	24-Jan-13	09-Jul-13
36	Korea	TIEA	23-Sep-15	21-Dec-16
37	Latvia	TIEA	05-Sep-12	04-Oct-13
38	Lesotho	TIEA	03-Jul-13	03-Jan-15
39	Liechtenstein	DTA	11-Jun-14	30-Apr-15
40	Lithuania	TIEA	20-Jun-13	08-Mar-14
41	Luxembourg	DTA	10-May-13	08-Aug-14
42	Macao (China)	TIEA	03-Sep-14	26-Apr-15
43	Malta	DTC	12-Mar-12	10-Mar-13
44	Mauritius	TIEA	06-Feb-13	05-Jul-13
		DTA	17-Dec-13	30-Jun-14
45	Mexico	TIEA	27-Jun-11	24-Mar-12
46	Monaco	DTA	07-Apr-14	09-May-15
47	Montserrat	TIEA	07-Apr-14	01-Nov-16
48	Netherlands	TIEA	25-Apr-08	11-Apr-09
49	New Zealand	TIEA	21-Jul-09	08-Nov-10
50	Norway	TIEA	28-Oct-08	08-Oct-09
51	Poland	TIEA	06-Dec-11	01-Nov-12
52	Portugal	TIEA	09-Jul-10	16-Mar-18
53	Qatar	DTA	22-Feb-13	11-Jul-13
54	Romania	TIEA	12-Jan-11	22-Jan-12

	EOI partner	Type of agreement	Signature	Entry into force
55	San Marino	TIEA	29-Sep-10	16-Mar-11
56	Seychelles	TIEA	20-Dec-11	22-Jul-12
		DTA	27-Jan-14	06-Oct-16
57	Singapore	DTA	06-Feb-13	26-Nov-13
58	Slovak Republic	TIEA	22-Oct-13	26-Jan-15
59	Slovenia	TIEA	26-Sep-11	09-Aug-12
60	South Africa	TIEA	21-Feb-11	26-Feb-12
61	Spain	TIEA	10-Nov-15	Not in force
62	St Kitts and Nevis	TIEA	18-Feb-12	14-Apr-13
63	Sweden	TIEA	28-Oct-08	23-Dec-09
64	Swaziland	TIEA	03-Jul-13	12-Mar-15
65	Switzerland	TIEA	11-Sep-13	14-Oct-14
66	Turkey	TIEA	13-Mar-12	06-Oct-17
67	Turks and Caicos	TIEA	24-Apr-14	17-Aug-15
68	United Kingdom	DTA	1952	24-Jun-52
69	United States	TIEA	19-Sep-02	30-Mar-06
70	Uruguay	TIEA	02-Jul-14	06-Oct-17

## 2. Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).<sup>9</sup> The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more

9. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

transparent environment. The amended Convention was opened for signature on 1 June 2011.

The United Kingdom extended the Multilateral Convention in respect of Guernsey from 1 August 2014.

Currently, the amended Convention is in force in respect of the following jurisdictions with which Guernsey can exchange information: Albania, Andorra, Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Brazil, Bulgaria, Cameroon, Canada, Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curacao (extension by the Netherlands), Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Greece, Greenland (extension by Denmark), Guatemala, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan, Korea, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Nauru, the Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Uganda, Ukraine and Uruguay.

In addition, the Multilateral Convention was signed by, or its territorial application extended to, the following jurisdictions, where it is not yet in force:<sup>10</sup> Armenia, Bahamas (entry into force on 1 August 2018), Bahrain (entry into force on 1 September 2018), Brunei Darussalam, Burkina Faso, Dominican Republic, El Salvador, Gabon, Grenada (signature on 18 May and instruments deposited on 31 May; entry into force on 1 September 2018), Hong Kong (China) (extension by China, entry into force on 1 September 2018), Jamaica, Kenya, Kuwait, Macau (China) (extension by China, entry into force on 1 September 2018), Morocco, Paraguay, Peru (entry into force on 1 September 2018), Philippines, Qatar, Turkey (entry into force on 1 July 2018), the United Arab Emirates (entry into force on 1 September 2018) and the United States (the original 1988 Convention is in force since 1 April 1995 and the amending Protocol signed on 27 April 2010).

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10. Note that while the last date on which the changes to the legal and regulatory framework can be considered was 27 April 2018, changes to the treaty network that occur after that date are reflected in this Annex.

## Annex 3: Methodology for the Review

The reviews are conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

This evaluation is based on the 2016 ToR, and has been prepared using the 2016 Methodology. The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 25 April 2018, Guernsey’s EOIR practice in respect of EOI requests made and received during the three year period from 1 October 2013 to 30 September 2016, Guernsey’s responses to the EOIR questionnaire and the follow-up questions, information supplied by partner jurisdictions, information independently collected by the assessment team, as well as information provided by Guernsey’s authorities during the on-site visit that took place from 14-16 August 2017 in St. Peter Port, Guernsey.

### List of laws, regulations and other material received

#### *Legislation*

- Companies (Guernsey) Law, 2008 (“Guernsey Companies Law “)
- The Income Tax (Guernsey) Law, 1975 as amended
- Limited Partnerships (Guernsey) Law, 1995 (“Limited Partnerships Law”)
- Partnership (Guernsey) Law, 1995 (“Partnerships Law”)
- Trusts (Guernsey) Law, 2007 (“Trusts Law”)
- Foundations (Guernsey) Law, 2012
- The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017; [www.guernseylegalresources.gg/article/161719/Beneficial-Ownership-of-Legal-Persons-Guernsey-Law-2017-Consolidated-text](http://www.guernseylegalresources.gg/article/161719/Beneficial-Ownership-of-Legal-Persons-Guernsey-Law-2017-Consolidated-text)

Beneficial Ownership of Legal Persons (Alderney) Law, 2017

Income Tax (Guernsey) (Amendment) Ordinance, 2014 [www.guernsey-legalresources.gg/CHttpHandler.ashx?id=87552&p=0](http://www.guernsey-legalresources.gg/CHttpHandler.ashx?id=87552&p=0)

### ***Regulatory framework***

Financial Services Commission (Bailiwick of Guernsey) Law, 1987

Protection of Investors (Bailiwick of Guernsey) Law, 1987 (“Protection of Investors Law”)

Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000 (“Fiduciaries Law”)

Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008

Prescribed Businesses (Bailiwick of Guernsey) Law, 2008

The Beneficial Ownership (Definition) Regulations, 2017 and The Beneficial Ownership (Definition) Amendment Regulations; [www.guernseylegalresources.gg/CHttpHandler.ashx?id=109318&p=0](http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=109318&p=0)

Companies (Annual Validation) Regulations, 2017

Beneficial Ownership of Legal Persons (Alderney) Regulations, 2017

The Resident Agent guidance [www.guernseyregistry.com/CHttpHandler.ashx?id=77348&p=0](http://www.guernseyregistry.com/CHttpHandler.ashx?id=77348&p=0)

Foundations (Annual Renewal) (Amendment) Regulations, 2017

Income Tax (Keeping of Records, etc.) (Amendment) Regulations enacted in 2012 (<https://gov.gg/CHttpHandler.ashx?id=2505&p=0>)

### ***Anti-money laundering framework***

Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 (“FSB Regulations”)

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 (“LEA Regulations”)

Handbook for Financial Services Businesses on Countering of Financial Crime and Terrorist Financing (“FSB Handbook”)

Handbook for Legal Professionals, Accountants and Estate Agents on Countering of Financial Crime and Terrorist Financing (“LEA Handbook”)

Guernsey: Committee Of Experts On The Evaluation Of Anti-Money Laundering Measures And The Financing Of Terrorism (MONEYVAL) Report on Fourth Assessment Visit – Guernsey, September, 2015

### **Authorities interviewed during on-site visit**

Income Tax Office, Guernsey

Guernsey Financial Services Commission (GFSC)

Financial Intelligence Service (FIS)

The Attorney General’s Office (AG Office)

The Director, Financial Crime and Risk Policy

The Director of International Tax Policy

### **Current and Previous reviews**

This report is the third review of Guernsey conducted by the Global Forum. Guernsey previously underwent an EOIR review through two assessments during the first round of reviews: the 2011 Phase 1 Report and its 2014 Phase 2 Report. Guernsey’s two assessments during the first round of reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology (2010 Methodology) used in the first round of reviews.

### Summary of Reviews

Review	Assessment team	Period under Review	Legal framework as of (date)	Date of adoption by Global Forum
Round 1 Phase 1	Ms Valeria Sperandeo from the Italian Revenue Agency, Assessment Directorate, International Division, Exchange of Information Office; Ms Balbir Kaur, senior tax specialist with the Tax Policy and International Tax Division of the Inland Revenue Authority of Singapore; Ms Renata Fontana and Ms Gwenaëlle Le Coustumer from the Global Forum Secretariat.	Not applicable	July 2010	January 2011
Round 1 Phase 2	Ms Giovanna Corona, Senior Tax Officer, International Relations Directorate, Ministry of Economy and Finance of Italy; Mr Colin Chew, Director-Tax Investigation of the Inland Revenue Authority of Singapore; Ms Laura Hershey and Ms Gwenaëlle Le Coustumer from the Global Forum Secretariat.	2009-11	January 2013	November 2013
2 <sup>nd</sup> Round	Ms Sylvia Gumbs, Deputy Financial Secretary, Fiscal, Policy, Investment and Debt Management Ministry of Finance, Government of St. Kitts and Nevis; Mr David Chitaishvili, Adviser of the Department for International Relations, Georgia Revenue Service; Mr Bhaskar Eranki from the Global Forum Secretariat	1 January 2014- 31 December 2016	26 April 2018	13 July 2018



## Annex 4: Guernsey’s response to the review report<sup>11</sup>

Guernsey is pleased that its long term commitment to, and implementation of, international standards for transparency and exchange of information in tax matters, has been recognised in the second round review with an overall rating of Compliant.

Guernsey will address the in box and in text recommendations as soon as possible, and report progress in the 2019 follow up report.

In relation to the A1 monitoring recommendation, the Assessment Team advised that it considered that the aspect related to the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (that “Guernsey should ensure Section 10(5) that requires Resident Agents to register an absence of any beneficial owners, is strictly implemented, such that beneficial ownership information is available in all cases in accordance with the standard”), could be satisfied by the Registrar issuing relevant guidance. Guernsey is pleased to report that such guidance was added as FAQ 12 in the “Guidance on the Meaning of Beneficial Owner”, and can be accessed at; [www.guernseyregistry.com/CHttpHandler.ashx?id=109195&p=0](http://www.guernseyregistry.com/CHttpHandler.ashx?id=109195&p=0)

In addition, the letters from Guernsey’s Attorney General, referred to in paragraph 85 of the Report, are attached.

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11. This Annex presents the Jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.



## LAW OFFICERS OF THE CROWN

The OECD  
2, rue André Pascal  
75775 Paris Cedex 16  
France  
19<sup>th</sup> April 2018

Dear OECD Secretariat

**Global Forum on Transparency and Exchange of Information for Tax Purposes: Draft report on Guernsey**

I am writing in respect of the text in the draft report about availability of ownership under Category A of the 2016 Terms of Reference. It has been brought to my attention that this text suggests that the definition of beneficial owner for the purposes of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (the Law), as set out in the Beneficial Ownership (Definition) Regulations, 2017 (the Regulations) is not in line with international standards. I understand that this is on that basis that the legislation expressly provides for the possibility of recording the non-existence of beneficial owners, and it is said therefore that the legislation should be aligned with the international standard in this area.

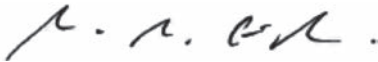
My purpose in writing to you is to confirm, in my capacity as Guernsey's prosecuting authority, that I believe that a resident agent is obliged to provide beneficial ownership information in line with the international standard under the current legal framework, and further that I would have no difficulty in deciding to prosecute a resident agent for failing to do so. This is because section 9 of the Law makes it a legal obligation for resident agents of legal persons to identify the beneficial owners of those legal persons, and the definition of beneficial owner in Regulation 1 of the Regulations expressly replicates the cascading three-tiered approach of the international standard in relation to the meaning of beneficial ownership. The result is that there is a legal obligation to apply each of the tiers. The reference in section 10(5) of the Law to circumstances in which a resident has ascertained that there are no beneficial owners of a legal person is expressly explained for the avoidance of doubt in Regulation 1 of the Regulations as meaning circumstances in which a resident agent has been unable to identify any beneficial owners. In other words, this situation would only arise where a resident agent had applied each of the three tiers and, having done so, was nevertheless unable to identify a beneficial owner.

Given that the third tier applies to a natural person holding the position of a senior managing official of the legal person, it is difficult to envisage a situation in which it would not be possible to identify any beneficial owner, and my understanding is that to date, no resident agent has claimed this. However, I wish to make it absolutely clear that if a case were to arise where a resident agent claimed to be unable to identify a beneficial owner, but had not first applied each of the three tiers of the international standard as required by the Regulations, I would regard that person as not having taken reasonable steps to identify the beneficial owner and therefore having committed a criminal offence. I would have no hesitation in taking forward a prosecution on that basis as appropriate.

In summary, the suggestion that Guernsey's legal framework is not aligned with the international standard is inaccurate and appears to be based on a misunderstanding both of the obligations that are in place and of the approach that would be taken to enforcing them.

I trust this is helpful. If you require any further information please do not hesitate to contact me.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M. Pullum'.

**Megan Pullum QC**  
**HM Procureur**



**LAW OFFICERS OF THE CROWN**

Our ref: CT/SOG/101328

Your ref:

The OECD  
2, rue André Pascal  
75775 Paris Cedex 16  
France

29<sup>th</sup> May 2018

Dear OECD Secretariat,

Further to my letter of 19th April 2018, I understand that the Assessment Team has suggested that the Guernsey court might interpret the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (the Law) differently from the way in which it is outlined in that letter. I am concerned that this suggestion is based on a fundamental misunderstanding about the Law and Guernsey's legal system more generally. Therefore, I am writing now in order to remove any such misunderstanding.

I wish to stress that section 9 of the Law, which imposes the obligation on resident agents to take reasonable steps to ascertain the identity of beneficial owners, does not contain any ambiguous wording or other language that is open to differences of statutory interpretation by the court as a matter of law. The only question the court would have to decide is one of fact, namely whether or not, in the circumstances of the particular case, a resident agent had taken reasonable steps to identify the beneficial owner as defined in the Beneficial Ownership (Definition) Regulations, 2017 (the Regulations). The test of reasonableness is a well-established feature of Guernsey and other common law jurisdictions, which the courts are very familiar with applying in both criminal and civil cases. The fact that the court would have to decide whether or not a person's guilt had been established by applying that test does not mean that there is any legal gap, ambiguity or uncertainty on the face of the legislation.

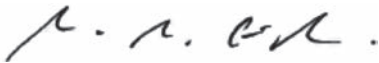
In short, there is no scope for the court to take a different view of the effect of the legislation from that set out in my previous letter.

In order to provide additional reassurance to the Assessment Team on this point, Guernsey has sought independent advice about the combined effect of the Law and the Regulations from a QC at a leading set of barristers' chambers in London specialising in

financial crime. His advice (copy attached) confirms that the position is as set out in this letter and in my letter of 19<sup>th</sup> April.

I trust this is helpful. If you require any further information please do not hesitate to contact me.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M. Pullum QC', with a stylized flourish at the end.

**Megan Pullum QC**  
HM Procureur

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## COMPLIANCE OF GUERNSEY LAW WITH OECD OBLIGATIONS

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### Introduction

1. I am instructed to advise on a narrow point, namely whether the statutory framework in Guernsey complies with OECD recommendations on the definition and identification of beneficial owners of legal persons (“the International Standard”). I address the following two questions:
  - (1) Is section 10(5) of the Beneficial Ownership of Legal Persons (Guernsey) Law 2017 (“the 2017 Law”) incompatible with the International Standard?
  - (2) Does the phrase “reasonable steps” in section 9(1) of the 2017 Law indicate that there is legal gap or ambiguity in the legislation?

### The International Standard

2. Recommendation 10 of the Financial Action Task Force (“FATF”) Recommendations<sup>1</sup> provides that financial institutions must take the following measures (page 12):

...

Identifying the beneficial owner and taking reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer.

...

3. The Interpretative Note to Recommendation 10 (at pages 59-60) provides that the beneficial owners can be identified through the following information:

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<sup>1</sup> Financial Action Task Force, “International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations” (updated February 2018)

(i.i) The identity of the natural persons (if any – as ownership interests can be so diversified that there are no natural persons (whether acting alone or together) exercising control of the legal person or arrangement through ownership) who ultimately have a controlling ownership interest in a legal person; and

(i.ii) to the extent that there is doubt under (i.i) as to whether the person(s) with the controlling ownership interest are the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural persons (if any) exercising control of the legal person or arrangement through other means.

(i.iii) Where no natural person is identified under (i.i) or (i.ii) above, financial institutions should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.

...

### The legal framework in Guernsey

#### *Beneficial Ownership of Legal Persons (Guernsey) Law 2017*

4. Section 9(1) of the 2017 Law provides:

The resident agent of a relevant legal person must take reasonable steps to ascertain the identity of the beneficial owners in relation to that relevant legal person.

5. Pursuant to section 10(1) of the 2017 Law:

The resident agent of a relevant legal person must keep a record of the required particulars of the beneficial owners of that relevant legal person in a record referred to in this Law as the “record of beneficial owners”.

6. Section 10(5) states:

If a resident agent has ascertained that there are no beneficial owners in relation to a relevant legal person, he must record that fact in the record of beneficial owners.

7. Pursuant to section 17(2) of the 2017 Law, any resident agent who fails to comply with “a duty imposed on him under sections 9 to 13” is “guilty of an offence” and “unless the person is a regulated person”, is “liable to a civil penalty”.

*The Beneficial Ownership (Definition) Regulations 2017*

8. Regulation 1 of the Beneficial Ownership (Definition) Regulations 2017 (“the 2017 Regulations”) provides the definition of a beneficial owner:

Subject to the provisions of this regulation and regulation 2, for the purposes of the Beneficial Ownership of Legal Persons (Guernsey) Law 2017 (“the Law”), the beneficial owner in relation to a relevant legal person is –

(a) the natural person who ultimately controls the relevant legal person through ownership through ownership; or, if no such person exists or can be identified,

(b) the natural person who ultimately controls the relevant legal person through other means; or, if no such person exists or can be identified,

(c) the natural person who holds the position of a senior managing official of the relevant legal person,

and “beneficial owner” and related expressions shall be construed accordingly; and for the avoidance of doubt, references in the Law to circumstances where a resident agent has ascertained that there are “no beneficial owners in relation to a relevant legal person” are to circumstances where no beneficial owners in relation to a relevant legal person can be identified by the resident agent of that resident legal person

Question 1: Is section 10(5) of the 2017 Law incompatible with the International Standard?

9. Concerns have been raised that section 10(5) might be incompatible with the obligation under the International Standard to identify somebody in a “senior managing position” (limb i.iii) where limbs i.i and i.ii are not met/engaged.
10. In my opinion, as a matter of statutory construction this concern is unfounded.
11. Section 10(5) of the 2017 Law only applies once a “resident agent has ascertained that there are no beneficial owners in relation to a relevant legal person”. The definition of a beneficial owner is provided by Regulation 1 of the 2017 Regulations and explicitly includes “the natural person who holds the position of a senior managing official” in circumstances where it cannot be ascertained who controls the legal person.



12. Consequently, for a resident agent to conclude that there are no “beneficial owners”, he must have already been unable to determine who holds the position of a senior managing official. Section 10(5) can only be engaged *after* it has been determined that no senior managing official can be identified.
13. If a resident agent has not taken reasonable steps to determine the information set out in Regulation 1 then he will not be complying with his duties and would be committing an offence under section 17 of the 2017 Law.
14. Section 10(5) cannot, therefore, be said to contradict the obligation to identify a senior managing official where limbs i.i and i.ii of the international standard are not engaged.
15. I observe that section 10(5) arguably goes further than the International Standard. In effect, a resident agent is required to inform the authorities where it has not been possible for limbs i.i, i.ii and i.iii to be met: in other words, positively to identify in the record the deficit in evidence as to beneficial ownership. Such [public] notice may promote further investigation into the identification of the legal person by the authorities, and will be transparent to any other person with access to the record.
16. In reality, circumstances engaging section 10(5) will probably be somewhat exceptional. It is generally not difficult to identify at least one senior managing official. I have been informed that to date in Guernsey there have been no circumstances where section 10(5) has been invoked in relation to a legal person.

Question 2: Does the phrase “reasonable steps” indicate there is a legal gap in the legislation?

17. The phrase “reasonable steps” in section 9(1) of the 2017 Law has not been defined further. This is because it will be for a court, as a tribunal of fact, to determine whether reasonable steps have been taken by the resident agent.
18. The concepts of “reasonableness” and “reasonable steps” have a long history in common law jurisdictions. One illustrative example is the criminal standard of proof, which was defined as “beyond reasonable doubt” (it is now “satisfied so that you are sure”). Tribunals of fact, which includes juries, are given no further guidance on the definition of “reasonable”. This does not mean that there is a legal loophole through which criminal defendants can escape the

consequences of their actions. What is reasonable will be context specific given the duties imposed on individuals in a given statutory/regulatory framework.

19. The term “reasonable steps” appears in multiple pieces of legislation in the UK and has been considered several times by the Supreme Court of the UK. To give an example, albeit in a different context (employers’ duties), in *Kennedy v Cordia (Services) LLP* [2016] 1 WLR 597 the Supreme Court did not attempt to provide any further definition of “reasonable steps” ([104]):

So far as [the Regulation] is concerned, it requires the employer to take all reasonable steps ...Evidently, the implications of a duty to take all reasonable steps depend on the circumstances.

20. In my opinion the term “reasonable steps” does not provide resident agents with a loophole through which they can escape their obligations under the 2017 Law. There is no legal gap or ambiguity in the legislation. Although “reasonable steps” is not defined further in the law, it would be for a tribunal of fact to analyse whether, in particular circumstances, the resident agent took reasonable steps to identify the beneficial owners of a legal person. Reasonableness will be determined by the underlying purpose of the duty imposed, and considerations of proportionality in the specific regulated environment.

#### Conclusion

21. In my opinion:

- (1) Section 10(5) of the 2017 Law is not incompatible with the International Standard.
- (2) The phrase “reasonable steps” in section 9(1) the 2017 Law does not constitute a gap in the law or render the provisions ambiguous.

22. If any part of this Opinion requires clarification please do not hesitate to contact me.

3 Raymond Buildings,  
Gray’s Inn,  
London

24 May 2018

HUGH DAVIES QC

## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to coordinate domestic and international policies.

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GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information  
on Request GUERNSEY 2018 (Second Round)**

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 150 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, please visit [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency).

This report contains the 2018 Peer Review Report on the Exchange of Information on Request of Guernsey.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264302730-en>.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases.

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